

HOUSING and COUNCIL TAX BENEFIT FRAUD STRATEGY

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Housing and Council Tax Benefit Fraud Strategy

1. Introduction

- 1.1 West Dunbartonshire Council has an Anti Fraud and Corruption Strategy which sets down the framework to ensure our financial and organisational environments are properly controlled.
- 1.2 This document is in addition to that strategy and details responsibilities for the prevention, detection and investigation of housing and council tax benefit fraud.
- 1.3 Corporate Services, Revenue & Benefit Section is responsible for the administration of housing and council tax benefits. We have a duty to ensure efficient and effective processes for dealing with all benefit claims. We also have a duty to protect public funds.
- 1.4 Benefit fraud is the deliberate misrepresentation of circumstances, or the deliberate failure to notify a change of circumstances with the intent of gaining some advantage.
- 1.5 The Revenue & Benefits Section is committed to the prevention, detection, deterrence and investigation of all housing/council tax benefit fraud.
- 1.6 Benefit fraud can be committed by claimants, landlords (or agents), or employees of the Council.
- 1.7 We can fulfil our duty to protect public funds by being proactive in the following areas:
 - Preventing fraud occurring in the first place in having secure benefit gateways by establishing effective controls to stop fraud entering the benefit system. West Dunbartonshire Council has operated the Verification Framework, a government fraud preventative initiative, since April 2003. The Verification Framework means that all benefit claims are thoroughly checked using a robust validation process;
 - Detecting fraud in ongoing claims by monthly data matching of our full housing benefit caseload with information provided by other government departments;
 - Maximising the use of legislative powers of Accredited Counter Fraud Officers;
 - Applying sanctions when appropriate, such as administrative penalties, administrative cautions and referring relevant cases to the Procurator Fiscal for consideration of prosecution;
 - Recovering overpayment of benefits and any administrative penalties;

- Providing annual staff awareness/training and Fraud Awareness Induction for all new employees; and
- Liaising and participating in joint initiatives with external organisations such as the Department for Works and Pensions, other Local Authorities, Audit Scotland, the National Fraud Initiative (NFI) and Her Majesty's Revenues & Customs and Counter Fraud Investigation Service (DWP).

2. Legal Framework

2.1 We are bound by legislation to ensure payments of Housing and Council Tax Benefits are properly controlled, as follows:

- Local Government (Scotland) Act 1973
To make arrangements for the proper administration of our financial affairs. This includes the prevention and detection of housing/council tax benefit fraud;
- Social Security (Administration) Act 1992
This act is amended by the Social Security (Fraud) Acts 1997 and 2001, providing new powers to Local Authorities to assist in the prevention and detection of benefit fraud;
- Regulation of Investigatory Powers (Scotland) Act (2000) (RIPSA)
This Act provides a legal framework for authorising covert surveillance by public authorities and an independent inspection regime to monitor activities within the United Kingdom. The Act empowers the Council to obtain communication data relating to members of the public;
- Freedom of Information Act 2002
This Act makes provision for the disclosure of information held by public authorities or by persons providing services for them and to amend the Data Protection Act 1998 and the Public Records Act 1958; and for connected purposes;
- Data Protection Act 1998
This Act makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information;
- Human Rights Act 1998
This Act gives further effect to rights and freedoms guaranteed under the European Convention on Human Rights;
- The Criminal Justice and Licensing (Scotland) Act 2010
This Act came into force for Specialist Reporting Agencies (SRAs) other than the Police on 6 June 2011. The Act changes the way disclosure is made to the Crown in Scotland; and

- The Welfare Reform Act 2012
This Act removes the power of Local Authorities to prosecute Housing/Council Tax Benefit fraud, and sees the creation of the Single Fraud Investigation Service from the 1/4/2013.

