

Taunton Deane Borough Council

Corporate Governance Committee - 12 December 2011

Anti-Fraud & Error Policy

Report of the Head of Revenues & Benefits

(This matter is the responsibility of Executive Councillor Vivienne Stock-Williams)

1. Executive Summary

Members are asked to support the attached Anti-Fraud & Error policy that has been refreshed in line with best practice and continues to clearly outline the Council's position on fraud and error in services administered and delivered by the Revenues & Benefits Service.

2. Background

- 2.1. The Anti-Fraud and Error Policy was originally approved by Council in July 2003. Since then, it has been subject to regular review and updating, with the last such review being in 2009.
- 2.2. Our Anti-Fraud and Error Policy (Appendix 2) has been changed to reflect updated guidance and good practice. In particular, our revised policy now includes information on how we will deal with Single Person Discount fraud
- 2.3. The proposed changes within the UK Government's Welfare Reform Bill include the introduction of Universal Credit from 2013. Universal Credit will replace income related benefits (including Housing Benefit) over the period 2013 to 2017 and will be administered by the DWP. As part of this reform a Single Fraud Investigation Service (SFIS) will be created in April 2013 to investigate Social Security Benefits, Tax Credits and Universal Credit. Ultimately, this will lead to a cessation of Local Authorities autonomous powers to investigate benefit fraud for Housing and Council Tax Benefit.

3. Finance Comments

- 3.1. Annual expenditure on Housing and Council Tax Benefit in 2010/2011 was in excess of £35m. The Council has a duty to protect the public purse and the Anti Fraud and Error Policy assists in minimising potential loss to the Council.
- 3.2. The government provides Administrative Subsidy to the Council for the Benefits service, some of which is intended to be used to offset the cost of anti fraud measures.
- 3.3. In Somerset, the cost of Council Tax collection and fraud investigation is borne by District Councils. The County Council receives a larger share of the Council Tax and would therefore receive the greatest part of the additional income that arises from identifying single person discount fraud. However, the County does not contribute financially to the cost of identifying any fraud.

- 3.4. With regard to Single Person Discount Fraud, any income collected from penalties raised would be kept by Taunton Deane Borough Council. The cost of prosecutions under the Fraud Act would be borne by Taunton Deane Borough Council and as such, prosecutions should only be taken where it is financially viable to do so.

4. Legal Comments

- 4.1. The legislation concerning matters within the Revenues & Benefits Service's Anti-Fraud and Error Policy is mainly contained in:
- Social Security Administration Act 1992
 - The Fraud Act 2006
 - Regulation of Investigatory Powers Act.
 - Local Government Finance Act 1992
 - Police and Criminal Evidence (PACE) Act and the Criminal Procedure and Investigations Act.

5. Links to Corporate Aims

- 5.1. Tackling Fraud & Error is most closely linked with the corporate aim of Tackling Deprivation & Sustainable Community Development.

6. Environmental and Community Safety Implications

- 6.1. None

7. Equalities

- 7.1. An Equality Impact Assessment has been completed and is shown in Appendix 1

8. Risk Management

- 8.1. There is a risk that fraud and error will occur. However this is managed through the controls and policies that Taunton Deane Borough Council have in place.

9. Partnership Implications

- 9.1. The Revenues & Benefits Service is delivered by Southwest One on behalf of Taunton Deane Borough Council. However, elements of decision making regarding investigations, sanctions and prosecution rests with the Head of Service as part of the retained function. Therefore the decision making on such issues remains with Taunton Deane Borough Council.

10. Recommendations

- 10.1. The Committee supports and approves the revised Anti-Fraud & Error policy.

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Impact Assessment form

What are you completing this impact assessment for? E.g. policy, service area	Revenues & Benefits Service - Anti Fraud & Error Policy		
Section One – Aims and objectives of the policy /service			
<p>Taunton Deane Borough Council is committed to ensuring that claimants receive the benefits and discounts to which they are entitled and will ensure that benefits and discounts are taken up by those people who need access to the service. However, the Council recognises that some people will try to obtain benefits and discounts to which they are not entitled. The Council will not tolerate abuse of the system and will take proactive and reactive steps to prevent and detect fraud and recover overpayments.</p> <p>This Policy details our approach to reduce the opportunity for fraud and error to occur and sets out our commitment to use all legal sanctions available, including prosecution</p>			
Section two – Groups that the policy or service is targeted at			
<p>We have a statutory duty to provide benefit or discounts regardless of the gender, sexual orientation, religion or belief or ethnicity of the customer. People of all ages will be our customers. However statutory provisions will apply in the calculation of Housing Benefit or Council Tax Benefit dependent on age. Additional Housing Benefit or Council Tax Benefit is payable where there is a specific impairment/disability benefit in payment. Discounts for Council Tax will be applied where there is a specific impairment/disability to be considered.</p>			
Section three – Groups that the policy or service is delivered by			
Taunton Deane Borough Council's Revenues & Benefits Service delivered in partnership with Southwest One.			
Section four – Evidence and Data used for assessment			
Annually we carry out a satisfaction survey of Revenues & Benefit customers. Data provided shows no evidence of dissatisfaction as a direct or indirect result of how we deliver our service in meeting our duties under the Equality Act 2010.			
Section Five - Conclusions drawn about the impact of service/policy/function on different groups highlighting negative impact or unequal outcomes			
<p>The Anti-Fraud & Error Policy aims to prevent, detect and deter Housing Benefit, Council Tax Benefit and Council Tax Discount Fraud in Taunton Deane Borough. It provides:</p> <ul style="list-style-type: none"> • Assurance to residents of Taunton Deane Borough Council that those who attempt to defraud will be sanctioned; • Consistency of approach in dealing with cases of proven fraud • Guidance for Officers • Ensures good stewardship and that we are proactive in addressing fraud <p>As the policy will be applied consistently regardless of the gender, sexual orientation, religion or belief or ethnicity of the customer, there should be no negative or unequal outcome on different groups.</p>			
Section six – Examples of best practise			
<p>Our policy has been developed taking into consideration advice given by the DWP HB/CTB Good Practice Guide, "Carrying out Counter Fraud Activities"</p> <p>http://www.dwp.gov.uk/local-authority-staff/housing-benefit/performance-and-good-practice/hbctb-good-practice-guide/part-one-good-practice/carrying-out-counter-fraud/</p>			
Signed: Manager completed by		Signed: Group Manager/Director	



REVENUES & BENEFITS SERVICE

**Anti-Fraud
and Error
Policy**

Anti-Fraud & Error Policy

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Revision history

Version number	Date	Summary of changes	Author
V1.0	15/01/2009	Initial creation of document	Simon Doyle
V1.1	28/09/2011	Refresh and updating of policy	Helen Vile

Approvals

This document has been approved by the following people.

Name	Role
Heather Tiso	Head of Revenues and Benefits

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Policy

Statement of Intent

Taunton Deane Borough Council is committed to ensuring that claimants receive the benefits and discounts to which they are entitled and will ensure that benefits and discounts are taken up by those people who need access to the service.

However, the Council recognises that some people will try to obtain benefits and discounts to which they are not entitled. The Council will not tolerate abuse of the system and will take proactive and reactive steps to prevent and detect fraud and recover overpayments.

This Policy details our approach to reduce the opportunity for fraud and error to occur and sets out our commitment to use all legal sanctions available, including prosecution.

Introduction

Local authorities have a statutory duty under section 151 of the Local Government Act 1972 to arrange for the proper administration of their financial affairs. This statutory duty includes the prevention, detection and deterrence of fraud.

This policy represents a commitment by Taunton Deane Borough Council to carry out a robust anti-fraud strategy to protect public funds and to ensure benefits and discounts are delivered to those who have a true entitlement to them.

This policy outlines the mechanisms whereby the Council will deliver the above commitment to its customers and shows how it meets its duty to prevent, detect and deter fraud as required in law.

Our policy is based on the principles of fairness, integrity, honesty and equality. It is important that in encompassing these principles we encourage an ever-stronger culture among employees and the public that fraud is illegal, unacceptable and irresponsible and we will not tolerate it.

Most of our customers are honest and law-abiding but the sheer expenditure combined with the complex nature of benefit and Council Tax administration leaves the system susceptible to fraud and error.

Overpaid benefit or incorrect liability for Council Tax occurs through either:

- Fraudulent activity by customers or
- Other non-intentional failure/action by customers and on occasions processing staff.

