

Guidance on the nomination of Local Counter Fraud Specialists (LCFSs)

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Version 2.0

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Version control

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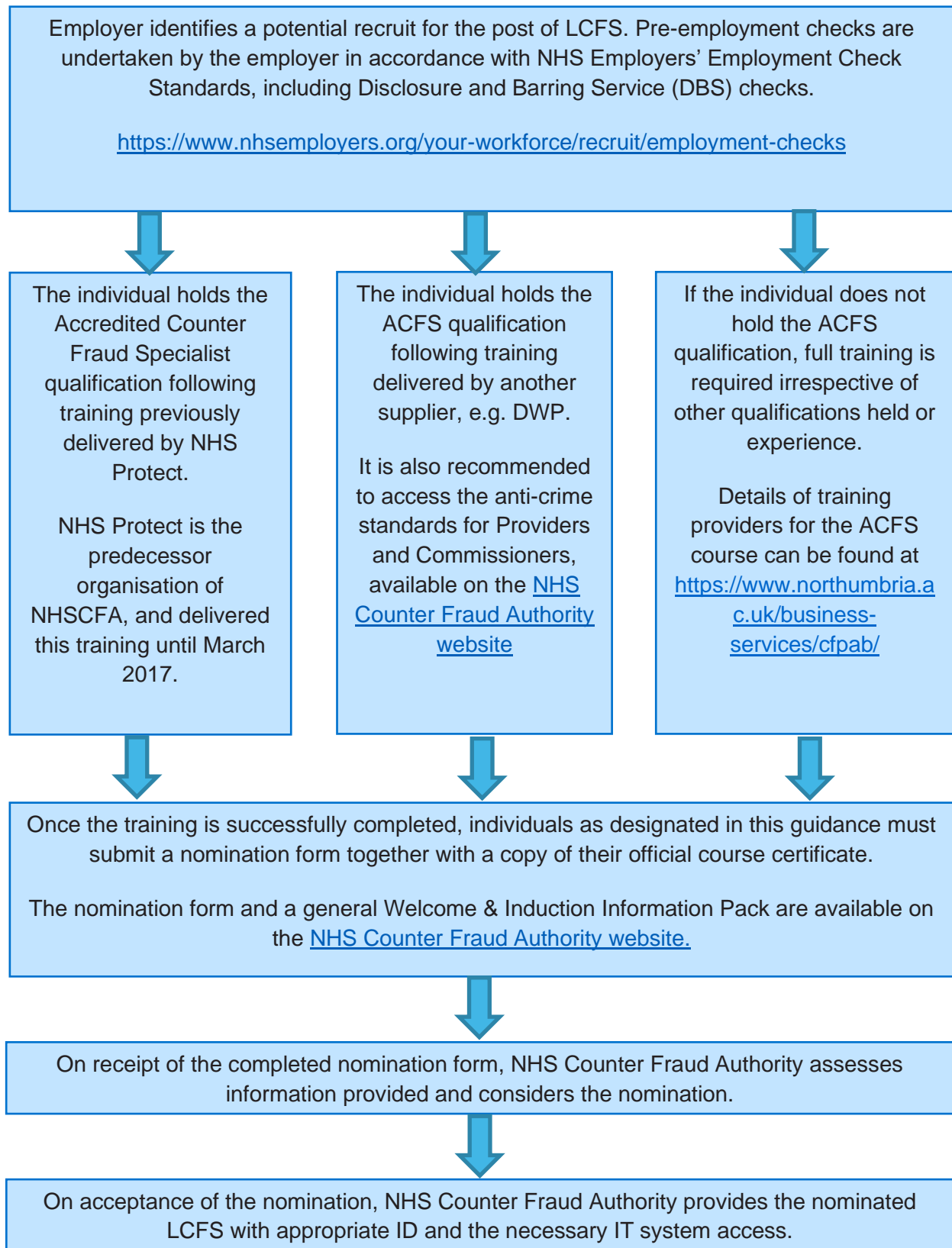
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1. Introduction