3. The Role of the Revenue & Benefit Section

- 3.1 The Revenue & Benefit Section is responsible for the investigation of suspected housing/council tax benefit fraud (HB/CTB). The Section is also responsible for internal control arrangements to ensure the integrity of the HB/CTB system and for prevention and detection measures to minimise the risk of fraud entering the benefit system. Responsibility also exists for detecting existing fraud cases already in payment and taking appropriate sanctions actions where fraud is proven.
- 3.2 All referrals of suspected benefit fraud will be considered by the Benefit Investigation Team within the Revenue & Benefit Section and a decision made on which cases require investigation.
- 3.3 The Revenue & Benefit Section has a Benefit Investigation Team consisting of 1 Accredited Counter Fraud Manager, 2 Accredited Counter Fraud Specialists. The team is supported by an Intelligence Officer and 1 clerical assistant who gather evidence required to assist in the investigation of any allegation made. This team also maintain a fraud management system of all referrals of suspected benefit fraud. The fraud management system details the results of investigations, any resulting fraudulent benefit overpayments, the types of fraud committed, and decisions on progression of sanctions taken against the individual(s).
- 3.4 The information contained in the fraud management system will be used for monthly and quarterly reporting to finance management and the Department for Works and Pensions (DWP).
- 3.5 They will liaise with the Housing and Council Tax Benefit Section to ensure their awareness of ongoing investigations and to discuss the adjudication of benefit.
- 3.6 On completion of an investigation, the Investigation Section will issue a full report of the investigation to the Section Leader (Benefits & Council Tax). He/she will decide based on all the evidence provided whether any overpayment is to be classified as fraudulent. It should be noted the investigation officers must remain independent, and as such, are not permitted to adjudicate on benefit claims.
- 3.7 If a decision is made by the Section Leader (Benefits & Council Tax) that there has been deliberate misrepresentation of circumstances in a case, or a deliberate failure to notify a change of circumstance, the Section Leader, Investigations will consider the option of applying a sanction against the perpetrator(s) i.e.:

- Administrative Penalty
This is a financial penalty as an alternative to a criminal prosecution; or
- Administrative Caution
This is a meaningful deterrent when prosecution is not a first option and an administrative penalty is not appropriate; or
- Referral to the Procurator Fiscal to consider prosecution
In Scotland the Procurator Fiscal is responsible for all criminal proceedings. He/she is entirely independent of all reporting agencies and the decision whether or not to institute proceedings is entirely a matter for him or her

The final decision on applying a sanction will be made by the Revenues & Benefits Lead Officer taking into consideration health, social factors or any mitigating circumstances.

- 3.9 A press statement will be issued when a case is successfully prosecuted and where it is considered that any resultant publicity will act as a deterrent to potential fraudulent claimants. In addition any new counter fraud activities undertaken by the Council will be publicised.

4. Reporting Suspicions of Benefit Fraud

- 4.1 Anyone, either a member of the public, an employee, an Elected Member of the Council, or a member of an external organisation, can report a suspicion of fraudulent activity concerning a housing or council tax benefit claim. All reports (unless anonymous) will be acknowledged by the Investigation Section. Sources of reports could be as follows:
- Reports received from members of the public/external organisations
Any member of the public or external organisation can report a suspicion of benefit fraud. Any report received must be immediately referred to the Investigation Section;
 - Referrals Received from Council Employees
Every employee has a duty to ensure that public funds are safeguarded. All employees must therefore immediately report any suspicions of benefit fraud to the Benefit Investigation Team. Employees will also assist in investigations by making all relevant information available; and
 - Referrals Received from Elected Members of the Council
If an Elected Member suspects benefit fraud, he/she should report that suspicion to the Benefit Investigation Team.
- 4.2 The Revenue & Benefit Section is committed to utilising all possible government anti fraud initiatives. Reports/referrals of suspected fraud arising from these initiatives, such as the National Fraud Initiative (NFI), and targeted Interventions such as High Risk Reviews and Data Matches issued by the

Housing Benefit Matching Service will be acknowledged and investigated as detailed in Section 3.

5. **Benefit Fraud by an Employee or an Elected Member of the Council**

- 5.1 If a member of staff or an Elected Member is involved in a fraud investigation, the matter will be dealt with in accordance with the Council's business irregularities procedures and reported to the Manager of Internal Audit.

6. **Prosecution Policy**

- 6.1 The Council recognises that it is a criminal offence to knowingly make a false claim or to fail to report changes in circumstance to obtain benefit to which there is no entitlement. The Council will consider prosecution or applying an appropriate sanction against anyone who commits such an offence.

- 6.2 In reaching a decision on whether or not to prosecute or apply another sanction the Revenues and Benefits Lead Officer will consider the following criteria:

- The value of the benefit obtained by fraud;
- Whether there is sufficient evidence of false information;
- Whether there is sufficient evidence of fraudulent intent;
- The quality of evidence available to determine whether fraud was committed;
- Whether a prosecution would be in the public interest;
- Any previous offences against the Council;
- Social factors including the age and health of the offender; and
- Literacy problems and language/learning difficulties.