We need a robust and effective Anti-Fraud and Error Policy to ensure:

- We minimise the opportunity for fraud or abuse of Council Tax discounts or Housing Benefit and Council Tax Benefit schemes and
- Where fraud or abuse does occur, we detect it and deal with it efficiently and effectively.

Taunton Deane Borough Council could be subjected to both internal and external fraud and corruption. It is important the Anti-Fraud & Error Policy is read with and complements the Council's Whistle-Blowing Policy.

Legislation

For the purposes of this policy, all members and officers will be expected to comply with all codes of practice, legislation and corporate policies when dealing with issues relating to benefit fraud. These include:

- Codes of conduct for employees and members.
- Social Security legislation including the Housing and Council Tax Benefit Regulations.
- Fraud Act 2006 and supporting Circulars.
- Verification guidance and codes of practice.
- Public Interest Disclosure Act.
- Regulation of Investigatory Powers Act.
- Local Government Finance Act 1992
- Financial Regulations and Standing Orders.
- Corporate Customer Care policy.
- Whistleblowing policy.
- Equalities legislation.
- Human Rights Act
- Data Protection Act.
- Police and Criminal Evidence (PACE) Act and the Criminal Procedure and Investigations Act.
- Local Authority Fraud Investigators' Code of Practice produced by the Department for Work and Pensions.(DWP)
- Disciplinary policy.
- Any other relevant policies.

Definition of Fraud

The Fraud Act 2006 came into force on the 15th January 2007. This introduced a defined offence of fraud which is broken into three sections

- Fraud by false representation
- Fraud by failing to disclose information
- Fraud by abuse of position

Fraud by false representation

Representation must be made dishonestly, and is made with the intention of making a gain or causing a loss or risk of loss to another. A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. Representation can be stated by words or communicated by conduct i.e. written, spoken or by electronic means.

Fraud by failing to disclose information

Fraud by failing to disclose information details that a fraud will have been committed, if a person fails to declare information which he/she has a legal duty to disclose. There is a requirement that the person acts dishonestly and intends to make a gain for himself/herself, cause a loss to another or expose another to a risk of loss.

Fraud by abuse of position

Fraud by abuse of position requires a person who is in a privileged position to act dishonestly by abusing the position held; and by doing so, fails to disclose to another person, information which he/she is legally required to disclose. The dishonest act must be with the intention of making a gain for him/her or another. Alternatively it may be with the intention of causing a loss or risk of loss to another. The offence may be committed by omitting to make a declaration as well as by an act.

The introduction of the Fraud Act 2006 does not prevent the prosecution of the offences under the various Theft Acts and Forgery and Counterfeiting Act, e.g. theft, counterfeiting and falsification of documents.

When Fraud occurs

Housing Benefit & Council Tax Benefit

We tell customers claiming Housing Benefit or Council Tax Benefit it is their responsibility to tell us of changes in circumstance that could affect their benefit.

Where we consider a person has not reported a change to gain more benefit than they are legally entitled to, we may take punitive sanction action dependent on criteria detailed in Prosecution section of this policy.

Landlords may also be committing offences if they fail to tell us of changes about a tenant's occupation of the property or rent liability if they know the change is one likely to affect benefit (or could reasonably be expected to know).

Partners and appointees of the customer as well as advisors of the customer or appointees may also commit offences on benefit claims.

Fraud may also occur when customers make false statements in completing benefit forms or by omitting full details of their circumstances as the form asks.

Single Person Discount (Council Tax)

We tell those liable to pay Council Tax and receiving a Single Person Discount that they are under a duty to tell the Council within 21 days if they think they no longer qualify for a discount

Councils have the power to impose civil penalties where taxpayers fail to inform us within 21 days that the discount should not apply. The Council may impose a penalty of £70 for such a failure on the first occasion and £280 for each subsequent occasion in relation to the same information.

The Council can choose to prosecute under Section 2 of the Fraud Act 2006 where the Council Tax payer has committed a fraud by false representation but only where it is in the Council's financial interests to do so.

Retention of Documents

The Revenues & Benefits Service will retain evidence and documentation for fraud investigations in accordance with legislation, policy, best practice and internal procedures.

Whistle Blowing Policy

Taunton Deane Borough Council has a Whistle Blowing Policy that has measures to protect staff and Members who suspect fraud or inappropriate behaviour in the Council.

Council employees and Elected Members are required to tell the Council of any abuse of power perpetrated by colleagues. The Council will follow the procedures set out in its whistle-blowing policy when dealing with all such allegations.

Data Protection Act 1992

Taunton Deane Borough Council is registered under Purpose 058 of the Data Protection Act. Where applicable, the Revenues & Benefits Service will use Exemption 28, to protect organisations that supply information in connection to investigating fraudulent benefit claims.

Revenues & Benefits Service staff will always take proper action to preserve confidentiality. When responding to requests for information, officers will always be mindful of the requirements under the Data Protection Act e.g. the enquiry is for the prevention and detection of a crime.

Monitoring and Review

To help in achieving the aims outlined above, it is essential we to keep our strategies and procedures under constant review.

Performance in anti-fraud and error is communicated in an information report through the Corporate Scrutiny Committee to all Members.

We seek annual endorsement of our Anti-Fraud & Error Policy through the Executive Portfolio Holder for Corporate Resources.

Basic Principles

We have based our Anti-Fraud & Error Policy on some simple but important principles that over recent years both Local Authority and Department for Work and Pensions counter-fraud policy makers have developed.

The basic principles are:

- **Getting it right** - ensuring claims are correct from the day one and secure the gateway to claiming benefit from the first application onwards
- **Keeping it right** - ensuring we adjust claims as circumstances change to ensure they remain correct
- **Putting it right** - detecting and investigating fraud and error and taking prompt action to correct claims, with suitable penalties to prevent reoccurrence
- **Making sure things work** - checking progress, evaluating counter fraud strategies and adjusting them because of experience.

From these principles we have drawn three main Anti-Fraud & Error Strategy elements namely

- Prevention
- Detection
- Deterrence

Prevention

Fraud and error prevention is in the words of the former Benefit Fraud Inspectorate:

"minimising the opportunity for someone to commit internal or external fraud".

There are many factors we need to consider to maximise our ability to prevent fraud and error entering the system and in particular the following:

- A regular review of Council Tax discounts and exemptions to ensure the taxpayer remains eligible;
- Compliance with the good practice set down in the DWP's Verification Framework - this provides a robust validation of documents and evidence provided by customers in support of their claims;
- Check 4% (minimum) of new benefit claims prior to informing the customer of their entitlement. In addition, we sample a further 500 claims post-determination to correct awards. In addition to checks on benefit claims, we sample work carried out by Revenues Officers. Our checks enable us to correct errors and identify training needs.
- Risk-based intervention of existing claims through intelligence gathered locally as well as prioritising cases identified through the Housing Benefit Matching Service;
- Positively encouraging our customers to tell us quickly of changes in their circumstances, e.g. all our claim forms and letters, as well as various leaflets, remind customers of their responsibilities. We also promote swift notification of changes through our website, Newsletters, articles in the Deane Dispatch and the annual booklet accompanying Council Tax and NNDR bills;
- Suitable consideration on the design and format of claim forms to ensure we achieve a balance between simplicity (helping take-up) and the need to get accurate information and prevent customers putting in fraudulent claims;
- All Revenues & Benefits Service staff are subjected to checks undertaken by the Criminal Records Bureau (CRB);
- Suitable training in Council Tax and benefits legislation and fraud awareness issues for all relevant staff;
- Our ability and willingness to respond to recommendations on good practice by the Audit Commission, the South West Audit Partnership (SWAP) and our own evaluation to improve performance;
- Using integrated Document Management - we store all documents we receive in our administration of benefits, Council Tax and NNDR electronically to enable instant viewing access. This reduces risk of loss and helps in to investigate any fraudulent activity.

