

**11<sup>th</sup> January 2016 – City of Lincoln Council – Executive**  
**Appendix 1: Proposed revised Benefit Fraud Sanctions and Prosecutions**  
**Policy**

City of Lincoln Council

&

North Kesteven District Council

Benefit fraud, sanctions and prosecutions policy

# **CONTENTS**

- 1. BACKGROUND**
- 2. STATEMENT OF INTENT**
- 3. ACTION TO COUNTER FRAUD**
- 4. THE PREVENTION AND DETECTION OF FRAUD**
  - 4.1 The prevention of fraud
  - 4.2 The detection of fraud
  - 4.3 Duties and considerations of employees and elected members
  - 4.4 Duties and considerations of investigation officers
  - 4.5 Resources
- 5. SANCTIONS AND PROSECUTIONS**
  - 5.1 The decision making process
  - 5.2 Factors to consider
  - 5.3 Delivering sanctions and prosecutions
  - 5.4 Publicity

## **1. Background**

- 1.1 On 1<sup>st</sup> June 2011 the City of Lincoln and North Kesteven District Councils entered into an arrangement to share the provision of revenues and benefits services between them. By sharing their services the Councils are seeking to achieve savings and efficiencies.
- 1.2 From 1<sup>st</sup> October 2014, transfer of Housing Benefit Fraud investigation transferred from City of Lincoln Council and North Kesteven Council to the Department for Work and Pensions (DWP) under the Single Fraud Investigations Service. City of Lincoln Council and North Kesteven District Council retain responsibility for investigating potentially incorrectly-claimed Council Tax Support.
- 1.3 For the purposes of this policy, a person is considered to commit benefit fraud if they commit or attempt to commit a statutory offence against any of the following schemes operated by the Councils:
  - Housing Benefit;
  - Council Tax Benefit;
  - Council Tax Support;
  - any successor benefit to these schemes.

## **2. Statement of Intent**

- 2.1 The City of Lincoln and North Kesteven District Councils are committed to protecting public funds by taking action to combat benefit fraud. The Councils will not tolerate any form of benefit fraud, whether it is attempted from within or outside of the Councils. If there is sufficient evidence to show that a claimant or some other third party has committed benefit fraud, the Councils will consider taking action against that person under the appropriate legislation.
- 2.2 The Councils will seek to recover any benefit overpaid as a result of fraudulent activity and will use every power available to them to minimise the loss to the public purse through fraud.

## **3. Action to counter fraud**

- 3.1 The Councils are committed to operating in an open and honest way in order to:
  - encourage the prevention of fraud;
  - promote the detection of fraud;

- deter people from committing fraud by prosecuting or issuing sanctions against people caught committing benefit fraud.

## **4. The prevention and detection of fraud**

### **4.1 The prevention of fraud**

4.1.1 The Councils will seek to prevent fraud from entering the benefits system by:

- requiring appropriate verification of evidence and details provided by claimants to obtain benefit;
- carrying out risk based reviews of claims, as required;
- publicising the Councils' involvement in data matching and other counter fraud activities;
- participating and contributing to the Regional Boards for fraud;
- working with SFIS to facilitate the effective detection of Benefit Fraud;
- providing reliable and timeous data to the DWP on anti fraud activity and sanction and prosecution outcomes;
- promoting and providing means for members of the public to report cases of suspected fraud to the Councils;
- work with SFIS to facilitate delivery of anti-fraud training to Council staff, as appropriate;
- in partnership with SFIS, publicising successes in detecting fraud and delivering sanctions and prosecutions to deter others from committing similar fraudulent acts.

