



COUNTER-FRAUD AND PROSECUTION POLICY

COUNTER FRAUD POLICY

1.0 Introduction

- 1.1 Housing and Council Tax benefits are administered by the Borough Council acting as agents for the Department for Work and Pensions under the provisions of the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992. This policy sets out the Council's commitment to a robust anti-fraud strategy for Housing and Council Tax benefits. The purpose is to protect public funds whilst ensuring that Housing and Council Tax benefits are awarded to those who have a proper entitlement to them.
- 1.2 The key functions of the Benefits Service are to assess, award and review Housing and Council Tax benefit claims with a commitment to service delivery that:
- Is speedy and accurate
 - Is designed to reduce the risk and level of fraud and error
 - Will ensure that claimants receive the benefit to which they are entitled
 - Is accessible to everyone in the community
- 1.3 The Council recognises that the vast majority of customers claiming benefit are honest but accepts that a minority of customers will attempt to obtain benefits to which they know they are not properly entitled. Where it is found that intention and planning are involved in the commission of fraud, the Council will prosecute where it considers it appropriate to do so.
- 1.4 This policy outlines the mechanisms whereby the Council will deliver the above commitment to its citizens. It aims to combat fraud and error by embracing specified initiatives including those sponsored by the Department for Work and Pensions (DWP).

2.0 Regulation of Investigatory Powers Act 2000

- 2.1 A clear statutory framework is laid down in the Regulation of Investigatory Powers Act 2000. This allows the operation of certain intrusive techniques to be used in the investigation of offences in compliance with the Human Rights Act 1998. The legislation has particular implications for the Council where it is considered appropriate to undertake surveillance in the course of a benefit investigation. In such cases the Council will ensure that all such actions are taken in accordance with the provisions of Part II of the Act which covers the use and authorisation of 'directed covert surveillance'.

3.0 The Data Protection Act

- 3.1 The Council will notify the Data Protection Commissioner in accordance with the requirements of the Data Protection Acts 1998 and 2000. Specific reference will be made to the prevention of crime and prosecution of offenders.

4.0 Action on Overpayment of Benefit

- 4.1 Overpayments of benefit can arise where a person has a responsibility to report a change in their circumstances but fails to do so. Where this occurs the Council will consider each case individually and, where the claimant would reasonably be expected to know that the failure to report the change would have caused an overpayment of benefit, the Council may consider prosecution.
- 4.2 Where appropriate, the Council will consider applying the alternatives to prosecution available within the legislation in the form of the imposition of an Administrative Penalty or issuing a local authority caution.
- 4.3 Whether or not such action is taken, the Council will seek to recover any overpayments of benefit in accordance with the guidelines set out in its published Overpayments Policy.

5.0 Landlords and Housing Benefit Payments

- 5.1 Payments of benefit may in certain prescribed circumstances be made directly to a private landlord on behalf of the claimant. Landlords who are receiving benefit directly are also obliged to report any changes in their tenant's circumstances that they may reasonably be aware might affect their tenant's entitlement to benefit. Failure to do so is an offence under the Social Security Administration Act 1992. The Council will ensure that landlords are made aware of their duty to report such changes.
- 5.2 Where it is found that an offence has been committed, the Council will consider prosecution and will recover any overpaid benefit either directly from ongoing payments of benefit to the landlord or by civil recovery through the Courts. Where a landlord has acted fraudulently or has persistently failed to report such changes the Council may withdraw the facility for direct payment to a landlord.

5.3 The Government has given the Council powers under the Housing Benefit (Supply of Information from Landlords) Regulations 1997 to obtain information from Landlords in appropriate cases. These powers will be used reasonably and in compliance with the regulations. Landlords will be expected to comply with requests for information or they will be subject to appropriate sanctions.

6.0 Duties and Considerations of Investigation Officers

6.1 The investigation of fraud must be undertaken firmly but at all times with sensitivity, tact and in a manner that will not bring the Council into disrepute.

