



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
Her Majesty's Inspectorate for Education and Training in Wales

Anti-fraud and anti-bribery policy

Information box

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Version control

Version	Author	Date of issue	Comments
1.0	Phil Sweeney	March 2011	Update to existing agreed policy to reflect organisational changes
2.0	Phil Sweeney	January 2014	Minor updates to references to job titles/group names and links.
3.0	Phil Sweeney	January 2015	Changes: References to 'Audit and Risk Assurance Committee'; Reporting matters to Action Fraud rather than local police; and Estyn participation in National Fraud Initiative.
4.0	Phil Sweeney	August 2015	New Internal Audit Hotline (3.3) Incorporate Anti-bribery (section 4).
5.0	Phil Sweeney	August 2017	Updated to meet cabinet office requirements – see paragraph 1.6(a) and 3.46

Impact Assessment

- A business rationale assessment has been carried out and this policy contributes to Estyn's strategic objectives and delivery principles.
- An equality impact assessment has been carried out and this policy is not deemed to impact adversely on any people on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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Section 1: Introduction

Aims of the policy

- 1.1 Estyn requires all individuals working for the organisation to act at all times with honesty and integrity and to safeguard the public resources for which they are responsible. This policy:
- a sets out responsibilities for ensuring that opportunities for fraud and corruption are reduced to the lowest possible level of risk;
 - b explains what to do if you suspect fraud; and
 - c explains the action that will be taken by management where there are suspected cases of fraud.

To whom do this policy and its procedures apply?

- 1.2 This policy and its procedures apply to all individuals working for Estyn including employees, secondees, loans, agency staff, consultants, contractors, board members including non-executive directors and members of the Audit and Risk Assurance Committee. Any person who undertakes work for Estyn can make a disclosure of information about suspected fraud under the procedures set out in section 3.

What is fraud?

- 1.3 Fraudulent activity manifests itself in many different ways including deception, bribery, forgery, counterfeiting, extortion, corruption, theft, conspiracy, collusion, embezzlement, misappropriation of assets, false representation and concealment of material facts. The Fraud Act 2006 came into effect in January 2007 and supplements other legislation, such as the Theft Acts 1969 and 1978, which have traditionally been used to cover fraudulent activity referred to above.
- 1.4 The Fraud Act provides a legal definition of fraud. The Act provides for a general offence of fraud with three ways of committing it which are: by false representation, by failing to disclose information and by abuse of position. It creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in frauds (see annex 1 for more details).

Reporting fraud

- 1.5 Guidelines on what to do if you suspect fraud are provided in Section 3 of this policy. Vigorous and prompt investigations will be carried out into all cases of actual or suspected fraud discovered or reported.

Action to be taken in the case of fraud

- 1.6 The following are the likely courses of action to be taken in relation to the various categories of people or organisations found to have committed fraud:
- a. Employees involved in fraud of any kind can expect to be subject to Estyn's disciplinary procedures and subsequent dismissal and prosecution. Where an employee resigns during the course of a fraud investigation and for disciplinary process the procedures will be continued to conclusion. Workers on secondment, loan or subject to agency contracts will have their agreements/contracts terminated and may be subject to prosecution.
 - b. Non-executive directors of Estyn's board and members of the Audit and Risk Assurance Committee who are found to be involved in fraud can expect to forfeit their position and be subject to prosecution.
 - c. Suspected fraud within a body undertaking contract work for Estyn, where the suspicion of fraud relates to work carried out for Estyn, will lead to the suspension of contract payments. If fraud is confirmed, action will be taken to recover losses. The process of recovery will depend upon the nature and circumstances surrounding the loss, and whether the fraud results in criminal charges being laid.
 - d. Decisions not to proceed with disciplinary action in cases of serious fraud, other than where the individual is being prosecuted must be taken by HMCI (Estyn's Accounting Officer) after consultation with the Director General Health & Social Services/NHS Wales Chief Executive (Additional Accounting Officer, Welsh Government).

Fraud Response Plan

- 1.7 Estyn's Fraud Response Plan (see Section 3) forms part of Estyn's anti-fraud policy. The plan sets out how to report suspicions and explains how investigations will be conducted and concluded. To support the procedures set out in Section 3 Estyn will liaise with its internal audit service provider to provide guidance for those specific individuals who will be tasked with investigating reported cases of suspected fraud.