Detection

This covers our arrangements to identify, investigate and detect benefit and discount fraud and error. There are many activities and procedural arrangements we have to maximise detection of fraud and error. For example:

- The existence of a dedicated Investigations Team in the Revenues & Benefits Service;
- Adherence to the good practice detailed in the DWP's Verification Framework;
- The Revenues & Benefits Service Fraud Hotline so members of the public can anonymously give information on suspected fraudulent claims;
- Participation in the National Benefits Fraud Hotline Service;
- Operating the mail "Do Not Redirect Scheme" - the Post Office also tells us the address the mail would have been forwarded to;
- Closer working initiatives with Department for Work and Pensions (DWP) colleagues;
- A robust fraud referral and risk assessment;
- Participation in Data Matching* exercises including:
 - Housing Benefit Matching Service (HBMS);
 - National Fraud Initiative (NFI);
 - Local matches with large local employers or agencies;
 - The Council's own databases including those holding information on Members and staff (we will consult with recognised trade unions before data matching on Members and employees);
 - Access to the DWP database through the Customer Information System (CIS);
- * We adhere to the principles set out in the Data Protection Act;
- Providing relevant training and feedback to promote awareness and understanding of fraud and error issues;
- Relevant training to keep all appropriate officers abreast of legislative changes;
- Membership and participation in the Local Authority Investigation Officers Group and the National Anti-Fraud Network (NAFN);
- Using all relevant and legal opportunities available to us to gather evidence and information;
- Our wish to improve performance by responding to good practice recommendations by the Audit Commission, SWAP and our own evaluation;
- Strong performance management to identify administrative and investigative weaknesses.

Deterrence

Fraud deterrence covers activities designed to discourage customers from putting in fraudulent claims or to commit fraud as well as deterrent factors "employed". These include:

- Being visibly active in anti-fraud and error activities - an obvious anti-fraud stance undoubtedly has a great deterrent effect. For example:
 - Compliance with the good practice detailed in the DWP's Verification Framework;
 - Public awareness of the existence of a dedicated Investigations Team
- All staff employed in the Revenues & Benefits Service annually complete and sign a Declaration of Interest where they declare:
 - Details of any property in the TDBC area that they rent to tenants;
 - Any connection to any claim for Housing or Council Tax;
 - They will not amend any benefit claim, Council Tax or Non-Domestic Rate (NNDR) where they have any connection.
- Taunton Deane Borough Council's Whistle-blowing policy where Members and staff must tell the Council of any abuse of power perpetrated by colleagues;
- A clear message we will not tolerate fraud and we will take suitable punitive action when necessary against those individuals found to have committed fraud (refer to our separate Sanction/Prosecution policy for more details);
- A robust and effective benefit overpayment recovery procedure;
- Suitable publicity on successful prosecution cases.
- Training to ensure we keep staff up-to-date with ever changing legalisation and procedural amendments.

Anti-Fraud Measures

The following are some of the anti-fraud measures taken to prevent, detect and deter fraud in the Revenues & Benefits Service:

Verification

The Benefit Regulations allow rather than require Local Authorities to ask for such verification as is needed to put benefit into payment, subject to what it is reasonable to request.

We believe it is important to discourage and prevent fraud and error from entering the system. To achieve this, the Revenues & Benefits Service will impose rigorous procedures for verifying claims under the guidelines given in the Department for Work and Pension's Verification Framework.

We obtain original documentation when assessing benefit and proof of identity when the claimant first applies. All employees responsible for receiving and verifying documents are trained on the latest evidence requirements including identifying false documents. We use UV scanners to verify the validity of documents.

The scrutiny and verification of each claim will not interfere with our commitment to provide a modern, efficient and cost-effective service focused on meeting our customers' needs in a friendly, timely and accurate manner. We will ensure our service remains readily accessible to everyone in the community to maximise social inclusion, minimize barriers to work and help people to live in decent housing.

Our Housing & Council Tax Benefit claim form has questions and instructions in "Plain English" clearly stating what we need. The form includes warnings and information so the customer is aware of the risks involved in misinforming us of their circumstances. Our form contains all the information the customer needs to understand their rights and responsibilities.

We have systems in place allowing the customer to seek help to complete claim forms and report changes of their circumstance to us.

Anti-Fraud Investigations Team

We have a dedicated team of investigation officers who are accredited Counter Fraud Officers through the National Professionalism in Security qualifications (foundation and advanced). They are also 'Authorised Officers' therefore able to use investigative powers under the Social Security Administration Act 1992.

Data-Matching

Taunton Deane Borough Council's benefits data is matched against other data sources (internal and external) to identify inconsistencies that may suggest the existence of incorrectness on a Housing Benefit or Council Tax Benefit award.

We take part in Data Matching* exercises including:

- Housing Benefit Matching Service - this is an exercise where our benefit records are compared to DWP records for various government benefits paid (through the Single Housing Benefit Extract (SHBE)). If there is a discrepancy between the two sets of records a file is created and sent to us to investigate the discrepancy. From 27 June 2011, data matching is also carried out with information held by the Credit Reference Agency.
- The National Fraud Initiative - this is the Audit Commission's data matching exercise in which participants across the UK from Local Government, Central government and the NHS provide data which is then matched to help reduce the level of benefit fraud, occupational pension fraud and tenancy fraud. The information regarding possible matches is referred to Local Authorities from the Audit Commission for further enquiries.
- Local matches with large local employers or agencies;
- The Council's own databases including those holding information on Members and staff (we will consult with recognised trade unions before data matching on Members and employees);
- Access to the DWP database through the Customer Information System (CIS);

* We adhere to the principles set out in the Data Protection Act

The Revenues & Benefits Service will undertake pro-active initiatives designed to make use of data already held to ensure good quality evidence, and expedient investigations, for example:

- Council house purchases under the right to buy scheme
- Landlord/tenant collusion

We use data extracted from our benefit system to identify larger overpayments (over £1,000) and use this to decide if an investigation is appropriate.

Interventions

Inevitably there will be some changes not reported by customers and not identified through data matching. The Revenues & Benefits Service will use risk based data on claims as provided monthly by the DWP and local risk based criteria to review existing benefit claims. We will undertake specific checks on claims and request ad hoc data scans.

Publicity

The Revenues & Benefits Service takes every opportunity to remind claimants to report changes in their circumstances. We use various methods to publicise the need to report changes.

The Investigations Team maximises the use of publications to tell Taunton Deane Borough Council's residents of successful investigations as well as providing information about how to report a suspected fraud.

The Revenues & Benefits Service will actively publicise any case it believes will act as a deterrent to others who are thinking of committing fraud - including naming any individual where fraudulent intent has been proven.

We give out anti-fraud posters and literature to relevant organisations as well as displaying them at Taunton Deane Borough Council offices.

Fraud Referral Tool

We have an easily accessible Fraud Referral tool available on the Taunton Deane Borough Council website as well as publicising anti-fraud information and updates through the Internet.

Documentation

We aim to provide all documentation in plain English and in a format that claimants can understand, to ensure that they are aware of their responsibilities to provide accurate and timely information. Facilities are also available to have documents translated or made available in large print.

Random Checking

Regular random checking of claims is undertaken to ensure that claims have been processed correctly and that all supporting documentation is correct.

Electronic Payments

Claimants and landlords are encouraged to accept payments by electronic transfer, so payments are made directly to bank/building society accounts.

Telephone Hot Line

The public is encouraged to disclose information, confidentially or otherwise, that may help in identifying potentially fraudulent claims. Providing the dedicated 'telephone hot line' assists this aim.

Training

It is important we recognise the success and credibility of our Anti-Fraud and Error Policy depends in part, on the effectiveness of training and in turn the alertness and responsiveness of our staff to signs of fraud and error.

Effective training and awareness programmes are important components affecting performance. It would be ill-advised to consider only Investigation Officers need training in anti-fraud and error. It is important we train and inform all relevant staff in an anti-fraud and error culture. To promote this, the Revenues & Benefits Service provides:

- Staff reviews of training needs;
- Fraud awareness training for all new staff (Corporate Induction);
- Annual fraud awareness refresher training to relevant staff;
- Shadowing of Investigation Officers when suitable;
- Time for self-training through reading and on-line learning (e.g. the Meritec e-learning tool on the Taunton Deane Borough Council's intranet site);
- Accredited Counter-Fraud Officers training to all Investigation Officers - all Investigation Officers should hold a relevant qualification or study for a relevant qualification such as Professionalism in Security (PiNs);
- Legislation training to ensure we keep staff up-to-date with ever changing legalisation and procedural amendments.

Employees' Duty to Report

All employees have a duty to report any suspicious circumstances which may affect a customer's right to benefits or discounts and to report this to the Investigation Team. The Council's Disciplinary Procedure applies in all such cases. Failure to report suspicious circumstances may result in disciplinary action taken against the officer who failed to carry out their duty to report.

The Council has an agreed Code of Practice for Confidential Reporting (also known as the 'Whistleblowing Policy') which encourages and protects members and employees who wish to raise concerns or disclose irregularities.

