

AGENDA ITEM NO:

**UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
CHIEF EXECUTIVE'S ADVISORY GROUP
THURSDAY 22 SEPTEMBER 2011**

Title:	APPROVAL OF POLICIES
Responsible Director:	David Burbridge, Director of Corporate Affairs
Contact:	Louisa Bailey, Senior Manager Corporate Affairs

Purpose:	To seek BoD's approval for the following policies: 1 Prevention of Harassment and Bullying at Work Policy; and 2 Policy for Raising Concerns in the Public Interest (Whistleblowing)
Confidentiality Level & Reason:	None
Medium Term Plan Ref:	N/A
Key Issues Summary:	The two policies have been reviewed by the Policy Review Group and in line with the Policy for the Development and Management of Controlled Documents the BoD's approval is sought before they can be published.
Recommendations:	The BoD is asked to consider and if thought fit, approve the: 1 Prevention of Harassment and Bullying at Work Policy; and 2 Policy for Raising Concerns in the Public Interest (Whistleblowing);

Signed:	Date: 15 September 2011
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UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST

BOARD OF DIRECTORS THURSDAY 22 SEPTEMBER 2011

APPROVAL OF POLICIES

PRESENTED BY THE DIRECTOR OF CORPORATE AFFAIRS

1. Introduction

The report sets out those policies which require the BoDs approval before they can be published and disseminated to staff.

2. Policies for Approval

The Policy Review Group (PRG) has reviewed each of these draft policies, considered them compliant with the Policy for the Development and Management of Controlled Documents, and recommends that they be approved. The approved policies and associated procedures will be notified to all relevant stakeholders by e-mail and will be put onto the Intranet.

2.1 Prevention of Harassment and Bullying at Work Policy (Appendix 1)

The purpose of this policy is to ensure that you are treated with dignity and respect, and to enable you to work in an environment that is free from harassment and bullying by colleagues. The Trust's framework for ensuring that all allegations of harassment or bullying are taken seriously and dealt with promptly and confidentially consists of the following:

2.1.1 In the event of a complaint of harassment or bullying, every effort should be made to resolve the issue informally at an early stage. In cases where the informal approach has not been successful, or in more serious cases, it may be necessary to use a formal process. Detailed processes are found in the Prevention of Harassment and Bullying at Work Procedure.

2.1.2 Confidentiality must be maintained by all parties at all times during investigations into allegations of harassment or bullying. Any breach of confidentiality by either party may result in disciplinary action.

2.1.3 Victimisation or retaliation against any party will not be tolerated and may result in disciplinary action.

2.1.4 False allegations will be taken seriously and may result in disciplinary action.

2.1.5 Managers might have to take actions such as outlining expected standards of performance, asking for improvements in performance, and making clear the consequences of poor performance.

2.2 Policy for Raising Concerns in the Public Interest (Whistleblowing) (Appendix 2)

2.2.1 The Trust is keen to encourage and enable you to raise concerns in a constructive and positive manner through the use of internal mechanisms, rather than overlooking a problem or 'blowing the whistle' outside the organisation. Staff can be reassured that they can raise their concerns without fear of reprisals, victimisation or subsequent discrimination, and that they will receive the appropriate support and feedback from the management of the Trust.

2.2.2 A whistleblowing concern should not be confused with a grievance which is a concern, problem or complaint regarding an aspect of employment that staff raise with their manager. This policy is not intended to replace the Grievance Policy.

2.2.3 Staff should initially raise any concerns with their line manager, or if this is not appropriate, with the next line manager above them. Every effort should be made to resolve concerns at an early stage.

2.2.4 If staff are found to have deliberately made false allegations these will be taken seriously and may result in disciplinary action.

2.2.5 Any disclosure of information, particularly information relating to the care and treatment of individual patients will be regarded as a most serious matter and may result in disciplinary action up to and including dismissal.

