

**REPORT TO:** POLICY AND RESOURCES COMMITTEE - 8 DECEMBER 2008  
**REPORT ON:** COUNTER-FRAUD ANTI-FRAUD AND ANTI-CORRUPTION POLICY  
**REPORT BY:** DEPUTE CHIEF EXECUTIVE (FINANCE)  
**REPORT NO:** 599-2008

**1.0 PURPOSE OF REPORT**

This report is to inform the Elected Members of updates to the Anti-fraud and Anti-corruption Policy

**2.0 RECOMMENDATIONS**

It is recommended that the Committee approve the updated Anti-fraud and Anti-corruption Policy

**3.0 FINANCIAL IMPLICATIONS**

None

**4.0 MAIN TEXT**

Other than minor additions and deletions the major changes are:-

- Where a claimant refuses a lesser sanction - Administrative Caution or an Administrative Penalty then the case will be reported to the Procurator Fiscal
- Benefit Sanction Policy deleted from end of report - now a stand alone policy

**5.0 POLICY IMPLICATIONS**

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management and no issues have been identified.

**6.0 CONSULTATIONS**

The Chief Executive, Depute Chief Executive (Support Services), and Head of Finance.

**7.0 BACKGROUND PAPERS**

None

<b>D K Dorward</b> <b>Depute Chief Executive (Finance)</b>	<b>Date:</b>	<b>8 DECEMBER 2008</b>
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**DUNDEE CITY COUNCIL**

**ANTI FRAUD AND ANTI CORRUPTION POLICY**

**( 8 DECEMBER 2008 POLICY & RESOURCES COMMITTEE REPORT NO 599-2008)**

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## **DUNDEE CITY COUNCIL**

### **ANTI FRAUD AND ANTI CORRUPTION POLICY**

This policy document sets out Dundee City Council's commitment to the prevention and detection of benefit fraud in respect of Housing Benefit and Council Tax Benefit.

Fraud is defined by the Accounts Commission for Scotland as "The intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for gain".

The council will not tolerate fraud, corruption or abuse of position for personal gain and is committed to securing effective methods of prevention, detection and investigation. The council will promote an environment that actively encourages the highest principles of honesty and integrity

Benefit fraud is a criminal offence and the Council is committed to tackling benefit fraud and thereby protecting public funds.

The Council has implemented a programme of robust counter-fraud activities to prevent, deter, detect, investigate and take action against, perpetrators of benefit fraud.

#### **Our aim is to:**

- prevent fraud from entering the system
- detect any existing fraud, investigate and, where fraud is found proven, take appropriate action
- deter fraudsters through fraud awareness training, publicity campaigns and complying with the Councils Benefit Sanction Policy ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)).

Where this commitment could have implications for Department for Work and Pensions Benefits, the Council is further committed to fulfilling this commitment through working closely with this organisation while strictly adhering to all relevant legislation.

### **EQUALITY IMPACT ASSESSMENT**

Equality Bill 2006 - General duties:

A public authority shall in carrying out its functions have due regard to the need:

- a) to eliminate unlawful discrimination and harassment, and
- b) to promote equality of opportunity between men and women.

Duties under the above legislation requires local authorities to carry out Equalities Impact Assessments as part of published Equality Schemes. These schemes will be monitored by Equalities Commissions such as CRE (Commission for Race Equality) and DRC (Disability Rights Commission). Compliance Notices will be issued where a public authority has failed in its duties and these will be enforceable by a variety of legal remedies.

EQIA's should be conducted on all existing policies and new policies. These must be screened to determine if an EQIA is required. Existing policies should be screened every three years. Policies could be written or unwritten, formal or informal and include procedures and custom and practice. If policies are unwritten or involve custom and practice - there is no need to write them to conduct the screening.

The Council Equality Task Groups are responsible for monitoring the implementation of EQIA strategy across departments. Departments are required to submit annual progress reports to the equality task groups in September of each year from 2007. Each Department has an EQIA Officer.

This Anti-fraud and Anti-corruption Policy has been EQIA'd and no concerns were raised.

### **THE REVENUES DIVISION'S VISION STATEMENT**

The Revenues division embraced Dundee City Council's aims to show respect and consideration for everyone, treating everyone fairly, with dignity and equality. Delivering a service that meets needs by providing support and financial aid where appropriate. Working with the City to reduce material deprivation, improve health and increase social protection.

In the administration of benefits we aim to deliver the services that meet the recognised needs of our older people, single people, families, sick, disabled, unemployed and homeless.

The Council will continue its efficient and effective billing and collection of Council Tax, Non-Domestic Rates and Community Charge to ensure that all income legitimately due to the Council for these local taxes is billed and thereafter collection maximised.

Working to bring equality into our service by eradicating discrimination. Giving our citizens the freedom to make their own choices by facilitating access to our services so that everyone can participate on equal terms.

We further aim to build strong ties with our citizens and stakeholders, supporting individuals to live in decent housing by providing a service that is customer-focused, modern, efficient, speedy and accurate and secure from fraud and error.

## **PREVENTION**

### **The Role of Members**

Elected Members are responsible for ensuring that adequate Management arrangements are in place; for developing and taking decisions on the use of the Council's physical, financial and human resources; to concern themselves with the performance, development, continuity and overall well-being of the organisation.

### **The Role of Management**

Management at all levels are responsible for ensuring that their staff are aware of the Authority's Schemes of Administration, i.e. financial regulations, tender procedures and delegation of powers, and that the requirements of each are being met. It is also a Management responsibility to maintain the internal control system and to ensure that the Authority's resources are properly applied in the manner and on the activities intended. This includes responsibility for the prevention and detection of fraud.

Special arrangements may apply where employees are responsible for systems that generate payments, for example the Housing Benefit computer system. Managers should ensure that adequate and appropriate training is provided for staff and that checks are carried out to ensure that proper procedures are being followed. Managers should also consider whether pre-employment checks should be undertaken for certain posts.

The Council's Recruitment and Selection process should be strictly adhered to and, in particular, the references and qualifications of all proposed new employees of the Authority should be thoroughly checked prior to a position being offered.

