Executive Summary

At the last meeting of the Audit Committee, members received the Audit Commission’s report ‘Protecting the Public Purse’. As an outcome it was considered appropriate to provide members with details of the work of the Council’s Housing Benefit and Council Tax Benefit Fraud section, which was one of the subjects covered in the Commission’s report.

This report provides information on the functions and performance of the Housing Benefit and Council Tax Benefit Fraud service.

Decision

Members are requested to accept the report.

Background

At the last meeting of the Audit Committee, members received the Audit Commission’s report ‘Protecting the Public Purse’. As an outcome it was considered appropriate to provide members with details of the work of the Council’s Housing Benefit and Council Tax Benefit Fraud section, which was one of the subjects covered in the Commission’s report.

Details of Section

The Council’s Housing Benefit and Council Tax Benefit Fraud section operates within the Exchequer section, which also pays the Housing Benefit and Council Tax Benefit on behalf of the Council.

The full establishment is 3 fte investigators; however only 2 have been employed since 2003; when due to financial pressures funding for 1 fte was withdrawn.

Each investigator is qualified to full Professionalism in Security (PinS). Which is accredited and acknowledged by the Department for Works and Pensions (DWP) / through Portsmouth University.

Administrative support of 1 fte is provided from within the Systems control team.
The service is managed by the Systems Control & Fraud Manager (SCFM) and by the Exchequer Manager (EM), who is qualified as approved officer and is Management PinS trained. Both are “authorised” officers by the Chief Executive under the Social Security Fraud Act 2001.

**Working Arrangements**

The Fraud workload arises from many sources, including referrals from:
- Housing Benefit staff
- Council Tax staff
- Other BDC staff - diminished since BDC housing stock was sold
- DWP
- Monthly data matching undertaken centrally by the DWP – referred to as the Housing Benefit Matching Service (HBMS)
- Members of the Public via the Fraud hotline, correspondence or personal visit to Council offices
- Local Risk Based Referrals (LRBR) – where the Systems Control & Fraud Manager has identified a risk trend or criteria and extracts matching claims, they are verified as ongoing by visiting benefit officers, who will refer them back if not correct. (process started December 2009)
- Local intelligence, including newspapers
- Parish and District councilor’s
- Persons being investigated, citing others doing the same or worse

Information may be treated as “sensitive” and only disclosed to a judge/magistrate on subpoena where a risk may be involved to a supplier of information.

Joint investigations with the DWP are undertaken as appropriate.

All investigations are undertaken and prosecutions mainly made under the following:

- Social Security Administration Act 1992 (SSAA)
- Social Security Administration (Fraud) Act 1997 (SSAFA)
- Social Security Fraud Act 2001 (SSFA)
- Housing & Council Tax Benefit regulations

However, they can also include:

- Theft Act 1968
- Forgery and Counterfeiting Act 1981
- Criminal justice Acts (various)
- Bankers Book Evidence Act 1987
- Proceeds’ of Crime Act (POCA) 1997

And all investigations comply with:

- Police & Criminal Evidence Act 1984 (PACE) – Fair handling of individuals interests
- Criminal Procedures Investigation Act 1996 (CPIA) – Fairness of investigation
- Regulation of Investigatory Powers Act 2000 (RIPA) – Covert observation
- Data Protection Act 1984 & 1998 – Handling of personal information
- Human Rights Act 2000 – Compliance with European standards

Investigations and actions not only comply with legislation but with our Code of Practice on conducting an investigation, a copy is provided at Appendix A.
Essentially there are two parts to any investigation:-

1) the criminal offence in the action; and
2) the money defrauded from the public purse.

Prosecutions can and have been undertaken where there has been no monetary loss, but the case required prosecution in the public interest and again money has been recovered without sanction

**Standard investigative methodology:-**

- Information received from any source that a claim may not be correct.
- Basic checks undertaken by administration support (information received is reasonable/ person is actually on benefit / we have other corroborative intelligence locally, etc)
- Investigator allocated based on outstanding work, other cases in caseloads
- Investigation made via paper trail / visit to other parties, e.g. employer, informant.
  - Guidance leaflet on obtaining the information provided (Appendix B) and code of practice (Appendix b1)
  - If information from employers, contractors, landlords, etc. is not forthcoming section 110A of the legislation empowers the demanding of information and the subsequent prosecution if it is not provided (Appendix B2)
- Once evidence is sufficient to have “reasonable grounds to suspect” the requirements of PACE apply
- Covert observation under RIPA may be undertaken when authorised.
- Access to person’s confidential information under and in accordance with SSFA.
- Prosecution file (shortened version) prepared by investigators
- Taped Interview Under Caution (IUC) if necessary
  - standard process is two officers present
  - A guidance leaflet about having an IUC issued when invited for interview (Appendix C)
- Usually 2 dates are given for IUC attendance at different times on different days (negating any accusation that we are not hindering the person from attending).
- IUC will be undertaken in home if appropriate
- Interpreter used if necessary at IUC
- Shortened transcript of IUC produced by investigator for decision maker to read
- Decision made by SCFM or EM on appropriate sanction (see above) after listening to IUC tape and considering:-
  - Individual case / persons considerations
  - In the public Interest?
  - Council’s prosecutions policy (Appendix D)
- Sanction (if 2) or 3) as detailed below) administered by SCFM or EM
- Usually 2 dates are given to accept sanction
  - If not accepted, case reviewed by EM or Head of Finance
  - Same sanction not available as outcome of review
- This step is not a legal requirement but considered reasonable step.
- Sanction 4) requires agreement of EM under delegation from Solicitor to the Council before it can be started.
  - Prosecution file sent to solicitor to agree prosecution is legally sound and to commence
  - Solicitor is authorised to return file if it would fail on legal technicalities
  - Prosecution undertaken.
• Recovery of money defrauded is always recovered by:
  - recovery from ongoing benefit by weekly deduction, currently £12.80 per week (£13.10 from 1/4/10) (plus 50% of any “earnings disregard”).
  - Invoice for monies due, where no ongoing benefit is in payment,
  - adjustment to Council Tax account
  - attachment to earnings for Council Tax arrears
  - access to DWP Customer Information System (CIS) to trace persons via National Insurance number and other councils can collect on our behalf from their benefit payments