6.2 Officers appointed to investigate fraud will do so in accordance with the Human Rights Act 1998. The relevant provisions are in the European Convention of Human Rights Articles as follows:-

- Article 1 of the First protocol: Protection of Property
- Article 6: Right to a Fair Trial
- Article 8: Right to Respect for Private and Family Life
- Article 14: Prohibition of Discrimination

6.3 When investigating fraud or verifying claims, officers will work within the guidelines of the Police and Criminal Evidence Act 1984 (PACE) and apply the Council's policies on equality, diversity and customer care. Officers will at all times apply appropriate procedures to maintain confidentiality.

7.0 Duties and Considerations of Council Employees

7.1 Any Council employee involved in the administration of benefits must disclose details of any property that they are renting to tenants within the Great Yarmouth area or any personal connection with a person claiming benefit to the Head of Revenues and Customer Services. All Revenues and Customer Services Department staff will be required to sign a declaration of interests annually and the Benefits Investigations Manager will hold a copy.

7.2 Gifts and hospitality offered to Council employees as a consequence of their role as an employee of the Council must be reported to a senior officer and registered in accordance with agreed procedures.

7.3 Any Council officer found to be involved in an offence under the Theft Act 1968 or the Social Security Act 1992, or any other criminal offence involving claims of benefit fraud at this Council or, any other Council will be subject to disciplinary action under the Council's Disciplinary Procedures, in addition to any prosecution proceedings that may occur.

7.4 If any Council officer investigating a suspected fraud should be found to have abused their position, the Head of Revenues and Customer Services will undertake an investigation with a view to taking disciplinary action.

8.0 Protection against Personal Violence and Abuse

- 8.1 The Council will take all reasonable steps to ensure the safety and well-being of its staff. Reported incidents of verbal abuse or violence will be treated extremely seriously and appropriate action taken to prevent any recurrence.
- 8.2 Individual officers must act sensibly and responsibly at all times to ensure their own protection in potentially abusive and violent situations. If any interview or other contact with a member of the public appears to be a risk to safety the officer will withdraw immediately.
- 8.3 Safety of staff will take precedence over any other consideration when preventing or investigating fraud.

9.0 Benefit Administration and Counter-Fraud Action

- 9.1 The Council believes that it is important to discourage and prevent fraud from taking place in the first instance. The Council will implement rigorous procedures for the verification of evidence provided in support of claims for benefit. The information that must be collected and verified before benefit can be paid; specifies the minimum standards of evidence to support a claim and sets out the checks that must be made during the life of a claim. These checks may take the form of a home visit to the claimant. Such visits may be unannounced if it appears in any particular case that this will better facilitate the prevention of benefit fraud.
- 9.2 The Council's claim form for Housing and Council Tax Benefit will be in a format previously approved by the DWP's Benefit Fraud Inspectorate and will include questions and instructions in plain English giving the customer clear directions as to what is required of them, together with clear warnings about giving incorrect or incomplete information. From time to time, instructions in other languages may be included where it appears appropriate to do so.
- 9.3 Assistance will be made available to help customers to make claims, for example where there are disability problems, language problems or the person reasonably requires a home visit.

10.0 Resources

- 10.1 All staff will receive regular awareness training concerning fraud given by members of the investigations team. Staff will be encouraged to refer any suspicions that they have regarding an individual claim to the Investigations Team. Such referrals will be treated in confidence and feedback given to the assessment officer about any resulting action.
- 10.2 Investigation officers will provide regular feedback to originating staff on the types of fraud being discovered so as to encourage further referrals. Investigation officers are required to maintain good liaison arrangements with other Revenues staff and other Council departments who may be able to provide information.

