



HOUSING & COUNCIL TAX BENEFIT ANTI-FRAUD POLICY

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**Tonbridge and Malling Borough Council
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 seeks to check and verify all original documents and personal circumstances 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 and a Whistleblowing Charter 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 Strategy 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 Sanctions & Prosecutions policy will be reviewed at least annually by the Investigation Manager, with any material amendment subject to the approval of the Cabinet.

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 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 Investigation Team. Investigation Officers are based in the Audit Fraud Team within the Finance Service and can be contacted on extension 6337/6101 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 Statement of Health and Safety Policy found on the staff 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 Investigation Team are required to act with integrity and follow the **Code of Conduct for 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 annual refresher training.
- 4.6 Appropriate staff both internally within the council and externally will receive benefits fraud awareness training.
- 4.7 All 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 & Transformation. 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 officers 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 one of 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 operation of a fraud 'hotline'; 01732 876337
 - 1 participation in the Department for Work and Pension's monthly data-matching exercise;
 - 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, Home Office, Kent Police, other Local Authorities and other investigation departments;
 - 1 publicity of anti-fraud initiatives, the Fraud Hotline number and press releases.
- 5.3 All referrals passed to the team will be sifted and vetted for strength of evidence. All 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 Investigation Team by completing the Referral Form on Northgate. The Investigation Team will give feedback to staff regarding the quality of the Fraud Referral and the outcome of any resulting investigation.
- 5.6 The Investigation 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 Service Manager – Revenues & Benefits 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 Sanctions and Prosecution Policy. The sanctions open to the council include a Caution, an Administration Penalty or 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, regardless of whether sanction action takes place, and may consider imposing a civil

penalty of £50 for negligently failing to report changes in circumstances.

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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 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.

The recommendation on whether a case is suitable for sanction action lies with the Investigations Manager. A sanction recommendation will be completed by the investigating officer and then reviewed by the investigations manager in accordance with the sanction policy to determine what course of action, if any, is appropriate. This review will take into account;

- The evidential test criteria,
- The Public interest test criteria,
- Value and length of the offence,
- Local prevalence,
- Social and health factors, and
- Any other mitigating factors

Sanction cases will be approved by the Chief Internal Auditor. Prosecution recommendations will be reviewed by Legal Services and the Chief Financial Services Officer for approval. 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 or dealt with in-house by the Authority's legal team. These cases are generally prosecuted under the Social Security Administration Act 1992.

Cases that are progressed under the One File Concept (OFC) agreement with the Department for Work and Pensions will be subject to this policy and consideration given to the Department for Work and Pensions sanction policy (as shown in **Appendix C**) when considering offences committed against Tonbridge and Malling Borough Council.

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

II. 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;

- How clear the evidence is
- If there has been any failure in the investigation
- If there has been any failure in benefit administration

III. PUBLIC INTEREST CRITERIA

If the evidential criteria are met then the council will consider whether or not Sanction action would be in the public interest. In making this decision, the following factors will be considered first:

- Medical conditions
- Other social factors
- Financial implications compared with losses
- Council's Vulnerability Policy

If these still indicate that a sanction is appropriate then the other Public Interest Criteria as shown in The Code for Crown Prosecutors listed at **Appendix A**, will be considered in order to decide the appropriate sanction

IV. NO SANCTION OR PROSECUTION

Tonbridge and Malling Borough Council may consider closing the case without any sanction or prosecution action if:

- To our knowledge the claimant has never previously offended
- The offence is minor
- The period over which the fraud has been committed is very short
- The overpayment is very low
- The case does not satisfy the Evidential and Public Interest Criteria

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.

V. CIVIL PENALTIES FOR INCORRECT STATEMENTS

Even if it is determined Tonbridge & Malling will not take any sanction or prosecution action in respect of offences committed, they may still consider issuing a civil penalty for failure to notify the appropriate authority of a relevant change in circumstances

The Authority may consider imposing a penalty of £50 on a person where;

- The Person negligently makes an incorrect statement or representation, or negligently gives incorrect information or evidence.
- In or in connection with an application; or
- In connection with the award of Housing and/or Council Tax Benefit;
- Fails to take reasonable steps to correct the error
- The error results in an award of Housing and/or Council Tax Benefit which is greater than the amount to which the person was entitled; and
- The person has not been charged with an offence or cautioned, or been given an administration penalty.