A single fraud investigation could result in an invoice for overpaid housing benefit, an invoice for the Adpen and an increased Council Tax bill for the overpaid Council Tax.

Consequently recovery via deduction from ongoing benefit payments can take many years at £12.80*52 = £665.60 p.a. (The value of the average fraudulent overpayment was £1,373 in 2009/10 in respect of Housing Benefit).

No interest is payable on these debts.

If investigations show that a person is actually entitled to more benefit than has been paid, we will ensure the correct amount is paid.

We operate a voluntary local performance standard of 28 days for each stage of the investigations we control, so as not to unduly stress persons being investigated. We need to ensure that there is no “abuse of process”, i.e. Delaying the process unduly, and coercing the person into saying or doing something simply due to long lasting pressures.

**Type of Offence**

There are two types of offences usually dealt with by the section; -Summary (the majority of BDC cases) or on Indictment.

a) **Summary offences** can only be dealt with by a Magistrates Court (which do not have a jury) and must be started before a six-month period has expired from knowledge of the offence or it is “time barred”. (There are special extension reasons for offences created by statute.)

These offences will be under Section 112 or (112(1A)) of the SSAA Depending on the size of the sentence appropriate it can be sent up to the Crown Court for sentencing, due to the sentencing limits imposed on Magistrates Courts.

There is no right of appeal in these cases.

b) **Indictment only** offences these are rarely used as they mainly apply to conspiracy.

**Triable ‘either way’** offences

Some offences are summary only, others are indictable only

There are a group of offences that can be tried “either way” – which means they can be tried summarily at Magistrates or on indictment at Crown Court e.g. Section 111 of the SSAA

Where “either way” offences are used, and if the defendant indicates at the outset they intend to plead guilty, they are dealt with by the Magistrates Court, but may be passed to the Crown Court for sentencing, if the magistrates feel it is warranted.
If there is no indication of a guilty plea the decision on the case being heard by the Magistrates Court or sent to the Crown Court is at the discretion of the magistrates. In these cases the defendant can exercise their right to be heard at Crown Court.

Cases heard at Crown Court are subject to appeal.

**Sanctions available where a fraud is considered to have been committed**

1) **No Further Action** – amount too small, personal circumstances, short duration that could be considered as a “late notification of changes of information”, Underlying Entitlement negates the overpayment- where IF they had told us the truth they would have been entitled, however, they didn’t thereby causing the overpayment

2) **Administrative Penalty** (Adpen) which is a mandatory 30% “fine” based on the value of the fraud identified.
   a. This cannot be cited in court should a subsequent offence me made.
   b. Not an acceptance of committing a fraud.

3) **Formal Local Authority Caution**
   a. this can be cited in court should a subsequent offence be made and then the original offence could be punished at the same time.
   b. Only possible after the person accepts knowingly committing the fraud at the time of the offence

4) **Prosecution** under the appropriate legislation.

Sanctions 2) & 3) are recorded on the DWP central offences register for 5 years. It is almost certain that any second offence in 5 years will result in prosecution.

In all cases the value of the overpayment is recoverable.

An officer in the Housing Benefits Service manages and controls the recovery of Housing Benefit overpayments, and Adpens.

A summary of the Fraud Sections workload for the last two years is provided in the table below:

<table>
<thead>
<tr>
<th>Workload</th>
<th>2008/9</th>
<th>1/4/09 to 10/2/10</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HB/CTB investigated to Sanction decision level</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigated information -no sanction applicable</td>
<td>1,381</td>
<td>1,380</td>
</tr>
<tr>
<td>No further action after IUC</td>
<td>18</td>
<td>12</td>
</tr>
<tr>
<td>Adpen</td>
<td>61</td>
<td>83</td>
</tr>
<tr>
<td>Formal Caution</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Successful prosecution</td>
<td>23</td>
<td>24</td>
</tr>
<tr>
<td>Unsuccessful prosecution</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Prosecution started not yet finished</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>BDC/ DWP Investigations pending</td>
<td>-</td>
<td>4 Unknown</td>
</tr>
<tr>
<td>IUC pending</td>
<td>-</td>
<td>1 6,565</td>
</tr>
<tr>
<td>Projected cases (pro rata)</td>
<td>127</td>
<td>19,694</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,488</td>
<td>£ 295,745</td>
</tr>
<tr>
<td><strong>Value</strong></td>
<td>£ 256,026</td>
<td></td>
</tr>
</tbody>
</table>