To assist Management in discharging their duties, advice should be sought from the Internal Audit Section, the Assistant Chief Executive (Management) and the Deputy Chief Executive (Support Services).

### **Responsibilities of Employees**

Local Government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors, Management and fellow employees with impartiality. Employees will be expected to bring to the attention of the appropriate level of Management any significant impropriety or breach of procedure that would impact on the provision of the Local Taxation and Benefits Service.

Employees should be aware of this commitment to working to the highest standards and that any fraudulent activity on their part in relation to their own departments, other Council departments or the Finance Department which includes Housing Benefit and Council Tax Benefit or any other fraudulent activity which is deemed as bringing the Council into disrepute, will be subject to disciplinary procedures.

Employees working in the Benefits administration area of the Revenues Division of the Finance Department will continue to be prohibited from dealing with any work related matters that affect their relatives.

In addition, staff should seek guidance from their line manager on any occasion where there is doubt as to whether it is appropriate for a member of staff to deal with a particular account.

## **Role of Internal Audit**

Internal Audit is a service to the organisation and contributes to internal control by examining, evaluating and reporting to Management on its adequacy and effectiveness. Whilst it is not a primary function of Internal Audit to detect fraud, their work should assist Management in preventing and deterring fraud through the strengthening of internal control.

## **Role of External Audit**

As part of their work, External Audit should consider and assess the arrangements in place for the prevention and detection of fraud.

## **Service Level Agreements with stakeholders**

The Council will liaise where appropriate with outside organisations to encourage closer working, formalising joint working through the implementation of Service Level Agreements. However, these agreements will necessarily be subject to there being appropriate legal gateways to sharing of information and resources.

## **Audit Scotland**

From April 2008 Audit Scotland has taken over from the Benefit Fraud Inspectorate in the role of inspecting Councils. A rolling programme of inspections is now in place to ensure that Councils are continually working to improve the service they provide for the public. Dundee City Council will endeavour to implement any recommendations from Audit Scotland.

## **Risk Assessment**

The Council is aware of its duty of care to its citizens but it is also aware of its duty of care to its employees. As such, risk is assessed and managed regarding lone working.

## **Verification Framework**

The Verification Framework (VF) is a Government initiative which sets out the information that must be collected and verified before Housing Benefit and Council Tax Benefit can be paid. The aim is to ensure that claimants receive all the Benefit that they are entitled to by setting a minimum standard of evidence needed for a claim to be assessed, encouraging accuracy in calculating claims from the start of a claim but also to detect and prevent fraudulent claims

Dundee City Council has implemented the verification framework with effect from 01 February 2004 in order to secure the gateway to fraud and it is expected that this will realise an increase in benefit accuracy and detection of benefit fraud offences.

## **Land Registry Checks**

Benefit applications are checked against the Land Registry data where appropriate

## **Fraud Awareness**

The Counter Fraud Team carryout Fraud Awareness Presentations to the Revenues Division, other departments within the Council and external organisations such as Registered Social Landlords. Dundee City Council continues to review the awareness sessions in an effort to reach as wide an audience as possible to strike home the message that Benefit Fraud is illegal and will not be tolerated and that working together we can make a real difference in eradicating fraud within our benefit system. If you would like the Benefit Fraud Team to come to your organisation to do a Fraud Awareness presentation please contact the Fraud Manager on 01382 431255.

## **Publicity**

A twice-yearly Fraud Awareness programme of publicity on the Council's Counter Fraud Activities is in place involving press adverts, Council internet information and referral service, billboards in the city centre, posters in public offices in the city and leaflets issued with Revenues mail. The campaigns run during May and November.

In addition to this the Council also has a quarterly advertising campaign on city buses to advertise the benefit fraud hotline and Internet referral process.

The Council also takes the opportunity to advertise in various magazines and take part in video advertising in the city centres as opportunities and resources allow as well as having adverts on carrier bags issued by our libraries.

## **DETERRENCE**

### **Repayment**

The recovery of fraudulent benefit overpayments will be given priority

The Council will seek repayment of all incurred Housing Benefit or Council Tax Benefit overpayment which has arisen as a result of fraudulent activity.

Where an individual has committed a benefit fraud offence, Dundee City Council will actively seek to recover the overpayment in full, prioritising these cases for urgent action taking all legal steps available.

All benefit overpayments resulting from a benefit fraud offence are recorded and taken into consideration if the perpetrator commits any further benefit offence when determining what further action to take.

The Fraud Section forward details of each individual case to the Overpayments Section to record instigate automatic deductions from on going benefit entitlement or to issue the appropriate invoice for repayment.

This recovery progress is monitored by the Overpayments Section to ensure that agreed repayment arrangements are adhered to. Should a debtor default on an arrangement or fail to make repayment arrangements, the debt will automatically progress through the various debt management stages.

Debtors who are in receipt of benefit have automatic deductions taken from their account in accordance with legislation and Benefit Fraud Inspectorate best practice, Debtors who are not in receipt of benefit are issued with an initial invoice, which is followed by a reminder notice then a final notice is issued.

If repayment arrangements are still not in place by this time the debt is reviewed on a case-by-case basis to take account of all the circumstances. The options at this stage are as follows:

- if there is any doubt about the residence of the debtor the Council and Department for Work and Pensions records are searched to establish any different address that the individual appears at as a member of that household so that contact can be made with the debtor at the new address to progress repayment
- if the debtor is in receipt of a benefit from the Department for Work and Pensions (DWP) the Council can request repayment deductions from their DWP benefits
- if the debtor has relocated to another area the Council can request repayment from ongoing benefit entitlement that the debtor has at that address
- the debt is forwarded to the Sheriff Officer to take action to recover
- if the debtor has expressed a financial difficulty in repaying the debt, the Council can issue and Income and Expenditure Form to determine what the individual is likely to be able to afford. Supporting documentation may be requested to confirm any outgoing expenses noted in the form
- the debt may be recovered from the landlord's next check

All debts are regularly reviewed for changes to the debtor's location and financial circumstances

### **Sanction Policy**

The Council is committed to taking action against anyone committing fraud offences and as such has a policy in place supporting this Anti-fraud and Anti-corruption Policy ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)).