- 10.3 Investigation staff exercise the powers conferred by Section 110A of the Social Security Administration Act 1992. This authorisation gives powers to require information from persons described in the Act, and, gives powers of entry and inspection to premises as defined. Each year these officers are issued with appropriate approved documentation.
- 10.4 The investigation staff will use this authorisation to communicate with, or interview, persons who may hold information that has relevance to a claim for Housing /Council Tax Benefit. Any abuse of these powers will be investigated in accordance with the Council's disciplinary procedures.
- 10.5 The Benefit Investigations Team uses an Anti-Fraud module within the main Benefits computer system. This facilitates the proper management, monitoring and recording of Investigations

11.0 Training

- 11.1 The Council will expect its investigators to be fully trained and to maintain their working knowledge to the required standard. The Council will require investigators to have relevant professional qualifications or suitable equivalent experience in order to carry out the counter-fraud work. All officers will attend 'Professionalism in Security' training courses which are accredited by Portsmouth University.

12.0 Initiatives

- 12.1 The Council will make all efforts to ensure that fraud is prevented. The following is a list of the current initiatives being undertaken:-

- Royal Mail Do-not-redirect Service
- Service Level Agreements with other Agencies
- Housing Benefit Matching Service
- Anti-Fraud Hotline
- Internal Data Matching
- Prosecution Policy
- Risk Assessments
- Claim Checks
- Internal Audit Work
- Liaison and joint investigations with the DWP's Investigation Team
- Member of Local Authority Investigation Officer Group
- Direct computer terminal link with the Department of Work and Pensions

13.0 Publicity

- 13.1 The Council operates a Benefit Fraud Hotline. This will be publicised appropriately from time to time.

14.0 Whistle Blowing

14.1 The Council has a Whistle Blowing Policy which has measures in place to protect members of staff who suspect fraud or inappropriate behaviour within the council. The policy complies with the Public Interest Disclosure Act 1998, and all investigators will be in accordance with these provisions.

15.0 Working in Partnership

15.1 The Council is keen to undertake specific fraud drives by working with:

- Police
- Inland Revenue
- Pensions Agency
- Working Age Agency
- Custom and Excise
- Immigration Service
- Department for Work and Pensions
- Other Councils
- Other internal departments

15.2 Whilst the Council is committed to the exchange of information with other organisations, either on a case basis or through the mechanism of data-matching, the Council will observe the law on data protection and the rules of confidentiality at all times.

16.0 Codes of Conduct

16.1 In undertaking an investigation the Council will observe the Police and Criminal Evidence Act 1984 Codes of Conduct. Investigators will ensure that persons subject to interview are advised of their rights and that evidence is obtained and secured in accordance with the Act. These Codes of Conduct will also be observed when taking statements and are fully taken into account within the internal Investigation Procedures Manual.

17.0 Data Matching

17.1 The Council has joined the Department for Work and Pensions Housing Benefit Matching Service which checks claims of benefits for duplicate claims against other local authorities and some Benefit Agency schemes. The Council has also joined the National Fraud Initiative administered by the District Audit Service, which allows comparison of Housing Benefit data against other data sources. The Council will also run data matching exercises against its own databases. Trade Unions will be consulted prior to data matching concerning staff or Elected Members.

17.2 At all times the Council will observe the advice and guidance of the Data Protection Registrar in the areas of data matching.

18.0 Specific targeted Fraud Campaigns

18.1 The Council may undertake specific fraud campaigns during each year. This will be done either in partnership with other organisations or alone. All campaigns will be designed with due regard to the requirements of the Council's Equal Opportunities Policy.

19.0 Intelligence

19.1 The Council will subscribe to the National Anti-Fraud Network in order to ensure the proper exchange of intelligence concerning potential fraud activity.

19.2 The Council will subscribe to publications about fraud and benefits in order to maintain current knowledge of fraud issues.

19.3 The Council will also subscribe to appropriate organisations such as the Local Authority Investigation Officer Group.

20.0 Visiting of Claimants

20.1 The Council will maintain a visiting regime to confirm the residency of the claimant and cross-reference the information on the application form. A database of high-risk residencies, which are to be visited on a rolling programme, will be maintained.

20.2 Claimants may also be visited periodically in the life of their claim in accordance with the DWP guidance on interventions.