Section 2: Responsibilities

- 2.1 The following sections describe in general terms the roles and responsibilities of various personnel within Estyn.
- 2.2 Her Majesty's Chief Inspector of Education and Training in Wales (**HMCI**), as Accounting Officer, (or anyone acting as Accounting Officer in the absence of HMCI in accordance with paragraph 24 or 25 of Estyn's Accounting Officer Memorandum issued by HM Treasury in February 2010) is responsible for establishing and maintaining a sound system of internal control that supports the achievement of Estyn's policies, aims and objectives. The system of internal control is designed to respond to and manage the whole range of risks that Estyn faces. The system of internal control is based on an on-going process designed to manage the risks effectively. The risk of managing fraud will be seen in the context of the management of this wider range of risks.
- 2.3 The Accounting Officer delegates to the **Corporate Services Director** as the **Principal Finance, Human Resources and Communications Officer (PFHRCO)** prime responsibility for leadership in financial matters. This includes ensuring there is an effective framework of robust policies, systems and control processes in place in Estyn to secure the appropriate management of resources and to safeguard regularity and propriety, including taking appropriate steps to counter fraudulent activity. The PFHRCO is therefore responsible for informing Estyn's Executive Board (EB), Strategy Board (SB) and the Audit and Risk Assurance Committee of action taken in specific cases of fraud and suspected fraud and of any proposed procedural or policy changes that impact on the prevention, control or identification of fraud within Estyn. The **Head of Direct Services & Stakeholder Engagement** will act as the nominated deputy to the PFHRCO and will take on his/her responsibilities in relation to the anti-fraud policy, as appropriate.
- 2.4 Within the overall framework of control, the **Corporate Services Director**, through the **Finance Manager**, is responsible for:
- a. ensuring that accounting and reporting procedures are kept up to date and adhered to, throughout Estyn;
 - b. reviewing and updating the anti-fraud policy and reviewing procedures in the light of reported frauds;
 - c. developing a fraud risk profile and undertaking a regular review of the fraud risks;
 - d. designing and implementing effective controls to prevent fraud commensurate with the fraud risk profile;
 - e. providing guidance on policies and procedures for travel and subsistence claims, and for the receiving and recording of gifts and hospitality;
 - f. ensuring that all staff receive the most up to date version of Estyn's Anti-fraud policy describing what their responsibilities are in relation to combating fraud;
 - g. maintaining a central log for all reports and allegations of fraud and, under the direction of the PFHRCO or HMCI, ensuring that vigorous and prompt investigations are carried out if fraud occurs or is suspected;
 - h. co-ordinating assurances about the effectiveness of the anti-fraud policy to support the Annual Governance Statement; and

- i. providing advice to HMCI, as Accounting Officer, and the PFHRCO, as officer with prime responsibility for implementing Estyn's control environment, on the action to be taken in specific cases of fraud and suspected fraud.

2.5 Line managers are responsible for:

- a. ensuring that adequate internal controls and management checks are in place and are carried out effectively in their areas of responsibility so as to prevent and detect fraud;
- b. being aware of the potential risks of fraud, assessing the type of risk involved in the operations for which they are responsible and implementing new controls to reduce the risk of similar fraud occurring where fraud has taken place or fraud has been suspected;
- c. regularly reviewing and testing the control systems for which he/she is responsible; and
- d. ensuring that controls are being complied with and their systems continue to operate effectively.

2.6 Internal auditors are responsible for:

- a. advising on and reviewing systems for the control, prevention and identification of fraud in Estyn generally;
- b. advising on cases of reported fraud or suspected fraud in Estyn, and on general fraud matters that come to their attention;
- c. reporting appropriately to the Audit and Risk Assurance Committee;
- d. delivering an opinion to the Accounting Officer on the adequacy of arrangements for managing the risk of fraud and ensuring that Estyn promotes an anti-fraud culture; and
- e. undertaking, when requested, investigations into particular cases of fraud or suspected fraud within Estyn.

2.7 The Head of Direct Services & Stakeholder Engagement is responsible for:

- a. deputising for the PFHRCO in relation to the anti-fraud policy during periods of absence of the PFHRCO; and
- b. advising line managers on appropriate investigation and disciplinary action and procedures in individual cases, including advising on action against line managers where management failures have contributed to the commission of fraud and action against staff who fail to report fraud.

2.8 The Information Technology Security Officer is responsible for:

- a. monitoring breaches or attempted breaches of Estyn's ICT Usage Policy to determine whether such breaches are such as to constitute a suspected fraud that should be investigated.

2.9 The **PFHRCO, HMCI and the Chair of Audit and Risk Assurance Committee** share, as appropriate, responsibility for:

- a. considering reported suspicions of fraud and agreeing urgent measures to be implemented;
- b. appointing Investigating Officers and issuing terms of reference for full investigations;
- c. determining whether and when to involve the police in an investigation on the basis of evidence of fraud, seriousness of fraud or other relevant factors; and
- d. reviewing reports on suspected fraud prepared by Investigating Officers and issuing instructions on further actions to be taken.

2.10 The **Head of Direct Services & Stakeholder Engagement** (as nominated deputy for the PFHRCO) may be called upon to assume the responsibilities listed in 2.9 in instances where the PFHRCO is either unavailable to deal with a case or is implicated in a case of suspected fraud. Likewise, in instances where the Chair of Audit and Risk Assurance Committee is implicated or unavailable, other members of the Audit and Risk Assurance Committee will assume the responsibilities of the chair. The response to all reported suspicions of fraud will be dealt with, in agreement, by at least two of the three individuals mentioned in this paragraph and/or paragraph 2.9 above.

2.11 **The Audit and Risk Assurance Committee** is responsible for:

- a. reviewing the adequacy of the policies and procedures for all work related to preventing and detecting fraud;
- b. reviewing regular reports of instances of fraud, where there have been any, and considering their implications for Estyn's policy, procedures and systems including, where appropriate, reports from the Head of Internal Audit; and
- c. making recommendations to the Board about action to be taken by Estyn.