Working in Partnership

The Revenues & Benefits Service will actively work with other agencies to support their anti-fraud activities. These agencies include:

- Local Authorities Investigation Officers Group (LAIIOG)
- National Anti-Fraud Network (NAFN)
- The Department for Works and Pensions (DWP)
- Other Local Authorities and County Councils
- HM Revenues & Customs
- The Home Office
- Other Council departments
- The Police

Whenever possible we work in partnership with these agencies in targeted fraud drives and in sharing information and conducting joint investigations.

Service Level Agreements (SLAs)

We have agreed a Partnership Agreement with the DWP. This agreement sets out the principles for effective partnership working between the DWP Fraud Investigation Team and Investigation Officers for Taunton Deane Borough Council. The agreement covers the main aspects of how each organisation will work together on matters of Administration, Security and Fraud on claims which have a joint Jobcentre Plus and TDBC interest. It sets out the reasons we should work together and what we are jointly trying to achieve in doing so.

Targeting Specific Groups

Under Human Rights legislation, it is not considered to be good practice to target or pursue unjustified reviews on specific groups of people. However, if a high-level of benefit fraud is established within a particular area or among a particular group, it may be suitable to carry out a detailed review to ensure there are no further cases.

Redirected Benefit Mail

Taunton Deane Borough takes part in the Royal Mail 'Do Not Redirect' scheme, whereby benefits correspondence is sent out using distinctive envelopes. Any benefit recipient who has moved away from the address where he or she was claiming will not have any mail sent on to their forwarding address and the correspondence will be returned to the Benefits Service for further investigation. In using the mail "Do Not Redirect Scheme" - the Post Office also tells us the address the mail would have been sent to.

Investigations

Any investigation we conduct will be based on the following criteria:

- To find out the facts
- To gather enough evidence to support any sanction we may apply
- To ensure we award the correct discount or pay the correct Housing Benefit or Council Tax Benefit

During an investigation, we may suspend a discount or benefit payment pending further enquiries.

The Revenues & Benefits Service will aim to focus on investigations to ensure the best use of available resources. We will thoroughly examine each case and give proper consideration to appropriate closure or sanction. We will follow all potential lines of enquiry when gathering evidence. We will check and verify all potential information sources and interview all relevant witnesses.

Investigations are to be undertaken under agreed written procedures and always with full consideration of the Human Rights Act. At all times, it must be possible to show the investigation is necessary, that enquiries are not excessive (i.e. are proportionate to the potential fraud) and there is no harassment of individual claimants.

The Investigation Officers are expected to always treat all people suspected of benefit fraud with respect and courtesy, in line with the Council's policies on customer care.

Written records of all investigations must be kept and updated with any supporting evidence as the investigation progresses. The outcome must also be recorded.

The Investigations Team will ensure they only disclose Council held information in line with the Data Protection Act and associated procedures on confidentiality.

The Investigation Team should always during an investigation, consider and observe the rights of any individual they are interviewing or investigating. It is the duty of the Investigation Officers to establish the facts of the case and not reach conclusions based solely on intuition or supposition.

Where fraud is suspected and it appears reasonable to prosecute under this policy, only employees trained in the Police and Criminal Evidence Act (PACE) procedures (as amended or substituted) must undertake the interview under caution (IUC) with the claimant. Where appropriate, interviews should be conducted with the police.

The PACE code of practice, a national standard produced under the Police and Criminal Evidence Act 1984 must be used to conduct interviews under caution and this will ensure compliance with the Human Rights Act. Copies of the code of practice are held by the Investigation Team and are available for examination on request.

Intelligence Gathering

The Revenues & Benefits Service subscribes to the National Anti-Fraud Network that supplies several intelligence gathering services, including:

- Credit searches
- Company director information
- DVLA information
- Financial information

The National Anti-Fraud Network also acts as our PINS 9A authorised body for getting information under the Social Security (Fraud) Act 1997. NAFN ensures all information is legally obtained and approved by the proper officers.

The Revenues & Benefits Service subscribes to the Local Authority Investigation Officers Group (LAIOG). LAIOG hold regular meetings updating officers on legislation and other relevant information. Officers are allowed to get and add information to the LAIOG website.

We also subscribe to the Experian product “Investigator On-Line” and will use this product to gather information in the support of our investigations.

Home Visits

It may be necessary to visit claimants/landlords in their own homes. Wherever possible, those involved will be notified by letter or telephone call, unless notification would jeopardise the investigation. This is in accordance with the Human Rights Act 1988, Article 8 (Right and respect for private and family life).

Appointment of Authorised Officers

Legislation allows the Council to appoint existing employees as “Authorised Officers”. An Authorised Officer is able to enter premises (such as the customer’s place of work) to enquire and examine records about any person believed to be a benefit claimant or after a test of reasonableness, a person who could supply information about the investigation, for example partners of claimants or employers . The Council can prosecute the company or any third-party who has relevant information but refuses to co-operate with such an investigation.

The Council has appointed officers in the Revenues & Benefits Service as Authorised Officers who have the same power to enter business premises as the DWP.

Use of surveillance

Any surveillance we carry out will comply with legislation contained in the Regulation of Investigatory Powers (RIPA) Act 2000. We will ensure we conduct all surveillance activities, including all authorisations, continuation and cancellations under Taunton Deane Borough Council’s RIPA Policy & procedures. We will keep all forms under that policy for inspection by approved bodies, i.e. the Surveillance Commissioner.

Surveillance will be undertaken by trained officers where it is justified and under the statutory code of practice. Corporate Surveillance Procedures will be adhered to.

All surveillance requests, agreements, cancellations and amendments must be recorded, signed and kept by the authorising officer where appropriate. All surveillance requests will be time-limited, and all amendments and renewals to authorised surveillance requests must be re-authorised by an authorising officer.

All records must be kept accurately and conveniently so they are readily available for inspection by the Office for the Commissioner for Surveillance or by the Audit Commission. A central record will be kept by the Solicitor to the Council of all authorised surveillance, and benefit fraud surveillance records will be part of the central record.

Joint-working

Due to the nature of the checking involved in correctly applying sanctions/prosecutions, it is recommended by the DWP that joint working is applied wherever possible.

The Council has agreed a Partnership Agreement with the DWP to aid joint-working.

In general, where there is a fraud investigation which involves more than one benefit, the organisation which discovers the fraud will take the lead with decisions on prosecution, cautions or administrative penalties.

The Council will abide by an agreed set of protocols for joint-working so all legal action which involves solicitors or investigations officers is undertaken in an agreed and efficient manner.

Recording and checking previous cautions and administrative penalties

Best practice on the application of sanctions/prosecutions states it is essential that records on previous convictions, cautions and administrative penalties are checked before a sanction/prosecution action is taken. It is also a requirement that all sanction/prosecution activity is logged to allow others to check an individual claimant's records.

The DWP keeps a sanctions and penalties database recording the issue and acceptance of cautions and administrative penalties. The database allows access to information on previous administration penalties and cautions administered by the DWP and other local authorities.

Basic disclosures of past convictions may be sought before the appointment of certain positions within the Council. Evidence of previous convictions for benefit fraud may be relevant to the decision to appoint individuals to vacant posts.

Recording and checking previous convictions

For checks on previous convictions, DWP fraud investigators get information, under agreement from the Home Office, through the DWP (Solicitors' Branch). Local authorities may not legally have access to this information independently. Therefore, to meet the need to check previous convictions on benefit cases, joint interviews under caution need to be carried out.

If no DWP benefits are involved, investigations officers must approach the local Police force which has access to previous convictions information.

Duties & Consideration of Officers and Members

Responsibilities of the Head of Revenues & Benefits

The Head of Revenues & Benefits must ensure:

- all employees within the Revenues & Benefits Service and those in related areas (i.e. Housing Advisory Officers) are trained in fraud awareness;
- Investigation Officers are fully familiar with fraud legislation and codes of practice; and
- all new Revenue & Benefits Officers are subject to strict pre-employment checks, to include reference to the Criminal Records Bureau.

Duties of the Principal Benefits Officer

The Principal Benefits Officer must ensure:

- data-matching is undertaken regularly with both internal and external systems and, in particular, through the Housing Benefit Matching Service to identify cases of potential benefit fraud, and to fully investigate all such cases;
- all Benefit Officers are trained in fraud awareness, legislation and codes of practice so high-quality referrals can be made to the Investigation Team;
- the calculations of fraudulent overpayments are undertaken within agreed timescales and under agreed procedures;
- that through liaison and close working arrangements with the Investigation, Overpayment & Support Services Team Leader an effective and efficient anti-fraud culture is established and maintained.