3. **Recommendations**

The BoD is asked to consider and if thought fit, approve the:

3.1 Prevention of Harassment and Bullying at Work Policy; and

3.2 Policy for Raising Concerns in the Public Interest (Whistleblowing).

David Burbridge
Director of Corporate Affairs

Prevention of Harassment and Bullying at Work Policy

CONTROLLED DOCUMENT

CATEGORY:	Policy
CLASSIFICATION:	Human Resources
PURPOSE	This document outlines the policy for the prevention of harassment and bullying at work.
Controlled Document Number:	
Version Number:	
Controlled Document Sponsor:	Executive Director of Delivery
Controlled Document Lead:	Director of Human Resources
Approved By:	
On:	(date)
Review Date:	This policy will be reviewed after 3 years or earlier if statutory provision changes.
Distribution:	
<ul style="list-style-type: none"> • Essential Reading for: Executive Directors Directors of Operations Divisional Directors Heads of Service Line Managers HR Team Trade Union Representatives • Information for: All Staff 	

Prevention of Harassment and Bullying at Work Policy

Document Control Number:

Issued:

Version No:

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1. Introduction

- 1.1. The purpose of this policy is to ensure that you are treated with dignity and respect, and to enable you to work in an environment that is free from harassment and bullying by colleagues.
- 1.2. Harassment and bullying are not acceptable under any circumstances, or at any level in the Trust. The Trust will take any allegations of harassment or bullying seriously and will deal with them promptly and confidentially. Serious cases of harassment or bullying may amount to gross misconduct leading to dismissal.
- 1.3. This policy supports the Trust's values, and in particular, respect, responsibility and honesty.

2. Scope

- 2.1 This policy covers all staff working for the Trust including employees, contractors, volunteers, students, locum and agency staff, and staff employed on honorary contracts.
- 2.2 The policy covers harassment and bullying in the workplace and in any work-related setting outside the workplace e.g. work undertaken away from Trust premises and work-related social events.
- 2.3 The policy does not cover harassment or bullying by patients or visitors towards staff. Any such incidences will be managed under the Prevention and Control of Aggression and Violence Policy and the Withholding of Treatment Policy.

3. Framework

3.1 Definitions

3.1.1 Harassment: Harassment is any unwanted behaviour that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for you. Some examples of harassment are listed in Appendix A.

3.1.2 Bullying: Bullying is offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate or injure the recipient. Some examples of bullying behaviours can be found in Appendix B.

3.2 Key Principles

3.2.1 If you feel that you are being harassed or bullied you can seek advice from your manager, Human Resources, Occupational Health, Staff Support or your Staff side representative.

3.2.2 Members of the Occupational Health and Safety Department will provide support and advice to any staff involved in harassment or bullying cases. You are able to self-refer to Occupational Health services.

- 3.2.3 The Staff Support service will provide you with confidential counselling in relation to harassment or bullying at work.
- 3.2.4 Generally, the decision whether to pursue a complaint is up to you. However, the Trust has a duty to protect all staff and may pursue the matter independently if it considers it appropriate to do so.
- 3.2.5 In the event of a complaint of harassment or bullying, every effort should be made to resolve the issue informally at an early stage. In cases where the informal approach has not been successful, or in more serious cases, it may be necessary to use a formal process. Detailed processes are found in the Prevention of Harassment and Bullying at Work Procedure.
- 3.2.6 Confidentiality must be maintained by all parties at all times during investigations into allegations of harassment or bullying. Any breach of confidentiality by either party may result in disciplinary action.
- 3.2.7 Victimisation or retaliation against any party will not be tolerated and may result in disciplinary action.
- 3.2.8 False allegations will be taken seriously and may result in disciplinary action.
- 3.2.9 Managers might have to take actions such as outlining expected standards of performance, asking for improvements in performance, and making clear the consequences of poor performance. Whilst this may make you feel uncomfortable, these do not in themselves constitute harassment or bullying, and normal performance processes will be expected to continue. Appendix C gives examples of bullying behaviours in managers and strong and fair management behaviours.

4. Duties

4.1 Executive Director of Delivery

The Executive Director of Delivery is responsible for the policy and its implementation and has the authority to approve the Procedure for the Prevention of Harassment and Bullying at Work and any amendments to the document in response to changes in legislation or best practice, provided that they are compliant with this policy.