**Benchmarking**

The service benchmarks its performance through the Chartered Institute of Public Finance Accountants (Cipfa) benchmarking group along with 149 other authorities across all types (Unitary, London Borough, Shire Districts, Welsh etc) ((Appendix E) is extracted from the latest benchmarking analysis for 2008/9, while (Appendix F) provides the comparisons with other “nearest neighbour” authorities).
There is no “name and shame” policy regarding fraudsters at BDC, thus individual case details are not published in the press or on the Web, however, statistics of performance / cases are. If the press attend court; they can decide to publish personal details as these are in the public domain.

As part of the shared working initiative with Colchester BC peer reviews were undertaken and have resulted in improved working practices for them.

Cost of the Service

<table>
<thead>
<tr>
<th></th>
<th>2008/09</th>
<th>2009/10 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary, Child Care &amp; pension</td>
<td>73,195</td>
<td>74,840</td>
</tr>
<tr>
<td>Accommodation &amp; Equipment</td>
<td>852</td>
<td>500</td>
</tr>
<tr>
<td>Staff training &amp; membership</td>
<td>4,664</td>
<td>1,260</td>
</tr>
<tr>
<td>Investigation costs &amp; Advertising</td>
<td>31,953</td>
<td>13,270</td>
</tr>
<tr>
<td>Costs recovered</td>
<td>-</td>
<td>25,315</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,250</td>
</tr>
<tr>
<td></td>
<td>£ 85,349</td>
<td>£ 88,620</td>
</tr>
</tbody>
</table>

Minimal 'costs recovered' is budgeted for so that it is not a factor for undertaking investigations or influencing the choice of appropriate sanction. Subsequent legal costs incurred and costs recovered are therefore incidental to investigating & sanctioning the offences.

Evaluation of Colchester’s legal service has led to us utilising their abilities, from 2009/10, at a financial benefit to BDC.

Publicising the Service

A presentation was made to Members on the working of the Benefit Fraud section in November 2009 and this will be repeated in 2010. Housing landlords were also briefed on the service in February 2010.

Details of the Fraud Hotline telephone number is provided in the council tax information leaflet that accompanies the council tax bills.

Corporate Implications

<table>
<thead>
<tr>
<th></th>
<th>Addressed in report.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial:</td>
<td>Addressed in report.</td>
</tr>
<tr>
<td>Legal:</td>
<td></td>
</tr>
<tr>
<td>Equalities &amp; Diversity:</td>
<td>Equalities Impact Assessment undertaken for the service. No issues identified with processes.</td>
</tr>
<tr>
<td>Customer Impact:</td>
<td>Impact on only those customers being investigated.</td>
</tr>
<tr>
<td>Environment &amp; Climate Change:</td>
<td>None</td>
</tr>
<tr>
<td>Consultation/Community Engagement:</td>
<td>Local Committees X Partners X</td>
</tr>
<tr>
<td></td>
<td>Public X Staff X</td>
</tr>
<tr>
<td>Key Decision:</td>
<td>No</td>
</tr>
<tr>
<td>Public/Private Report:</td>
<td>Public</td>
</tr>
</tbody>
</table>

Officer Contact: C. McCloud
Designation: Exchequer Manager
Ext No: 2850
Email: chrmc@braintree.gov.uk
Guide to the Conduct of Investigations

In carrying out investigations the *presumption should always be that the claimant is entitled to the benefit that they receive*. This will remain the presumption unless (or until) any evidence indicates that this is not the case.

- All investigations will be carried out thoroughly and professionally.
- All visiting staff will carry identification cards and present them before being asked for proof of identity.
- Customers will be treated with courtesy and respect at all times.
- Appointments with customers will be made, as far as practicable, at their convenience.
- Visits without appointment will be made at reasonable times of the day (not usually before 8.00am or after 8.00pm, unless with prior agreement with the customer or Exchequer Manager). Unless the investigation relates to LTAHAW.
- Interviews will not be conducted if the investigator is aware that discussion of the matter at that point would be inappropriate or if the claimant states that it is an unsuitable time or the claimant needs to leave before the investigator feels the interview would finish.
- Investigators will not use threats, intimidation or coercion in order to achieve results and comply with PACE
- Customers will be given the opportunity to explain their actions and will be listened to carefully and their comments recorded.
- The likely effect of the outcome of the enquiry will be explained to the customer at the time of the interview, including any intention for further action to be taken or other agencies being involved.
- Customers will be offered a full explanation of any action being taken on their claim and action will not be taken without the claimant being advised.
- Customers who may have difficulty understanding, or participating in, the investigative process will be treated sympathetically and appropriately.
- Specific consideration will be given to those who are vulnerable, young, elderly, sick disabled, those with learning difficulties, those with language difficulties, those with mental health problems; or where the customer’s condition - distress, give cause for concern.
- No interviews will be conducted where the claimant is considered to be under the influence of drugs or alcohol.
- In these instances the Benefit Investigator will discuss the matter with the Fraud Manager to consider: -
  - If investigation is appropriate.
  - If an alternative approach to the investigation could be used.
  - If the involvement of a third party, friend, or relative would be appropriate during the investigation.
  - In the event that the customer wishes to terminate or re-arrange an appointment this should be done without question. The Investigator should make no attempt pro-long an interview when a claimant has expressed a wish to end it.
  - Staff will advise the Exchequer Manager of any occurrences that give cause for concern - relating to the Investigator or the Customer, or any incident in an interview that may lead to a challenge on non compliance with P.A.C.E.