- 1.1. This document provides information and guidance on the NHS Counter Fraud Authority's (NHSCFA) nomination process for local counter fraud specialists (LCFSs). This is primarily for NHS and non-NHS healthcare organisations and for employers providing contracted counter fraud services to them. The document also provides guidance on the relevant legal and data handling requirements in relation to staff engaged as LCFs working in and for healthcare organisations. Those undertaking these roles are expected to meet the required standards of propriety and probity and this guidance aims to help with ensuring that this is the case.
- 1.2. As the NHS Counter Fraud Authority's remit covers only economic crime and does not include security management, it is no longer required to send nominations for the local security management specialist (LSMS) role.
- 1.3. Historically, NHS bodies were required to put in place arrangements to counter fraud under Secretary of State Directions. Provisions introduced under the Health and Social Care Act 2012 mean that such arrangements are now set out in the NHS Standard Contract rather than in Secretary of State Directions. The commissioning contract and its clauses apply to all providers. Service Condition 24.2 requires those providers which are licensed by Monitor, and NHS Trusts, to take the necessary action to meet the standards set by the NHSCFA. The NHSCFA also issues counter fraud standards in conjunction with NHS England for commissioners. More information on these requirements, and on the standards developed by the NHSCFA, can be found at <https://cfa.nhs.uk/counter-fraud-standards>
- 1.4. The NHS Standard Contract is published by NHS England. The current version is available at <https://www.england.nhs.uk/nhs-standard-contract/> Section 24 of Service Conditions contains information on counter fraud arrangements. The contract should be used by clinical commissioning groups (CCGs) and NHS England when commissioning NHS funded services.

2. Overview of the nomination process



3. Initial appointment

- 3.1 The responsibility for undertaking the required pre-employment checks before individuals are nominated to the LCFS role rests with the employing organisation. Checks should be carried out in accordance with NHS Employers' Employment Check Standards guidance (<http://www.nhsemployers.org/your-workforce/recruit/employment-checks/nhs-employment-check-standards>). This will include Disclosure and Barring Service (DBS) checks; further information on DBS checking is available in Appendix A.
- 3.2 The nomination process cannot be started until potential nominees have successfully completed all pre-employment checks (including relevant DBS checks) and accredited training.

4. Training overview

- 4.1 A potential nominee must complete training to obtain the Accredited Counter Fraud Specialist qualification before being nominated for the role. Once the training is successfully completed, individuals as designated in this guidance must submit a nomination form, see section 5.
- 4.2 Details of training providers can be found on the Counter Fraud Professional Accreditation Board (CFPAB) website at <https://www.northumbria.ac.uk/business-services/cfpab/>. Please note that the NHSCFA does not offer this training (our predecessor organisation NHS Protect offered it until March 2017).

5. Nominations for Local Counter Fraud Specialists

- 5.1 The responsibility for nominating an LCFS falls to an accountable board member. This is usually the Director of Finance from the nominating provider/commissioning organisation. This includes nominations for a support LCFS for the organisation. 'Lead' LCFSs will not be able to independently nominate a support.
- 5.2 The nomination form and a general Welcome & Induction Information Pack are available on the [NHS Counter Fraud Authority website](#).
- 5.3 The nomination form must be completed and signed by the nominee and their employer. An accountable board member (usually the Director of Finance) of the nominating provider/commissioner) must counter sign the form. Any failure to disclose the information required or return the nomination form in full will prevent an

individual being approved as an LCFS. Please note the accredited training certificate will also be required as proof of accredited status.

- 5.4 The nomination form consists of a declaration from the employer, the nominee and the nominating provider/commissioner and confirms that the employer has undertaken a full NHS Employment Check Standard recruitment process, including DBS checks, and that details of any irregularities have been provided.
- 5.5 If any discrepancy is identified during the employment check, this must be disclosed on the nomination form. The nominating NHS organisation will be required to provide an explanation.
- 5.6 The nomination form will be reviewed by the NHSCFA and a decision will be made as to whether the nomination will be accepted.
- 5.7 The final decision for accepting a nomination for the position of LCFS sits with the NHSCFA and is subject to the employer undertaking all appropriate pre-employment checks. Decisions on the outcome of a nomination request will be communicated to the NHS organisation making the nomination. If a nominee wants to reapply they can do so, provided they have addressed, if appropriate, the reason for their nomination failing originally.
- 5.8 Any changes to employer, NHS organisation or LCFS must be notified to the NHSCFA using the nomination form. In all instances the employer and NHS organisation must complete a current LCFS nomination form.
- 5.9 Access to NHSCFA IT systems will not be granted until the nomination process has been completed in full and approved by the NHSCFA.
- 5.10 Access and use of NHSCFA IT systems is a requirement under NHSCFA policy and NHS counter fraud standards.
- 5.11 Not all individuals are suited to perform these specialist roles. It is for the nominating organisation and LCFS employer to assure themselves that the nominee is a suitable candidate and has the appropriate background. Further information is provided in Annex B to assist this process. The nominating organisation can also contact the NHSCFA for further guidance if unsure as to the suitability of a potential nominee. Information on appropriate standards of conduct can be found at Annex C.

