

# **HOUSING & COUNCIL TAX BENEFIT ANTI-FRAUD POLICY**

**Updated September 2009**

## Contents

<b>Section</b>		<b>Page</b>
<b>Housing &amp; Council Tax Benefit Anti-Fraud Policy</b>		
1	Introduction	3
2	Definition of Benefit Fraud	3
3	Culture	4
4	Prevention	4
5	Detection and Investigation	5
 <b>Housing and Council Tax Benefit Sanction and Prosecution Policy</b>		
I	Statement of Intent	7
II	Recovery of Overpayments	7
III	No Further Action	8
IV	Evidential Criteria	8
V	Public Interest Criteria	8
VI	Formal Cautions	9
VII	Administrative Penalties	9
VIII	Cases not suitable for a Caution or a Penalty	9
IX	Prosecution	10
Appendix A	The Code for Crown Prosecutors	11
Appendix B	Code of Conduct for Benefit Fraud Investigation Staff	19

## **Tonbridge and Malling Housing & Council Tax Benefit Anti-Fraud Policy**

### **1. INTRODUCTION**

- 1.1 Tonbridge and Malling Borough Council is committed to the delivery of Housing & Council Tax Benefit to its citizens and considers benefit is for those who are most vulnerable in society. It is important to detect and prevent fraud and error in the first instance and as such the council works with the principles of the government's Verification Framework. The Verification Framework provides a way to check and verify all original documents before making payments or amending existing payments of benefit to claimants.
- 1.2 The council is opposed to all forms of fraud and corruption. It recognises that fraud and corruption undermine the standards of public service, which it promotes, and reduces the resources available for the good of the whole community. The council has issued an Anti-Fraud and Corruption Strategy, a Whistleblowing Policy (Confidential Reporting Code) to encourage prevention, promote detection and support the investigation of allegations of fraud or corruption at a corporate level.
- 1.3 This Housing & Council Tax Benefit Anti-Fraud Policy is designed to reinforce the Anti-Fraud & Corruption Policy specifically in relation to Housing and Council Tax Benefit Administration and is designed to: -
- 1 stop fraudulent claims from entering our systems
  - 1 find any fraudulent claims already in the system
  - 1 stop payments from going to people who are not entitled to it
  - 1 punish those people who commit fraud
  - 1 recover fraudulent overpayments of benefit
  - 1 deter people from trying to commit fraud
- 1.4 The Housing & Council Tax Benefit Anti-Fraud Policy and the Sanction & Prosecution policy will be reviewed regularly by the Chief Internal Auditor with any amendment subject to the approval through the Policy Framework.

### **2. DEFINITION OF BENEFIT FRAUD**

- 2.1 Benefit fraud is where a person, dishonestly, or not,
- a) Falsifies a statement or a document; or
  - b) Is involved in a failure to notify a relevant change of circumstance; or
  - c) Omits relevant information

for the purpose of obtaining or increasing entitlement to housing/council tax benefit for themselves or another.

### 3. CULTURE

- 3.1 The Council is determined that the culture and tone of the organisation will continue to be one of honesty and opposition to fraud and corruption and as such has established a dedicated Benefit Fraud Investigation Team.
- 3.2 The Council's staff and members, at all levels, are an important element in its stance on fraud and corruption and should lead by example. They are encouraged to raise any concerns and can do this in the knowledge that these will be treated in confidence and properly investigated.
- 3.3 Instances of suspected/alleged Housing Benefit and/or Council Tax Benefit fraud may be referred for investigation to the Benefit Fraud Investigation Team. Benefit Fraud Investigation Officers are based in the Internal Audit Section and can be contacted on extension 6337/6145 or through the e-mail system. All staff conducting either investigations and or interviews should be aware of the council's procedures for dealing with unacceptable and aggressive behaviour, which is contained within the Health and Safety Policy under Violence at Work and Lone Working found on the Council's Intranet.