Duties of the Principal Revenues Officer

The Principal Revenues Officer must ensure:

- that a regular review of all Council Tax discounts and exemptions is carried out;
- customers claiming a Single Person Discount are advised when submitting their application of the consequences of submitting a false declaration or failing to inform the Council within 21 days that they no longer qualify for a discount;
- the calculations of revised Council Tax liability through the withdrawal of Single Person Discount are undertaken within agreed timescales and under agreed procedures;
- back-date the withdrawal of a single person discount to the date of the change and will impose a penalty in accordance with relevant legislations where the information supplied by a taxpayer is proven to be false or knowingly supplied to obtain pecuniary advantage

Duties of the Investigation, Overpayment & Support Services Team Leader

The Investigation, Overpayment & Support Services Team Leader must ensure that:

- all Investigation Officers are properly trained in legislation, legal procedures and practices and that their knowledge and skills are kept up to date;
- all investigations are undertaken fairly and legally and the investigators' powers are used appropriately;
- appropriate records are maintained supporting the outcome of an investigation and that any action is correctly classified for subsidy purposes;
- the caseload of each Investigation Officers is effectively managed and that individual targets are fulfilled;
- Sanction rewards are accurately recorded;
- resources are focused on reducing the level of fraud and, in particular, targeting in a positive but sensitive manner areas/groups where fraud is most likely to exist; and
- joint initiatives are undertaken with other agencies such as the DWP, Police, Inland Revenue, other authorities and other government organisations, to identify fraudulent claims.

Duties of Investigation Officers

Investigation Officers must ensure that:

- all claimants are genuine and that information supplied by landlords, tenants and agents is accurate and up to date by investigating claims where it appears the claimant has failed to disclose information which affects their initial entitlement or a change in circumstances;
- all claims are investigated where third parties may be providing false information which affects the entitlement of the claimant, e.g. a landlord colluding with the tenant to provide false rent payments;
- all claims are investigated where information has been received from members of the public or other sources that suggests that fraud may have taken place;
- work is carried out jointly with other organisations such as the DWP, Police or other authorities, to investigate cases that may lead to identifying fraudulent benefit claims; and
- where appropriate, offenders are prosecuted, penalised or cautioned following the guidelines provided in this policy.

Duties of Prosecuting Officers

Officers involved in a prosecution must take an independent view of the evidence in any prosecution:

- The decision to prosecute must not be influenced by the ethnic or national origin, sexual preferences, the sex, religious beliefs or political persuasion of offenders, witnesses or victims of any offence.
- They will always act in the interest of justice and it is therefore important officers are not subjected to any improper influence from any source, be it internal or external to the Council.
- They must place before the Court all relevant evidence, even evidence that helps the defence.

The Council is a public authority as defined by the Human Rights Act 1998. We must therefore vigorously apply all the principles contained in the Act and the European Convention on Human Rights.

Elected Members

The Council's Members Code of Conduct clearly stipulates the duties of elected Members. We ask Members to tell the Head of Revenues & Benefits of any interest they may have in any claim for Housing or Council Tax Benefit.

All Employees

All offers of gifts and hospitality made to Council Employees because of their role as a Council Officer must be reported to a senior officer and registered in the Register of Gifts and Hospitality under agreed procedures.

If any employee is involved in an offence under the Fraud Act 2006, the Social Security Administration Act 1992, the Theft Act 1968 or any other offence involving Single Person Discount Fraud or Benefit Fraud at

- Taunton Deane Borough Council
- any other Local Authority
- the Department for Work & Pensions or
- HM Revenues & Customs

They will be subject to disciplinary procedures as well as any resultant prosecution proceedings.

A conflict of interest applies where an employee is related to a claimant or landlord, or even if the claimant or landlord is merely personally known to the employee or member.

Where these circumstances apply, the Head of Revenues & Benefits must be made aware of the circumstances in accordance with the Declaration of Interest Procedure. If the employee would normally be involved in assessing a benefit or discount claim, the Head of Revenues & Benefits must appoint another employee to deal with the claim. Failure to tell the Head of Revenues & Benefits of a conflict of interest would be considered as a serious breach of an employee's duty to report, and would be likely to result in action being taken under the Council's Disciplinary procedures.

Where a conflict of interest applies and the employee processes the benefit or discount claim, the case will be investigated by the Investigation, Overpayment & Support Services Team Leader and, if appropriate advice will be sought from the Human Resources Service on any disciplinary action. Processing work where there has been a conflict of interest, without express authority, will be viewed as a serious breach of Council procedures and may result in dismissal or even criminal prosecution if a fraud has been perpetrated.

Where members of the Council or employees are involved in any capacity with a benefit or discount claim that is subject to an investigation, the Head of Revenues & Benefits must be informed. The Head of Revenues & Benefits and the Council's Monitoring Officer will decide on the methods of investigation and decide what action, if any, the Council should undertake.

Where an officer suspects another employee of committing fraud, then the officer has a duty to tell their manager immediately and in confidence. The Council's Monitoring Officer must be informed and the matter dealt with in accordance with the corporate strategy on fraud and corruption. Failure to report a suspicion of fraudulent behaviour is likely to result in action being taken against the employee under the Council's Disciplinary procedures.

Protection of employees

The Revenues & Benefits Service recognises customers may be aggressive or hostile during a fraud investigation. Officers are trained to recognise and defuse potentially violent situations. They must give priority to both their safety and others who may be affected by the incident.

Any cases of intimidation, verbal abuse or violence must be reported as soon as possible. A decision will then be taken on whether to record the customer involved as potentially violent, considering requirements under the Human Rights Act and Data Protection Act.

Sanctions & Prosecution

Background

After a full investigation and collection of evidence, including an interview under caution (IUC), a decision will be made on whether to prosecute or if another penalty is appropriate. Before making this decision, officers will have regard to all the factors and in particular to:

- the mental and physical condition of the claimant;
- the other social factors relating to the claimant or other members of the household;
- ensuring there is sufficient evidence for the prosecution and there has been no undue delay in completing the investigation;
- the administration of the benefit;
- the period of the overpayment;
- the overpayment and the entitlements to other benefits; and
- any previous history.

When considering the net loss to public funds, due regard will be given to the underlying entitlement to other public benefits. This is a factor the defendant could use in mitigation to minimise the offence.

A fraud carried out over a long period of time would be viewed as seriously as one involving a large sum, discovered shortly after it occurred.

The Investigation, Overpayment & Support Services Team Leader will ensure that enough evidence has been obtained and in a manner which will support a prosecution. This includes conducting interviews under caution where it is appropriate. All the evidence forming the basis of the prosecution must be admissible in a court of law and obtained within the current legislation and supporting regulations.

Any delay in starting the investigation or in conducting the investigation directly attributable to administration will be considered. A prosecution will not continue where the delay has been unreasonable.

Where the fraud has occurred or has been allowed to continue due to poor administration it would not normally be suitable to prosecute. Examples would include:

- where benefit has been paid on incomplete information;
- where the form has been poorly completed by the interviewing officer; or
- where there has been a failure to note flaws in a statement or document.

Cases thought suitable for prosecution may be passed to the Department for Work and Pensions Solicitor's Office under the existing Local Authority Prosecution arrangements. These cases are generally prosecuted under the Social Security Administration Act 1992.

Cases may also be dealt with in-house. Investigation Officers will present cases at plea and direction with the backing of private prosecution services to conduct cases where a not guilty plea has been entered. If a guilty plea has been entered Investigation Officers will proceed and conclude the hearing.

The initial recommendation on the suitable action to be taken in each case lies with the Investigation Officer. This will depend on the evidence they have gathered and the seriousness of the fraud.

The final decision on whether a case should be referred for prosecution will be made by the Head of Revenues & Benefits who will consider the factors outlined in this policy. This decision will be countersigned by the Investigation, Overpayment & Support Services Team Leader.

Officers with responsibility for prosecuting offenders have great scope to exercise discretion at various stages of the prosecution. We must use that discretion to serve the interests of justice, the public, victims, witnesses and offenders.

Single Person Discount Fraud

In cases involving Single Person Discount we have the power to impose civil penalties where taxpayers fail to inform us within 21 days that the discount should not apply. Under Schedule 3 of the Local Government Finance Act, we can impose a penalty of £70 for such a failure on the first occasion and £280 for each subsequent occasion in relation to the same information.