The Council endeavours to implement best practice at all times and, where appropriate will incorporate DWP guidelines on benefit sanction criteria.

Where a case is identified as being suitable to be progressed to prosecution the Council will consider invoking the powers invested in Local Authorities by the Social Security Administration Act 1992 and all

subsequent amendments allowing the imposition of Administrative Cautions and Administrative Penalties as an alternative to prosecution.

Dundee City Council's Sanction Policy is included at the end of this policy document.

### **Detention of individuals**

Should an individual fail to attend an interview under caution without good cause the Council will request that the police detain the individual under Section 14 of the Criminal Procedure (Scotland) Act 1995 in order to carry out the interview. In such instances the Council's Investigation Officer leading the investigation will liaise with the police and the police will undertake the interview under caution in the interview suite of Tayside Police as soon as possible after the individual has been detained.

### **Administrative Cautions**

Administrative Cautions are levied under the terms of Section 115A of the Social Security Administration Act 1992

An Administrative Caution is deemed appropriate where Fraud has been proven but it is either a first offence and it is not so serious that the first option should be Administrative Penalty or Prosecution. The criterion for Administrative Cautions is as follows:

- a) the case has been reviewed and has met the evidential requirements to be reported to the Procurator Fiscal
- b) the circumstances of the case merit a more serious form of deterrent action over and above the recovery of the overpaid benefit(s)
- c) the fraud, or attempted has resulted in a Council benefit overpayment ranging between £0 - £1,999.99
- d) the duration of the offence is under 13 weeks
- e) after interviewing the possible offender the Council has made an independent review of the case and found it suitable for sanction action
- f) the offender has admitted the offence
- g) the offender is 18 or over

### **Administrative Penalties**

Administrative Penalties are levied under the terms of Section 115A of the Social Security Administration Act 1992 as amended by Section 15 of the Social Security Administration (Fraud) Act 1997

An Administrative Penalty may be deemed appropriate where Fraud has been proven but the offence is not so serious that the first option should be Prosecution. In cases where a secondary fraud is proven then the case will be reported to the Procurator Fiscal for prosecution.

The level of the financial penalty is laid down in legislation as being 30% of any accrued benefit overpayment occurring with effect from 18 December 1997 due to the fraud offence. The criterion for Administrative Penalties is as follows:

- a) the case has been reviewed and has met the evidential requirements to be reported to the Procurator Fiscal
- b) the circumstances of the case merit a more serious form of deterrent action over and above the recovery of the overpaid benefit(s)
- c) the fraud, or attempted fraud has resulted in a Council benefit overpayment ranging between £0-£1,999.99
- d) after interviewing the possible offender the Council has made an independent review of the case and found it suitable for sanction action
- e) the offender is 18 or over

## **Prosecutions**

Reporting to the Procurator Fiscal is under the terms of Sections 111 and 112 of the Social Security Administration Act 1992 and under Common Law.

A prosecution is deemed appropriate where Fraud has been proven and where the offender may have committed a previous benefit fraud offence and / or the offence is such that it is suitable to prosecute as the first option. The criterion for prosecutions is as follows:

- a) the case has been reviewed and has met the evidential requirements to be reported to the Procurator Fiscal
- b) the circumstances of the case merit a more serious form of deterrent action over and above the recovery of the overpaid benefit(s) such as in a situation where an either or an increased level of planning has been uncovered or there are a number of individuals involved in the fraudulent activity
- c) the fraud has resulted in a Council benefit overpayment of £2,000 and over or the perpetration of the fraud involves such action that involves a level of fraudulent scheme demonstrating increased fraudulent intent
- d) after interviewing the possible offender the Council has made an independent review of the case and found it suitable for sanction action
- e) where, if an Administrative Caution or an Administrative Penalty has been offered on the same case, it has been refused
- f) the offender is over 18
- g) if the offender has previous benefit offences on record

## **Sanction Guidelines**

The Council is committed to taking action against fraudsters and as such has a policy in place supporting this policy document ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)). The Council endeavours to implement best practice at all times and, where appropriate to joint working, incorporate DWP guidelines on benefit sanction criteria.

Sanction cases go through a three part testing process prior to being authorised for sanction action. The tests are the test of fairness, evidential test and public interest test.

The Council will apply appropriate sanctions against persons who have committed benefit fraud as an essential element of an effective anti-fraud strategy.

Where a case is identified as being suitable to be progressed to prosecution the Council will consider invoking the powers invested in Local Authorities by the Social Security Administration Act 1992 and all subsequent amendments allowing the imposition of Administrative Cautions and Administrative Penalties as an alternative to prosecution.

When a case is investigated and it is then reviewed as being up to prosecution standard, an assessment on the action to be taken is made. All sanction cases must be suitable for prosecution.

All sanctions levied will be in addition to the repayment of any recoverable part of the overpayment of benefit resulting from the fraudulent activity.

Where a benefit claimant provides the Revenues Division with evidence which assists in proving an offence, providing the claimant was cautioned prior to providing the evidence, and therefore was aware of the possible implications of providing that evidence, the evidence will be accepted and used in the investigation negating the requirement to obtain this evidence and accompanying witness statement from the originating source.

If there are exceptional circumstances, an example of which could be where a claimant holds a position of trust in the community or is an employee with the Council, this will be taken into consideration when determining both any appropriate sanction action and also disciplinary action.

The offering of Administrative Cautions or Administrative Penalties will be at the discretion of the Council under the guidelines outlined in this Anti-Fraud and Anti-Corruption Policy and refusal of a caution or a penalty will require the Council to report the individual to the Procurator Fiscal.

All cases where there is both a Department for Work and Pensions benefit and a Council Benefit in payment to the claimant during the period of the fraud and where both benefits could be affected by the fraud being perpetrated, the cases will be considered for joint working with the Department for Work and Pensions Fraud Investigation Service.