2.12 **All individuals working for Estyn, including non-executive directors of the Board**, are responsible for:

- a. acting with propriety in the use of official resources and the handling and use of public funds whatever they are involved in, whether that be cash or payment systems, claims, receipts or dealing with suppliers;
- b. conducting themselves in accordance with the Civil Service Code and the seven principles of public life set out by the Nolan Committee in 'Standards in Public Life'. They are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- c. being alert to the possibility that unusual events or transactions could be indicators of fraud;
- d. reporting details immediately through the appropriate channel if they suspect that a fraud has been committed or see any suspicious acts or events; and
- e. co-operating fully with whoever is conducting internal checks or reviews or fraud investigations.

Section 3: Fraud Response Plan

What to do if you suspect fraud

- 3.1 Fraud may be suspected as a result of observation, specific management checks, suggestions or accusations from third parties, being asked to do something which is not in accordance with the Civil Service Code or simply from a feeling that something is not quite right. When any fraud or attempted fraud is discovered, suspected or alleged it must be reported immediately. Estyn has adopted a whistleblowing policy and procedure based on the provisions in the Public Interest Disclosure Act 1998. This policy ensures that it is the right of any employee or worker not to suffer detriment by any act or deliberate failure on the part of Estyn, on the grounds that they have made a protected disclosure, including the disclosure of a suspected fraud.
- 3.2 If you suspect fraud, and there is no reason to believe that either the PFHRCO or HMCI is implicated, you should make a disclosure orally or in writing, in either English or Welsh, directly to the PFHRCO or his/her nominated deputy.
- 3.3 If you suspect fraud, and there is reason to believe that the PFHRCO and/or HMCI may be implicated, you should report the suspicion to the Internal Audit Hotline telephone number: 07720 508151; or email: Helen.cargill@bakertilly.co.uk; or write to:

Helen Cargill
Suite 205
Regus House,
Malthouse Avenue
Cardiff Gate Business Park
Cardiff
CF23 8RU
- 3.4 If you suspect fraud, and there is reason to believe that a member of Estyn's Audit and Risk Assurance Committee may be implicated, you should report the suspicion to Internal Audit (see para 3.3, above).
- 3.5 If a suspicion of fraud is reported to you by an external party you should take as much detail as possible and then report the suspicion to the Internal Audit Hotline. External parties contacting Estyn about a suspected fraud should be advised to also report their suspicions directly to the Internal Audit Hotline.
- 3.6 In the interests of limiting potential damage to evidence you should not discuss the matter with any other person nor undertake any investigation yourself, beyond identifying that there is due cause to report your suspicion.
- 3.7 Where a disclosure is made orally, the person receiving the disclosure will complete a 'Suspected Fraud – Disclosure Form' (annex 2) as an agreed note of the discussion and will ask the individual to countersign the form to confirm that the information on the form has been recorded correctly. A copy of the form will be given

to the person making the disclosure. The original form will be placed on a central log within SharePoint to support any investigation and subsequent report.

Who will investigate a suspected fraud and how?

3.8 Where suspected fraud is reported the following process will be followed:

Interim measures

3.9 If it appears necessary to take urgent interim measures – for instance, to secure readily available evidential matter – the PFHRCO or HMCI (or Chair of Audit and Risk Assurance Committee if the PFHRCO or Chief Inspector is implicated by the disclosure) will arrange for this to be done immediately, before any formal inquiries or investigation proceed.

Formal investigation

- 3.10 The PFHRCO, Chief Inspector and, as appropriate, Chair of Audit and Risk Assurance Committee will agree any formal investigation to be carried out (any party implicated by the disclosure will be excluded from this process). The PFHRCO or Chief Inspector will appoint a suitable person to act as Investigating Officer. The Investigating Officer will be somebody not implicated in the disclosure, who is impartial and who will be able to investigate the matter thoroughly and confidentially.
- 3.11 The Investigating Officer will normally be at SEO level or above and at least a management level more senior than anybody implicated in the disclosure. The PFHRCO or Chief Inspector will determine the most appropriate person to undertake the investigation, identifying whether it essential that the Investigating Officer has received formal Police and Criminal Evidence (PACE) training. In cases where the PFHRCO or Chief Inspector might be implicated the Chair of the Audit and Risk Assurance Committee will identify an appropriate investigator.
- 3.12 In order to give full consideration to a disclosure, the Investigating Officer may meet the person making the disclosure (where known) and any others mentioned in it to establish the facts. Any person asked to attend a meeting with the Investigating Officer may be accompanied by a colleague or trade union official provided that the accompanying individual:
- a. is not implicated in the investigation or there is another kind of conflict of interest;
 - b. agrees to maintain confidentiality of all matters discussed;
 - c. does not answer questions on behalf of the person making the disclosure or prevent the person from explaining the disclosure; and
 - d. is readily available so that the investigation is not delayed.
- 3.13 The Investigating Officer may be accompanied to the meeting by a member of the Human Resources team who will take notes and advise on process. Meetings merely to investigate allegations of fraud are not disciplinary hearings.
- 3.14 The investigation may also involve individuals being asked to provide written statements to the Investigating Officer. Immediately it becomes apparent during an investigation that disciplinary action may be considered necessary, advice will be

sought from the Human Resources team as to whether to take any further action under Estyn's Disciplinary Policy and Procedure. Information from the initial investigation will be carried forward into disciplinary proceedings.