The Council can choose to prosecute under Section 2 of the Fraud Act 2006 where the debtor has committed a fraud by false representation but only where it is in the Council's financial interests to do so.

There is a right of appeal to The Valuation Tribunal against the imposition of a penalty. Where the penalty is subject to an appeal or arbitration, no amount is payable in respect of the penalty while the appeal or arbitration is outstanding.

Housing & Council Tax Benefit Fraud

In investigating Housing & Council Tax Benefit Fraud, we have 3 “sanction” options:

- Formal Caution
- Administrative Penalty
- Prosecution

Formal Caution

A formal caution is a serious matter. It is an admission by an offender that they have committed an offence. A caution may influence our decision to instigate proceedings if the person offends again. A caution may also be cited in any later Court proceedings within the period of three years from the date of the caution.

Suitably approved officers in the Revenues & Benefits Service have discretion to recommend a formal caution instead of prosecuting an offender.

It is impossible to list all the reasons that would lead an officer to caution for an offence as opposed to instigating prosecution proceedings. As the Home Office has recognised, the decision is essentially one of common sense. However, two questions should be asked in every case:

- Is the caution likely to be **effective**?
- Is the caution **appropriate** to the offence?

The purposes behind the caution are:

- To deal quickly with minor offences
- To prevent such offenders from unnecessary appearances in the criminal courts.
- To reduce the chances of re-offending.

Before an officer decides to caution an offender he or she must be satisfied:

- There is enough evidence to give a reasonable prospect of a conviction.
- The offender will admit the offence.
- The offender will understand the significance of the caution and give their informed consent to the caution.

A formal caution for Housing Benefit or Council Tax Benefit fraud should be only be administered by an authorised officer of the Revenues and Benefits Service.

A Formal Caution may be subsequently cited in court if the person to whom the Caution is given is later prosecuted for other benefit offences. However, it should only be cited if it is relevant to the offence under consideration and only where the offender has re-offended within three years from the date of the Caution. The officer who presents the case should clearly distinguish between cautions and convictions.

The Investigation Officer must consult the databases held by the Police and the Department for Work and Pensions. If an offender has been cautioned for such an offence in the past then a further caution should not normally be offered.

A Formal Caution is in effect a “warning” given in certain circumstances as an alternative to prosecution to a person who has committed an offence. To offer an individual a Formal Caution there must be enough evidence to justify (if necessary) instituting criminal proceedings and the person must have admitted the offence during “Interview under Caution”.

Cautioning is based on a principle that no prosecuting authority is under an obligation to prosecute - the use of the Formal Caution is administrative and no legislation exists covering its use.

Formal Cautions are considered a meaningful “penalty” and deterrent for those people where criminal prosecution proceedings are not a first option and Administrative Penalty action is not appropriate.

We should only consider a Formal Caution where offences are what might be termed minor e.g. small overpayments or the fraud continued for a relatively small period of time etc.

We must consider many factors in deciding if a Formal Caution is the correct form of disposal:

- a) Criminal proceedings are not a first option;
- b) Evidential and “public interest test” criteria have been fully considered;
- c) Person gives informed consent to being cautioned;
- d) The Offence was fully admitted during “Interview Under Caution”;
- e) The level of any overpayment;
- f) The time over which the fraud was perpetrated;
- g) The person’s age (Cautions can only be offered to people over 18 years old);
- h) The person has not offended before, or has offended before but offence was minor and the person was not cautioned/sanctioned/prosecuted and the current offence is minor;

- i) The willfulness with which the person committed the offence and their subsequent attitude at the discovery of the offence;
- j) The person has previously been sanctioned/prosecuted for a similar offence but this was over 5 years ago;
- k) If the person has been cautioned within the last 5 years then only in exceptional circumstances should we consider a further caution e.g. the overpayment is particularly small and/or indications are the person's personal circumstances in the second offence border on one or more of the mitigating factors that would normally exclude prosecution;
- l) There should be no caution considered if the individual has already been cautioned 2 or more times in the past 5 years (two or more cautions previously would indicate a lack of contrition for the offences committed and perhaps a repeated intent to commit benefit fraud);
- m) Administrative delays - Have there been any excessive or inexcusable delays in the investigation or administration of the case;
- n) Will our issue of a Caution be effective and have the desired deterrent effect.

Considering all the above it is not possible to set a "blanket policy" on issuing Formal Cautions. Every case will be considered on its own merits and the case as a whole.

A Formal Caution would not be appropriate if the overpayment was over £600 (generally if the overpayment exceeds £600 we would offer either an Administrative Penalty or instigate prosecution proceedings).

There is effectively no lower overpayment limit in caution cases - we can offer a Formal Caution where the offence has been an attempted fraud.

The longer a fraud has been perpetrated will to a degree, show the intent or wilful action of the individual to defraud. Therefore, a person committing a fraud over more than two years should not be offered a Formal Caution but instead be subject to greater punitive action.

An "offender" is not obliged to accept the offer of a Formal Caution but if they refuse or ignore the offer we will instigate criminal proceedings.

In **all** cases that involve a decision to give a caution for Housing Benefit or Council Tax Benefit, authority must be given and recorded. The Investigation, Overpayment & Support Services Team Leader is the officer designated to administer cautions, unless they have been present or involved with the IUC. In such a case, cautions should be administered by the Head of Revenues and Benefits.

Administrative Penalty

The legislation governing the use of 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.

An Administrative Penalty is a financial penalty offered to an individual as an alternative to prosecution proceedings. We cannot impose an Administrative Penalty on an individual, but if the offer of such a penalty is rejected or ignored, we should instigate prosecution proceedings.

Administrative penalties have no standing in Court. Therefore, if a person has previously agreed to pay an administrative penalty for an earlier overpayment, it cannot be mentioned in Court.

Administrative penalties are made on behalf of the Secretary of State and there is no right of appeal against the decision nor can the person ask the Secretary of State to review the amount of the penalty which is prescribed in the legislation. Administrative penalties are made on behalf of the Secretary of State; they cannot be issued by the Police.

Administrative Penalties can only be for overpaid benefit (or part of overpayments) that accrued after the Administrative Penalty start date of 18 December 1997 and that arose as a result of benefit offences.

Please note that if the offender is a Council tenant, then the penalty cannot be added to their rent account or treated as rent arrears.

It is possible for the Revenues & Benefits Service to offer an Administrative Penalty to an employer (in relevant cases) for offences that occurred after 30 April 2002 that relate to an employer. Section 115A of the Social Security Administration Act 1992 details the legislation relating to "Customer" (i.e. Benefit Claimant) Administrative Penalties and likewise Section 115B the legislation relating to "Employers".

"Customer" Administrative Penalties are set at 30% of the relevant recoverable overpayment. We can offer an Employer Administrative Penalty to an employer who has committed an offence of:

- Making a false statement, or obstructing an Authorised Officer, or failing to provide the required information, or committing false accounting, when dealing with an enquiry about their employees e.g. under Section 109B or 109C of the Social Security Administration Act 1992.

The Administrative Penalty in the above instance is currently set at £1000. If, however, grounds exist for instigating proceedings because of incitement, conspiracy or aiding and abetting and the employer's conduct involved more than 5 employees the Penalty is set at £5,000. (If less than 5 employees the Penalty is £1,000 x the number of employees).

As with Formal Cautions, we would normally only consider an Administrative Penalty when instigating prosecution proceedings would not be our first option for dealing with the case and where the factors of the case do not warrant a Formal Caution.

We must consider the following factors in deciding if an Administrative Penalty is the correct form of disposal:

- a) Criminal proceedings are not our first option;
- b) We have taken full account of evidential and “public interest test” criteria;
- c) The amount of the overpaid benefit;
- d) The length of time over which the fraud was perpetrated;
- e) The person has not offended before, or has offended before but the offence was minor and the person was not cautioned/sanctioned/prosecuted and the current offence does not, as a first option, warrant prosecution;
- f) The willfulness with which the person committed the offence and the contrition they subsequently display;
- g) Administrative delays - have there been any excessive or inexcusable delays in the investigation or administration of the case.
- h) The person has been previously sanctioned/prosecuted for a similar offence but this was over 5 years ago;
- i) Will issuing the Administrative Penalty have the desired deterrent effect;
- j) We will generally consider repeat offences for prosecution (if they have occurred within the last 5 years). For “sanction” action to be effective we should deal with repeat offences with more severely than previous ones

We must consider each case on its own merits and consider the factors of the case as a whole and not in isolation of each other.