Dundee City Council works closely with the Fraud Investigation Service (FIS) its counterparts within the Department for Work and Pension's (DWP) and has fully embraced joint-working.

In liaising with our counterparts in the DWP it has been confirmed that where a DWP investigation has been vetted and deemed suitable for sanction action the Council can be assured that the case will be suitable for proceedings and similarly the Council vets its cases for sanction suitability. In joint working cases, therefore, the lead organisation will take responsibility for vetting cases.

Any such case that falls outside the set criteria will be reported as a variance to the Sanction Policy.

In assessing the appropriate sanction action the offenders benefit fraud history will be taken into consideration.

This list is not exclusive or exhaustive and each case will be judged on its own merits as a whole with no single criterion being the deciding factor.

When an investigation leads to a proven fraud against a pensioner claimant and the normal claimant circumstances have been considered resulting in the case proceeding to sanction the council will assess the suitability for sanction as follows:

- where there is previous fraud history then the case will automatically be raised to the next sanction level
- where there is no previous fraud history and the individual admits the offence they will be offered an administrative caution
- where there is no previous fraud history and the individual does not admit to the offence they will be offered an administrative penalty
- refusal of an administrative caution or penalty will result in the matter being reported to the Procurator Fiscal
- where the sanction overpayment of benefit amounts to £5,000 or over the matter will automatically be reported to the Procurator Fiscal

Only cases where the circumstances of the sanction decision are outside any of the above noted criteria will be taken to be variances to the policy and reported to the Elected Members as such. If approved these variances will be incorporated into the Benefit Sanction Policy.

Should an offender decline the offer of an Administrative Caution or an Administrative Penalty, the matter will, where appropriate, be reported to the Procurator Fiscal to consider prosecution.

In order to deter future fraudulent activity, where a case is referred to the Procurator Fiscal for criminal proceedings and is subsequently brought to court, the Council may publicise the details in the local press.

All sanctions action is recorded.

### **Sanction Variances**

All sanction cases - Administrative Cautions / Administrative Penalties / Prosecutions - are vetted to ensure that the action being considered complies with the Council's Benefit Sanction Policy ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)). All cases being considered for sanction action will be reported to the Fraud Manager for authorisation.

Any cases where a sanction is administered by the Council and it falls outside the sanction criteria, as stated in the policy ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)), will qualify as a variance to the Benefit Sanction Policy and as such will be reported to the Elected Members in the quarterly Counter Fraud Performance Reporting and, if approved, will be incorporated into the policy.

Any cases where a variance is authorised shall be documented and reported to the Elected Members in the Fraud Quarterly Report to ensure strict control measures are in place as advocated by the Benefit Fraud Inspectorate.

As soon as practicable, all variance situations will be incorporated into the Benefit Sanction Policy.

## **DETECTION**

### **Corporate Five Year Plan 2007-2011**

This policy is supported by the Fraud elements of the Council's internal Corporate Five Year Plan 2007-2011 and the Fraud Manager assesses the counter fraud section for compliance during the year by documenting the section's progress on each item and implementing procedural adjustments if appropriate to ensure that the plan objectives are met.

### **Annual Business Plan**

The internal Counter-fraud Annual Business Plan supports the Corporate five year plan, the Anti-fraud and Anti-corruption Policy and the Benefit Sanction Policy

Each year the Fraud Service performance is reviewed, updating the Annual Business Plan enablers accordingly.

As with the internal Corporate Five Year Plan, the Fraud Manager assesses the counter fraud Annual Business Plan enablers by documenting the section's progress on each item and implementing operational adjustments where appropriate.

Should there be changes to the plan required then the document is updated by further entries being made with any necessary information being carried forward to the next revision of the Corporate Five Year Plan.

The Councils Anti-fraud and Anti-corruption Policy, Benefit Sanction Policy, Corporate Five Year Plan and Annual Business Plan work together to ensure that Dundee City Council has a robust anti-fraud strategy.

### **The Role of Management**

It is vital that Management at all levels ensure that adequate and effective safeguards are in place to detect fraud.

### **The Role of Employees**

Employees play an important role in detecting fraud. All employees should be encouraged to be vigilant against fraud.

### **Employee Responsibility and Disciplinary Implications**

Employees are responsible for their own conduct, standard of work and behaviour. Heads of Departments are responsible for the management and discipline of their Departments. A manager/supervisor may caution an employee when a minor infringement of the established standards of conduct or performance has been committed. Whilst this will not constitute formal disciplinary, further misconduct or failure to achieve required standards of work will lead to formal action. In cases of formal disciplinary action, the Head of Department, or a nominated senior officer, has the right to warn, suspend without pay, withhold incremental progression, and demote or dismiss subject to an employee's right of appeal. The Personnel Department will advise department managers on all disciplinary matters.

Employees have a duty of good faith towards their employer. If an employee is found to have committed or to have known about a benefit offence being committed and has failed to notify or withheld information from the Council, he/she will be subject to disciplinary action in accordance with the Council's Disciplinary Procedure, which could result in dismissal.

The Council will not tolerate fraud, corruption or abuse of position for personal gain and is committed to securing effective methods of prevention, detection and investigation. The Council will promote an environment that actively encourages the highest principles of honesty and integrity.

### **The Role of Internal Audit**

The responsibility for the detection of fraud rests with Management. Internal Audit will advise and assist Management in fulfilling their responsibility and may themselves investigate cases. There may be circumstances where auditors detect fraud as a result of the work that they are undertaking.

## Counter-fraud Objectives

In the Annual Business Plan and Strategy 2008-2009 the annual counter-fraud achievement objectives for the future financial year are documented. These are reviewed for performance at the end of the financial year and a new set of achievement objectives are then implemented for the following financial year. In this way we aim to continually improve the service the counter-fraud section provides.

## Benefit Fraud Message

It is important that the public are aware that there are processes in place to secure the gateway to benefit fraud. The message is – **ANY PERSON DEFRAUDING BENEFIT WILL BE CAUGHT!**

## Test of Fairness

Dealings with persons in relation to benefit sanction investigations should be fair and be demonstrated to have been fair and proportionate.