- 3.15 Once the Investigating Officer has established the facts, he/she will prepare a report for the PFHRCO, Chief Inspector and Chair of Audit and Risk Assurance Committee to consider and decide what action, if any, is appropriate.
- 3.16 When enquiries have been completed the Investigating Officer will submit a written report for consideration by the PFHRCO, Chief Inspector and Chair of the Audit and Risk Assurance Committee, in the first instance, containing the following sections:
- a. **Introduction.** This should state who initiated the investigation, what prompted the investigation, how the investigation was carried out and who the investigating officers were.
 - b. **Management Summary.** This should state the major findings identified during the investigation.
 - c. **Findings.** This should state all the findings discovered during the investigation.
 - d. **Recommended Action.** This should state all the recommendations made in the report, with a reference to the relevant paragraph.
 - e. **Appendices.** Any statements made by staff and interview records should accompany the report.
- 3.17 The report will be reviewed by the PFHRCO, HMCI and the Chair of the Audit and Risk Assurance Committee, as appropriate, who will decide the further course of action, including informing other members of the board and the Senior Management Team.
- 3.18 Where appropriate, the PFHRCO or his/her nominated deputy will ensure that the findings of the investigation are communicated to:
- a. the person making the disclosure;
 - b. the individual(s) under investigation; and
 - c. any external authority, e.g. the police, who may need to consider whether action should be taken on the basis of the findings – the call can be made by the PFHRCO (or his/her nominated deputy) after having discussed the matter with the Chief Inspector and Chair of Audit and Risk Assurance Committee.

Confidentiality

- 3.19 The Investigating Officer will act as the point of contact with the individual (if his/her identity is known) until Estyn considers the matter is resolved. All communication will be kept confidential (while this is under Estyn's control).
- 3.20 The individual making the disclosure will also be required to keep the fact that he/she has raised a disclosure, the nature of the disclosure and the identity of those involved, confidential.
- 3.21 In making a disclosure, only those people involved in considering the disclosure will know the identity of the person who made it. The identity of the person will not be revealed except:
- a. where Estyn is under a legal obligation to do so;

- b. where the person's name is already in the public domain; or
- c. to a lawyer or other adviser on a strictly confidential basis for the purposes of obtaining advice.
- d.

Anonymous disclosures

3.22 Estyn strongly encourages individuals who suspect fraud to make a disclosure openly and in accordance with these procedures. Estyn can not guarantee to investigate anonymous allegations as a proper investigation may prove impossible if the Investigating Officer can not obtain further information from or give feedback to the individual making the disclosure or ascertain whether the disclosure was made in good faith.

Estyn's undertaking to individuals raising disclosures in good faith

3.23 Provided a disclosure is made with reasonable belief and in good faith, Estyn makes the following promises:

- a. employees will not be disciplined or subjected to any other detriment to their career as a result of raising a disclosure, even if the disclosure turns out to be mistaken or groundless;
- b. other people who work in or for Estyn will not be subject to any detriment because they raised a disclosure;
- c. the disclosure will be treated seriously and the person raising the disclosure will be treated fairly and justly by Estyn;
- d. the identity of the person making the disclosure will be kept confidential for as long as they require (while this is under Estyn's control) subject to the requirements of criminal investigations, where applicable;
- e. Estyn will take all other reasonable steps to protect the individual raising the disclosure from harassment or other personal detriment.

3.24 Where somebody feels they have been victimised as a result of making a disclosure, the matter will be fully investigated and may result in disciplinary action being taken against the person responsible for the victimisation.

Disclosures containing mistaken or groundless allegations

3.25 Where a disclosure contains an allegation that is ultimately found to be mistaken or groundless, providing the person making the disclosure acted reasonably and without malice, Estyn will take all reasonable steps to protect any person implicated in it from adverse consequences.

Disclosures containing unfounded or malicious allegations

3.26 Estyn has a duty to protect all those who work for us from unfounded; or malicious allegations contained in disclosures. Disclosures which are made without reasonable belief or in bad faith will be treated as a serious matter.

- 3.27 An allegation made in a disclosure will only be regarded as malicious if, following investigation, it can be shown that it was raised in a deliberate attempt to cause harm to an individual or the organisation. However, if the investigation shows that the allegation was made maliciously, this could result in disciplinary action being taken against the individual concerned and may result in their dismissal.
- 3.28 Any allegations found to be made maliciously or in bad faith will be viewed with even greater seriousness if the allegation is made externally, apart from where an employee makes an allegation to the Civil Service Commissioners in accordance with the Civil Service Code.

How will evidence be secured for an investigation?