PROSECUTION POLICY

21.0 Legislative Framework

- The Social Security Administration Act 1992
- The Social Security (Fraud) Act 1997
- The Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 (PACE)
- The Criminal Procedure of Investigations Act 1996
- The Fraud Act 2001
- Local Government Act 2000
- Criminal Procedures Investigation Act 1996
- Criminal Justice Act

22.0 Introduction

22.1 This section sets out the framework to ensure a fair and consistent approach to the use of formal sanctions. It refers to criteria relating to the offence, offender,

value and duration of the fraud which have to be taken into account before considering whether a sanction is appropriate, and if so, which sanction should apply. However, every case will be considered on its merits and action taken as appropriate.

23.0 Standard of Evidence

- 23.1 Where offences are disclosed by an investigation the Council will consider the circumstances of the case, in accordance with this policy, and apply the appropriate sanctions.
- 23.2 Where an Officer has investigated a claim for Housing or Council Tax Benefit, and it is considered that sufficient evidence has been obtained to support a prosecution against the claimant, the papers will be referred to a senior officer for consideration who may also seek legal advice as necessary.
- 23.3 A senior officer for these purposes is the Service Unit Manager (Enforcement) for Revenue Services or the Benefit Investigation Team Manager. **Before any case is put forward for prosecution, legal advice will be sought, and only where the legal advisor is satisfied that the relevant and correct evidence has been obtained will prosecution proceed.**
- 23.4 Where it is decided that a case is suitable for prosecution the senior officer will then decide whether such a prosecution is in the public interest. The Council recognises that a decision to prosecute an individual is serious and that, even in a small case, a prosecution has serious implications for all involved. Decisions to prosecute should be fair and consistent.
- 23.5 However, there are other options available to the Authority should prosecution not be appropriate. In a case where enough evidence is available, authorities may request repayment of overpaid benefit plus 30% administration costs, or a formal caution may be given.
- 23.6 The Authority will use the most appropriate deterrent against future fraudulent activity. This requires each referred case to be considered on its individual merits making reference to any previous sanctions or convictions, before deciding on any further action.
- 23.7 It should be noted that to issue any Penalty or to successfully prosecute the authority must prove there was fraudulent intent to obtain benefit or a pecuniary advantage to which there was no entitlement. Therefore before making a decision, the senior officer will consider whether this can be shown. For these purposes the senior officers are the Service Manager (Enforcement) or the Service Manager (Operations) for Revenue Services, or the Investigation Team Manager.
- 23.8 However, any sanction will only be considered where it is believed a prosecution could be brought and an interview has been conducted in accordance with the Police and Criminal Evidence Act.

23.9 In general terms, the more serious the offence the more likely it is that a prosecution will be in the public interest.

The Senior Officer will consider the following when deciding if a prosecution is appropriate:

- A conviction is likely to result in a significant sentence
- The accused was in a position of trust
- The evidence shows that the accused was a ringleader or organiser of the offence
- There is evidence that the offence was premeditated;
- There is evidence that the offence was carried out by more than one person
- The previous convictions of the accused or cautions are relevant to the present offence
- The accused is alleged to have committed the offence whilst under an order of the Court
- There are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- The offence is widespread in the area, although not serious in itself or
- The senior officer and the legal advisor consider it prudent, given the details of the case

A prosecution is less likely where the following applies:

- The loss is described as minor and was the result of a single incident
- There has been a long delay between the offence taking place and the date of the trial, unless
 - a. The offence is serious
 - b. The delay has been caused partly by the accused
 - c. The offence has only just come to light; or
 - d. The complexity of the offence has meant that there has been a long investigation.
- A prosecution is likely to have a severely detrimental effect on the victim's health – this will be balanced against the seriousness of the offence
- The defendant is, or was at the time of the offence, suffering from significant ill health, unless the offence is serious or there is a real possibility that it may be repeated.

23.10 Where prosecution is pursued the authority will lay information with the Court to issue a separate summons against each individual involved.

23.11 In all cases consideration will be given to the offender's frailty, mental health at the time of the offence and since, and any previous convictions (including formal cautions). Details of previous convictions will be obtained from the Department for Work and Pensions (DWP) or from Police records.