The aspects of our sanction investigations that we consider in the test of fairness are:

- our record keeping throughout the investigatory process
- officers' awareness of the test of fairness
- the interviewee's rights
- the interviewee's needs
- the level of information given to the interviewee prior to interview
- the level of information given to the interviewee during the interview
- allowing the interviewee sufficient time to respond
- advising the interviewee what will happen next
- delay during an investigation
- having transcripts of interviews to demonstrate the above
- making the interview DVD, tape or transcript available to the interviewee on request

## Evidential Test

Sanction cases should be fit for prosecution and so must be able to demonstrate a suitable level of evidence gathered during the investigatory process.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be

The elements to the evidential test that must be demonstrated are:

- we must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge.
- When deciding whether there is enough evidence to prosecute we must consider whether the evidence is reliable
- When deciding whether there is enough evidence to prosecute we must consider whether the evidence can be used

## Public Interest Test

If a case passes the evidential test then we consider whether a prosecution is needed in the public interest.

Public interest is where a case is reviewed for factors tending against prosecution which clearly outweigh those tending in favour.

While this is ultimately the remit of the Procurator Fiscal we have empirical data from our past prosecution cases that enables us to review our cases for public interest rather than referring cases to the Procurator Fiscal when we know that they will be marked no proceedings.

There is justification in this because if the council is aware that a case will not be successful before reporting it would be a poor use of resources:

- for the council to take the time to prepare the case and submit it to the fiscal
- for the fiscal depute to go through the case and mark it as no pro
- for the council to then have a mark against it as an unsuccessful prosecution

The Public Interest Factors that are considered are contained in the Benefit Sanction Policy and are as follows:

The Public Interest Factors that are considered are:

- Age

When an investigation leads to a proven fraud against a pensioner claimant and the normal claimant circumstances have been considered resulting in the case proceeding to sanction the council will assess the suitability for sanction as follows:

- where there is previous fraud sanction history then the case will be reported for prosecution
- where there is no previous fraud history, the individual admits the offence, and it fits the overpayment and fraud offence period criteria they will be offered an administrative caution
- where there is no previous fraud history, the individual does not admit to the offence, and it fits the overpayment and fraud offence period criteria they will be offered an administrative penalty
- refusal of an administrative caution or penalty will result in the matter being reported to the Procurator Fiscal
- where the sanction overpayment of benefit amounts to £5,000 or over the matter will automatically be reported to the Procurator Fiscal

- Social Welfare

In all cases the known circumstances of the individual will be assessed and if it is felt that the individual has been enduring difficult social circumstances this will be reviewed to assess whether proceeding to sanction would be advisable e.g. the terminal illness of a child. This is not a category that can be easily documented as it will depend on the circumstances of each case. Validation of the circumstances may also be required.

- Mental Health

The mental health of the individual will be taken into consideration before any sanction decision is taken. Where it is known or suspected that there may be a mental health issue then the matter will be looked into further and if established then the case will not be suitable for sanction action. Validation of the circumstances may be required.

- Physical Health

The physical health of the individual will be taken into consideration before any sanction decision is taken. For instance if the individual is suffering from a terminal illness then it is unlikely that the Council would take further action against that individual. Validation of the circumstances may be required.

- Voluntary disclosure of any information

Where an individual advises the Council that they have previously failed to declare either their true circumstances or a change in their circumstances **before** any action has been taken by the council regarding any possible discrepancy with their benefit then the matter will not be suitable for sanction action. However, if it is found that the voluntary disclosure has resulted from any correspondence or contact from the Council regarding a possible discrepancy in that individual's benefit then the matter will be subject to normal sanction criteria.

- Whether criminal intent can be demonstrated

All Investigation Officer case notes and evidence, including interview transcripts or officer notebook entries are assessed before any decision is taken to establish if there has been any criminal intent to defraud demonstrated. Sanction action will only be taken where this has been established.

- Fraud history

When a case has been vetted for sanction action then it is assessed for previous fraud offences to determine which sanction action is appropriate. This previous history check is possible due to the DWP maintaining a database on all benefit fraud sanction cases.

The database includes both DWP and LA benefit fraud sanction cases. If previous offences are found then the case will be reported to the Procurator Fiscal for prosecution irrespective of what sanction would be appropriate for the current fraud offence.

- Quality of evidence

All cases are assessed for being fit for prosecution before any sanction decision is made. This is the underlying mandatory criteria for levying any sanction.

- Quality of investigation

All cases are assessed for quality of investigation by means of our test of fairness, evidential test and public interest test before any sanction decision is made.

- The length of time taken in the investigation

All cases are assessed for how long they have been ongoing and within that time whether there has been any avoidable delay involved before any sanction decision is made.

- Claimant being a member of staff

Council employees are expected at all times whether in work time or not to act appropriately and with integrity. While being a member of staff committing a benefit offence will not affect the decision to take sanction action or not it may result in the matter being referred direct to the Procurator Fiscal for prosecution with additional remarks in the report advising the fiscal of the circumstances. Where an employee is found to have committed benefit fraud or have been collusive in that fraud then the matter is subject to a report to the Depute Chief Executive (Finance) and the Personnel Manager to determine suitability for disciplinary action.

- Would public interest be best served by prosecuting

In accordance with our Public Interest Test - see above - all cases are vetted for public interest using where available previous advice from the Procurator Fiscal.

- Whether the claimant has declined a Caution or Administrative Penalty

Where an individual refuses an Administrative Caution or Administrative Penalty the matter will be reported to the Procurator Fiscal for prosecution.

- The level of the fraudulent scheme showing increased fraudulent intent

If the investigation has established that the individual has gone to unusual lengths to commit benefit fraud then the matter will be reported to the Procurator Fiscal for prosecution due to this high degree of intent to defraud.

- Any collusive scheme with third parties

If the investigation has established that there are multiple individuals involved in the scheme to commit benefit fraud then the matter will be reported to the Procurator Fiscal for prosecution due to this high degree of intent to defraud.

