

THE HIGHLAND COUNCIL
RESOURCES COMMITTEE – 28 MARCH 2003

Agenda Item	
Report No	

Benefit Counter Fraud Policy
Sanctions and Publicity

Report by Director of Finance

SUMMARY

This Policy updates the Benefit Counter Fraud Policy (Sanctions and Publicity) approved by the Resources Committee on 28 August 2002.

1. Background

The Highland Council is committed to maintaining a rigorous strategy which will provide a framework for encouraging fraud prevention; promoting detection; performing investigations; and invoking sanctions.

2. Fraud Defined

2.1 The Social Security Administration Act 1992 determines that a claim for Housing Benefit and Council Tax Benefit is considered to be fraudulent and an offence committed when:

“A person, for the purpose of obtaining any benefit whether for himself or some other person, or for any other purpose connected with this regulation:

- *makes a statement or representation which he knows to be false;*
- *produces or furnishes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular.”*

2.2 This policy update introduces the additional **offence of failing to notify a change of circumstances.**

2.3 Internal Fraud

The Council’s general policy relating to irregularities is included in 13.8 of the Financial Code.

2.4 External Fraud

External fraud is an attempt made by persons out with the Authority to defraud the Council e.g. housing benefit and council tax benefit fraud committed by claimants and/or their landlords.

3. The Counter Fraud Policy

The Highland Council will:

- Seek to ensure that benefit fraud is prevented wherever possible and where it is detected, it will be thoroughly investigated to its natural conclusion.
- Support joint working arrangements with other local authorities and the Department for Work and Pensions (DWP) in order to detect fraudulent claims.
- Adopt detailed policies in relation to counter fraud.

4. Sanctions

4.1 The Council considers that deliberate abuse of the benefit system is a criminal offence and has a right, inherent in common law and in statute, to impose sanctions in cases involving benefit fraud.

4.2 Referrals to Sanctions Board

The decision to refer a case for sanction is a serious matter for all the parties involved and each case will be examined on its own merits on a consistent and impartial basis. The decision to treat a fraud as serious and to impose a sanction will be taken by referral to a Sanctions Board comprising appropriate officers from the Finance Service. It is important that there are no unnecessary delays while carrying out a criminal investigation. Should a Sanctions Board be unable to convene within 14 days of request, the decision to proceed will be taken by the Local Taxation and Benefits Manager. A record of the decision and reasons for the decision will be made and retained for all cases.

4.3 Sanction Criteria

To warrant a sanction, the initiation and possible outcome of the sanction must be in the best interests of the Council. For a case to be considered for sanction, the following must be demonstrated:

- a good case to answer (prima facie);
- sufficient evidence of false information;
- sufficient evidence of fraudulent intent; and
- a complete record of the investigation

4.4 Best Interests of the Council

It is the role of the Procurator Fiscal to determine what constitutes the public's best interests. In determining the Council's best interests, the Sanctions Board will take into consideration:

- the age of the person;
- the physical and/or mental health of the person, partner or dependant;
- such other personal circumstances of the individual which would mitigate against prosecution;
- any failings in the Council's administration procedures which have enabled a fraud to proceed; and
- any period of avoidable delay in bringing the circumstances to the attention of the relevant authorities.

Having considered these criteria, the Sanctions Board will then decide whether an Administrative Caution, Administrative Penalty or prosecution should be applied.

4.5 Administrative Cautions

This policy update introduces the additional sanction of **Administrative Caution**. With effect from 1 October 2002, a cautioning system was introduced in Scotland for the Department for Work and Pensions' Counter Fraud Investigation Service and Local Authorities.

A Caution can only be considered when there is sufficient evidence to justify instituting criminal proceedings and the person has admitted the offence during an Interview Under Caution (IUC). Whilst the Administrative Caution cannot be cited in court it may be referred to in the report submitted to the Procurator Fiscal for consideration to prosecute for any subsequent offence.

