

# **NORTH HERTFORDSHIRE DISTRICT COUNCIL**

## **BENEFITS ANTI-FRAUD STRATEGY AND PROSECUTION POLICY STATEMENT**

### **1.0 INTRODUCTION**

1.1 North Hertfordshire District Council is committed to administering Housing and Council Tax Benefit in a prompt and professional manner to genuine claimants, ensuring they receive the full Benefits they are entitled to.

1.2 The Council is aware of the high risk within the Benefit system from fraud, error or irregularity and the necessity to protect the public purse from abuse. In order to combat this the Council has invested resources in establishing a team of officers dedicated to identifying, investigating and preventing fraud

1.3 The Council recognises that deliberate abuse of the Benefit Scheme by an individual or individuals in order to obtain money from the Council to which there is no entitlement is a criminal offence.

### **2.0 BACKGROUND**

2.1 The Investigation Section was formed in 1989 to monitor, record and investigate levels of alleged fraud or abuse of the Benefit system.

2.2 From April 2006 the Government changed the way in which Anti Fraud Sections were subsidised. From that date one third of the Benefit Administration Grant paid to the Authority is expected to be used to fund Anti Fraud activity. A target is set at local level in order to maintain consistency in sanctions imposed on those found to be committing fraud.

2.3 Since its inception the Council has achieved and exceeded the target set.

### **3.0 PREVENTION**

3.1 During 1998/99 the Government introduced on a voluntary basis initially, a scheme called the "Verification Framework", the basis of which is to shift the emphasis with regard to Benefit fraud away from detection toward prevention.

3.2 The prime objective of the Verification Framework is to prevent and deter fraud by a pattern of regular visits and examination of original documents only for verification purposes.

3.3 The Council has adopted the Framework from May 1999 and it is important that staff working to it are made aware of the types of potential frauds that may occur and understand the need to be vigilant when dealing with claims. The unit has various key elements built into its working practices to prevent or deter fraud which include:

- Random cheque hand delivery to Private Tenants.
- Fraud drives in areas where a high incidence of alleged fraud is reported.
- Maximising on publicity in prosecution cases for the deterrent value.
- Reported non-receipt of cheques ----periods of grace before re-issue
- Data Matching exercises with external agencies

#### 4.0 **INVESTIGATION AND DETECTION**

4.1 The Council will conduct investigations into allegations of fraud in a professional manner in accordance with the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and any other relevant legislation, which underpins the investigation of crime. The section gets its workload in the following ways:

- Referral by assessment staff
- Information from the public given in person, by letter, or anonymously
- DWP referrals
- Police information
- Area offices and various outside agencies
- Landlords.
- Data Matching exercises

4.2 Based on past experience the following is an indication of the types of fraud detected and these should be borne in mind by staff involved in the validation and assessment of claims:

- Undeclared income
- Undeclared capital/savings

- Living together
- Fictitious and collusive desertion/separation
- Landlord fraud
- Undeclared non-dependants
- Instrument of payment fraud

4.3 Where staff involved in the validation or assessment of claims have suspicions relating to a claim it should be referred to the Investigation Section directly or through line management. Pro forma's are available for this purpose and should be completed giving as much information as possible.

4.4 On receipt of a referral the information will be passed to a designated Investigations Officer who may discuss the case further with the instigator. The Section undertakes to commence the investigation within 7 days of receipt of the information.

4.5 Investigations may be carried out by a sole Investigator or in conjunction with an outside organisation such as the DWP or Police. The key elements involved in any investigation undertaken include:

- Surveillance
- Home or office interview
- Statement taking
- Confirmation of claim details
- Interview Under Caution where appropriate.

4.6 In some instances the Council may undertake Directed Surveillance against individuals suspected of committing fraud. Trained officers will undertake surveillance operations and only when fully authorised in accordance with the Regulation of Investigatory Powers Act 2000. Directed surveillance will only be applied where criminal activity is sufficiently serious to justify the degree of intrusion into a person's privacy that would result from the techniques used.

## **5 PROSECUTIONS**

5.1 The council's policy is to prosecute fraud cases where certain criteria are met. The Investigations Manager makes the decision in this respect in conjunction with the Council's Solicitor. The factors influencing this decision include:

- Any previous convictions for fraud
- Amount of any overpayment of benefit involved
- Where an offer of a lesser sanction is refused
- State of health of claimant
- Age
- Level of intent to commit fraud
- If it is in the Public interest
- Quality of evidence

5.2 On obtaining a conviction the Council will, as part of its deterrent measures, seek to maximise any publicity available through the media.

5.3 Staff should be aware that a conviction for fraud does not in any way disbar a claimant from making a subsequent claim to Benefit. Such claim should however be brought to the notice of the Investigations Sections prior to payment being made.

## **6.0 ADMINISTRATIVE PENALTIES**

6.1 This provision is in accordance with the Social Security Administration (Fraud) Act 1997, which allows an Authority to administer a penalty (currently 30% of the amount of Benefit fraudulently obtained). The Council may recover the administrative penalty in addition to any repayments of the overpaid Benefit

6.2 The Council will consider financial penalties as an alternative to a criminal prosecution, if:-

- The overpayment is under £2,000
- It is a first offence
- There is no evidence that the fraud was pre-meditated.
- The fraud did not continue beyond 6 months.
- It is in the public interest to do so

6.3 If the Financial penalty is not accepted by the offender as an alternative to legal action then the matter must be referred for criminal prosecution.