In Administrative Penalty cases (Section 115A cases) we must give serious consideration to the amount of overpaid benefit and the time over which the fraud was committed.

If offences occur resulting in overpayments from £600 to £1,500, an Administrative Penalty may be appropriate. NB In instances where the overpayment is over £1,500 we would generally instigate prosecution proceedings.

We would normally consider overpayments under £600 suitable for a Formal Caution but if the individual does not fully admitted the offence (in which case a Caution would be inappropriate), an Administrative Penalty may be suitable.

If a fraud has been committed over more than two years we must give serious consideration to instigating prosecution proceedings.

It should be noted the offer of a penalty should be made in a special interview. The offender should be told at the interview:

- It is not an interview under caution.
- Acceptance of the penalty is not a declaration of guilt.
- The recovery of the penalty will occur in the same way as the recovery of the overpayment.
- The offender has 28 days in which to change their mind should they accept the penalty - in the event of non-acceptance prosecution would be instituted.
- Failure to repay the debt or default on instalments will result in the offender facing civil proceedings for recovery.

The “offender” is not obliged to accept the offer of an Administrative Penalty but if they refuse or ignore the offer we will instigate criminal proceedings.

In **all** cases that involve a decision to give an Administrative Penalty for Housing Benefit or Council Tax Benefit, authority must be given and recorded. The Investigation, Overpayment & Support Services Team Leader is the officer appointed to give Administrative Penalties, unless they have been present or involved with the IUC. In such a case, Administrative Penalties should be administered by the Head of Revenues and Benefits.

Prosecution

When recommending prosecution proceedings we are effectively stating:

- Prosecution is the first option for dealing with the case and meets the policy on prosecution;
- The mitigating factors against prosecution do not apply;
- We have considered other sanction activity under our policy and it is not appropriate or, the customer has refused/failed to accept a sanction as an alternative to prosecution;
- There is enough legally admissible evidence to give a realistic prospect of conviction;
- We are satisfied the prosecution is in the “Public Interest”.

In all cases that involve a decision to institute prosecution proceedings for Housing Benefit or Council Tax Benefit, authority must be given and recorded by the Head of Revenues and Benefits.

The Investigation, Overpayment & Support Services Team Leader will review all cases recommended for prosecution. Case files will be produced, and these will include all the evidence that has been collated in a clear and orderly manner. A summary of the case and the charges that are recommended, including the relevant legislation that has been breached, will be included at the beginning of the case file.

Where the case involves evidence of DWP benefits, the case file will also contain enough information to enable the DWP benefit fraud to be considered.

Deciding the relevant sanction

There are specific factors we need to consider in our decisions on whether we should apply a relevant sanction:

- Fair and effective prosecution/sanction activity is essential to upholding law and order;
- Prosecution/sanction decisions must be fair and consistent;
- We must examine cases “critically” and with strict neutrality;
- It is essential we display vigorous application of the principles of the European Convention of Human Rights/ Human Rights Act 1998 in particular:
 - Article 6 – Right to a fair trial
 - Article 8 – Right to respect for private and family life

- In every potential prosecution case we must have enough legally admissible evidence to provide a realistic prospect of conviction and the prosecution must be in the public interest.
- As an alternative to prosecution, if we believe the offer of a Formal Caution or Administrative Penalty is the correct action to take then the required standard of “sufficient legally admissible evidence” remains unaffected.
- Investigative activity has been in full compliance with
 - Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigation Act 1996
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000

Review and Discontinuance

We must continuously review all prosecutions from starting proceedings. Reviews are important especially when new evidence is found, or as details of the defence case emerges.

Officers must be resolute when made aware of new evidence or information and should not hesitate to recommend discontinuance proceedings in appropriate cases.

Accepting Guilty Pleas

In certain instances defendants may wish to plead guilty to some but not all the charges. Officers should only accept a guilty plea if they believe the Court is able to pass a sentence that matches the seriousness of the offence. Officers must never accept a guilty plea merely because it is convenient.

Criteria to Apply for Prosecution or Sanction Action

In every potential prosecution the officer needs to respond to the following questions:

- a) Is there enough evidence for the prosecution to proceed?
- b) Is the prosecution in the public interest?

If the officer decides there is not enough evidence, then no matter how important or potentially serious the fraud is, a prosecution cannot continue. It will also be improper to offer a formal caution or an administrative penalty to the suspect.

Therefore sanction action will only be suitable if there is enough evidence and it is in the public interest to prosecute.

Sufficient Evidence

In considering the case we must be satisfied there is enough evidence to provide a “realistic prospect of conviction” against every defendant on every charge.

Therefore, we should not start prosecution action unless we can place admissible, substantial and reliable evidence before the Court. Admissible evidence is evidence the Court would not exclude because it had been improperly gathered or obtained in breach of, for example, the Police and Criminal Evidence Act, the Regulation of Investigatory Powers Act, or the Data Protection Act.

The evidence must be substantial, i.e. it can be proved beyond reasonable doubt. The evidence must also be reliable so it stands up to scrutiny in any potential cross-examination by the Defence.

The officer responsible for investigating the case must consider the following:

- a) Any statutory requirements relating to the conduct of investigations and interviews, or codes of practice.
- b) If the case depends on admissions by the accused the officer must consider any evidence that supports or detracts from the reliability of the confession. They must consider the age, intelligence, understanding or other circumstances of the accused.
- c) If the accused gives an explanation, the officer must consider if it is credible in the light of the evidence as a whole.
- d) Officers must also consider any possible defence, e.g. due diligence or best practical means.
- e) If the identity of the accused is likely to be an issue, how strong is the evidence and have they applied correct procedures on identification and recognition?
- f) Are there any reasons to suggest a witness may be unreliable? For instance, is their memory faulty, or are they either friendly or hostile to the accused, or have they some other motive for forwarding their version of events.
- g) Are there matters that can be put to a witness by the Defence to attack their credibility?
- h) Is there a conflict between the evidence of the witnesses?
- i) Officers must not ignore evidence. They should consider all available evidence in deciding whether to prosecute, whether it supports a prosecution or not.

Public Interest

The rationale is the accused should not automatically be subject to prosecution proceedings. We should only instigate a prosecution if the public interest factors in favour of it outweigh those against such action.

There is a presumption in favour of not prosecuting people who are mentally ill or who suffer from severe physical illness. However, the presumption can be rebutted if the offence is sufficiently serious.

The officer should consider the wilfulness with which the offence was committed and the offender's subsequent attitude. Displaying regret and an apology and/or offering to put matters right may support a decision to use a formal caution.

Factors that should weigh for prosecution include:

- a) Any conviction is likely to result in a significant sentence.
- b) The accused was in a position of authority or trust, e.g. a public servant or a trustee.
- c) The accused was an organiser of the offence, where the offence was committed by a group of people.
- d) There are grounds to believe the offence is likely to be continued or repeated.
- e) The accused has allegedly committed the offence while under an order of the Court.
- f) The accused has been cautioned or has been convicted for similar or like offences in the past, or issued with an administrative penalty
- g) The importance of the case itself, i.e. whether it would set a legal precedent.

The factors that weigh against the prosecution and may lead officers to consider other methods of enforcement, such as formal cautions or an administrative penalty are:

- a) The offence is relatively minor.
- b) The Court is likely to impose a mere nominal penalty, such as a discharge or a small fine.
- c) The accused has already been convicted and sentenced by the Courts for a similar offence, and the further conviction is unlikely to result in imposing an additional sentence unless the matter is so serious that it requires further prosecution.
- d) The offence has been committed because of a genuine misunderstanding.
- e) The accused's positive attitude and willingness to prevent any recurrence

- f) The offence is “stale”, i.e. there has been some considerable delay between the offence taking place and the start of a prosecution. If the offence is triable summarily (that is it is triable only in the Magistrates Court) charges must be laid within six months (except for proceedings to which section 116 of the Social Security Administration Act 1992 applies). The Courts have the power to dismiss a case if there has been undue delay by the prosecution (even if started within statutory time limits). However if:
- the offence is serious, or
 - the delay has been caused or substantially caused by the accused, or
 - the offence has only recently been found, or
 - the offence is complex which has resulted in a long investigation,
- then serious consideration should be given to prosecuting the matter.
- g) The old age, illness or infirmity of the accused. However, officers must always be aware of the seriousness of the offence.
- h) The accused has rectified the loss or harm that they have caused. This should not be the sole reason not to prosecute.
- i) Any undertaking and/or valid explanation offered by the Defendant.