6. Ongoing monitoring and information accuracy

- 6.1 The NHSCFA will carry out checks each quarter in order to ensure that the information and records it holds on LCFS nominations are up to date and accurate.

7. Summary

- 7.1 The procedures outlined above are intended to ensure that the integrity of those employed to create and maintain a counter fraud culture throughout the NHS is beyond reproach. This is part of the NHSCFA's overall approach to the deterrence and prevention of crime.

Appendix 1 – Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act 1974 provides that anyone who has been convicted of a criminal offence and who is not convicted of a further indictable offence during a specified period (the “rehabilitation period”) becomes a “rehabilitated person” and his/her conviction becomes spent. This means that the conviction does not have to be declared for most purposes, such as applying for a job.

The period of time that must elapse before a conviction becomes a spent conviction varies, according to the length and nature of the sentence and the age of the offender. For example a community order becomes spent after one year, while a custodial or prison sentence of a maximum of 48 months becomes spent after seven years. The length of time for a conviction to become spent for someone under 18 is generally half that of an adult. A custodial or prison sentence of more than 48 months (four years) can never become spent.

Under the Act, a spent conviction, or failure to disclose a spent conviction or any circumstances connected with it, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing a person in any way in any occupation or employment.

A spent conviction need not be disclosed when a person is asked about his/her previous record and a rehabilitated person cannot be prejudiced if the spent conviction later comes to light.

There are a number of job roles that are excepted from the ROA. These are listed in the ROA Exceptions Orders that are published alongside the Act. The job roles and their definitions are wide ranging and the complete list can be found online. They range from those working with children and vulnerable adults, Crown Officers, doctors, nurses, pharmacists, veterinarians, accountants and many more. A person applying for any of these job roles must disclose to an employer or prospective employer previous convictions/criminal records no matter how long ago they were served.

The following NHSCFA roles are also included on the Exceptions Order:

‘Any employment or other work in England or Wales concerned with—

(a) the investigation of fraud, corruption or other unlawful activity affecting the national health service [...]

Under legislation, employers must not discriminate in their recruitment processes. Therefore, organisations registered with the Disclosure and Barring Service (DBS) are

required to have a written policy on the recruitment of ex-offenders, stating that they do not discriminate because of a conviction or other information revealed. A sample policy document can be found at <https://www.gov.uk/>

There are several acts of Parliament employers must have regard for: The Rehabilitation of Offenders Act (ROA) 1974, the Police Act 1997 and the Equality Act 2010. The Exceptions Order linked to the ROA includes a list of the professional categories excepted from the ROA. All excepted categories have a reference number, which changes over time; as of July 2014, the one related to health professions is number 21. The full list can be found at <https://www.gov.uk/>

For NHS provider organisations, there is the further requirement of compliance with the Care Quality Commission's *Essential Standards of Quality and Safety*, and specifically outcome 12 which relates to robust recruitment practices.

<https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulations-service-providers-managers>

There are three different levels of DBS checks linked to specific roles, activities and positions, information about which is available at <https://www.gov.uk/dbs-check-requests-guidance-for-employers>. All checks must comply with the Data Protection Act 1998.

Employers should ensure that their organisations are registered with the DBS to be able to carry out a check on a candidate. The level of check required, if any check is required at all, will depend on the role and position which the candidate has been selected for.

Roles that include contact and interaction with vulnerable people, children and the elderly entail a more thorough check (the latter falls within the category of 'regulated activity').

Employers are also encouraged to consult the supporting documentation available from DBS in light of several changes that have been introduced in the last few years, including filtering of some old and/or minor convictions and the 'portability' of a DBS check.

Appendix 2 – Nominee suitability

The following background criteria should be considered for those being employed into the role of LCFS. This list is indicative and not intended to be exhaustive:

- accredited counter fraud specialist
- NHS background
- inspection or investigation experience
- suitable educational background or relevant professional experience
- ability to analyse complex data to identify risk areas for fraud
- ability to use a range of IT software
- good interpersonal skills
- ability to work as part of a team and individually, using own initiative as appropriate
- experience in writing reports for senior management
- good presentation skills
- no conflict of interest with any other employment, if taking on a role part time

The following suitability criteria should be considered during the pre-employment check process - again this is an indicative list and not intended to be exhaustive:

- previous convictions related to fraud and/or deception
- previous convictions related to violence and /or theft
- knowingly making a false statement or omitting to include any required answer to a question at any point during the recruitment process or on the nomination form
- periods where an applicant has worked and claimed benefits without declaring their correct salary to the Department for Work and Pensions (DWP) or its predecessor (the Department for Social Security)
- an applicant being implicated in another person's fraudulent benefit claim. These circumstances will be dealt with on a case by case basis.
- notification of previous cautions and convictions, whether 'spent' or 'unspent', taking into account the Rehabilitation of Offenders Act and the position applied for (see

also Annex A above). These circumstances should be dealt with on a case by case basis.