4.2 Managers

Anyone in charge of a group of staff must ensure that harassment or bullying does not occur in their work area and that:

4.2.1 They and their team are aware of this policy;

4.2.2 They set a good example in their work relationships and style of management the key principles of the policy;

- 4.2.3 They deal with any harassment or bullying in a proactive and timely manner;
- 4.2.4 They support individuals who say that they have been harassed or bullied, and take full account of their feelings and perception of the situation;
- 4.2.5 They appreciate that individuals who may be causing offence may not be aware of the impact of their actions. Such individuals are also in need of support;
- 4.2.6 They maintain complete confidentiality and do not mention or discuss the case with any person not involved in its investigation;
- 4.2.7 They do not participate in, encourage or condone gossip relating to cases of actual or alleged harassment or bullying, and take appropriate steps to prevent or stop such gossip in their work area;
- 4.2.8 They attend any training sessions which may be arranged to increase their awareness of the issues involved in harassment and bullying.

4.3 Staff Side and Trade Union Representatives

Staff Side and Trade Union representatives will:

- 4.3.1 Provide advice and support to their members if requested to do so, including raising a concern on a member's behalf;
- 4.3.2 Assist in raising awareness and communication of the policy.

4.4 Staff

You must:

- 4.4.1 Treat everyone that you come into contact with at work in a professional manner and with respect for their dignity;
- 4.4.2 Not harass or bully, or encourage or collude with any form of harassment or bullying in your workplace. If you are found to be responsible for such actions you may face disciplinary action up to and including dismissal;
- 4.4.3 Raise your concern at the earliest possible opportunity if you believe you are being harassed or bullied;
- 4.4.4 Report any incident of harassment or bullying that you witness to your manager, or if your manager is the alleged harasser then report it to a third party e.g. another manager;

- 4.4.5 Maintain appropriate confidentiality during any investigation into harassment or bullying and do not mention or discuss the case with anyone not involved;
- 4.4.6 Offer support to any colleagues suffering harassment or bullying.

5. Implementation and Monitoring

5.1 Implementation

- 5.1.1 This policy will be available on the Trust's Intranet site. It will also be disseminated through the management structure within the Trust.
- 5.1.2 Human Resources will provide consistent advice and guidance to managers and staff on the application of this policy and its procedure;
- 5.1.3 Where required, all staff can obtain training in the prevention of harassment or bullying via Human Resources.
- 5.1.4 Training relating to this policy and associated procedure is available for managers via the Essential Skills for People Management training course.

5.2 Monitoring

- 5.2.1 The operation of this policy and associated procedures will be monitored via Human Resources.
- 5.2.2 Human Resources will monitor and record all formal harassment or bullying cases via the monthly Key Performance Indicator (KPI) reports. These are presented to the Executive Director of Delivery at the Strategic Delivery Group.
- 5.2.3 The Annual Workforce Plan will report harassment and bullying cases to the Board of Directors on an annual basis.
- 5.2.4 Human Resources will analyse feedback regarding harassment and bullying from the annual Staff Survey. If a concern is identified, an appropriate action plan will be developed.

6. References

- 6.1 ACAS
- 6.2 Equality Act 2010
- 6.3 Health and Safety at Work Act 1974
- 6.4 Protection from Harassment Act 1997
- 6.5 NHS Employers Guidance – Bullying and Harassment (April 2006)
<http://www.nhsemployers.org/Aboutus/Publications/Documents/Bullying%20and%20harassment.pdf>
- 6.6 Staff Survey

7. Associated Policy and Procedural Documentation

- 7.1 Prevention of Harassment and Bullying at Work Procedure
- 7.2 Disciplinary Policy and Procedure
- 7.3 Grievance and Disputes Policy and Procedural document
- 7.4 Maintaining High Professional Standards in the Modern NHS
- 7.5 Prevention and Control of Aggression and Violence Policy
- 7.6 Procedure for Conducting an Investigation
- 7.7 Withholding of Treatment Policy

Examples of Harassment

The grounds for harassment are varied and can include:

- Race, ethnic origin, nationality or skin colour
- Sex, sexual orientation, sexual reassignment or gender identity
- Religious or political convictions
- Physical characteristics (e.g. weight, height)
- Disabilities including physical disabilities, sensory impairments, learning disabilities, or mental health issues
- Age
- Real or suspected infection with HIV/AIDS
- Past criminal record
- Willingness to challenge people who harass or bully others which may in turn result in victimisation