23.12 As a requirement of the relevant Acts and Government initiatives, details of any sanctions issued will be forwarded, on the prescribed form to the DWP. Previous Formal Cautions and prosecutions may be cited in Court.

23.13 Under the Fraud Act 2001 implemented as from April 2002, where a person is convicted of one or more benefit offences in two separate sets of proceedings within a period of three years they may be disqualified from receiving benefit. This is known as the “Two Strikes” provision. Certain benefits can be withdrawn, or reduced by 20 or 40 per cent for up to 13 weeks.

24.0 Fraud Investigation

24.1 An investigation carried out by investigation staff has three important functions.

- To establish the facts
- To gather sufficient admissible evidence to support a sanction or prosecution and
- To gather and collate information to enable the correct claiming of subsidy

24.2 Such an investigation will only be considered where it is in the public interest to do so. In the majority of fraudulent cases the fraud investigation will reveal facts that question the validity of entitlement to the benefit in payment. As a consequence the benefit may be suspended or cancelled. The withdrawal of benefit may be sufficient in itself to conclude the investigation.

25.0 Joint Working with DWP

25.1 In some cases the council investigators will work in conjunction with DWP investigators. In any cases where the DWP “take the lead” in a case the decision as to whether to impose a sanction and, if so, which one, will be based on the DWP sanction guidelines.

26.0 Formal Cautions

26.1 Formal cautions will be administered wherever fraudulent activity has been proven but is at the lower end of the range of benefit fraud. A fraud involving less than £2,000 would not normally be pursued to Court, other than in the circumstances explained later in this Policy under the heading of “Prosecutions”.

26.2 Formal cautions will only be given where a person is over 18, has committed an offence and:

- There is sufficient evidence to justify criminal proceedings
- The person has admitted the offence during a formal interview under caution
- The person’s history of previous convictions has been taken into account
- The person must sign a document to show they admit the offence and
- The person agrees to the caution and they acknowledge they have been cautioned.

26.3 **The standard of evidence used for a formal caution will be the same as required to prosecute.** If a formal caution is refused the case will be put forward for prosecution and the Court will be informed of the refusal to accept a formal

caution. A senior officer, as previously defined in this document or an investigator not previously involved with the case, will administer the formal caution, as provided by Benefit Fraud Inspectorate guidance. Where a person has moved into another Authority's area before the caution can be conducted, the fraud file will be transferred to the relevant authority, together with a request that they continue any formal caution action.

26.4 At the time of the caution being administered the accused will be required to sign a separate statement admitting the offence and accepting the formal caution. A formal caution will only be considered appropriate if the following apply:

- The offence is minor, the amount of overpayment is small and the Court is likely to award a minimal sentence
- The person has not offended before or the person has committed benefit fraud before but the offence was minor, no caution or prosecution was involved and the current offence is also minor
- The person's attitude towards their offence indicates that a caution would be an appropriate punishment taking into consideration
 - a. The wilfulness with which the person committed the offence and,
 - b. Their subsequent attitude, i.e. whether they express genuine regret for what they have done.
- There is reasonable expectation that this will curb his/her offending

26.5 Therefore, a Local Authority official caution may be considered where the requirements for prosecution have been fulfilled, the overpayment is under £2,000, an Administrative Penalty is not deemed appropriate and any of the following criteria apply

- It is a first offence;
- It is not a first offence but previous offences comply with the above criteria; or there are exceptional circumstances which may include
 - a. The amount of overpayment is relatively small
 - b. There is indication that the person's circumstances in connection with the second offence involve one or more mitigating factors that would normally exclude prosecution

26.6 In the event of the claimant declining to accept a Local Authority official caution, criminal proceedings will always be considered.

26.7 The issue and acceptance of a formal caution should be logged with the DWP central database.

27.0 Administrative Penalties

27.1 The legislation governing administrative penalties is contained in section 115A of the Social Security Administration Act 1992, as inserted by section 15 of the Social Security Administration (Fraud) Act 1997 and the Social Security (Penalty Notice) Regulations 1997. Administrative penalties have no standing as previous convictions in Court. Therefore if a person has previously agreed to pay an

administrative penalty for an earlier overpayment this cannot be mentioned in Court.

