

Audit, Risk & Anti-Fraud Team

Housing Benefit

Local Council Tax Support

ANTI-FRAUD, SANCTIONS AND PROSECUTION POLICY



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Housing Benefit & Council Tax Support Anti-Fraud Policy

1.0 Introduction

- 1.1 In 2010 Sevenoaks District Council and Dartford Borough Council combined their Audit & Fraud and Revenues & Benefits Services into single shared services. The primary aim of this joint venture was to continue to provide a high quality service, supporting the most vulnerable members within the two districts, in the most efficient and cost effective way.
- 1.2 The Council has a zero-tolerance to all forms of fraud & corruption. This message is keenly promoted through the issuing of a trio of joint working policies – The Anti-Fraud & Corruption Strategy, The Whistle-blowing Strategy and this policy, The Housing Benefit & Council Tax Support Anti-Fraud, Sanctions and Prosecution Policy.
- 1.3 Housing Benefit (HB) is paid to assist people on a low income to meet the rental liability on their main and principal home. Council Tax Support (CTS) is paid to assist people on a low income to meet the annual Council Tax liability on their main and principal home. Housing Benefit is a means-tested benefit, administered by local authorities, on behalf of the Department for Work & Pensions (DWP). Council Tax Support is a means-tested Council Tax discount administered by local authorities.
- 1.4 The Housing Benefit & Council Tax Support Anti-Fraud Policy re-enforces the Council's commitment to :
- Preventing fraud and error entering the benefit/discount assessment caseloads by having robust internal systems and checking procedures in place.
 - Detecting incorrect and fraudulent claims for both benefit and discounts by running pro-active drives as well as fully participating in all the government led anti-fraud data-match initiatives.
 - Putting incorrect claims right quickly and getting back what we are owed.
 - Issuing sanctions, in line with the joint Sanctions and Prosecution Policy, against people proven to have cheated the system.
 - Where appropriate, deter future fraudulent claims by publicising the work of the Anti-Fraud Team and the punishments handed out by courts in prosecution cases.
- 1.5 The Housing Benefit & Council Tax Support Anti-Fraud, Sanctions and Prosecution Policy will be reviewed annually to take into account any legislative and procedural changes.

2.0 Definition of Benefit Fraud

2.1 Benefit fraud is where a person, dishonestly, or not, whilst applying for or in receipt of a Social Security benefit:

- makes a false statement,
- produces a false document and/or
- fails to promptly notify of a relevant change in circumstances which the person knows will affect the rate of benefit there are entitled to/or are in receipt of.

2.2 Most benefit fraud offences are prosecuted under the Social Security Administration Act 1992:

- Section 112(1)a – making a false statement, producing a false document
- Section 112(1A) – failing to report a relevant change in circumstances.
- Section 111A – obtaining benefit dishonestly.

However other relevant pieces of legislation can be used, for example the Fraud Act 2006, where the crime is of a specific type.

3.0 Council Tax Support Fraud

3.1 Council Tax Support came into existence on 1st April 2013 and replaced Council Tax Benefit.

3.2 Council Tax Benefit was a Social Security benefit administered by local authorities on behalf of the Department for Work & Pensions. Council Tax Support is a discount awarded against the annual Council Tax liability, by local authorities, created by the Local Government Finance Act 2012.

3.3 Council Tax Support Fraud offences will be prosecuted under section 14B of the Local Government Finance Act 1992.

4.0 The Anti-Fraud Team

4.1 The Anti-Fraud Team has a main base at Dartford Borough Council's Civic Centre in Dartford and also a hot-desk arrangement at Sevenoaks District Council's Argyle Road offices in Sevenoaks. The team comprises specially trained officers, responsible for investigating allegations of fraud & corruption for both Sevenoaks District Council and Dartford Borough Council.

4.2 The teams' main role is the investigation and detection of suspected Housing Benefit & Council Tax Support frauds, but where called upon, the officers will conduct specific enquiries relating to Housing Tenancy fraud, Council Tax fraud and other frauds found within local government.

The Anti-Fraud Team's main objectives are:

- Assist with the creation of systems which help prevent fraud from entering the system and to unearth fraud once it has established itself.
- To teach front-line staff techniques of how to identify fraud and instil confidence in the procedure for reporting suspicions relating to potential fraudulent claims and how they can seek advice for handling such situations.
- To maximise the potential results and effectiveness of data-matching exercises available to local councils which seek to identify fraud using all the appropriate legal gateways open to them.
- To facilitate joint working with external anti-fraud agencies to ensure that the councils have a cohesive approach to the fraud investigation process.
- To investigate instances of suspected benefit fraud, collate evidence which assists in the determination of the validity of a benefit claim and to take appropriate action against any perpetrators.