- Affect on DWP benefit

In cases where there is a DWP benefit in payment, where the information uncovered in an investigation will not result in the withdrawal of the DWP benefit then no further action will be taken where the DWP benefit

provides pass ported Housing Benefit and / or Council Tax Benefit. However, where there will be a withdrawal of the DWP benefit then a joint investigation will be undertaken with both organisations taking appropriate sanction action. Information that would result in a reduction of the DWP benefit are referred to the DWP to progress.

- Any failure in investigation

All cases are assessed for any failure in the investigation before any sanction decision is made.

- Any failure in benefit administration

All cases vetted as suitable for sanction are independently checked for any failure in the benefit processing before any action is taken.

### **Verification Framework**

The Verification Framework (VF) is a Government initiative which sets out the information that must be collected and verified before Housing Benefit and Council Tax Benefit can be paid. The aim is to ensure that claimants receive all the Benefit that they are entitled to by setting a minimum standard of evidence needed for a claim to be assessed, encouraging accuracy in calculating claims from the start of a claim but also to detect and prevent fraudulent claims

Dundee City Council has implemented the verification framework with effect from 01 February 2004 in order to secure the gateway to fraud and it is expected that this will realise an increase in benefit accuracy and detection of benefit fraud offences.

### **Benefit Fraud Strategy**

The Council is committed to tackling fraud as identified in the area and our counter fraud resources are allocated to allow this to be done effectively.

Caseload analysis confirms that approximately a third of our caseload relates to Living Together as Husband and Wife fraud where a single claimant has not declared that they have a partner living with them. Because of this high level of LT fraud, one investigations officer has been designated as an LT Officer with the remaining four investigations officers concentrating on other high risk sanction cases.

All referrals are risk assessed and actioned according to the outcome of the risk assessment.

Referrals will be actioned via various sections depending on the outcome of the risk assessment process:

- Counter-Fraud to undertake an investigation  
(all referrals taken on for fraud investigation either by the Council or the DWP are subject to joint working)
- Department for Work and Pensions to assess the referral for fraud investigation where a DWP benefit is in payment  
(all referrals taken on for fraud investigation either by the Council or the DWP are subject to joint working)
- Liaison Section to visit to gather pertinent information and / or documentation to ensure the benefit and / or discount will be correct
- Accounts Section to write out or telephone to gather the pertinent information and / or documentation to ensure the benefit and / or discount will be correct

Procedures relating to Counter-fraud activity evolve as required with variances to any related policy being submitted to the Elected Members for approval.

### **Do Not Redirect**

The Council takes advantage of the Royal Mail's Do Not Redirect Service to combat fraud where a person claims benefit from an address that they do not reside at.

Where an official mail redirection has been put in place with Royal Mail, this service allows for benefit mail issued by the Council to the original address to be intercepted and returned with the redirection information so that investigations can be implemented.

All Do Not Redirect items are recorded and monitored by the counter-fraud section with investigations taking place where discrepancies arise.

The Council also works in partnership with Royal Mail and where any unofficial redirection of post is uncovered this matter is also investigated.

### **Data Matching**

Data-matching involves bringing together data from different sources and comparing it to identify any discrepancies. This comparing of data aims to identify cases that merit further investigation.

The Council take part in many data-matching exercises both internal and external, using its own departmental information such as benefits and payroll records to uncover discrepancies but the benefits information is also matched to the Department for Work and Pensions and other Councils to identify people who are failing to declare personal and/or financial circumstances that would adversely affect their entitlement to benefit or discount.

The Council promotes data-matching where there is a legal gateway which allows for this very effective fraud detection procedure as is borne out by our participation in the National Fraud Initiative - see below.

### **Remote Access to DWP Benefit Data**

Separate from data matching, procedures are in place to facilitate checking any Department for Work and Pension benefit in payment

### **National Fraud Initiative**

The Audit Commission is an independent public body responsible for ensuring that public money is spent economically, efficiently and effectively, to achieve high quality local and national services for the public.

The National Fraud Initiative (NFI) is the Audit Commission's data matching exercise that tackles a broad range of fraud risks faced by the public sector. The NFI has been embedded in the statutory external audit process for audited and inspected bodies since 1998 and is currently run every two years. The most recent NFI data matching exercise was in October 2008 with the discrepancies due to be rolled out to councils in January 2009.

The use of data for NFI purposes continues to be controlled to ensure compliance with data protection and human rights legislation.

The Council takes part in National Fraud Initiatives as relevant to Scotland

### **Risk Assessments**

Risk assessments are made using the intelligence collated from our counter-fraud activities to identify high risk areas where resources can be targeted. The counter-fraud section aim to have up to 10 Fraud Initiatives into high risk areas ongoing at any one time.

### **Benefit Assessment**

As per the Court of Appeal (Civil Division) QBCOF 99/1021/4, where a benefit offence has been proven with sufficient evidence to withdraw benefit and there is a Department for Work and Pensions benefit in payment, the Council may action Housing Benefit and / or Council Tax Benefit awards without a Department for Work and Pensions adjudication or end of entitlement notice where that action is thought to be justified and has been authorised by the Benefit Manager.

### **Joint Working**

The Council promotes joint interdepartmental working and joint working with external organisations where that work will promote securing the gateway to fraud

### **Service Level Agreements with external stakeholders**

The Council has agreements on information sharing and joint working processes with other departments and organisations as appropriate

### **Fraud Hotline**

The Council has a Fraud Hotline Service. Manned during the day, answer machine at night and at weekends, this free telephone service allows individuals to refer possible fraud cases anonymously or not as preferred – 0800 085 2289

## **Investigations**

Benefit Fraud Investigations will be managed and carried out in a manner consistent with this Anti Fraud and Anti Corruption Policy and in conjunction with the Benefit Sanction Policy ([www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)).

## **Code of Conduct for Investigators**

Benefit Counter Fraud Officers will adhere to the agreed Code of Conduct that has been produced to cover Benefit Fraud Investigations. You can view this code on the Council's internet site: [www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)

## **Investigation Time Targets**

The Council aims to action your referral and assess it for content - Referral Quality Assessment - within 1 working days of receipt of that referral.