Sexual harassment

- Unwelcome sexual advances, propositions and demands for sexual favours
- Unwanted or derogatory comments about clothing or appearance
- Leering and suggestive gestures and remarks
- Displaying offensive material, such as pornographic pictures, page-three type pin-ups or calendars, including those in electronic forms such as computer screen savers or by circulating such material in emails
- Physical contact such as the invasion of personal space and unnecessary touching through to sexual assault

Racial harassment

- Any incident which is perceived to be racist by the victim or any other person
- Refusing to work with someone or deliberately isolating them because of their race, colour, nationality or ethnic origin
- Displaying racially offensive material including graffiti
- Racist jokes, banter, insinuations, insults and taunts
- Verbal and physical abuse/attacks on individuals because of their race, colour, nationality or ethnic origin.

Harassment of workers with disabilities

- Asking intimate questions about an individual's impairment such as how it occurred and what it is like to be disabled
- Name calling, jokes, taunts and use of offensive language
- Assuming that a physical disability means that the individual is inferior
- Assuming that a mental disability means that the individual lacks intelligence

Harassment on the grounds of religion

- Mocking people's religious beliefs
- Making unwanted comments on dress
- Making it unnecessarily difficult for people to conform to their religious beliefs.

Harassment on the grounds of sexual orientation

- Homophobic or biphobic comments, 'jokes' and name-calling
- Dissemination of homophobic or biphobic materials
- Repeated references to a person's sexual orientation
- Outing a person as LGB without their consent or spreading rumours
- Prejudiced myths such as that all gay men are HIV positive, bisexual people are attracted to everyone, lesbians don't have caring responsibilities or that LGB people are a threat to children
- Excluding an LGB person from conversation and activities
- Excluding a same sex partner when opposite sex partners are included
- Intrusive questioning about an individual's personal or sex life

Harassment of transgender workers

- Transphobic comments, 'jokes' and name-calling
- Refusing to treat a person as of their new gender when they transition
- Failing to address a person by their preferred name and correct gender pronouns
- Denying people access to the appropriate single sex facilities such as changing rooms
- Outing a person as transgender without their consent or spreading rumours (this may also be a criminal offence)
- Intrusive questioning.

Age harassment

- Derogatory comments relating to age e.g. 'old fogey' or 'still in nappies'
- Ageist jokes
- Assumptions about a person based on their age
- Excluding a person from work social events on the grounds of their age

These lists are not exclusive or exhaustive and there may be other behaviour which also constitutes harassment and leads to discrimination.

Examples of Bullying Behaviours

Bullying may take the form of physical, verbal or non-verbal conduct. The following are examples of bullying behaviour:

- **shouting at, being sarcastic towards, ridiculing or demeaning others;**
- **physical or psychological threats;**
- **overbearing and intimidating levels of supervision;**
- **inappropriate and/or derogatory remarks about someone's performance;**
- **abuse of authority or power by those in positions of seniority;**
- **deliberately excluding someone from meetings or communications without good reason.**

This list is not exclusive or exhaustive and there may be other behaviour which also constitutes bullying and leads to discrimination.

DISTINCTION BETWEEN BULLYING BEHAVIOURS IN MANAGERS AND STRONG MANAGEMENT

Bullying Behaviours

- Making threats
- Handing out physical and verbal abuse
- Humiliating people in front of others
- Refusing to listen to concerns
- Ignoring people for promotion
- Needlessly reviewing someone's work
- Addressing people by their job title or grade rather than by name
- Setting unrealistic deadlines
- Withholding necessary information

Strong and Fair Management Behaviours

- Setting and agreeing achievable tasks and goals
- Consistent and fair
- Gives constructive feedback
- Manage performance by recognising good performance and tackling poor performance constructively.
- Shares information freely
- Is realistic about strengths and development needs
- Gives credit where credit is due.

These lists are not exclusive or exhaustive.