### **4.2 The detection of fraud**

4.2.1 The Councils will seek to detect fraud by:

- working with partners to facilitate delivery of an effective fraud investigation service to ensure that irregularities and fraudsters are identified and dealt with appropriately;
- providing caseload information to the Secretary of State for Work and Pensions for data matching, risk analysis and identification of irregularities;
- participating in anti fraud activities such as the National Fraud Initiative (NFI);

- participating in the annual Housing Benefit Review conducted by the DWP which involves a statistically valid sample of the caseload being reviewed in depth by Secretary of State appointed inspectors to evaluate the level of fraud and error in the regional and national caseload and helps the Council to plan its risk profile;
- complying with Police and Criminal Evidence Act, Regulation of Investigatory Powers Act, Social Security Acts, Data Protection Act and other relevant legislation in managing anti-fraud activity;
- provide a 'Single Point of Contact' (SPOC) for SFIS for management of fraud matters;
- provide a SPOC for secure transfer of data to/from SFIS;
- monitoring fraud referrals, investigation activity and sanction and prosecution outcomes to develop and identify high risk areas for anti fraud exercises.

### **4.3 Duties and considerations of employees and elected members**

- 4.3.1 The Councils expect officers to report details of any property that they are renting to tenants and any claims to benefit to which they have some connection. This may be a claim to benefit where an officer or member is the landlord, claimant, partner, dependant or non dependant of the claim. Any interest in a claim to benefit by officers and members must be recorded in the Register of Interests in the usual manner.
- 4.3.2 Any officer involved in the administration of benefits who has knowledge of a claim where they are a close family member of the claimant or partner (as defined in regulation 2 of the Housing Benefit General Regulations) must report this connection to the Head of Shared Revenues and Benefits. Officers involved in the administration of revenues and benefits may be required to complete a declaration periodically about these issues.
- 4.3.3 Any officer found to be involved in an offence under the Social Security Administration Act 1992 (as amended), or any other criminal offence involving claims to benefit at either of the Councils, or any other Council or Government Department, must report this to the Head of Shared Revenues and Benefits. In addition to any prosecution proceedings that result from the benefit fraud, the Councils may take disciplinary action.

### **4.4 Duties and considerations of investigation officers**

- 4.4.1 Whilst investigating benefit/support fraud, the Councils' investigation officers and authorised officers will work within the guidelines of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, the

Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, the Social Security Acts and subsequent amendments, any new legislation introduced to govern this area of work and the Councils' policies on customer care.

- 4.4.2 Officers will operate within the confines of the Data Protection Act 1998 and will maintain client confidentiality.
- 4.4.3 The Councils will investigate any instances where an officer has abused their powers whilst investigating any allegation of benefit/support fraud. If the investigation reveals breaches of the law or Council policy then disciplinary action may take place.

## **4.5 Resources**

- 4.5.1 If required at any time, The Head of Paid Service will appoint at least one "Authorised Officer" under Section 110A of the Social Security Administration Act 1992 and Regulation 3 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.
- 4.5.2 The Authorised Officer may exercise any of the powers that are conferred by Section 109B and 109C of the Social Security Administration Act 1992 and Regulations 4 and 5 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013. Authorised Officers exercise powers to obtain information to assist in an investigation. Obstruction of such an officer or failure to produce information is an offence and the Council may take action against any person who commits it.
- 4.5.3 The Head of Paid Service will ensure that the Authorised Officers are fit and proper persons to be authorised and will issue those persons with a certificate of appointment.

## **5. Sanctions and Prosecutions**

### **5.1 The decision making process**

- 5.1.1 A panel consisting of the Legal and Democratic Services Manager City of Lincoln Council (or nominated Council Solicitor in their absence), and the Head of Shared Revenues & Benefits (or Revenues and Benefits Manager in their absence) will consider in each case recommended for further action when the evidence is sufficient to suggest that an alleged offender would be found guilty if the case were placed before the Court. The panel will consider whether further action should be taken in those cases proven and which sanction, if any, should be applied. A record of the reasons for the decision will be made. As

Housing Benefits investigation is now a function under DWP through SFIS, the evidence provided and case summaries will be the responsibility of SFIS. The Sanction Panel will provide an audit trail of decisions made. For Council Tax Support-only cases, the same Panel will consider cases for sanction and follow the same process (but without SFIS) – which could include other partners, for example other local authorities assisting with this function.