6.3 **Administrative Penalties**

The Council has discretion under Section 15 of the Social Security Administration (Fraud) Act 1997 to administer a penalty, which is calculated at 30% of a recoverable benefit overpayment. This applies to offences committed on or after 18 December 1997 and operates under the following general guidance:

- Administration penalties are normally used in cases of overpayments between £200 and £2000 (this figure is a guideline only);
- There is a 28 day 'cooling off' period – where the claimant has the right to change his/her decision on acceptance;

- The 30% penalty is paid in the same way as the overpayment (example: recovery from ongoing benefit, arrangement through debtors);
- The penalty is not payable until the overpayment has been repaid;
- The person will not incur a criminal record; and
- There is no right of appeal against the Local Authority's decision to offer an Administration penalty.

The Welfare reform Bill 2012 has introduced additional penalties where the offence/s is committed wholly on or after 8th May 2012.

The new penalties will be £350 for an attempted fraud where no overpayment has occurred and a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000).

For offences that are committed prior to 08/05/12 or span 08/05/12, Administrative Penalties should be calculated at the 30% rate.

The Act also reduces the cooling off period from 28 days to 14 days, when an individual can withdraw from the admin penalty agreement.

The administrative penalty is recovered in addition to any repayments of the overpaid benefit and can only be offered if the case could be referred to the Procurator Fiscal for prosecution i.e. has been investigated to prosecution standard.

If the claimant does not accept the offer of an Administrative Penalty then the case must be passed to the Procurator Fiscal.

6.4 Administrative Caution

An administrative caution is a meaningful deterrent for those persons who have made a fraudulent claim where criminal proceedings are not a first option and an administrative penalty is not appropriate.

A caution may only be used where there is sufficient evidence for a prosecution and the claimant has admitted the offence during an interview under caution. The caution is an oral warning and there is no financial penalty involved.

An administrative caution will be considered as the preferred option to a prosecution or administrative penalty:

- The overpayment is less than £200;

- Where there is sufficient evidence to support a prosecution but the offence is considered minor;
- Where there is no previous history of convictions or sanctions for benefit fraud;
- Where the person has admitted the offence during an interview under caution; and
- Where the person is over 18 years of age.

Where the person(s) agrees to the caution, they acknowledge they have been cautioned and sign a document to show they admit the offence.

If the claimant does not accept the offer of an Administrative Caution then the case must be passed to the Procurator Fiscal.

6.5 Prosecution

This sanction is generally applied to such cases where the fraud is considered to be of a serious nature. West Dunbartonshire Council policy is to apply the prosecution sanction in cases where:

- The overpayment is greater than £2000 (this figure is a guideline only); and
- There is enough evidence to institute criminal proceedings; and
- The investigation has proven criminal intent beyond reasonable doubt; or
- There have been previous sanctions applied (Admin Penalty/Admin Caution).

7. Loss of Benefit Provisions

From 1 April 2002 the 'Two Strikes' provision introduced a loss of benefit sanction which restricted payment of benefit for 13 weeks if a claimant, their partner or a family member was convicted of a second benefit fraud offence, and that second offence was committed

- within three years of a previous conviction (where 2nd offence committed before 01 April 2008), or
- within five years of a previous conviction (where 2nd offence committed on or after 01 April 2008).

From 1 April 2010 the 'One Strike' provision introduced a further loss of benefit sanction which restricted payment of benefit for four weeks when a claimant, their partner or a family member has been convicted, or has accepted a caution or an administrative penalty for a first benefit fraud

offence, when the whole period of the fraud was committed on or after 1 April 2010.

New Loss of Benefit provisions, contained in the Welfare Reform Act, are expected to come into force in April 2013.

8. Review and Timescales

This will be the last review undertaken by West Dunbartonshire Council as the Welfare Reform Bill has withdrawn local authority powers to prosecute DWP benefits and has introduced the creation of the Single Fraud Investigation Service (SFIS).

SFIS will be led by the Department for Work & Pensions DWP and from 1st April 2013 all local authorities will be required to work to the policies and procedures of the DWP in relation to the investigation and prosecution of benefit fraud offences.