MONITORING MATRIX

MONITORING OF IMPLEMENTATION	MONITORING LEAD	MONITORING PROCESS	MONITORING FREQUENCY	REPORTED TO PERSON/GROUP	ACTION PLAN LEAD
All formal harassment and bullying cases monitored	Human Resources Department	All formal cases recorded via KPI reports	Monthly	Executive Director of Delivery at Strategic Delivery Group	Director of Human Resources
All formal harassment and bullying cases monitored	Human Resources Department	All formal cases recorded via KPI reports then reported in Annual Workforce Plan	Annual	Board of Directors	Director of Human Resources
Staff Survey	Human Resources Department	Feedback from Staff Survey regarding harassment and bullying analysed and if cause for concern action plan developed	Annual	Executive Director of Delivery at Strategic Delivery Group	Director of Human Resources

Procedure for Raising Concerns in the Public Interest (Whistleblowing)

CONTROLLED DOCUMENT

CATEGORY:	Procedure
CLASSIFICATION:	Corporate
PURPOSE	This procedure is designed to support staff in raising concerns in the public interest.
Controlled Document Number:	
Version Number:	
Controlled Document Sponsor:	Executive Director of Delivery
Controlled Document Lead:	
Approved By:	
On:	
Review Date:	This procedure will be reviewed after 3 years of the approval date.
Distribution:	
<ul style="list-style-type: none"> Essential Reading for: 	Executive Directors Directors of Operations Divisional Directors Heads of Service Line Managers HR Team
<ul style="list-style-type: none"> Information for: 	Trade Union Representatives All employees

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1. Introduction

- 1.1. The Trust is committed to providing the highest possible standard of patient care and accountability. It is also committed to providing a working environment which promotes openness and opportunities for you to contribute ideas, and a culture whereby it is both safe and acceptable to raise concerns about unlawful conduct, misconduct, financial malpractice, fraud or dangers to public, staff, patients or the environment.
- 1.2. The Public Interest Disclosure Act 1998 (PIDA) protects the public by protecting you from workplace reprisals for raising a genuine concern, whether a risk to patients or other wrongdoing.
- 1.3. This procedure sets out the detailed steps to be taken when handling a concern under the Raising Concerns in the Public Interest (Whistleblowing) Policy.

2. General Guidance

- 2.1 Staff can often be the first to realise that there may be something seriously wrong within the Trust, your department or service. You may be worried about raising such issues or may want to keep your concerns to yourself for a variety of reasons, e.g. being disloyal to your colleagues, managers or the Trust itself.
- 2.2 It is recognised that you may want to raise a concern in confidence. All concerns will be treated in confidence and every effort will be made to protect your identity if you so wish. However, it must be appreciated that the investigation process usually reveals the source of the information and a statement may be needed from you as part of the evidence which will be seen by all the relevant parties.
- 2.3 Sometimes concerns are raised anonymously. This makes it more difficult to investigate the concern, and impossible to give feedback. You are therefore encouraged to provide your name at the time of raising your concern.
- 2.4 If you are found to have deliberately made false allegations this will be taken seriously and may result in disciplinary action.
- 2.5 Any disclosure of information, particularly information relating to the care and treatment of individual patients will be regarded as a most serious matter and may result in disciplinary action up to and including dismissal.

3. Procedure

3.1 Process for Raising Concerns Stage 1

- 3.1.1 Where possible, you should initially raise all matters of concern with your line manager. This can be done either verbally or in writing.

- 3.1.2 If you feel that you cannot raise the concern with your line manager, e.g. because the concern relates to your line manager, you should raise it with the next line manager above them, or proceed directly to Stage 2 should you wish.
- 3.1.3 All concerns must be given full and sympathetic consideration. The manager with whom the concern has been raised is responsible for investigating the concerns and taking remedial action as appropriate.
- 3.1.4 You will be informed of the outcome of the investigation and/or action to be taken within 10 working days of the concern being raised. If this is not possible, you must be kept informed of when you can expect to be notified.
- 3.1.5 If no action is to be taken you should be advised of the reason why.

3.2 Process for Raising Concerns Stage 2

- 3.2.1 If you are not satisfied with the action taken, you should then raise your concern, in writing, with the designated Non-Executive Director (NED) who will acknowledge receipt within two working days, or as soon as is reasonably practicable.
- 3.2.2 The designated NED is:
Mrs Clare Robinson
University Hospitals Birmingham NHS Foundation Trust
PO Box 9551
Mindelsohn Way
Queen Elizabeth Medical Centre
Birmingham
B15 2PR
- 3.2.3 The NED will be responsible for nominating an investigating officer who has not been involved in the case before, who will ensure that your concerns are appropriately investigated, taking into account any investigation previously undertaken.
- 3.2.4 You will be notified of the outcome of the investigation and details of any action to be taken in writing within 20 working days of receipt of the initial letter. If this is not possible, you must be informed of when you can expect notification.