- 3.29 Evidence can be described as, “the means by which any fact or point of issue or question may be proved or disproved in a manner complying with the legal rules governing the subject”. The Investigating Officer will take immediate steps to secure physical assets, including computers and any records thereon, and all potentially evidential documents. They will also ensure, in consultation with management, that appropriate controls are introduced to prevent further loss.
- 3.30 The Investigating Officer will be appropriately trained and will be provided with guidelines on what evidence should be obtained and on how to handle evidence in a way that does not invalidate any subsequent police investigation or prosecution as part of the terms of reference for the investigation.

How will Estyn deal with people under suspicion of committing fraud?

- 3.31 Prompt action will be taken to deal with individuals under suspicion. Action to suspend or dismiss an individual, if necessary, will be taken within the Disciplinary Policy and Procedure. If desks, cupboards and cabinets need to be searched, this will normally be done:
- a. with the person’s consent;
 - b. normally in the presence of the individual concerned; or
 - c. where for any reason this is not practical, in the presence of two witnesses appropriate to the case.

N.B. Investigators have no authority to search personal belongings without the individual’s consent.

How and when might the police be involved?

- 3.32 The PFHRCO, Chief Inspector and/or Chair of Audit and Risk Assurance Committee (as appropriate), in consultation with other managers and the Internal Auditors (as appropriate) will decide, at any stage of the process, whether or not to involve the police in the investigation. The decision to seek police involvement may entail a review of the scope of the internal investigation.
- 3.33 As soon as evidence indicates that a criminal offence may have been committed, urgent consideration will be given to the need to refer the matter to the police.

Initially, this may take the form of reporting the matter to Action Fraud, the National Fraud and Cyber Crime Reporting Centre.

- 3.34 Contact should only be made with the police when it has been authorised by the PFHRCO or the Chief Inspector.
- 3.35 If the police are called in their advice and guidance will be sought on how best to continue enquiries without prejudicing the case. All individuals working for Estyn are required to cooperate fully to assist inquiries.

How will we go about recovering assets?

- 3.36 Estyn will take appropriate steps, including legal action if necessary, to recover any losses arising from fraud, theft or misconduct. This may include action against third parties involved in fraud or whose negligent actions contributed to the fraud.

How and when might we involve experts?

- 3.37 If appropriate, Estyn will seek expert advice from wherever or whomever is appropriate, for example:
- a. Estyn's funding department within the Welsh Government
 - b. Head of Counter Fraud, Welsh Government
 - c. Estyn's internal auditors
 - d. Wales Audit Office
 - e. Action Fraud and/or local police service

How will we deal with the media?

- 3.38 All dealings with the press and media must be channelled through Estyn's Stakeholder Engagement team who will only release information that has been authorised by the Chief Inspector.
- 3.39 To raise awareness of the threat of fraud and help in mitigating this threat, Annex 3 of this policy provides general guidance for on the prevention of fraud in Estyn; Annex 4 identifies the potential for fraud within Estyn; and, Annex 5 provides examples of fraud indicators.

How will we disseminate lessons learned from any suspected/actual fraud cases?