27.2 Administrative penalties will only be issued where a prosecution could be pursued but it is not in the public or authority's interest to do so. The same criteria required by formal cautions also applies with the exception that the person **is not** required to have admitted the offence during interview. In addition, the senior officer must also consider whether

- The overpayment is over £250
- It was a first offence, and
- There was any planning involved in the process
- There was any other person involved in the fraud
- This will act as a deterrent against future fraud
- The requirement to pay the penalty will cause unreasonable hardship and
- The offender co-operated with the authority once knowledge of the fraud was put to them.

27.3 **The standard of evidence used for an administrative penalty will be the same as required to prosecute.** If a penalty is refused or acceptance withdrawn the case will be put forward for prosecution and the Court will be informed of the refusal to accept the penalty. A senior officer, as previously defined in this document or an investigator not previously involved with the case, will issue the administrative penalty, as provided by Benefit Fraud Inspectorate guidance. Where a person has moved into another Authority's area before the caution can be conducted, the fraud file will be transferred to the relevant authority, with a request that they continue any formal caution action.

27.4 In the event of the claimant declining to agree to pay an administrative penalty, criminal proceedings will always be considered. The prescribed penalty is currently 30% of the total amount overpaid.

27.5 The issue and acceptance of administrative penalties will be logged with the DWP central database.

28.0 Prosecutions

28.1 A prosecution will be considered where the following criteria apply:

- The overpayment is over £2,000, or
- The person has declined the offer of a local authority official caution or administrative penalty or has withdrawn their agreement to pay an administrative penalty, or
- The overpayment is over £400, and
- The fraud has continued over a long period, or
- The person has been previously convicted of benefit fraud, or
- The person has previously been the subject of an administrative penalty procedure, or

- There was planning involved in the process, or
- The person was in a position of trust (e.g. a member of staff) or
- There were other persons involved in the fraud, or
- The case has arisen from a collusive landlord/employer investigation.

28.2 It is acknowledged that there will be cases that do not fall within any of the aforementioned categories, and such cases will be considered on their merits and the appropriate action taken in each case.

28.3 The following information will be passed to the Senior Officer who will consider whether to refer the case to a solicitor for prosecution

- A full statement of facts/fraud file
- A written history of the customer's claims to Housing and Council Tax Benefit claims and exhibiting copies of the claim forms
- A statement from a decision maker exhibiting a copy of the relevant overpayment letter
- Copies of all relevant claims which could form the basis of a charge
- Detail of the method of payment
- A schedule of other offences, which are to be taken into account although, do not form the subject of the actual charge (where appropriate)
- General information relevant to the case, such as interviewing notes

28.4 Prosecutions are normally heard by the Magistrates Court and in order to meet the requirements of legislation all prosecutions must be notified immediately after sentence is passed, to the DWP.

29.0 Conclusion

29.1 This Counter-Fraud Policy outlines the main areas to consider when dealing with potentially fraudulent situations. The full working guidance is set out within Great Yarmouth Borough Council's fraud procedures manual.

29.2 In the majority of cases where fraud is discovered it will not be appropriate to prosecute the individuals concerned. The aim of the fraud investigation will be to prevent further payment of incorrect benefit and to maximise the income from subsidy, for the authority. However, using the criteria above, consideration should always be given as to whether sanctions are likely to result from the investigation. If it is clear that a sanction is a probable result then further consideration should be given as to the appropriate method of instigating proceedings.

29.3 Great Yarmouth Borough Council supports the firm and vigorous pursuit of fraud, but recognises that this should be done in a reasonable and professional manner that respects the innocent and protects the safety of every member of staff.

Formally adopted by Council on 23 December 2003.

Reviewed and minor changes agreed on 26 August 2010.

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Jane Beck
Head of Revenues and Customer Services