June 2009
Appendix B

Will I contravene the Data Protection Act by providing the information requested?

No, as Section 35(1) of the Data Protection Act 1998 states that where a law requires you to provide information, you are exempt from the non-disclosure provisions.

What happens if I refuse to provide the information?

A refusal will be considered an intentional obstruction of our enquiries. Obstruction is a criminal offence under section 111 of the Social Security Administration Act 1992, for which legal action may be initiated. This action may also be taken if you delay or obstruct an Authorised Officer from their investigation.

If you require more information:

This information is based on the Local Authority Code of Practice on obtaining information from Employers, Contractors, the Self-Employed and Landlords. You may ask to see a copy of the full code.

If information is sought by a visit, the Local Authority officers will carry copies with them for you to see.

You may request a personal copy. This either will be given to you at a visit, or if the request was made in writing or in any other circumstances, sent to you.

You may also inspect the Code of Practice at the Local Authority’s office at:

Braintree District Council
Causeway House
Braintree
Essex
CM7 9HB

If this does not provide you with the information, you may request clarification from the office that issued the information request.

If you wish to complain:

If you do not think the request, or the manner in which it was requested, was reasonable, you may wish to raise a complaint. You should direct your complaint to:

The Fraud Manager
Braintree District Council
Causeway House
Braintree
Essex
CM7 9HB

Most complaints can be settled by contact with the manager in this way and it is the most effective way of putting things right. However, if this does not provide a satisfactory outcome the complaint will be handled in accordance with the local authority’s customer complaints scheme.

If you remain satisfied, you may refer your complaint for an independent review to the Local Government Ombudsman.

Information Series

Obtaining Information

from Employers, Contractors, the Self-Employed, Landlords, Pension Providers and Licensing Authorities.

A Guide to the Powers of Local Authority Authorised Officers and their Limitations

www.braintree.gov.uk

Why do we require information?

Some people who receive benefits fail to properly declare their circumstances (for example by not declaring that they are working and receiving payment for work). This is a criminal offence, which we need to investigate.

Once we have identified that there is an improperly declared matter we need to obtain information that confirms the true circumstances. This information is sought from various people who are in an employment or contractual relationship with the person about whom we are seeking information.

If you receive this leaflet, we consider you such a person, from whom information may be obtained.

What information is required?

The type of information we may request from you includes:

- Home address and date of birth
- Copies of all documents relating to any tenancy
- Details of goods supplied for personal sale
- Licence details; and
- Dates and details of pension payments.

The statutory basis of Local authority requests:

The power to request information is provided under the Social Security Administration Act 1992 (as amended) sections 110A, 109B(1) and 109C.

How is information requested?

Information may be requested in writing or by visit. If we decide to visit you, we will normally advise you in advance of our intention to do so. This will allow a convenient time for the visit to be arranged.

However there are occasions, where for operational reasons, advance notification cannot be given. These situations are exceptional.

Who can request the information?

Only officers specifically authorised by the Chief Executive or Chief Financial Officer of a local authority may request information. They hold a Certificate of Authorisation for the purpose, which will be produced for inspection if you are visited.

Who can accompany a Local Authority Authorised Officer?

Under the legislation, a Local Authority Authorised Officer may be accompanied by anyone who is considered able to assist with the enquiry. This could be another Local Authority Officer or an Officer of the Department of Work and Pensions. If the person accompanying does not hold a certificate of authorisation you may refuse them access to inspect.

What is the Local Authority’s right of entry to places of employment/where records are held?

Entry is based on your consent. However, if you refuse consent, without lawful excuse, this will be considered as obstruction of our enquiries. Obstruction is a criminal offence under section 111 of the Social Security Administration Act 1992, for which legal action may be initiated.

Can they take records away?

Where copies of documents are required and cannot be made on your premises we may wish to do so. We will only do so with your consent, providing a receipt, and returning them as soon as possible.
CODE OF PRACTICE

Obtaining Information from Employers,
Contractors, the Self-Employed and Landlords.

A Guide to the Powers of Local Authority Authorised Officers
and their Limitations

Foreword – Why this Code of Practice is issued to you

Benefit fraud is estimated to cost the taxpayer at least £2billion per year. Fraud due to people working whilst claiming Housing Benefit forms a significant part of the overall level of fraud experienced. Obtaining information is necessary if we are to ensure that taxpayers’ money goes to those for whom it is intended.

Our powers to obtain information are not intended to place additional burdens on business but to reduce the overall burden on Society. Everyone, therefore, has an interest in providing information so that we can combat fraud.