Having decided to prosecute a person for Housing Benefit or Council Tax Benefit fraud it is important to do so using the correct and appropriate charges. These should reflect the seriousness of the offence and in turn the Courts' sentencing powers.

The following legislation listed is by no means exhaustive but covers the main Acts under which Local Authorities currently and usually take proceedings:

- Social Security Administration Act 1992 – Section 112
- Social Security Administration Act 1992 – Section 111A
- Theft Act 1968
- Theft Act 1978
- Fraud Act 2006 – Section 2

Summary Offences

These cases can only be dealt with in the Magistrates Court and time bars for laying information apply.

Generally the time bar for summary offences is 6 months from the date the accused committed the offence. However, there are “extensions” for Housing Benefit and Council Tax Benefit Offences. In these cases (Section 112 Social Security Administration Act 1992) the time limit for the laying of information is 12 months from the date the offence was committed but see the “exception” below.

When considering proceedings under Section 112 it is possible that in a case meriting prosecution, if the information cannot be laid within 12 months of committing the offence (usually old offences where the fraud comes to light at a much later stage), for the Local Authority to issue a Certificate (Section 116 of the Social Security Administration Act 1992). If a Certificate has been issued, the information must be laid before the court within 3 months of the date on which “sufficient evidence” to justify proceedings comes to light (this will normally be the date of the Interview Under Caution).

Indictable Offences

These cases can only be dealt with in the Crown Court - time bars for laying information do not apply.

Triable either-way Offences

A group of offences exist which can be tried “either-way”. This means that they may be tried summarily at Magistrates Court or on indictment at Crown Court - time bars do not exist.

Examples of such offences would be those under Section 111A of the Social Security Administration Act 1992 and the Theft Act 1968.

Redress

Redress can be defined as the recovery or attempted recovery of assets lost or defrauded. This would include any type of financial recompense for the fraud. Where possible, the Council will follow cases through to redress. Whilst the Council aims to progress to a sanction, it will also attempt to recover any loss.

Types of redress and recovery examples are:

	Method of redress/recovery
Revenues	<ul style="list-style-type: none">▪ Imposing fines on false Single Person Discount claims▪ Prosecution for false statements▪ Attachment of earnings▪ Pursuing debts through legal proceedings▪ Using bailiff powers
Benefits	<ul style="list-style-type: none">▪ Recovery of overpayment from Landlord or Tenant by issuing an invoice or recovering from ongoing benefits;▪ Pursuing debts through legal proceedings▪ Attachment of earnings or benefits▪ Charges on property

Action on overpayment of benefit

To prevent excessive fraudulent overpayments, overpayments will be kept to a minimum by:

- ensuring that original evidence supports the application for benefit;
- accurately calculating the claim from the outset;
- undertaking reviews at suitable times; and
- encouraging claimants to report changes in their circumstances at the time they occur.

We will take robust steps to recover overpayments that relate to charges of fraud and in collecting any resulting administrative penalties.

In accordance with the Corporate Recovery and Collection Recovery Policy, when an instalment plan to recover a fraud overpayment is needed, we will seek to secure maximum recovery rates.

Deductions from continuing Housing Benefit will be set at the maximum rate outlined in the DWP's overpayment recovery guidelines, unless a reduced rate has been agreed on hardship grounds.

We will be equally robust in our collection of administrative penalties and collection of the penalty will start immediately following repayment in full of the fraud overpayment.

Where we find that a person has deliberately failed to tell us about a change of circumstances, we will:

- Fully investigate the circumstances of the case;
- Consider all the facts having obtained all relevant information using either our Authorised Officer Powers or by interviewing the claimant under caution;
- Make a decision in each case considering any mitigating circumstances;
- Apply a suitable sanction.

Where we do not consider it to be in the "public interest" to sanction a claimant who has either knowingly made a false claim or who has failed to declare a change of circumstances, we will always take steps to recover the overpaid benefit.

It is not our aim to place our customers in financial hardship and we will always agree any reasonable arrangement to repay a debt. However, failure to arrange payment may result in the Council taking civil action to recover the debt through the courts.

Action on Overpayments to Landlords

We sometimes pay Housing Benefit directly to the claimant's landlord. Where a landlord deliberately falsifies or aids a tenant to falsify a Housing Benefit claim we will consider instigating sanction action against the landlord.

If a tenant commits a fraud without their landlord's knowledge we will recover any overpayment from the tenant and not from the landlord's future Housing Benefit payments.

A landlord who receives Housing Benefit for his tenants has a duty to tell the Revenues & Benefits Service of any changes in the tenant's residency of the property. Failure to report such changes could result in the landlord receiving overpaid Housing Benefit.

We make landlords aware of their duty to report known changes to their tenants' circumstances and any failure to do so is an offence under Social Security legislation and they risk prosecution.

Where the landlord fails to tell us of their tenants' changes of circumstances we have to consider if they are a "fit and proper" landlord and if we can continue to pay Housing Benefit to them.

We will always seek to recover any overpaid benefit from a landlord where that landlord fails to report a known change of circumstance. Where possible we will recover any overpayment from continuing Housing Benefit being paid to the landlord for their other tenants (Blameless Tenant Recovery). Any failure to repay an overpayment may result in civil action to recover the debt through the courts.

We will prosecute anyone involved in a planned or organised fraud involving more than one person.

The Revenues & Benefits Service will use the powers granted to them by the Secretary of State for Social Security under the Social Security Administration (Fraud) Act 1997, namely the powers of inspection and the power to gain information from landlords.

Appendix A - Code of Conduct for Investigators

As well as complying with Taunton Deane Borough Council's Corporate Code of Conduct, Taunton Deane Borough Council expects its Investigators to observe the following standards of conduct:

1. Investigation Officers will declare all cases of alleged fraud where they hold an interest. An 'interest' is defined as a legal interest in any property involved in the alleged fraud, or a personal relationship with any persons involved in an alleged fraud.
2. Investigation Officers must inform the Investigation, Overpayment & Support Services Team Leader immediately of any summons, charge, criminal convictions or anything else which may compromise their ability to carry out investigations.
3. Investigation Officers will at all times follow the Home Office Codes of Conduct under the Police and Criminal Evidence Act (PACE) 1984. Under section 67(9) of PACE Fraud Investigators are persons charged with the investigation of crime and are subject to the same restraints as the police, particularly those contained in PACE.
4. Investigation Officers will gather sufficient evidence to support conclusions and if it is necessary to invoke prosecution or other sanctions. The evidence obtained must be admissible and to the criminal standard.
5. All interviews with persons suspected of committing an offence will be conducted under caution in accordance with PACE.
6. Investigation Officers must adhere to the code of conduct set out in the Criminal Procedures & Investigation Act (CPIA) 1996.
7. Investigation Officers will maintain separate fraud files for all investigations. They will keep any records that are needed for the purposes of disclosure under CPIA, Regulation of Investigatory Powers Act (RIPA) 2000 and the Data Protection Act (DPA) 1998.
8. Investigation Officers must ensure information is always disclosed in accordance with the DPA.
9. Investigation Officers will declare membership of any organisation that could influence the outcome of an investigation.
10. At all times, Investigation Officers will treat persons suspected of HB/CTB Fraud with respect and courtesy. They will remain vigilant to any potential risk to their own integrity and that of the Council.
11. Investigation Officers must consider and observe the rights of any individual they are interviewing or investigating as outlined in the Human Rights Act 1998 and RIPA.

12. Investigation Officers will exercise particular care when making visits on their own in the following circumstances and seek appropriate advice from a senior officer if necessary:
 - Visits to persons living alone
 - Visits after dark
 - Visits to hostels or accommodation providing 'Care in the Community'
 - Visits to young persons
13. Investigation Officers must be aware of the potential for violence from persons under investigation and should not place themselves in a situation where there is a risk of attack. Investigation Officers must always check Taunton Deane's Customer Liaison list prior to an interview. Investigation Officers must not carry out unaccompanied visits or interviews with known potentially violent persons.
14. Investigation Officers must maintain accurate records of all visits, interviews and telephone calls in an approved format. QB50 notebooks must be kept securely.
15. Investigation Officers must show their ID card before entering a person's home. If asked to leave, they must do so immediately.
16. A breach of the Code of Conduct will be treated as misconduct and will be dealt with under Taunton Deane Borough Council's disciplinary procedures.

Name of Investigator:

Signature:

Date: