

# **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 Policy 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: -
- stop fraudulent claims from entering our systems
  - find any fraudulent claims already in the system
  - stop payments from going to people who are not entitled to it
  - punish those people who commit fraud
  - recover fraudulent overpayments of benefit
  - 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 in the Staff Portfolio.

## 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 a 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 A)**.

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 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 and 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 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 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:
- operation of a fraud 'hotline'; 01732 876337
  - participation in the Department for Work and Pension's monthly data-matching exercise;
  - using computer links to the Department for Works and Pensions to check entitlements and to receive benefit notifications;
  - undertaking land registry checks;
  - carrying out joint fraud investigations with other bodies such as the Counter Fraud Investigation Service, Border Agency, Kent Police, other Local Authorities and other investigation departments;
  - publicity of anti-fraud initiatives and the Fraud Hotline number including regular articles in 'Here & Now' and press releases to the press office.
- 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 civil penalty, Caution, 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.

**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.
- 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; the Investigation Manager 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 Investigation Manager will proceed and conclude the hearing.
- The initial recommendation on the appropriate action to be taken in each case lies with the Fraud Investigator. 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 the Investigation Manager who will take into account the factors outlined in this policy.
- Cases that are progressed under the One Customer One Team (OCOT) 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 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. 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.

## **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;
  - How clear the evidence is
  - 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 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
  - ❑ 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 will be considered in order to decide the appropriate sanction

## **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 person has not admitted the offence during an IUC.
  - ❑ For offences committed before the 8 May 2012 the administration penalty will be 30% of the total overpayment.
  - ❑ For offences committed wholly on or after 8 May 2012, the minimum penalty is £350.00. For overpayments totally over £700, the penalty is set at 50% of the recoverable overpayment, up to a maximum penalty of £2,000.

- 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 Investigation Manager.
- 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 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
  - ❑ 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

**CODE OF CONDUCT FOR FRAUD INVESTIGATION STAFF**

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

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

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

The Chief Auditor 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 & 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.