This code of practice is binding on the activities of this local authority’s staff that operate the procedures under sections 109B & 109C of the Social Security Administration Act 1992. If you are required to provide information to us under the provisions of sections 109B & 109C of the Social Security Administration Act 1992, this Code is available to you so that you know what you can expect of the officers making enquiries and so that you can understand your duties under these powers. It is aimed at encouraging compliance and co-operation. Where the requirements of this Code are not met, grounds for complaint may arise. Information about how to complain is contained in this Code of Practice (see paragraphs 35-38).

Beating fraud is everyone’s business. We must all work together if we are to achieve that aim.

Introduction

1. This Code of Practice explains the powers of Authorised Officers, their limitations and the responsibilities and rights of those from whom we may seek information, as defined in the legislation. Authorised Officers are required to undertake their enquiries in accordance with the Code of Practice at all times.
2. Authorised Officers of this authority should issue an information leaflet to people from whom they require information under sections 109B & 109C of the Social Security Administration Act 1992. It explains the powers of Authorised Officers and therefore assists Officers in their enquiries. It should be issued with written enquiries, carried by Officers visiting employment premises and made available in the Local Authority Offices to members of the public who wish to consult it. A copy of the Department of Work and Pension’s (DWP) code is also available on the DWP Website.
4. These powers are only for use in relation to enquiries for the purposes described in section 110A (2) – (see paragraph 8), from the specific people/organisations, as defined in section 109B – (see paragraph 10).

Authorised Officers

5. Under section 110A, the Chief Executive or Chief Financial Officer may authorise an officer of a Local Authority to exercise section 109B & 109C powers. Officers who do not have this authorisation may not make enquiries under these powers.

6. Authorised Officers are required to act reasonably in seeking information from individuals and organisations that hold information necessary to their enquiries. This means that they must act in an appropriate way given the circumstances of the case and any representations that may be made during their enquiries. The resultant actions taken by Authorised Officers should be ones that would stand up to the scrutiny of a Court or other independent body.

7. If you consider that the course of action undertaken, or proposed, by the Authorised Officer was not reasonable you should raise it at once with the Authorised Officer. If this does not satisfy your concerns you can follow the complaints procedure set out in this Code.

What these powers are used for

8. Officers are authorised under section 110A and use section 109A, 109B and 109C powers to obtain information from certain people, under section 110A(2), to:
   • Ascertain in relation to any case whether housing benefit or council tax benefit is or was payable in that case;
   • Ascertain whether provisions of the relevant social security legislation that relate to housing benefit or council tax benefit are being, have been or are likely to be contravened (whether by particular persons or more generally);
   • Preventing, detecting and securing evidence of the commission (whether by particular persons or more generally) of benefit offences relating to housing benefit or council tax benefit.

9. An Authorised Officer can ask for information about individual named persons or, in certain circumstances, the names and other details of the whole workforce. Requests for information can be made in writing or in the course of a visit. The following are examples of the types of information that Authorised Officers might request, for example, from an employer:
   • Name of employees
   • Wage details and hours
   • Period of employment
   • Terms of employment (i.e. whether an employee, sub-contractor, or self-employed)
   • Bank details (e.g. whether wages are paid into a Bank and its location)
   • Staff/payroll number
   • National Insurance number
   • Home address and date of birth

This list is not exhaustive and there will be circumstances in which Authorised Officers will seek information not specifically listed here, which is relevant to their enquiries and determined on the circumstances of the investigation.

Written Requests for Information

10. Section 109B (1) allows an Authorised Officer to write to (or e-mail) any of the persons defined in section 109B(2), listed below, to obtain information. These people are:
   • Any person who is or has been an employer or employee;
   • Any person who is or has been a self-employed earner;
   • Any person who, under existing legislation, is treated as an employer, employee, or self-employed earner;
   • Any person who is carrying on, or has carried on, any business involving the supply of goods for sale to the ultimate consumers by individuals not carrying on retail businesses from retail premises;
   • Any person who is carrying on, or has carried on, any business involving the supply of goods or services by the use of work done or services performed by persons other than employees of his;
   • Any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to others, of persons available to do work or to perform services;
   • Any local authority acting in their capacity as an authority responsible for the granting of any license;
   • Any person who is or has been a trustee or manager of a personal or occupational pension scheme;
   • Any person who is or has been liable to make a compensation payment or a payment to the Secretary of State under section 6 of the Social Security (Recovery of Benefits) Act 1997 (payments in respect of recoverable benefits); and
   • The servants and agents of any person as described above.

11. An Authorised Officer will only write to any of those persons defined above for information if they have reasonable grounds to suspect that benefit fraud is being, or has been, committed. They will provide a written notice that sets out:
   • Who they are;
   • Their address;
   • What information they need;
   • The format in which they would like the information provided in; and
   • When they would like the information by.
12. They may ask for original documents, photocopies of documents or extracts of documents (e.g. computer printouts etc) to be produced. However, they will only request the information they need and will take account of the burden this would place on the business, as well as their own needs.

**The Legal Duty to Provide Information required under a Written Notice**

13. If an Authorised Officer writes to ask for information recipients are legally obliged, under section 109B of the Social Security Administration Act 1992, to provide it, in the form it has been requested and within the time specified.
14. If a recipient of such a request has difficulty meeting any part of a request for information, they may contact the Authorised Officer to explain why and make alternative arrangements for the provision of the information.
15. The legal duty to provide information is not discharged until this has been done.

**Verbal requests for information made during a visit**

16. Under section 109C, an Authorised Officer may seek entry to any premises (including a home) where there are reasonable grounds for suspecting that a business or trade is being carried out. They are also allowed to enter any premises (including a home) where there are reasonable grounds for suspecting that documents relating to a trade or business are kept.
17. An Authorised Officer may also seek entry to any premises:
   - From which a personal or occupational pension scheme is being administered or where documents relating to the administration of such a scheme are being kept.
   - Where a person or someone acting on their behalf, who has paid compensation in relation to an accident, injury or disease, is to be found.
18. Requests to enter such premises will only be made where the Authorised Officer has reasonable grounds to believe that benefit fraud is being or has been committed by one or more persons.
19. When visiting premises, the Authorised Officer will state who they are and will show their certificate of authorisation and identity card.
20. The authorisation allows the officer to be accompanied by any other person or persons they think fit to accompany them, for the purpose of their visit. If other persons are accompanying the Authorised Officer, they will be identified and all visiting officers will carry identification, which will be presented for inspection.
21. Generally, Authorised Officers will give advance notice of their intention to visit. However, in certain circumstances this is not always appropriate and visits may be made without prior notification.
22. Officers will only enter premises with consent (that is, the owner, the occupier, or their representative). They should never try to force an entry – they have no legal powers to do so. If, after entry has been granted, the officers are asked to leave before they have completed their enquiries, they will do so. However, where an officer(s) considers that such action has been taken to obstruct their enquiries or to conceal evidence, they will consider criminal proceedings.
23. Under section 111 of the Social Security Administration Act 1992, it is an offence to intentionally delay or obstruct an Authorised Officer in the exercise of their powers under this Act.
24. When visiting premises, an authorised officer and any person accompanying them, may inspect the premises and question, with the consent of the owner, occupier, or their representative, anyone they find there. They do not have the power to detain people.
25. The Authorised Officer may require anyone on the premises to produce documents, make photocopies of documents or extracts of documents or to create computer or other printouts. An Authorised Officer will only seek access to records that are considered to be connected with payments and employment details, of employees, sub-contractors, recipients of commission payments, etc.
26. If absolutely necessary (for example because there is not a photocopier available), the officer may lawfully remove documents from the premises visited. The Authorised Officer will explain why this is necessary. Any original documents that are removed will be returned as soon as possible. A receipt will be given for any documents that need to be removed temporarily.
27. Documents will not be seized and removed by force. They will only be removed with consent.

**The statutory duty to provide information**

28. No one is required to provide any information (whether documentary or otherwise) that tends to incriminate them, or, if they are married, their spouse.
29. Otherwise, whether a request by an Authorised Officer is made in writing or verbally and in person, there is a statutory duty to provide that information, including any documentation that is requested.
30. Under section 111 of the Social Security Administration Act, it is an offence to intentionally delay or obstruct Authorised Officers in the exercise of their powers or to refuse, or neglect, to
   - Answer any questions;
   - Furnish any information; or
   - Produce any documents
When required to do so by an Authorised Officer. Obstruction includes circumstances where false or inaccurate information is provided in response to enquiries.
31. The Data Protection Act 1998 will not be contravened by providing the information requested by Authorised Officers. Under section 35(1) of the Data Protection Act 1998 exemption from the non-disclosure provisions exists where a statutory provision, such as section 109B & 109C of the Social Security Administration Act 1992, requires the supply of information.
32. Failure to meet in full requests for information could result in criminal proceedings being instigated. The maximum penalty is a maximum fine, fixed at level 3, currently set at £1,000, with a continuing penalty of £40 per day (under section 111(2) of the Social Security Administration Act 1992).

33. If information is not provided the Authorised Officer should explain the Local Authority’s statutory powers and the potential consequences of non-compliance.

At the end of our enquiries

34. Where an Authorised Officer has made enquiries and obtained information, notification of any further action that is being taken will be made as soon as possible. When the enquiry has been concluded notification of that action will also be made.

Complaints

35. If you have any grounds for complaint about how Authorised Officers have used their section 109 powers, or the reasonableness of their actions, when obtaining information please write to the Housing Benefits Manager at your local authority.

36. Most complaints can be settled by contact with the local manager in this way and it is the most effective way of putting things right. However, if this does not provide a satisfactory outcome the complaint will be handled in accordance with the local authority’s customer complaints scheme.

37. Independent legal advice may be sought at any time. The local Citizens Advice Bureau can assist in deciding whom to contact. Their locations and telephone numbers can be found in the local telephone directory.

38. This does not affect the right to seek assistance from a Member of Parliament to refer a complaint to the Local Government Ombudsman. Further information is available from:

   The Local Government Ombudsman

Disclaimer

Please note this Code of Practice gives general guidance only and should not be regarded as a complete and authoritative statement of the law. If you do not understand any of the contents of the Code you may wish to seek independent advice.

Appendix B2

Section 110 A Code of Practice

1. This Code of Practice provides information for all persons required to give information to officers authorised under section 110 A of the Social Security Administration Act 1992 (as amended) (“the Act”). It is available for members of the public to consult.

2. It explains the powers and limits of authorised officers and your rights and responsibilities. Officers from the Benefits Agency operate under a similar Code of Practice. These are set out in sections 109 A, B and C and section 110 A of the Act, which was inserted by the Child Support, Pensions and Social Security Act 2000.