6.4 Penalties can only be offered if the case has the evidence which would make it suitable for prosecution.

## 7.0 CAUTIONS

7 A formal caution is an oral warning given in certain circumstances to a person who has committed an offence.

7.1 A formal caution is a penalty and deterrent for persons who commit fraud of a lesser nature where criminal proceedings are not a first option and Administrative Penalty action is not appropriate.

7.2 A caution can only be considered when;

- The overpayment is less than £2,000.
- There is sufficient evidence to justify instituting criminal proceedings.
- The person has admitted the offence during Interview Under Caution
- The person's previous conviction/caution history has been taken into account.
- The person must sign a document to show they admit the offence.
- The person agrees to accept the caution

7.3 If the offender does not accept the caution then the matter is referred for prosecution.

## 8.0 OVERPAYMENTS

8.1 It is this Council's policy to pursue vigorously overpayments, which arise as a result of fraud. To this end outside collection agencies may be used as well as litigation through the courts.

8.2 As previously stated the amount of overpayment involved may be a deciding factor when considering possible prosecution or sanction.

8.3 In the event of a prosecution conviction where an overpayment of Benefit is involved the Council may recover the amount from any ongoing Benefit at the maximum rate in force at the time. This rule applies to both Claimants and Landlords who receive direct payments.

## 9.0 APPEALS

9.1 Decisions made by the authority relating to the cessation and reduction of Benefit due to fraud activity and the recovery of overpayments are subject to the normal Appeals procedures.

9.2 A customer must appeal within 1 calendar month from the date of the Decision Notice. However late appeals can be heard if there is special circumstances.

9.3 An appeal can be made either by phone or in letter but must state the grounds for the appeal. In all cases on receipt of an appeal it should be reconsidered and a statement of reason given, this can be orally or written.

9.4 If the still wish to appeal then the HBA1&2 forms must be sent in order for them to appeal for a Tribunal hearing. The Tribunal is an independent service and is normally chaired by a Solicitor or Barrister.

## 10.0 **TRAINING**

10.1 All staff new to the Council who are employed in the area of Housing Benefit or Council Tax Benefit claims will be encouraged to spend a minimum half day with the Investigation Section in order that they receive a good grounding in Fraud Awareness.

10.2 Fraud Awareness refresher training will be made available twice yearly to all staff involved in the receipt and process of Benefit claims as required by the Verification Framework.

10.3 New staff are required to declare if they are claiming Housing or Council Tax Benefit themselves and to declare an interest where a relative is claiming Benefit in the North Hertfordshire area. Any such declaration should be made through their line manager or to the Fraud Investigation Manager.

10.4 The Investigation Section will issue progress reports on a quarterly basis to keep staff informed concerning the progress of fraud investigations. These will contain details of

- Types of claim affected
- Patterns and themes
- New types of fraud identified
- How some frauds can be prevented.

10.5 Staff submitting referrals will be advised of the outcome and action taken on a personal basis at the closing stages of the investigation.

## 11.0 **FRAUD LEGISLATION**

11.1 The following Acts form the legislative basis, under which any prosecutions will be undertaken.

- Criminal Procedure and Investigations Act 1996
- Police and Criminal Evidence Act 1984
- Social Security Administration Act 1992
- Social Security Administration (Fraud) Act 1997.

## **12.0 HUMAN RIGHTS ACT 1998 AND REGULATION OF INVESTIGATORY POWERS ACT 2000**

12.1 The Human Rights Act became law in the United Kingdom with effect from 2nd October 2000. In tandem with this act the Home Office introduced The Regulation of Investigatory Powers Act 2000. This act concentrates on surveillance activity, providing a legal framework within which surveillance can operate.

12.2 In order to avoid a legal challenge under Article 8 of the Human Rights Act which states "Everyone has the right to respect for his private and family life, his home and his correspondence" all future surveillance work must be authorised under the Regulation of Investigatory Powers Act on forms designed and issued by the Home Office. Wireless surveillance can be carried out under this Act with the authority of one of the Councils two Home Office accredited officers known as Single point of Contact (SPOC)

12.3 The authorisation forms will be held in the Investigation Section and Investigators wishing to undertake any form of surveillance work will be required from 2nd October 2000 to give full details of the case involved and obtain signed authorisation from the Head of Revenues and Benefits or the Investigations Manager.

12.4 Any surveillance involved in a case, even if it does not form part of the eventual prosecution case, will be deemed unlawful if not properly authorised and could lead to a challenge against the whole case under Article 8 of HRA.

## **13.0 CONCLUSION**

13.1 The Council recognises that the continuing success of the Investigation Section and its general credibility will depend largely on the effectiveness of publicity, programmed training and responsiveness and fraud awareness of staff involved in processing Benefit claims.

13.2 This Policy Statement will be subject to review to ensure its currency and to keep abreast of any legislative changes.

Approved by Cabinet: 19 November 2002

Reviewed 15 November 2004

Reviewed 17 May 2005

Reviewed 16 November 2005

Reviewed 06 July 2007. Endorsed by Portfolio Holder Cllr Terry Hone

Reviewed 25 June 2009