### 4. PREVENTION

#### Staff

- 4.1 To reduce the risk of fraud and error it is vital that the qualifications and employment histories of potential recruits are comprehensively checked. Benefits staff should also sign an annual declaration covering any interests that may conflict with their work. For example, receiving HB and CTB, or acting as a landlord or agent.
- 4.2 All individuals within the Benefit Fraud Investigation Team are required to act with integrity and follow the **Code of Conduct for Benefit Fraud Investigation Staff (see Appendix B)**
- 4.3 Employees must declare any circumstances where their personal interests (financial and non-financial) may conflict with those of the council e.g. processing a Housing or Council Tax Benefit application form for a relative or friend.
- 4.4 Procedures have been designed to ensure that the work of one member of staff is checked by a Senior Benefits Officer. These types of checks are important deterrents to fraud and error.
- 4.5 Benefits staff will receive Fraud Awareness training as part of their induction. Thereafter they will receive refresher training.
- 4.6 Appropriate staff both internally within the Council and externally will receive benefits fraud awareness training.
- 4.7 All Benefit Fraud Investigation Officers will undertake training in order to ensure that they carry out their duties in accordance with recognised standards for Benefit Fraud Investigation as set out in the Local Authorities

Benefit Fraud Manual. Guidance can also be obtained from the DWP Fraud Manual located within the secure IRRV website. In addition they will undertake any training required by the Department for Work and Pensions in order to use specific powers under the Social Security Administration Act and Social Security Fraud Act (Authorised Officer powers).

## **Systems**

- 4.8 It is a management responsibility to maintain the internal control system. This includes the responsibility for the prevention of fraud and other illegal acts. By undertaking an agreed plan of work, internal audit will evaluate the adequacy and effectiveness of these controls as a means of assisting management to discharge its responsibilities.
- 4.9 All Benefits recording systems must be designed in consultation with and to the satisfaction of the Director of Finance. Access to data must be controlled by use of passwords with an audit trail kept of transactions
- 4.10 All staff with access to the confidential details of claimants will be responsible for ensuring the control of physical access to the data and will be responsible for compliance with the Data Protection Act and the Freedom of Information Act. This responsibility requires managers to ensure that the physical access to equipment is restricted, as far as practical, to authorized users only. All individuals must protect their passwords and not keep them written down or 'lend them'.
- 4.11 All manual Benefit Fraud records must be kept securely filed when not in use and access to these files must be restricted to designated Fraud Investigators only.
- 4.12 All valuables, including documentation, must be recorded and tracked through the council system until returned to the originator. Where these items are hand delivered a receipt will be given to the originator.
- 4.13 All telephone calls received in relation to Benefit Fraud will be recorded manually and a note of the content of the conversation will be kept on file.

## **5. DETECTION AND INVESTIGATION**

- 5.1 Surveys by the Audit Commission have identified that Housing/Council Tax Benefit Fraud is the largest area of detected fraud in local government.
- 5.2 Whilst encouraging genuine claimants to apply for benefit the council has adopted a number of initiatives to detect and prevent fraudulent applications, such as:
  - 1 Working with the principles of the previous Verification Framework; which incorporates more checking at the start of a benefit claim and Interventions during the life of a benefit claim;
  - 1 operation of a fraud 'hotline'; 01732 876085/876337

- 1 participation in the Department for Work and Pension's monthly data-matching exercise;
  - 1 use of the Royal Mail 'do not redirect' facility for all benefit post;
  - 1 using computer links to the Department for Works and Pensions to check entitlements and to receive benefit notifications;
  - 1 Undertaking land registry checks;
  - 1 carrying out joint fraud investigations with other bodies such as the Counter Fraud Investigation Service (DWP), Border Agency, Kent Police, other Local Authorities and other investigation departments;
  - 1 Publicity of anti-fraud initiatives and the Fraud Hotline number including regular articles in the Council's own publications and press releases to the press office.
- 5.3 All referrals passed to the section will be sifted and vetted for strength of evidence. All those cases where the evidence is considered sufficient to investigate will be logged on to the Northgate Fraud Management System and a case file opened.
- 5.4 The Council's Disciplinary procedures will be used where the outcome of an investigation indicates improper behaviour by a council employee.
- 5.5 Members of staff within the Benefits Section should refer suspected cases of fraud to the Fraud Section by completing the Referral Form on Northgate. The Benefits Investigation Section will give feedback to staff regarding the quality of the Fraud Referral and the outcome of any resulting investigation.
- 5.6 The Benefit Fraud Manager will circulate a quarterly report on the outcome of referrals. This report will include the source of the cases and details of the fraud type. This report will be given to the Revenue & Benefits Manager and all benefit staff.
- 5.7 All claims where there is sufficient proof for the council to believe that benefit has been claimed fraudulently will be dealt with under the Sanction and Prosecution Policy. The sanctions open to the council include Caution, Administration Penalty and Prosecution.
- 5.8 The council will take action, including legal recovery, in order to recover all overpayments of Housing & Council Tax Benefit that result from fraudulent activity or claimant failure to notify a change of circumstances.

**Tonbridge and Malling Borough Council**  
**Housing and Council Tax Benefit**  
**Sanction and Prosecution Policy**

**I. STATEMENT OF INTENT**

Tonbridge and Malling Borough Council has a duty to administer claims for Housing and Council Tax Benefit and a responsibility to prevent and detect benefit fraud. Tonbridge and Malling Borough Council is committed to protecting public funds and will consider taking prosecution action against any person suspected of committing benefit fraud.

Tonbridge and Malling Borough Council has decided that its Sanction and Prosecution Policy should not be entirely related to the monetary value of the offence. This is because Tonbridge and Malling is an area where rents vary widely depending on the location and type of property in question. In these circumstances a purely monetary policy would not be appropriate. All cases will be looked at on their own merit and any mitigating circumstances taken into account.

Cases deemed suitable for prosecution may be passed to the Department for Work and Pensions Solicitor's Office under the existing Local Authority Prosecution arrangements. These cases are generally prosecuted under the Social Security Administration Act 1992.

Cases may also be dealt with in house, an officer from the Legal Section will present cases at plea and direction with the backing of private prosecution services to conduct cases where a not guilty plea has been entered. If a guilty plea has been entered the officer from the Legal Section will proceed and conclude the hearing.

The initial recommendation on the appropriate action to be taken in each case lies with the Benefit Investigation Officer and Senior Benefit Investigation Officer. This will depend on the evidence they have gathered and the seriousness of the fraud.

The final decision on whether a case should be referred for prosecution will be made by a Sanction panel comprising of Director of Finance, Chief Solicitor and the Chief Auditor, they will take into account the factors outlined in this policy.

Further opinion may be gained from a legal professional either in house or private to ensure a robust case is presented at court.

**II. RECOVERY OF OVERPAYMENTS**

Regardless of whether or not any Sanction action is taken Tonbridge and Malling Borough Council will attempt to recover all overpayments. This action is taken by the Overpayments Officer who will pursue all available

methods of recovering the debt including taking civil action when necessary.

### III. NO FURTHER ACTION

Tonbridge and Malling Borough Council may consider closing the case without any further action if:

- To our knowledge the claimant has never previously offended
- The claimant has not made any false declarations
- There was no planning involved in the process
- There was no other person involved in the fraud
- The offence is minor
- The period over which the fraud has been committed is very short
- The overpayment is very low

In cases where no further action is appropriate and an Interview Under Caution has taken place a letter will be issued stating that no further action will take place, however a strong reminder advising of the responsibility to notify changes and correct information will be included in the letter.

### IV. EVIDENTIAL CRITERIA

Tonbridge and Malling Borough Council may consider sanction action if the case is serious enough to warrant it.

In order for any Sanctions to be considered the case must meet the evidential criteria. In other words is there sufficient evidence for a realistic prospect of a conviction?

In making this decision, the following factors will be considered;

- Does the evidence meet the requirements set out in the Code for Crown Prosecutors
- If there has been any failure in the investigation
- If there has been any failure in benefit administration

### V. PUBLIC INTEREST CRITERIA

- If the evidential criteria is met then the council will consider whether or not Sanction action would be in the public interest as detailed in the factors for and against as listed in the Code for Crown Prosecutors.

A copy of the Code for Crown Prosecutors is attached as **[Appendix A]** for reference. There may be cases where the evidence and public interest criteria are met but it is considered by the Prosecution Panel that an alternative sanction may be appropriate when all of the circumstances of the case have been taken into consideration.



## VI. FORMAL CAUTIONS

The Authority may consider issuing a Formal Caution if:

- The claimant has been Interviewed Under Caution
- To our knowledge the claimant has never previously offended
- Or if the person has committed benefit fraud before the offence was minor and the current offence is also minor;
- There was no planning involved in the process
- There was no other person involved in the fraud
- Criminal proceedings are not the first option
- Penalty action is not appropriate
- The offence is minor
- The amount of overpayment is relatively low.
- The person has fully admitted the offence during an IUC.
- The persons subsequent attitude, e.g. whether they express genuine regret for what they have done.

If the person refuses the Caution the case will usually be referred for prosecution.

## VII. ADMINISTRATIVE PENALTIES

The Authority may consider issuing an Administrative Penalty if:

- The claimant has been Interviewed Under Caution
- To our knowledge the claimant has never previously offended
- Or if the person has committed benefit fraud before the offence was minor and the current offence is also minor;
- There was no planning involved in the process
- There was no other person involved in the fraud
- Criminal proceedings are not the first option
- A Caution is not appropriate
- The offence is minor
- The amount of overpayment is relatively low.
- The person has not admitted the offence during an IUC.