3. The powers are used to obtain information in relation to employment and related areas.

4. Officers may be authorised by the Local Authority in accordance with section 110A of the Act or by the Benefits Agency in accordance with section 109 A of the Act. An authorised officer will always carry and show you their Certificate of Appointment.

5. Officers may make enquiries:
   i. to ensure that any benefit is or was correctly payable;
   ii. to establish whether the provisions of relevant Social Security legislation have been complied with; and
   iii. To prevent, detect or secure evidence of benefit offences.

6. They may request information about named individuals or the whole workforce. They will request this information in writing or by e-mail or during the course of a visit.

7. You may be asked to provide information if you:
   i. Are or have been an employer
   ii. Are or have been self-employed
   iii. Are or have supplied goods or services two people who are neither employed by them nor are retailers
   iv. Run or ran an employment agency
   v. Are a Local Authority which issues licenses

8. You will be given a notice telling you the officers name and address and the information they need. They will also tell you how you should provide the information and when they would like that information by.

9. You may be asked to provide information in any form including original documents, photocopies of documents, computer printouts etc.

10. You are legally obliged to provide the information you are asked to, in the format you were asked to use, within the time specified.

11. If you have difficulty in doing this you must contact the officer to make alternative arrangements.

12. You have not complied with the law until you do this.
13. Section 109C allows an authorised officer to enter any premises, on which a business is being carried out (including your home) where documents relating to a trade or business are being carried out.

14. They may also enter premises where a pension scheme is being carried out or where documents relating to the running of the scheme may be found or where a person who has paid compensation relating to an accident, injury or disease may be found.

15. An officer will always have reasonable grounds for making such a request.

16. When he visits you the officer(s) will say who they are and show you their certificate of appointment.

17. The authorisation allows the officer(s) to be accompanied by other people. They will tell you who these people are.

18. Officers will only enter your premises with your agreement. They cannot and will not force their way in. If you agree to let them in and then ask them to leave before they have finished their visit then they will leave. **If they feel that you have obstructed them or concealed information then you may be prosecuted.**

19. It is an offence under section 111 of the act to intentionally delay or obstruct an officer who is using his powers under the act.

20. The officer and those accompanying him may inspect your premises and question anyone they find there, with your agreement.

21. The officer may also require anyone to produce documents or copy documents or parts of them, or to produce computer or other printouts.

22. If you are unable to produce copies when asked to do so, the officer may remove the original documents in order to make copies of them. You will be given a receipt for any documents you release.

23. Documents will never be seized or removed by force. You must agree to let the officer take the documents.

24. You do not have to provide information that incriminates yourself or your wife.

25. Otherwise you must prove the information (and documents) you are asked to.

26. Section 111 of the Act says that it is an offence to refuse to supply information or neglect to answer any question or furnish or provide any information or to produce any document when required to do so by an authorised officer. If you do not comply with requests for information you may be prosecuted.

27. Sections 111A and 112 make it an offence to provide false information or documents, or to allow any one to do so.

28. If you wish to complain about how an officer used these powers to obtain information from you then please write to the Local Authority that issued the *Certificate of Appointment*.

29. We will respond to your complaint as soon as possible.

30. **This document is for guidance only and should not be treated as a full statement of the law**
You will then be asked questions. The Council’s Officers have a duty to establish the facts of the case and are not bound to accept the first answer you give.

At the end of the interview you will be asked to sign a paper seal which will be used to seal one of the tapes. You will be given a form explaining how you can have access to a tape of the interview. You will also be given a leaflet explaining what happens following your interview.

Who will interview me?

Usually one or two officers from the Investigation Team will interview you. These officers are specially trained to conduct interviews under caution.

Sometimes we carry out joint investigations with other agencies, such as the Department for Works and Pensions and the Inland Revenue. If your case is a joint investigation, an officer from the Council and an Officer from the other agency may interview you. If so, we will explain this at the interview.

Why have I been asked to attend an interview under caution?

The Council has asked you to attend an interview under caution because it believes that you may have committed a criminal offence. This does not mean that the Council believes that you are guilty and will prosecute you. It means that the evidence the Council has obtained so far suggests that you may have committed an offence.

The interview is held in order to give you the opportunity to provide an explanation of the events that have occurred, although should evidence emerge during the interview that you have committed an offence, you may be prosecuted.

Do I have to attend interview?

Attendance is not compulsory, however if you do not attend, the Council will have no alternative but to consider criminal proceedings against you.

Who can come to the interview with me?

Anyone who is not connected to the investigation can attend the interview with you. This person could be a friend, Social Worker, Solicitor or relative. If that person is not a legal advisor/solicitor, they are with you for moral support and they have no right to speak, to advise you, or to ask or answer any questions during the interview. You can appoint your own solicitor or legal advisor yourself or your local Citizen’s Advice Bureau may be able to assist you.

Please note that the Council does not have childcare facilities and you will not be interviewed if you have a dependant child with you at the time of the interview.

If you have a disability or English is not your first language, please let the Council know in advance so we can make the necessary arrangements.

What happens at the interview?