3.3 Process for Raising Concerns Stage 3

- 3.3.1 If you are still not satisfied you may appeal to the Chairperson of the Trust within 10 working days of the notification of the outcome of Stage 2. Concerns should be set out in writing, stating any action already taken to have the matter resolved, the response received and the reasons you were not satisfied with the response.
- 3.3.2 The Chairperson will be responsible for nominating an investigating officer who has not been involved in the case before, who will

ensure that your concerns are appropriately investigated, taking into account any investigation previously undertaken.

- 3.3.3 You will be notified of the outcome of the investigation, including the details of any action taken, in writing by the Chairperson (or the nominated deputy) within 30 working days of receipt of the initial letter. If this is not possible, you will be informed of when you can expect to be notified.

3.4 External Disclosure

- 3.4.1 If you remain dissatisfied with the outcome of your concerns, and honestly and reasonably believes that the information and any allegation contained in it are substantially true, then you may lawfully raise the matter with one of the Prescribed Regulatory Bodies e.g. Department of Health, NHS Counter Fraud, the Health and Safety Executive. Contact details can be found in Appendix A of this procedure.
- 3.4.2 You should be aware that only in exceptional circumstances, as specifically defined within the Public Interest Disclosure Act 1998, will disclosure to one of the Prescribed Regulatory Bodies be justified without first having used the Trust's internal procedures.
- 3.4.3 You are therefore strongly advised to seek professional advice from your trade union representative or professional organisation, or legal advice before embarking on such a course of action.
- 3.4.4 There may be occasions where the concern raised is of a particularly serious nature e.g. criminal or unlawful behaviour. In such cases it may be necessary to inform external parties e.g. police, internal/external audit.

3.5 Wider disclosures and disclosures to non-prescribed regulatory bodies

- 3.5.1 If you have exhausted all the internal stages without satisfaction and, where appropriate, have consulted the relevant Prescribed Regulatory Body, you may consider raising the matter with other external bodies such as the media, Members of Parliament or the police.
- 3.5.2 Such wider disclosures are only protected under the provisions of PIDA if the matter:
- has not been made for personal gain;
 - is exceptionally serious;
 - is not raised internally or with the Prescribed Regulatory Body because you reasonably feared that you would be victimised;
 - is not raised internally because you reasonably believed that there would be a 'cover up' and there is no appropriate prescribed body;

- was raised internally or with a Prescribed Body, but was not dealt with properly.

3.5.3 If you are thinking about disclosing a matter of genuine concern in these circumstances you should seek advice before doing so.

4. References

4.1 Public Interest Disclosure Act 1998

4.2 Public Concern at Work – ‘Speak up for a Healthy NHS.’

5. Associated Policy and Procedural Documents

5.1. Disciplinary Policy and Procedure

5.2. Grievance Policy and Procedure

5.3. Health and Safety Policy

5.4. Hospitality, Gifts and Sponsorship Policy

5.5. Incident Reporting Policy and Procedure

5.6. Management of Complaints Policy and Procedure

5.7. Procedure for Conducting an Investigation

5.8. Safeguarding Adults Policy and Procedure

5.9. Standing Financial Instructions Policy

Further advice and guidance

For free and confidential advice on what is protected under The Public Interest Disclosure Act (PIDA) and how best to raise a concern, you should contact **Public Concern at Work** (an independent Charity) on **020 7404 6609** or visit their website at: www.pcaw.co.uk

The following are useful external contacts:

Audit Commission PIDA Helpline	0845 052 2646
Care Quality Commission (CQC)	03000 616161
Department of Health	020 7210 4850
Environment Agency	08708 506 506
Health and Safety Executive	0845 345 0055
National Patient Safety Agency (NPSA)	020 7927 9500
NHS Counter Fraud & Corruption Reporting Line	0800 028 4060