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**ANTI-FRAUD AND CORRUPTION ARRANGEMENTS**

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**Responsible Cabinet Member(s) – Councillor Don Bristow,  
Resource Management Portfolio**

**Responsible Director(s) – Paul Wildsmith, Director of Corporate Services**

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**Purpose of Report**

1. To advise the Council of proposed changes in the arrangements for the prevention and detection of fraud and corruption and to seek the Council's approval of those changes.

**Background**

2. The public is entitled to expect the Council to maintain the highest standards of probity and to protect the public purse. The Council's commitment to this is set out in a Fraud and Corruption Strategy Statement included as an Annex to Financial Procedure Rules.
3. In recent years, however, there has been an increased focus nationally on anti-fraud and corruption arrangements in local authorities. Initiatives in this regard have included the corporate governance agenda, the heightened importance of the 'Use of Resources' element of the CPA process, Audit Commission national fraud initiative exercises, anti-money laundering legislation and Government set targets to reduce fraud and error within Housing and Council Tax benefits.

**Information and Analysis.**

***Anti-Fraud and Corruption Policy Statement and Strategy***

4. As a result of these developments the Council's existing anti-fraud and corruption arrangements have been reviewed and it is proposed that the Annex to Financial Procedure Rules is replaced by a specific Council Anti-Fraud and Corruption Policy Statement underpinned by an Anti-Fraud and Corruption Strategy. These documents would bring a greater clarity to existing arrangements by making the necessary linkages between a series of comprehensive and inter-related processes/procedures designed to prevent, detect and deter fraud and to take effective action against an attempted or actual fraudulent act affecting the Council.
5. A draft Anti-Fraud and Corruption Policy Statement has been compiled which sets out the Council's commitment to not tolerate fraud, corruption or abuse of position for personal gain, wherever it may be found in any area of Council activity (**see Appendix A**). The Policy Statement includes its scope; the culture and stance against fraud and corruption; how to raise concerns and report financial malpractice; the principle of having a Council Anti-Fraud and Corruption Strategy; and names the Director of Corporate Services as the responsible officer for maintenance and operation of the policy.

6. An Anti-Fraud and Corruption Strategy has been drafted to underpin the Anti-Fraud and Corruption Policy Statement (**see Appendix B**). The strategy identifies the key component parts to the Council having an effective counter-fraud regime; highlights the key people and measures which can help in the prevention of fraud and corruption; details responsibilities for detection and investigation; recognises that continued success of the Strategy is dependent upon an effective training programme; and outlines deterrence arrangements.

### ***Anti-Money Laundering Policy***

7. The Proceeds of Crime Act 2002, augmented by the Money Laundering Regulations, has consolidated, updated and reformed criminal law in the UK. The definition of money laundering has been broadened and the range of activities caught by the statutory control framework increased. Since the Council is unlikely to be immune from the risks surrounding money laundering it must embrace the underlying principles behind the money laundering legislation and adopt a Proceeds of Crime (Anti-Money Laundering) Policy.
8. A draft Proceeds of Crime Act (Anti-Money Laundering) Policy has been produced (**see Appendix C**). The Policy outlines the background to money laundering; explains what it is; the duties upon the authority and all members of staff and details a Council reporting procedure. The reporting procedure refers to an appointed person, the Money Laundering Reporting Officer (MLRO), who is to receive money laundering reports from colleagues and make reports to the National Criminal Intelligence Service (NCIS). It is proposed that the Chief Internal Auditor act as this Council's MLRO and that the three Audit Managers deputise in his absence.

### ***Housing/Council Tax Benefit Anti-Fraud Arrangements.***

9. The Government has set a national PSA target to achieve a 25% reduction in fraud and error within Housing and Council Tax benefits by the year 2006. In addition, the Council also has exacting Best Value Performance Indicators to meet and is required to aspire to the Performance Standards set by the Department of Works and Pensions in relation to anti-fraud and error activity. The activities of Benefit investigators form part of the Councils Anti-Fraud and Corruption strategy overall, however Benefit administration is covered by specific legislative requirements and that legislation also enables the Council to take action such as cautioning or penalising offenders.
10. Specific documentation relating to Benefits Anti-Fraud arrangements are detailed in the draft Housing Benefit/Council Tax Anti-Fraud Policy, Strategy and Sanctions Policy (**see Appendices D, E and F**). These documents outline the Councils commitment to making a positive impact on Benefit fraud and detail the specific measures in place to deter fraud and error, and investigate and penalise fraudulent activity.