When you enter the interview room, two cassette tapes will be unsealed from their packaging in front of you and placed into a tape recorder. The tape recorder will then be switched on and will start to record the interview.

Before you are asked any questions, the Council’s Officers will explain a number of things to you, including:

- That the interview is being tape recorded;
- That the interview is being conducted in accordance with Police and Criminal Evidence Act 1984 and a copy of the Codes of Practice for the Act are available for you to consult at any time;
- You will be cautioned and advised of your rights. You are not under arrest and can leave the interview at any time;
- Advise you that you are entitled to have a legal advisor/solicitor present if you do not already have one.
BRAINTREE DISTRICT COUNCIL

PROSECUTION POLICY

Braintree District Council is committed to protecting public funds, and will therefore take action against persons found to be committing or attempting to commit fraud following an investigation.

Housing Benefit & Council Tax Benefit Prosecution Policy

*Braintree District Council will prosecute in all cases:* -

- where there is sufficient evidence to do so
- where it is in the public interest to do so

When deciding if it is in the public interest, we are less likely to prosecute if the accused:

- is seriously or terminally ill.
- has a serious mental health problem.
- is a juvenile or is a pensioner.
- made a voluntary disclosure of the offence before the Council had any suspicions.
- has caused only a small loss to public funds.
- have social factors that are considered relevant.

We are more likely to prosecute if:

- the offence has continued for some time.
- the accused has a position of trust (e.g. employee of the Council).
- the offence was deliberate (e.g. claims that are false from the outset).
- the offender has been warned about a similar offence in the past.
- the offence involves collusion (e.g. collusive landlord or conspiracy).

We will normally prosecute:

- anyone who has been offered, and refused, an Administrative Penalty or Official Caution.
- anyone who has received an Official Caution or Administrative Penalty for a similar offence.
- anyone who has previously been prosecuted for a similar offence.
- anyone who obstructs an Authorised Officer appointed under section 110A of the Social Security Administration Act (as amended).
- anyone who makes threats against an employee of this Authority.

Cases other than Housing Benefit & Council Tax Benefit

The Council will prosecute any cases of fraud and dishonesty involving its activities, subject to:

Each case being fully investigated and considered under points above.
The assessment of the merits of each case will be made by the relevant Head of Service, Director or Chief Executive. Where further advice is required consultation with the Prosecutions Referral Panel (consisting of Internal Audit, Insurance & Risk Manager, Head of Law and Governance and the Human Resources Manager or their nominees) for an independent opinion and to promote consistency, who will decide whether the matter should be referred to an external agency (e.g. Police) or to the Council’s Legal Section.

Where it is decided not to prosecute an offender, the deciding officer will record, in writing, the reasons for the decision.

If it is decided that the issuing of a ‘caution’ by the Councils’ Legal Section is appropriate then details of the caution shall be made within the written record.

This policy applies equally to all members of the public, Members and employees of Braintree District Council.
Appendix E

Results of the CIPFA Benchmarking Club for Fraud Service for all councils for 2008/09

**Fraud Work**

<table>
<thead>
<tr>
<th></th>
<th>/1000 Claimants</th>
<th>Avg.</th>
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</thead>
<tbody>
<tr>
<td>Number of Fraud Staff</td>
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<tr>
<td>Referrals to Fraud Staff</td>
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<td>48</td>
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<td>Closed Investigations</td>
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<td>32</td>
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**Sanctions**

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<tr>
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<tbody>
<tr>
<td>Cautions offered &amp; accepted</td>
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<tr>
<td>Administrative Penalties offered &amp; accepted</td>
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<tr>
<td>Cases Accepted by Court for Prosecution</td>
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<tr>
<td>Prosecutions resulting in a guilty verdict</td>
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<td>1.25</td>
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**DATA MATCHES**

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<th>Avg.</th>
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<tbody>
<tr>
<td>Data Matches</td>
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<td>46</td>
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</tbody>
</table>
Results of the CIPFA Benchmarking Club for Fraud Service compared against Nearest Neighbours for 2008/09

**Fraud Work**

- **Number of Fraud Staff per 1000 Claimants**
  - Total Claimants: 11,122
  - Fraud work 2008/09: 96

<table>
<thead>
<tr>
<th>No. Claims</th>
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<tbody>
<tr>
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<td>60</td>
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<tr>
<td>1373</td>
<td>123</td>
<td>46</td>
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</table>

**Sanctions**

- **Cautions offered and accepted per 1000 Claimants**
- **Cases Accepted by Court for Prosecution per 1000 Claimants**
- **Administrative Penalties offered and accepted per 1000 Claimants**
- **Number of prosecutions resulting in a guilty verdict per 1000 Claimants**

<table>
<thead>
<tr>
<th>Sanctions 2008/09</th>
<th>/1000</th>
<th>Avg</th>
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</thead>
<tbody>
<tr>
<td>Cautions offered &amp; accepted</td>
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<td>Administrative Penalties offered &amp; accepted</td>
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<td>Cases Accepted by Court for Prosecution</td>
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<tr>
<td>Prosecutions resulting in a guilty verdict</td>
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<td>2.16</td>
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**DATA MATCHES**

- **Data Matches 2008/09**
  - No. Claimants: 90
  - Data Matches: 499

- **Data Matches per 1000 Claimants**
  - Avg: 45