If the person refuses the Administrative Penalty the case will usually be referred for prosecution.

## VIII. CASES NOT SUITABLE FOR A CAUTION OR A PENALTY

Even if the above criteria for Cautions and Penalties was satisfied Tonbridge and Malling Borough Council may decide that a Formal Caution or Administrative Penalty is not appropriate if the person:

- Has been prosecuted for a benefit offence in the last 5 years.
- Has been cautioned two or more times in the past five years.

This is because this would indicate that

- Previous sanctions have not deterred them from re-offending
- Their lack of contrition for the offences committed;
- Their disregard for the legislation;
- A deliberate and repeated intent to commit benefit fraud
- Their apparent belief that these offences are not serious.

Instead Tonbridge and Malling Borough Council may consider referring the case for prosecution.

In cases where a Sanction is not appropriate and an offence has been identified then a formal warning letter may be issued and held on file for five years. The warning letter will be cited in further cases where appropriate.

## IX. PROSECUTION

The final decision on whether to refer a case for prosecution lies with the Sanction Panel.

Once the decision to prosecute has been made the case will be presented to the Council's Legal team for an opinion on the evidential and public interest test. If the evidential and public interest tests have been met the case will pass for prosecution. If the Legal team consider the evidential and public interest test has not been met the case will be referred back to the benefit fraud team with a recommendation.

In addition to the Evidential Criteria and Public Interest Criteria outlined above the following will also be taken into consideration

- Whether the claim was false from inception
- Whether there was planning in the process
- Whether the suspect was a ring leader or an organizer of the offence
- Any previous incidence of fraud
- Whether there has been any abuse of position or privilege
- The amount of the overpayment
- The duration of the alleged offence
- Whether there are grounds for believing that the offence is likely to be continued or repeated, based on the person's previous history.
- Whether the offence is widespread in the area where it was committed and so prosecution may act as a deterrent
- Any voluntary disclosure
- Has the person refused to accept a Formal Caution or Administrative Penalty

## THE CODE FOR CROWN PROSECUTORS

### 1. Introduction

- 1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case a prosecution has serious implications for all involved – victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.
- 1.2 The code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.
- 1.3 The code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

### 2. General Principles

- 2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply in all cases.
- 2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.
- 2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.
- 2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention of Human Rights in accordance with the Act.

### 3. Review

- 3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure that it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges to change the charges or sometimes to stop the proceedings.
- 3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

### 4. The Code Test

- 4.1 There are two stages in the decision to prosecute. The first stage is *the evidential test*. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does not pass the evidential test, Crown Prosecutors must decide if a prosecution is needed in the interest of the public.
- 4.2 This second stage is the *public interest test*. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.

### 5. The Evidential Test

- 5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.
- 5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- 5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

#### **Can the evidence be used in court?**

- a) It is likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems

relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

### **Is the evidence reliable?**

- b) Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- c) What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?
- d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- f) Are there concerns over the accuracy or credibility of the witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.4 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect or conviction.

## **6. The Public Interest Test**

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statesman on public interest, which has been supported by Attorney General ever since: 'It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject to prosecution'. (House of Common Debate, volume 483, column 681, 29 January 1951).

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentencing is being passed.

6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

***Some common public interest factors in favour of prosecution.***

6.4 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

- a) A conviction is likely to result in a significant sentence;
- b) A weapon was used or violence was threatened during the commission of the offence;
- c) The offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
- d) The defendant was in a position of authority or trust;
- e) The evidence shows that the defendant was a ringleader or an organiser of the offence;
- f) There is evidence that the offence was premeditated;
- g) There is evidence that the offence was carried out by a group;
- h) The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
- i) The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- j) There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
- k) The defendant's previous convictions or cautions are relevant to the present offence;
- l) The defendant is alleged to have committed the offence whilst under an order of the court;
- m) There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history or recurring conduct; or
- n) The offence, although not serious in itself, is widespread in the area where it was committed.

***Some common public interest factors against prosecution***

6.5 A prosecution is less likely to be needed if:

- a) The court is likely to impose a nominal penalty;
- b) The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
- c) The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).

- d) The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
  - e) There has been a long delay between the offence taking place and the date of the trial, unless:
    - i. The offence is seriously;
    - ii. The delay has been caused in part by the defendant;
    - iii. The offence has only recently come to light; or
    - iv. The complexity of the offence has meant that there has been a long investigation.
  - f) A Prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;
  - g) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
  - h) The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they can pay compensation); or
  - i) Details may be made public that could harm sources of information, international relations or national security.
- 6.6 deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case.