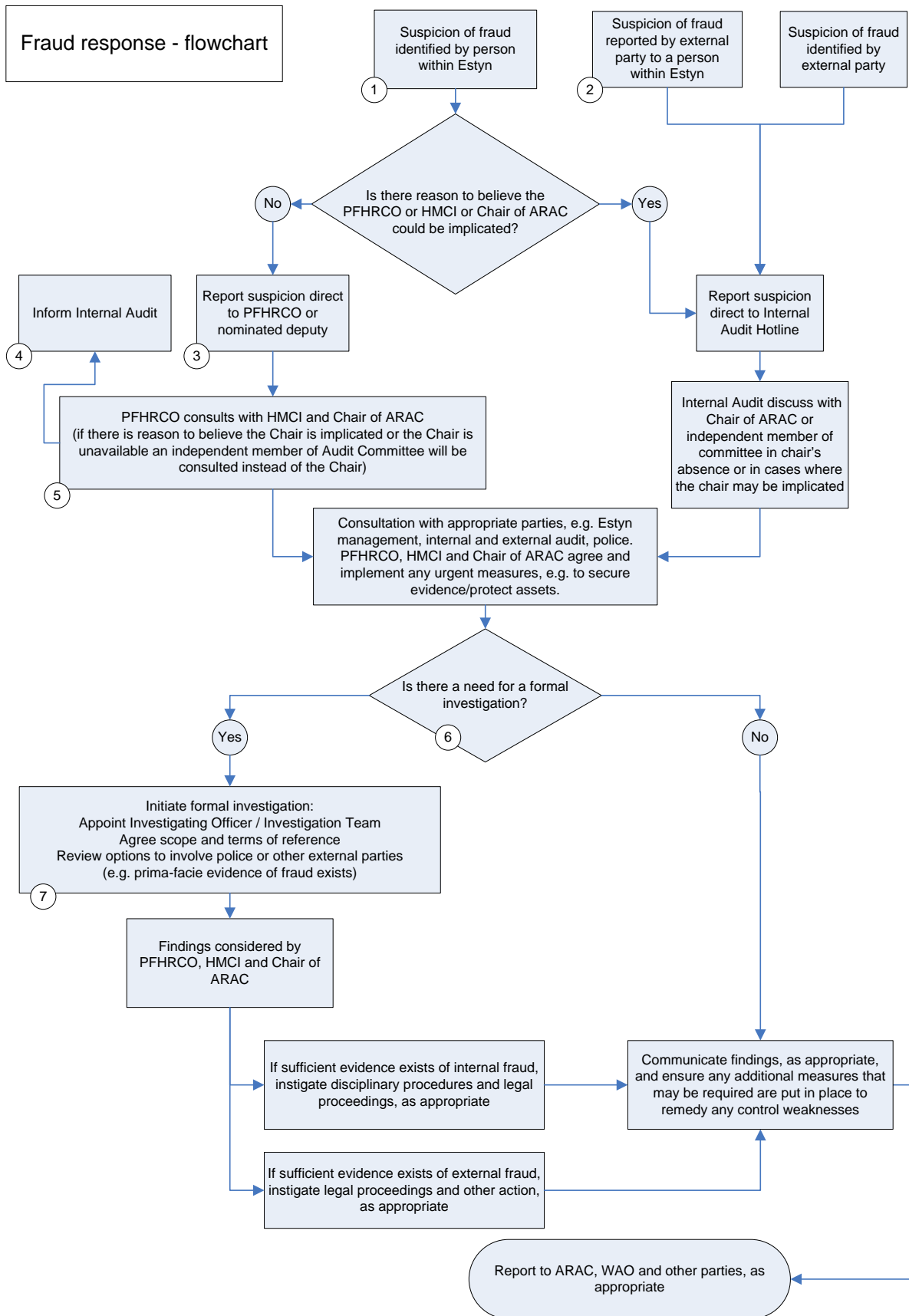
- 3.40 As soon as practicable, the Investigating Officer will let line managers, in the line management chain where the issue rests, know that the investigation has been completed (but will observe appropriate confidentiality and may not necessarily discuss any consequential action taken). The line managers should then inform all staff interviewed and involved that the investigation has been concluded.

- 3.41 Actions arising from fraud reports will be discussed by Estyn's Directors Group and lessons learned will be cascaded through the Service Delivery Group, staff/sector team meetings, and may also be disseminated to all staff via Work Matters.
- 3.42 Line managers will be required to confirm to the Corporate Services Director that necessary follow-up arrangements have been put in place to ensure any control weaknesses identified have been remedied and that action taken is effective.

Reporting fraud externally

- 3.43 The PFHRCO or his/her nominated deputy, on behalf of the HMCI as Accounting Officer, will report any confirmed fraud to the Welsh Government (Estyn's funding department), to ensure that any appropriate disclosures are made within Estyn's annual accounts.
- 3.44 The Wales Audit Office (WAO) as the external auditors of Estyn will be informed of all cases of confirmed internal fraud. These reports will be made by the PFHRCO or nominated deputy acting on behalf of HMCI. The PFHRCO will also report orally to the WAO as soon as possible after receiving notification of a suspected serious fraud which he/she believes warrants investigation.
- 3.45 Cases of fraud or suspected fraud which appear novel or contentious, which raise important points of legal complexity, policy or political sensitivity, or provide information about the effectiveness of existing systems, or contain lessons of general interest will be brought to the attention of the Welsh Government, HM Treasury and the Auditor General for Wales by the PFHRCO or nominated deputy, as required by Managing Public Money.
- 3.46 Details of identified fraudsters working for Estyn, including individuals who have left Estyn, will be submitted to the Cabinet Office for access by all Civil Service departments when recruiting staff.

Anti-fraud and anti-bribery policy



Notes to fraud response flowchart

- 1 From the outset of any suspicion of fraud, the objective will be to restrict the number of people with knowledge of the possible fraud in order to limit potential interference to evidence that might compromise the outcome of an investigation. For this reason, suspicions should be reported direct to the Principal Finance, Human Resources and Communications Officer (PFHRCO) or HMCI rather than through line managers (who may begin their own investigation). Estyn will endeavour to manage and control the response to a suspected fraud using internal resources, where possible. External assistance will be used where appropriate but it is recognised that there can be no guarantee of availability of, for example, internal audit staff or external (WAO) audit staff to assist in any investigations, particularly for a matter that might require immediate action. Staff involved in conducting investigations will be appropriately briefed.
- 2 In order to have transparency and assure external parties that potential fraud will be dealt with appropriately, any suspicions reported from outside Estyn or which implicate the PFHRCO, HMCI or Chair of Audit Committee will be routed through internal audit.
- 3 Where the Head of Direct Services & Stakeholder Engagement is unable to deputise for the PFHRCO the PFHRCO will nominate an alternative suitable deputy responsible for receiving reported suspicions of fraud in her absence.
- 4 Internal audit will be notified of the receipt of the reported suspicion in order to inform potential future audit work (including possible assistance with investigation). Further consultation will take place in due course.
- 5 Every effort will be made for the PFHRCO and/or HMCI to consult with the chair or an independent member of the Audit Committee ahead of wider consultation and implementation of measures to deal with the reported suspicion of fraud. It should be recognised that there might be occasions where decisions/actions will be required before it is possible to discuss the issue with a member of the committee – in these circumstances at least two members of Estyn's Executive Board (including the PFHRCO and HMCI) will agree actions to be taken.
- 6 As for 5 above.
- 7 Guidelines for the investigating team, including terms of reference, will be followed throughout the investigation process. As soon as any investigation identifies a potential case for disciplinary and/or legal action against a member of staff the disciplinary process will be adopted, including the right to trade union representation.