Cautions apply only to minor offences. In most cases, a minor offence can be defined as one where the overpayment is small, i.e. currently below £400 (or for attempted fraud cases which would have continued for only a short period, normally no more than three months. *(Note: with effect from 11 November 2004, the Department for Work and Pensions (DWP) removed the figure of £400 as a guideline on the basis that it would fail the test of rationality.)*)

A Caution is appropriate where all the following conditions are met:

- Criminal proceedings are not the first option;
- Penalty action is not appropriate;
- The overpayment is below the level where the Council's policy is to prosecute or offer an Administrative Penalty; and
- The circumstances of the offence and the person indicate a caution may be appropriate

4.6 Administrative Penalties

In cases where the criteria for sanctions have been fulfilled, the Sanctions Board will consider administrative penalties as an alternative to a criminal prosecution if the:

- individual's personal and financial circumstances indicate that a financial penalty would be a suitable solution; or
- the sum of money defrauded is within the range fixed from time to time for this purpose by the Department for Work and Pensions (DWP). At the time of writing, the range is £400 - £1,499). If decided appropriate by the Sanctions Board, an Administrative Penalty may be offered if the overpayment is outwit this range.

(Note: with effect from 11 November 2004, DWP amended the guideline to a sum of money up to £2000.)

Note The change does not affect the ability for The Highland Council to refer lower value cases for prosecuting if aggravating factors apply.

This allows the Council to administer a penalty of 30% of the amount of benefit fraudulently obtained. The Council will attempt to recoup the administrative penalty payments in addition to any repayments of the overpaid benefit. If the individual does not accept the penalty, or, accepts the penalty and does not adhere to it, then the Council has a statutory responsibility to refer the matter for criminal proceedings. All decisions to offer an administrative penalty will be decided by the Sanctions Board.

4.7 Prosecutions

The Council retains the discretion to refer all cases for prosecution but will generally only refer where the criteria have been satisfied and where one of the following conditions is met:

- where the overpayment is above the limit fixed from time to time for this purpose by DWP. At the time of writing, this limit is £1,500;*(as from 11 November this figure has increased to £2000)*
- the individual does not accept the administrative penalty; or
- the individual accepts the administrative penalty and does not adhere to it.

4.8 Following approval from the Sanctions Board, the Finance Service will pass the case for prosecution to the Police, Procurator Fiscal or DWP Solicitors Prosecution (SOLP).

4.9 Recovery of Loss

Where loss has been suffered through fraudulent activity, there will be a presumption that the Council will pursue the individual for recovery, including taking any legal actions. The

Council's Disciplinary Procedures may be used where the outcome of investigation indicates improper behaviour on the part of an employee. In these circumstances, the Director of Finance, at his discretion, will advise the employee's Service Director on a confidential basis.

Where there is an allegation involving an elected member, the Chief Executive will be informed and upon completion of an investigation involving an employee or elected member, a full report will be considered in accordance with the Council's Financial Regulations and Standing Orders.

5. Publicity

5.1 Publicising the Council's Counter Fraud Policy and activity will reassure the public and raise their awareness that "*tackling fraud is everybody's business*". However, a balanced approach must be taken to ensure that individuals who are legitimately entitled to claim housing benefit and council tax benefit do so. Appropriate recognition will be taken of the Council's commitment to financial inclusion.

5.2 Press Release Mechanism

A formal, structured press release mechanism will be adopted. The Finance Service will liaise with the Council's Public Relations Manager to publicise prosecutions, special operations, policies and strategies; and information to claimants.

5.3 Fraud Hotline

The Fraud Hotline is a free and confidential telephone service that is available to the public, elected members and employees for the purpose of reporting alleged benefit fraud. The telephone number is currently 0800 854183 and callers can choose to remain anonymous.

6. Conclusion

This updated policy will ensure the gateway to the benefits system is more secure and will provide the Council with a framework for applying sanctions and for informing all stakeholders of the Council's counter fraud activity.

RECOMMENDATION

The Committee is invited to adopt this updated Counter Fraud Policy (Sanctions and Publicity) for immediate implementation.

Signature:

Designation: Director of Finance

Date: 13 March 2003

Ref: IS/SMcK

Background Papers: Section 111A of the Social Security Administration Act 1992
Social Security Administration (Fraud) Act 1997
Social Security Fraud Act 2001

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