### ***The relationship between the victim and the public interest***

- 6.7 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not prosecute and any views expressed by victim or the victims family.
- 6.8 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

### ***Youths***

- 6.9 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the youth's past behaviour is very important.

- 6.10 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert youths from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against.

### ***Police Cautions***

- 6.11 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.
- 6.12 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.

## **7. Charges**

- 7.1 The Crown Prosecutors should select charges which;

- a) Reflect the seriousness of the offending;
- b) Give the court adequate sentencing power; and
- c) Enable the cases to be presented in a clear and simple way.

This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

- 7.2 Crown Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 7.3 Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

## **8. Mode of Trial**

- 8.1 The Crown Prosecution Service applies the current guidelines for magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the 'National Mode of Trial Guidelines' issued by the Lord Chief Justice). Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines requires them to do so.



- 8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

## **9. Accepting Guilty Pleas**

- 9.1 Defendants may want to plead guilty to some, but not all of the charges. Alternatively they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept a defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.
- 9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact the ancillary orders can be made with some offences but not with others.
- 9.3 In cases where defendant pleads guilty to charges but on the basis of facts that are different from the prosecution case and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened and then sentence on that basis.

## **10. Re-starting a Prosecution**

- 10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.
- 10.2 These reasons include:
- a) Rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;
  - b) Cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and
  - c) Cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

Appendix B

**CODE OF CONDUCT FOR BENEFIT FRAUD INVESTIGATION STAFF**

**Code of Conduct & Good Practice for Benefit Fraud Investigation Staff**

This code applies to all officers engaged in carrying out duties involving the investigation of Benefit Fraud.

The code should be read in conjunction with the legal requirements of the post and current staff rules.

The relevant Line Manager will deal with a breach of The Code of Conduct and Good Practice.

Inefficiency is a breach of this Code, and falls short of the expected standard and may require remedial training.

**General Conduct**

Officers of Tonbridge and Malling Borough Council will not:

- exceed their actual authority or hold themselves out as having any authority not provided by legislation.
- act in any way, benefit or gain, which exceeds the limits of their powers.
- misuse their official position for any benefit or gain for themselves or another.

**Legislation**

- Officers must pursue all reasonable lines of enquiry even if it points away from a suspect's guilt
- Ensure that all material that is gathered during the investigation is recorded and retained and that all relevant material is revealed to the prosecutor in accordance with The Criminal Procedure and Investigations Act and the Codes of Practice
- Ensure that the Codes of Practice are observed in accordance with The Police and Criminal Evidence Act.
- Ensure that applicable provisions of The Regulation of Investigatory Powers Act and the Codes of Practice and guidance in relation to directed surveillance are adhered to.
- Observe all other applicable legislation and internal and external guidance

**Evidence (witness and suspects)**

Officers to whom the Code applies must not under any circumstances:

- Conceal or fabricate evidence or knowingly allow any evidence to be concealed or fabricated.
- Discriminate or exercise any bias on the grounds of race sex, marital status, sexual orientation, or disability.

- Accept or offer any inducement, bribe or other advantage from or to any witness or suspect.
- Use any information gathered in the course of their duties for personal gain or coercion or otherwise misuse such information.
- Do or fail to do anything that may result in a miscarriage of justice.

### **Disclosure of Interests**

- Officers must declare any circumstances or interests which may affect their ability to conduct an investigation objectively.
- Any relationship to or with a suspect or witness or informant.
- Any personal interest in the outcome of an investigation or other civil or criminal Proceedings.
- Their dependency on alcohol or drugs other than those prescribed.
- Officers should disclose to their line manager if they are or have been subject to any: summons, charge, or arrest.

### **Information**

- Officers must treat all information gathered for evidential purposes during an investigation as confidential and, must not deliberately or negligently:
  - Disclose such information to an unauthorised third party.
  - Reveal the source of the information to an authorised third party.
- Personal Injury and Damage to Property
  - Officers, must exercise all reasonable care to prevent injury to the person, loss or damage to the public and private property, and must not:
    - Forcibly enter public or private property except to save life or prevent serious injury or on the invitation of the occupier or other responsible person or constable.
    - Deliberately or negligently destroy or damage any property.
    - Seize or retain any property without lawful authority.
    - Use threatening physical violence towards a colleague or member of the public.