Section 4: Anti-bribery policy

Introduction

- 4.1 This policy takes account of the updating of bribery legislation in the Bribery Act 2010 and the civil service code of conduct.
- 4.2 As civil servants, all Estyn employees should be aware of the core values of integrity and honesty set out in the civil service code and, in particular, the requirement that civil servants must not accept gifts or hospitality or receive other benefits from someone who might reasonably be seen to compromise our personal judgement or integrity. Similarly, we should not be influenced by improper pressures from others or the prospect of personal gain.
- 4.3 The Bribery Act 2010 applies to UK citizens, residents and incorporated entities in the UK. The Act modernised the law on bribery and created offences for bribing another person and **being bribed**. Very generally, this is defined as offering someone (and, more so in the case of Estyn, someone accepting) 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. So this could cover seeking to influence a decision-maker rather than by what can legitimately be offered as part of a tender process. The Act also created a new offence in respect of organisations that fail to prevent persons associated with them from bribing on their behalf.
- 4.4 Estyn recognises that, over and above any criminal charges arising from specific acts of bribery, the offence may also tarnish our reputation and therefore our aim is to limit our exposure to bribery by:
- setting out an unambiguous anti-bribery policy that applies to all Estyn staff and all those acting on our behalf
 - communicating this policy to all staff and those acting on our behalf, and providing appropriate education and training
 - making it easy for staff to report concerns and encouraging them to be vigilant in helping to guard against bribery
 - maintaining robust policies and procedures that decrease the opportunity to offer or receive bribes and increase the likelihood of uncovering any such action
 - making clear the obligation to self-report any incidence involving Estyn or a partner organisation under the Act

The policy

- 4.5 Estyn and its staff will not:
- make or accede to threats
 - agree to accept or actually accept anything that an informed, reasonable third party could perceive as being either:
 - an inducement for Estyn to act improperly
 - a reward for Estyn acting improperly

- offer, promise or give (whether directly or indirectly) anything likely to be perceived to cause the same in others
- continue to deal with any external organisation where reasonable suspicion exists that it may have committed offences under the Bribery Act

4.6 Estyn and its staff will:

- conduct the relevant due diligence on parties with whom we enter into business arrangements and make it clear from the outset of any such business that we will not tolerate any form of bribery
- make a self-disclosure to line management whenever anyone considers that there are reasonable grounds to believe that staff or business partners have committed a breach of the Act and cooperate fully with any ensuing investigation.

Estyn commitment

- 4.7 The Estyn Strategy Board, executive management team and Audit and Risk Assurance Committee fully support the implementation and enforcement of the terms of this policy throughout the organisation.
- 4.8 The Audit and Risk Assurance Committee will formally note the risk assessments provided on bribery issues and confirm their contentment within the annual process of reviewing financial and fraud risks.
- 4.9 As evidence of the commitment to detect and investigate as well as prevent bribery, the Audit and Risk Assurance Committee will ensure it maintains appropriate channels for reporting incidences. These can be found in Estyn's Whistleblowing and raising a concern policy.

Scope

- 4.10 Where the word *staff* is used in this policy, it includes all individuals working for Estyn (non-executive directors, secondees, loans and agency staff) and those employed by parties contracted to deliver services on our behalf. In this context, all staff are required to comply with the policy, the Act, the civil service code, and the relevant bribery and corruption laws in force in whichever jurisdiction in which they are engaged in business.

Training and awareness

- 4.11 This policy will be drawn to the attention of staff annually and will be included in induction material. Those considered in higher risk positions (namely: procurement, finance, and human resources functions) will receive appropriate training in recognising and dealing with potential situations and sources of bribery and will be given adequate resources to help them prevent these situations from developing. All managers across Estyn are responsible for drawing up and enforcing procedures to prevent and detect potential sources of fraud and bribery within their area of operation, including robust procedures within the manuals/operating instructions, particularly with regard to procurement, finance and staffing appointments.

Reporting and review

- 4.12 The Corporate Service Director is designated to monitor the policy and will hold (at least annually) a session dedicated to the topics of fraud and bribery.
- 4.13 The Corporate Services Director will review the control and reporting measures employed in order to check they are fit for purpose, consider the training and resources provided, and work with internal audit to scope appropriate reviews and investigations. From this, he will report to the Executive Board in the form of a risk assessment. In turn, the Executive Board will consider if this process provides the assurance required.