The Council aims to commence an investigation within 5 working days of it being through the Referral Quality Assessment procedure which vets the referral for content and determines the action to be taken.

## **Counter Fraud Section**

MANAGER  
SUPERVISOR  
REVENUES SANCTIONS OFFICER  
INVESTIGATIONS OFFICERS X 5  
BENEFIT ASSISTANTS X 3

The Counter Fraud Team work to strict legislative procedures such as:

- Social Security Administration Act 1992 and all subsequent amendments
- Human Rights Act
- Data Protection Act
- Regulation of Investigatory Powers (Scotland) Act
- Criminal Procedures (Scotland) Act
- Best practice, where it can be applied to Scotland, as contained in the Police and Criminal Evidence Act

## **Counter Fraud Section Remit**

- to investigate benefit fraud referrals
- to be proactive in identifying high risk areas of benefit fraud
- carry out investigations in a manner which complies fully with all relevant legislative acts such as the social security administration act, the human rights act , the data protection act & the regulation of investigatory powers (Scotland) Act

## **Counter Fraud Qualifications**

All investigatory officers within the Revenues Division's Council's Counter Fraud Section are required to hold or study for an Accredited Counter Fraud Officer qualification

The manager must be qualified as an Accredited Counter Fraud Manager

The course of study is undertaken via the Department for Work and Pensions Professionalism in Security Training Organisation

## How are fraudsters caught?

- strict verification & validation of benefit application forms requiring supporting evidence of income
- by you reporting possible benefit fraud cases to us
- information from other council departments, organisations & agencies
- data matching benefit records with other departments within the Council and agencies such as the DWP & Inland Revenue
- pro-active work to specifically target high risk categories of fraud

## Referring a Case

Fraud referrals can be referred to the Council by using:

- the hotline - **0800 085 2289** which is manned during the day and on answer phone at night – referrals can be made anonymously if preferred.
- internet referral form - [www.dundeeccity.gov.uk/fraud](http://www.dundeeccity.gov.uk/fraud)
- letter to the Revenues Division, Counter Fraud Section, P O Box 216, Dundee, DD1 3RE
- phone call to (01382) 431253
- if there is a suspicion of fraud by a member of staff and the reporter is another member of staff – please contact the Counter Fraud Manager on 01382 431255 to have your referral progressed in confidence

## Action the Counter Fraud Section will take

- assess the referral for content
- if taken on for investigation the referral content will be used to determine what action should be taken
- request information from the benefit fraud national database as to whether the claimant has offended previously
- make initial enquiries to confirm if referrers suspicions can be substantiated which allows us to take the investigation further
- approach all relevant sources of information such as employers / financial institutions / linked individuals as appropriate to establish if there is any substance to the allegation
- where appropriate use legislative authority to gather all information pertinent to the investigations
- if our investigation support the allegation or uncover any other type of benefit fraud then the details will be confirmed by documentary evidence and witness statements
- invite claimant into tape recorded interview under caution
- assess whether intent to defraud has been proven by assessing the overall situation using as the basis the documentary evidence, witness statements and interview under caution transcript
- assess whether there has been a fraud offence committed
- assess whether sanction action is appropriate
- request that the benefit be reassessed where appropriate
- take sanction action as necessary
- report information to national benefit fraud database

## **Fraud Referral Quality Assessment**

All referrals received by the Counter Fraud Section are reviewed for content with a view to embarking on a full investigation. The Council has a Referral Quality Assessment procedure in place which is specifically designed to assess the content of referrals and their suitability for investigation.

In certain situations the matter may not be progressed by the Counter Fraud Section such as where:

- there is insufficient information to take the case forward
- the information is known to the council already
- it is a repeat allegation that has already been actioned
- the matter has already been declared to the Council by the benefit claimant
- the possible change to benefit will result in an increase in the benefit award
- the referral content will result in no change to the benefit
- the matter is already being actioned by our Benefit Processing Section
- a weakness in the benefit assessment process has been identified
- the fraudulent activity relates to a person under the age of 18
- the referral relates to someone with Severe Mental Impairment
- the allegation is such that there is likely to be very little possibility to take the case to prosecution or administer one of the lesser sanctions and we are at our full caseload capacity for commencing lower level investigations

However, your referral will always be actioned where there is any action to be taken and so will be forwarded to one of the following:

- Department for Works and Pensions to investigate where a DWP benefit is in payment
- Revenues Division's Visiting Section
- Revenues Division's Benefit Processing Section

### **ALL REFERRALS ARE IMPORTANT TO THE COUNCIL!**

Please take some time to visit the Council's website at [www.dundee.gov.uk/fraud](http://www.dundee.gov.uk/fraud)

## **Multiple Referrals**

Where multiple referrals relating to the same individual either alleging different benefit offences or from different courses then the referral will be fast-tracked to investigation.

### **What should you refer?**

- people who you think could be on benefits that have a working partner residing with them
- any information you know about people not declaring income to the council or the department for work and pensions
- situations where people you think are on benefit but who seem to have enough spare money to spend on material goods etc
- people boasting about defrauding
- anything you think might be worth referring.

The team would rather get a lot of referrals that are subsequently found to not be linked to a fraudulent benefit claim than not get these and possibly miss one that is!

### **What sort of information should you include in your referral?**

- name(s)
- address(es)
- what you think the fraud is - what income or household circumstances are involved
- any known daily times or patterns linked to the possible fraud
- if you are telling us about a 'living together' situation tell us where claimant and partner are employed
- descriptions

- vehicle(s) make, model, colour, registration & if appropriate, why you believe it is linked to the possible fraud
- any reason to suspect violent behaviour
- anything you think might be useful

NB: please be aware that you should report only what you know and that on no account should you endeavour to 'find out more' about any persons movements as you may then be acting unlawfully!

### **Feedback and Data Protection**

Where name and contact details of the referrer are provided with the referral the Council will acknowledge receipt of the referral.