4.3 The Anti-Fraud Team is managed by the Fraud Manager, who reports to the Audit, Risk & Anti-Fraud Manager and is responsible for the day-to-day management of 4 Investigation Officers (2 full-time, 2 part-time) operating across two sites.

4.4 Cases of suspected benefit fraud can be referred to the Anti-Fraud Team electronically by members of the Benefit Assessment Team (via forms located on the benefit operating system 'Academy') or via e-mail/in writing from all other internal departments. There is a dedicated fraud hotline (0800 496 3245) situated within the Dartford office of the Anti-Fraud Team. Outside office hours there is an answerphone service attached to this number.

5.0 Culture

5.1 The Council takes any form of fraud or corruption very seriously. Separate Anti-Fraud & Corruption and Whistleblowing policies have been devised to embrace the issues of fraud and corruption. The Whistleblowing Policy specifically encourages both staff and members of the public to report such matters, in confidence, to the Council.

5.2 The Council is committed to ensuring that benefit is paid to only those who are entitled to receive it.

5.3 The Council is committed to ensuring that the benefits service is easily accessible and can be taken up by all members of society irrespective of their social status or background.

5.4 The Council will, where appropriate, work in co-operation with external agencies such as the Department for Work & Pensions, the Police, Her Majesty's Customs & Excise, the Border Force Agency and other local authorities in order to combat benefit fraud.

- 5.5 The Council will maintain and advertise a 24-hour reporting line (0800 496 3245 and other points of reference felt appropriate) so suspected benefit fraud can be reported.
- 5.6 All reports of suspected fraud will be logged and assessed in line with the joint fraud referral processing policy (within at least 10-working days) and an appropriate course of action assigned to each allegation.
- 5.7 The Council will, where proportionate and reasonable, actively report successive prosecutions through local media sources in order to promote and publicise the work of the Fraud Team to act as a deterrent to other would-be benefit fraudsters.
- 5.8 All investigation staff will receive quality training to ensure that investigations are conducted in accordance with the relevant legislation and that all procedures & practices are lawful and fair.
- 5.9 The Council will actively seek the repayment of **all** overpaid benefit deemed recoverable.

6.0 Prevention, Detection and Investigation

- 6.1 All benefit staff can contact the Anti-Fraud Team by telephone or e-mail to receive advice and guidance in relation to the handling of potential fraudulent claims for benefit/discounts and they will receive regular updates of any emerging trends in the field of benefit fraud which they need to be aware of when they are examining claims for Housing Benefit & Council Tax Support.
- 6.2 Benefit Staff will receive regular reports on the Fraud Team's successes and specifically the way in which these cases were discovered, so that useful lessons can be learned, which will hopefully prevent more fraudulent claims entering the system in the future.
- 6.3 Sevenoaks District Council is fully committed to all the available government anti-fraud schemes and performance measures (For example, Housing Benefit Matching Service (HBMS), National Fraud Initiative (NFI)) and regularly allow their benefits data to be cross-matched with outside organisations for the lawful purpose of highlighting potential instances of fraud within the benefits caseload.
- 6.4 All investigators are PINS accredited fraud investigators (PINS - Professionalism in Security). This is a nationally recognised qualification, accredited by Portsmouth University, and requires each student to successfully complete 7 separate fraud modules, with exams at the end of each module.
- 6.5 The PINS qualification ensures that all investigation staff are fully conversant with all the relevant legislation covering the collation and recording of evidence (Criminal Procedures & Investigations Act 1996); the interviewing and treatment of suspects (Police & Criminal Evidence Act 1984) and

authorisation of/use of surveillance techniques (Regulation of Investigatory Powers Act 2000).

- 6.6 In cases where the Housing Benefit and/or Council Tax Support recipient is in receipt of another Social Security benefit (for example - Income Support, Job Seekers Allowance or Employment Support Allowance) local authority investigators will join forces with colleagues from the Department for Work & Pensions' Fraud Investigation Service to conduct a joint investigation.
- 6.7 Sevenoaks District Council has an excellent working relationship with the local Fraud Investigation Service (DWP) and work hard to maintain the close links between the organisations. A majority of the benefit fraud investigations instigated by the Councils will be joint ventures with the DWP.
- 6.8 All persons suspected of submitting fraudulent benefit claims/failing to declare relevant changes in their circumstances are invited to attend a formal interview to:
- show the claimant the evidence the authority has collated which appears to show that certain offences have been committed and,
 - seek a response/explanation from the claimant to the evidence shown as well as understand any mitigating circumstances that the claimant may have had, during the period in question, which may have caused their actions/behaviour.
 - At the end of the interview the person being interviewed will be informed by the investigating officer that, where appropriate, a report will be issued to the Benefit Assessment Team to adjust any payments of benefit they may have had and depending on the size of their overpayments and the circumstances under which this overpayment arose, a panel of senior managers will decide what action, if any, the relevant local authority would take in this case.
- 6.9 All cases in which the investigation results in an overpayment of benefit or the removal of a discount will be reviewed against the Housing Benefit & Council Tax Support Sanctions and Prosecution Policy to decide upon the most appropriate action to take.
- 6.10 The decision on appropriate action is not taken lightly and as such it is based upon the informed decisions of a panel of senior officers within the local authority taking all aspects of the case into account.