Further clarification

- 4.14 This policy is not designed to prohibit the following, provided they are reasonable:
- the offer of hospitality to customers/suppliers/external contacts that may reasonably be expected to be reciprocated
 - the presentation of ceremonial and token marketing gifts
- 4.15 All managers are expected to recognise the implications of the policy and the limits of their discretion. Where they are considering actions that would be outside of set procedures, a clearly stated and defensible business case (noting the risks of such actions) must be presented in writing to the Executive Board.

Annex 1: Fraud Act 2006

A person is guilty of fraud if he is in breach of any of the sections of the Act listed below (*which provide for different ways of committing the offence*):

- section 2 (fraud by false representation)
- section 3 (fraud by failing to disclose information)
- section 4 (fraud by abuse of position).

A person who is guilty of fraud is liable:

- on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

2: Fraud by false representation

- A person is in breach of this section if he/she:
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- A representation is false if:
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
- “Representation” means any representation as to fact or law, including a representation as to the state of mind of:
 - (a) the person making the representation, or
 - (b) any other person.
- A representation may be express or implied.
- For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3: Fraud by failing to disclose information

- A person is in breach of this section if he/she:
 - (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
 - (b) intends, by failing to disclose the information:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

4: Fraud by abuse of position

- A person is in breach of this section if he/she:
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Annex 2: Suspected fraud – Estyn disclosure form

Name of the person or organisation suspected or affected	
Reference number (to be issued by Corporate Services Director or his/her deputy)	

If you have received information from a third party about a suspected fraud, please complete this section:

Name of third party	
Details of how contact was made (telephone call, note etc). Attach the original copy of any written correspondence received.	
Date allegation was received	
Any interest by the third party in the matter declared or known	

Details of alleged fraud:

Description of alleged fraud or deception.	
When did you first become aware that something was wrong?	
Time period over which alleged fraud occurred	
Any action taken to date	
Details of any relevant paperwork accompanying this report	

Details of person reporting allegation:

I certify that the information contained in this disclosure is correct.	
Signed:	Date:
Name:	
Post (if appropriate):	
Email address:	
Contact Number(s):	

Annex 3: General guidance on the prevention of fraud in Estyn

A3.1 Internal controls should be applied to prevent and detect fraud. A major element of the control framework is the provision of clear guidance on policy and procedures. The following are a range of controls which will be used within Estyn:

- a. **Segregation of duties** – in order to avoid conflicts of interest or opportunities for abuse. This ensures that the key functions and controls over a process are not carried out by the same member of staff, eg the person receiving goods should not authorise payment.
- b. **Physical security** – preventative measures to control or monitor access to assets, documentation or IT systems to ensure that there is no unauthorised use, loss or damage.
- c. **Supervision and checking of outputs** – management checks to ensure that all levels of staff are performing to meet standards and in accordance with instructions and policies. Random spot checks may be useful.
- d. **Evaluation of fraud prevention policies and activities** – will be performed by the management of the operation but will also be performed by an independent person/team, eg Internal Audit.
- e. **Staffing** – rotation of staff in sensitive or vulnerable posts where this can help prevent or detect collusion or fraud. An example of such a post may be one involved with contractors, especially where non-competitive procurement is involved.
- f. **Asset accounting** – rigorous checks to ensure that asset registers are up to date with spot checks of physical assets.
- g. **Budgetary and other financial controls** – use of delegated limits and other controls to ensure that expenditure is properly approved and accounted for by the responsible manager.
- h. **Records** – retention of documentation in line with agreed retention period.
- i. **Audit Assurance** – Annual Assurance Statements completed by Estyn managers and internal auditors.
- j. **Participation in the National Fraud Initiative (NFI)** – a data-matching exercise that helps detect and prevent fraud and overpayments from the public purse across the UK.

Annex 4: Potential for fraud within Estyn

A4.1 Estyn recognises the potential for:

- a. **internal fraud** – that perpetrated by a member of staff, or by a person serving on a committee or board of Estyn;
- b. **external fraud** – that perpetrated by someone providing goods or services to Estyn, or by someone otherwise contracted to Estyn; and
- c. **collusive fraud** – that committed by a number of people from inside and outside of Estyn.

A4.2 Frauds can be attempted or carried out in a number of ways. These include:

- a. **theft** – the dishonest appropriation of property, e.g. of cash, cheques, equipment or other property;
- b. **deception** – usually by the falsification of claims or documentation e.g. for overtime/flexitime working, for travel or subsistence expenses;
- c. **unauthorised use of property or services paid for by Estyn**, for example the significant or unauthorised use of telephones, computers, internet connections, stationery etc for private purposes;
- d. **irregularities in tendering for, supplying or pricing of property, goods or services**, for example, advantage gained from land, property, building services or goods being bought, sold or leased, or consultancy or professional services being contracted, without adherence to agreed procurement procedures, proper declarations relating to conflicts of interest, or considerations of market value and/or value for money;
- e. **irregularities in payments to bodies or individuals**, for example, the falsification of information on financial reports or payment authorisations, e.g. for payments to suppliers and staff; and
- f. **corruption and bribery**, for example, receipt or payment of cash, or receiving or giving other material advantage, as an inducement to the award of contracts or to falsify inspection reports (see **Bribery Act 2010** for further details).