5.1.2 The courses of action available to the panel are as follows:

- Prosecution through the Courts

The offender may be prosecuted through either the Crown or Magistrates Court, dependant upon the severity of the case and if found guilty will face a maximum sentence of seven years in prison, or a fine, or both for the most serious offences;

- Administrative penalty

As an alternative to prosecution, the offender may agree to repay an extra financial penalty instead of facing prosecution. The amount of the penalty is specified by law, but varies dependent upon the period of the offence and the scheme against which the offence has been perpetrated:

- for offences against the housing and council tax benefit schemes committed in part or in whole prior to 8<sup>th</sup> May 2012, the penalty is 30% of the amount overpaid;
- for offences against the housing benefit and council tax benefit schemes committed wholly after 7<sup>th</sup> May 2012, the penalty is 50% of the amount overpaid, with a minimum penalty of £350 and a maximum penalty of £2000;
- for offences committed against the council tax support scheme, the penalty is 50% of the amount overpaid with a minimum penalty of £100 and a maximum penalty of £1000.

5.1.3 The panel can decide to take no action in respect of any case. If this occurs a record of the panel's reasons for reaching this decision will be recorded.

5.1.4 In all cases, the claimant will be expected to repay any amount of benefit overpaid.

## **5.2 Factors to consider**

5.2.1 The panel will take the following factors into account when deciding whether it is in the public interest to prosecute someone whom it is alleged has committed benefit fraud:

- the amount of any overpayment of Housing Benefit, Council Tax Benefit or Council Tax Support, or any successor benefit made as a consequence of the fraud;

- the amount of any overpayment of any other social security benefit, or loss to public funds, made as a consequence of the fraud;
- the physical and mental condition of the alleged offender;
- the number and type of offences it is alleged to have been committed and the length of time over which the offences have taken place;
- any voluntary disclosure;
- the level of co-operation offered by the alleged suspect during the investigation;
- any relevant social factors such as age, health, employment, family commitments, financial issues, and any other issues that are felt to be relevant;
- the strength of the evidence;
- any failings in the investigation;
- any failings in the administration of the claim that could have contributed to the alleged offence;
- any exceptional or unusual factors specific to the case;
- any mitigating factors brought to the attention of the Council;
- any admission or denial of the offence by the alleged offender;
- any refusal to accept an administrative penalty or caution;
- any previous proven history of committing benefit fraud offences.

5.2.2 In deciding which sanction is appropriate, the panel will take account of the following guidelines. These guidelines are based upon Department for Work and Pensions research and practice and local experience. Each case will be considered on its own merits and the guidelines are not binding.

5.2.3 If the overpayment of benefit is under £2,000, the Council will generally seek to offer an administrative penalty, unless when considering the other factors, prosecution is more appropriate. The Council will also give consideration to DWP overpayment amounts for prosecution, which SFIS will liaise and update the Councils regarding as and when these guideline-limits change.

5.2.4 If the overpayment of benefit is over £2,000, the Council will generally seek to prosecute the offender, unless when considering the other factors an alternative to prosecution would be more appropriate. The Council will also give consideration to DWP overpayment amounts for prosecution, which SFIS will liaise and update the Councils regarding as and when these guideline-limits change.

5.2.5 The option will remain to take prosecution action in any case if aggravating circumstances exist, including attempted fraud, irrespective of the level of overpayment involved.



### **5.3 Delivering sanctions and prosecutions**

- 5.3.1 Prosecutions will generally be taken by City of Lincoln Council's Legal Department, or by the Criminal Prosecution Service if the case has been investigated by SFIS. In cases where the investigation has been undertaken jointly by the Council and the Department for Work and Pensions, the case may either be prosecuted by the City of Lincoln's Legal Department or solicitors acting on behalf of the Department for Work and Pensions, whichever appears the most appropriate in each case.
- 5.3.2 In some cases, it may be appropriate for another local authority to administer the sanction, if for example, the alleged offender has moved away and is resident in another local authority area – or the Councils are working with another local authority on investigative functions delivery.

### **5.4 Publicity**

- 5.4.1 The Councils may seek publicity about successful benefit fraud prosecutions. The aim of such publicity is to deter others from committing similar frauds and to demonstrate to taxpayers that the Councils are protecting public funds.