Housing Benefit & Council Tax Support Sanctions and Prosecution Policy

7.0 Introduction

- 7.1 Sevenoaks District Council has a duty to protect the public purse and as part of that commitment they have a responsibility to prevent and detect fraud. This policy is designed to provide clear guidance on the measures available to both authorities on how to deal with those who are found to have committed either benefit fraud and/or Council Tax Support fraud.
- 7.2 The guidelines in this policy must be implemented in a fair and unbiased manner each investigation is unique and must be judged on its own merits, with regard to the full facts of the case before an appropriate sanction is imposed.
- 7.3 In general the Council has 4 main options for further action when an investigation concludes that there has been an overpayment of benefit or an incorrectly awarded Council Tax discount:
- a) **A Warning letter** – Letter issued by the investigating officer explaining that the Council has decided that it is not in the public interest to take any further action against them, but they should make every effort to ensure that they repay the overpaid benefit and/or their increased Council Tax liability as quickly as possible in order to prevent civil recovery action being instigated.
 - b) **Formal Caution** (benefit offences only) – The offender signs a written admission to all the alleged offences and the authority retains this statement for 5 years. The cautions are logged on a national database of all sanctions (administered by the DWP) and any future sanction action would be influenced by earlier decisions.
 - c) **Administrative Penalty** – The offender does not admit to the alleged offences in this instance, but accepts to pay an additional amount to the authority to prevent the Council from instigating legal action. Again the penalty action taken in benefit fraud cases is logged on a national database so that, where necessary, checks can be made in case that claimant is the subject of an investigation in the future.
 - d) **Prosecution** – the local authority takes the claimant to court, citing offences either under the Social Security Administration Act 1992 (for benefit fraud offences) or under the Local Government Finance Act 1992 (for Council Tax Support fraud offences), or other legislation if found appropriate.
- 7.4 Formal Cautions, Administrative Penalties and prosecution are commonly referred to as sanctions. A local authority will only issue a sanction when there is a realistic prospect of obtaining a successful prosecution. In cases where offenders are offered a caution or penalty and these sanctions are refused the local authority will review the case again and decide if legal proceedings are now appropriate.

- 7.5 In all investigations conducted by the Anti-Fraud Team evidence is obtained and collated in accordance to the Police & Criminal Evidence Act 1984 and the Criminal Procedures and Investigations Act 1996. This means that, if deemed appropriate by senior management, cases can be referred for legal proceedings.
- 7.6 A case will only be deemed suitable for prosecution after it has been thoroughly reviewed and confirmed that it meets the requirements of the Code for Crown Prosecutors.
- 7.5 There are 2 main requirements – The Evidential Test and The Public Interest Test.

8.0 Evidential Test

- 8.1 The prosecuting authority must be satisfied that there is sufficient evidence to provide a ‘realistic prospect of conviction’ on each charge. Consideration should be given to what the claimant’s defence may be and how it is likely to affect the prospects of conviction.
- 8.2 A realistic prospect of conviction is an objective test based solely upon the prosecuting authority’s assessment of the evidence and any information that the authority has about the defence that the suspect may put forward. The authority must then decide whether, if properly directed in accordance with law, a jury (or magistrate) is more likely to convict than acquit a defendant of the charge(s) against them.
- 8.3 When deciding if there is sufficient evidence to prosecute the authority will consider:

Can the evidence be used in court?

- Is it likely that the evidence will be excluded by the court? (For example, is it likely it may be excluded due to the way that it was obtained?)
- Is the evidence hearsay? If so, is the court likely to allow it to be represented under any of the exceptions which permit such evidence to be given in court?
- Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?

Is the evidence reliable?

- Does the suspect have a creditable explanation for their actions?
- Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect’s level of understanding?

- Is the identification of the suspect likely to be questioned?
- Are there concerns over the accuracy, reliability or credibility of any of the evidence of any witness?
- Do any of the witnesses have previous convictions or out-of-court disposals which may affect their credibility?