VI. SANCTIONS AS ALTERNATIVES TO PROSECUTION

Where the authority has reviewed a case and is satisfied that an offence has been committed, mitigating factors may suggest that an alternative form of sanction should be considered in the first instance as a more suitable means of disposal.

These alternative sanctions take the form of a caution or an administrative penalty.

A Caution;

- Acts as a final written warning for the offence committed,
- Is for benefit administration purposes only
- Is not a criminal record and therefore, does not affect a persons employment prospects
- Is recorded centrally by the Department for Work and Pensions
- Remains on record for a period of 5 years,
- Would be cited at proceedings should any subsequent offences be committed within the 5 year period

The Authority may consider issuing a Caution if:

- To our knowledge the claimant has never previously offended, or
- The person has committed benefit fraud before but 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,
- The offence is minor,
- The amount of overpayment is relatively low,

- q The person has fully admitted the offence during an IUC,
- q The persons subsequent attitude, e.g. whether they express genuine regret for what they have done,
- q Criminal proceedings are not the first option

An Administrative Penalty;

- q Is a financial penalty calculated as a percentage of the fraudulent overpayment, which is set at;
 - o 30% of the total overpayment, or
 - o For offences committed wholly after 8th May 2012, 50% of the total overpayment, with a minimum of £350 and a maximum of £2,000,
- q Is for benefit administration purposes only,
- q Is not a criminal record and therefore, does not affect a persons employment prospects,
- q Is recorded centrally by the Department for Work and Pensions
- q Remains on record for a period of 5 years,
- q Would be cited at proceedings should any subsequent offences be committed within the 5 year period

The Authority may consider issuing an Administrative Penalty if:

- q To our knowledge the claimant has never previously offended, or
- q The person has committed benefit fraud before but the offence was minor and the current offence is also minor,
- q There was no planning involved in the process,
- q There was no other person involved in the fraud,
- q A Caution is not appropriate as there has been no admission to the offence,
- q The offence is minor,
- q Criminal proceedings are not the first option

If a person refuses to accept a caution or administrative penalty, the case will be referred for prosecution.

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

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

This is because this would indicate that

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

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

VII. PROSECUTION

The final decision on whether to refer a case for prosecution lies with the Chief Internal Auditor. This decision will then be reviewed by Legal Services and the Chief Financial Services Officer for approval.

Once a decision to prosecute has been made, the case will be presented to the Council's Legal team, who will provide an opinion on the evidential and public interest test.

If the evidential and public interest tests have been satisfied, the case will be authorised by the legal team and passed 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 Investigation 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, or
- The change in circumstances was intentionally withheld,
- 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 was 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,
- Whether the person has refused to accept a Caution or Administrative Penalty

VIII. 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 recuperating the debt including taking civil action when necessary.

IX Loss of Benefit provision

The Social Security (Loss of Benefit) Provisions Amendment Regulations 2010 introduced a revised loss of provision option that includes those cases where there is only Housing or Council Tax benefit in payment for offences occurring after 1 April 2010.

These are only applied to the principle benefit in payment at the discretion of the Department for Work and Pensions. Where there is Housing and Council Tax Benefit in payment they will be applied to whichever benefit is the greater.

The “first strike” can be applied to all cases where there is a sanction (Caution, Administration Penalty or Prosecution) arising from a fraudulent overpayment of benefit. The loss of benefit is applied for a four week disqualifying period. The benefit can be withdrawn, or reduced by 20% or 40%.

The “two-strikes” loss of benefit provision can be applied to those cases where there has been two benefit related sanctions within a five-year period. In these cases the person can be disqualified from receiving benefit for a thirteen- week period.

The “three-strikes” can be applied to those cases where there are more than two benefit related sanctions within a five-year period. In these cases the person can be disqualified from receiving benefit for a six-month period.