- notification of current and/or discharged county court judgements and/or bankruptcy orders. These circumstances should be dealt with on a case-by-case basis.
- the employing organisation being unable to confirm a candidate's identity
- the employing organisation being unable to establish a candidate's right to work in the UK
- false qualifications being provided or the employing organisation being unable to establish the authenticity of qualifications
- false references being provided, references not being provided by an appropriate authority or the employing organisation being unable to establish the authenticity of references
- a false educational history being given or the employing organisation being unable to establish the authenticity of the candidate's educational history
- a false employment history being given or the employing organisation being unable to establish the authenticity of the candidate's employment history
- failure to fully account for any gaps in employment or educational history or the employing organisation being unable to establish the whereabouts of the individual during these gaps
- failure to declare an outside activity that may be seen as a conflict of interest
- notification of any disciplinary offence (whether pending or resolved) during current or previous employment or the employing organisation being unable to establish the terms of a disciplinary offence
- the employing organisation not completing the form correctly
- any other reason for which the employing organisation is not satisfied by the information supplied during the recruitment process

It should be noted that those charged with conducting criminal investigations are required, when making witness statements (whether or not this forms part of a prosecution case), to disclose to the Crown Prosecution Service or any other prosecutor any disciplinary findings of guilt, criminal convictions/cautions whether spent or not, whether they are subject to any current or pending disciplinary investigation and whether they have been charged with a criminal offence in any proceedings. These matters may be disclosed to the courts in any subsequent trial. This is an important factor that must be considered

when determining the suitability of an individual for performing the role of LCFS. No exception under the Rehabilitation of Offenders Act applies to this disclosure.

Appendix 3 – Standards of Business Conduct

All LCFSs are expected to adhere to the 'Health Service Guidance (93) 5 "Standards of Business Conduct for NHS staff". These require NHS staff to:

- ensure that the interests of patients remain paramount at all times
- be impartial and honest in the conduct of their official business
- use public funds entrusted to them to the best advantage of the service, always ensuring value for money
- ensure that they do not abuse their official position for personal gain or to benefit their families or friends
- ensure that they do not seek to gain personal advantage or further private business or other interests in the course of their official duties

It is for these reasons that LCFSs have an ongoing duty to notify their employer of any interests which might impinge, or might reasonably appear to others to impinge, upon their employment in their role. In cases of doubt advice should be sought from the NHSCFA. Examples of conflict of interests include:

- any controlling or significant financial interests which an employee, or a close relative or associate of theirs, holds in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation) which may compete for an NHS contract to supply goods or services to the employer
- any additional outside employment, including representation in the role of LCFS/LSMS at another NHS body
- trusteeships, directorships or memberships of any organisations which may have dealings with the NHS, contractors with the NHS, or the Department of Health or may be reasonably considered by others to constitute a special interest (e.g. Freemasons, Rotary Club, Inner Wheel, Mechanics)
- any interests, activities, events or circumstances which may reasonably be considered to affect the employee's performance or their public duties

The organisation for which the LCFS is nominated has an ongoing responsibility to ensure that the person remains suitable to be nominated.

The Bribery Act 2010 modernises the law on bribery. It came into force on 1 July 2011. Very generally, bribery is defined as giving someone a financial or other advantage to

encourage that person to perform their functions or activities improperly or to reward that person for having already done so.

Under the Bribery Act 2010, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed to have been received corruptly unless the employee proves to the contrary.

It is for that reason that no LCFS should accept any gift without seeking authorisation from their employer.

Beyond these generally applicable standards, LCFSs are in an especially sensitive and responsible position. They are entrusted with the important task of reducing fraud within the NHS so that more NHS resources can be used to provide better patient care. They often have privileged access to confidential information involving very large sums of public and private money and to personal and private data.

LCFSs are charged with creating an anti-fraud culture, deterring and preventing fraud, detecting and professionally investigating crime, working towards the imposition of effective sanctions and creating effective measures to recover monies lost. It is not enough merely to ensure that propriety is maintained, it is essential that there is never any perception of impropriety. It is for this reason that particularly stringent checks are in place in relation to LCFSs.

Any case of actual suspicion of fraud by a person employed as an LCFS will be treated in the same way as cases of suspicion elsewhere in the NHS, with appropriate enquiries and, if necessary, disciplinary procedures being undertaken. This procedure is designed to ensure that those circumstances do not arise.