9.0 Public Interest Test

9.1 When the prosecuting authority has deemed that the case has sufficient evidence to provide a realistic prospect of conviction it must then consider if it is in the 'public interest' for the legal action to progress. Every case is different and many will have mitigating aspects which will influence the authority's decision to either take legal action or refrain from instigating legal proceedings.

9.2 Some common public interest factors tending against prosecution:

- The offence committed can be proven to be the result of a genuine mistake or misunderstanding on the claimant's part.
- The claimant's age would deter the authority from taking further action.
- The claimant's mental or physical health would deter the authority from taking further action.
- The claimant has repaid the overpaid benefit in its entirety (balanced with the seriousness of the offence)
- It can be established that part of the overpaid benefit was due to an error in benefit administration either on the part of the local authority or the Department for Work & Pensions.
- The investigation process contains unexplained long delays.
- The consequences of the claimant receiving a criminal record may far outweigh the benefits of the authority taking the action.
- The claimant's family circumstances or adverse recent events may deter the authority from taking the person to court.

9.3 Some common public interest factors tending in favour of prosecution:

- The seriousness of the offence as reflected by the general guideline thresholds set in advance by local authority (see section 9.4).
- The claimant held a position of trust or responsibility.

- The offences are pre-planned or pre-meditated or contain an element of pre-planning or an intention to deceive the authority to obtain benefit.
- The claimant has previous convictions or sanctions related to the current offence.
- The offences are repeated or continued over a long period.
- The claimant has been offered an alternative sanction (i.e. Formal Caution or Administrative Penalty), but has refused it.

9.4 As a guideline, if the adjudicated collective overpayment/incorrectly awarded discount is above £4,000, the local authority would deem this a serious offence and the case should be considered for prosecution. In cases where the collective overpayment/incorrectly awarded discount is below £4,000 the authority may consider an alternative to prosecution, for example a Formal Caution (benefit offences only) or an Administrative Penalty. However, senior management may decide that legal proceedings are still appropriate due to the circumstances in which the overpayment occurred.

10.0 Formal Cautions and Administrative Penalties

10.1 The Council may consider offering a Formal Caution in relation to a benefit offence following the review of the evidence and public interest criteria and a decision has been made that it is not in the public interest to proceed to legal action. The case should fulfil the following criteria:

- The makes an admission of the offence
- In joint investigations the DWP have decided it is appropriate to issue a Formal Caution
- The claimant has not been issued with a Formal Caution or Administrative Penalty in the last 5 years
- The caution is deemed to be an appropriate deterrent to prevent this happening again in the future

10.2 In cases where the offender does not admit the offence put before them the Council may offer them an Administrative Penalty as an alternative to prosecution. The level of the penalty would be as follows:

- Benefit offences committed before 8.5.2012 the penalty imposed would be 30% of the net adjudicated overpayment.
- Benefit offences committed wholly on or after 8.5.2012 the penalty imposed would be 50% of the net adjudicated overpayment, with a minimum of £350 up to a maximum of £2,000.
- Council Tax Support offences the penalty imposed would be 50% of the excess reduction of Council Tax liability, with a minimum of £100 up to a maximum of £1000.

11.0 Publicity

- 11.1 The Council has a statutory responsibility to prevent the waste, theft and fraud of public money. To this end, the Council has put in place a range of measures to ensure that benefits are paid only to those persons who are entitled to them.
- 11.2 These measures include actions that are taken after detection of an offence, as well as measures to prevent and deter the commission of an offence.
- 11.3 One such measure is publication of convictions. The publicity generated by a conviction for benefit fraud acts as a deterrent to others seeking to claim benefit to which they are not entitled. It also reassures the general public that the Council takes a serious view of fraud and actively seeks to protect public funds.
- 11.4 The Council will therefore consider publicising successful convictions of fraud (subject to obtaining prior advice from the relevant legal services section), together with specific details of the offence(s) in question. In reaching a decision as to whether to publish such information, the Council will consider the following factors:
- The specific details of the offence committed.
 - The public interest in disclosing personal information e.g. the deterrent effect of the publication.
 - Whether the publication would be proportionate.
 - The personal circumstances of the offender.
 - Whether any other persons may be affected by the publication e.g. family members.
- 11.5 This list is not exhaustive and other factors may be relevant in the circumstances of an individual case.
- 11.6 When it is considered appropriate to publish details relating to a conviction, the reasons for such publication will be recorded by the Anti-Fraud Team.
- 11.7 Any press release on the Council's website will normally be removed after a period of 1 month.