In order to comply with the Data Protection Act 1998 the Council will not be able to provide any feedback information to the public on what action is taken on the referral or the outcome of any investigation as to give information to a third party would be a contravention of the Act.

However, the council will be able to provide feedback where appropriate that will assist the referrer in referring cases in the future.

By working together we will ensure that we maximise the take-up of referrals to our given capacity.

### **Benefit Fraud Offences**

- knowingly providing false information
- knowingly failing to report a change of circumstances
- knowingly allowing another to defraud

### **Action the Council takes against benefit fraudsters**

- Reassess benefit
- Recovery of overpaid benefit obtained because of the Fraud Offence
- Administrative Caution
- Administrative Penalty
- Prosecution
- Report on Proceeds of Crime to the police

### **Repeat Offending**

Where it is established that an individual has committed a previous benefit offence and the investigation leads to a proven fraud, the Council will report the matter to the Procurator Fiscal

### **Successful Prosecution possible repercussions**

- Named in local press
- Named in national press
- Listed on National Benefit Fraud Database
- Criminal Record
- Community Service
- Fine
- Custodial Sentence

- Compensation Order against you for payment

### **Proceeds of crime**

The Council aims to identify cases where there is evidence of possible proceeds of crime:

- reviewing financial intelligence gathered during investigations
- expanding investigations to include financial investigations where appropriate
- reporting to and working jointly with the police where appropriate on financial investigations
- working jointly with the Department for Work and Pensions Financial Investigation Unit when it is implemented in Scotland

### **Working with the Police**

Dundee City Council is keen to build on our relationships with our stakeholders and where appropriate will:

- liaise with the Police on cases
- report any criminal activity other than benefit fraud offences as appropriate
- work with the Police on financial investigations
- work towards implementing a Service Level Agreement with the Police to encourage further mutually beneficial areas where a legal gateway applies
- receive and provide advice accordingly
- Utilise detention procedures as appropriate

### **Working with the Department for Work and Pensions (DWP)**

The Council will continue to work closely with the DWP by:

- complying with our Joint Partnership Agreement to our mutual benefit
- working jointly on cases to bring joint sanction action
- ensuring that referrals are actioned proactively by referring any suitable cases to the DWP where there is no Housing Benefit or Council Tax Benefit involvement or where the volume of cases would lead to unacceptable delay in commencing investigations
- receive and provide advice accordingly
- carryout exchange visits to maintain closer working

### **Managing Expectations**

It is very important that the fraud section take action against perpetrators of benefit fraud and we aim to prosecuting fraudsters where appropriate.

It is necessary to address the serious cases of benefit fraud and, to do this, it is necessary to concentrate a lot of our resources on the referrals that are most likely to lead to a prosecution. However, we are also aware of the need to tackle all levels of benefit fraud and specific initiatives are implemented to ensure that we do this and that we take appropriate action against all proven fraud cases to prevent re-offending.

When we receive a referral, there is a requirement to ensure that there is substance to the allegation so that we can justify taking investigative action and committing our resources. All referrals are therefore subject to a referral quality assessment procedure and a series of checks and if there is enough for us to go on then your referral will be allocated to an investigator.

We know that it is frustrating for the referrer not to know what we are doing with the referral and the outcome of any investigation but investigative work needs to be confidential as it is illegal to provide information on a

third party (the possible fraudster) to the referrer and it is also very important to remember that, until such time as a fraudulent claim is proven, the person being investigated has not committed any offence and as such is entitled to the same rights of confidentiality as anyone else. Because of this a referrer cannot be kept informed as to the progress of any investigation other than an acknowledgement that we have received the referral and our assurance that the content of your referral will be used to inform our benefit records, even if there is insufficient content or justification to allow us to Investigate it as a possible fraud.

Your information is always appreciated!

### **Interview Under Caution**

During investigations where there are grounds to suspect that a benefit fraud offence has been committed, the perpetrator and any associates who may be part of the offence, where appropriate, will be interviewed under caution using taping procedures. All individuals will be invited to the interview under caution by letter, unless there are specific reasons for this to be convened differently, with an explanatory leaflet being issued with the letter.

### **Involving the Public**

In order to fulfil our remit of deterring, detecting and preventing benefit fraud it is necessary to interview members of the public in connection with discrepancies in their benefit claims. Dependent upon the circumstances and seriousness of the case, individuals may be interviewed in their own homes or at a suitable Council office.

Interviews being held in the Council's offices will be tape-recorded. Interviews that are held in the Tayside Police Headquarters will be tape-recorded also but in addition DVD recordings will be taken. The individual concerned can obtain a transcript of the tape recording if they request it however the master tape will be signed and sealed in the presence of the interviewee and retained by the Council for use if the matter is referred to the Procurator Fiscal for prosecution.

Where the Council requires information and documentation about an individual, where that information or documentation is necessary to the investigation, the Council can and will use its legislative powers to obtain it.

### **Involving Businesses**

The Council's Counter Fraud Officers are Authorised Officers under Section 109 of the Social Security Administration Act 1992 and therefore have the authority to visit or contact any property from which a business is being run from, or where there is reason to believe that a business is being run from, in order to request any pertinent documentation or information and to interview any individuals found on the premises.

It is an offence to obstruct a Fraud Officer who is requesting information and such cases will be reported to the Procurator Fiscal for proceedings.

### **Training**

Council Benefit Fraud Investigation Officers must either be fully Accredited Fraud Officers under the Professionalism in Security Training Program (PINS) or be prepared to undertake the study to become fully accredited.

Further training is continually being sourced to ensure that Counter Fraud Officers' skills are continually kept up to date.

Investigation Officers are encouraged to take part in joint working with the Counter Fraud Manager to analysis different aspects of counter fraud work to gather intelligence to progress the sections aim to tackle benefit fraud by eradicating it from our benefit system.

### **Quarterly Fraud Section Performance Reports**

The Depute Chief Executive (Finance) provides quarterly Fraud Section Performance Reports for the Elected Members which, once approved are viewable on the Councils Internet and intranet sites.

**This policy document is a living document, designed to evolve over time to incorporate new legislation and best practice.**