### **Training and Awareness**

11. It is recognised that a key element to the success of the Council's anti-fraud and corruption arrangements is appropriate training and awareness raising for both officers and members. A programme of training and awareness will commence once the revised arrangements are approved by Council. The programme will include general awareness raising for all staff and members with more specific training for those officers involved in internal control systems

and financial and finance related systems. Officers responsible for the review of internal control systems and investigative work should also be properly and regularly trained and the training plans of Audit Services and the Housing Benefit Investigation Team will reflect this requirement.

12. The Council's website and intranet will be utilised to promote the anti-fraud and corruption arrangements. In addition, articles are to appear in the monthly 'Flyer' and posters are to be placed on notice boards within Council buildings.

### **Outcome of Consultation**

13. Consultation has taken place with Joint Consultative Committee who had no concerns regarding the proposals.

### **Legal Implications**

14. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

### **Section 17 of the Crime and Disorder Act 1998**

15. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The operation of successful anti fraud and corruption procedures will contribute to the Council fulfilling its Section 17 duty..

### **Council Policy Framework**

16. The issues contained within this report are required to be considered by Council.

### **Conclusion**

17. This report highlights the increased importance of the Council's anti-fraud and corruption measures. In response, the opportunity has been taken to refresh and enhance existing arrangements and as a consequence several draft policy documents have been produced. The documents reflect the Council's determination to prevent and detect fraud and corruption and make the necessary linkages between a series of relevant comprehensive and inter-related processes/procedures.

### **Recommendation**

18. Council are requested to :-

- (a) Authorise the deletion of the current Fraud and Corruption Strategy Statement that is annexed to the Financial Procedure Rules

- (b) Authorise the replacement of the Fraud and Corruption Strategy Statement with the Anti-Fraud and Corruption Policy and Strategy ( at Appendices A and B )
- (c) Authorise consequential amendments to the Council's Financial Procedure Rules that arise from the deletion of the Fraud and Corruption Strategy Statement and its replacement by the Anti-Fraud and Corruption Policy and Strategy .
- (d) Approve the Proceeds of Crime Act (Anti-Money Laundering) Policy at Appendix C, which includes the appointment of the Chief Internal Auditor as the Council's MLRO with the three Audit Managers as deputies;
- (e) Approve the Housing Benefit/Council Tax Anti-Fraud Policy, Strategy and Sanctions Policy at Appendices D, E and F.

## **Reasons**

19. The recommendations are supported by the following reasons :-

- a. To help meet the requirements of the CPA 2005 Use of Resources Methodology
- b. To enhance corporate governance arrangements

**Paul Wildsmith, Director of Corporate Services**

## **Background Papers**

CIPFA – Practical Guidance- Proceeds of Crime

Paula Coxon : Extension 2104

# Darlington Borough Council

## Anti-Fraud & Corruption Policy Statement

### *1 Introduction*

Darlington Borough Council is determined to maintain its reputation as an Authority which will not tolerate fraud, corruption or abuse of position for personal gain, wherever it may be found in any area of Council activity.

The purpose of this Policy Statement is to set out for members and employees of the Council the main principles for countering fraud and corruption.

The Policy statement includes:-

- the scope;
- the culture and the stance against fraud and corruption;
- how to raise concerns and report financial malpractice;
- the principle of having a Council anti-fraud & corruption strategy;
- the responsible employee.

Elected Members, and employees, should play a key role in counter-fraud initiatives. This includes providing a corporate framework within which counter-fraud arrangements will function, and the promotion of an anti-fraud culture across the whole of the Council. This should provide a sound defence against internal and external abuse of public funds.

This Statement also reflects the principles of the Nolan Committee.

Part of the External Auditor's statutory duties are to ensure that the Council has in place adequate arrangements for the prevention and detection of fraud and corruption.

The relevant definitions are as follows;

- Fraud is the "intentional distortion of financial statements or other records by persons internal or external to the organisation, which is carried out to conceal the misappropriation of assets or otherwise for gain".
- Corruption is the "offering, giving, soliciting or acceptance of an inducement or reward which may improperly influence the action of any person".

### *2 Scope*

This Policy Statement applies to elected members, co-opted members of committees, and all employees who work for the Council.

With regard to others who provide services for the Council, the Nolan Committee reiterated a fundamental principle in its report on the "Standards of Conduct in Local Government" 1997, which was:-

"Where a citizen receives a service which is paid for wholly or in part by the taxpayer, then the government or local authority must retain appropriate responsibility for safeguarding the interests of both the user and taxpayer regardless of the status of the service provider".

Therefore, the Council expects that individuals and organisations (e.g. partners, suppliers, contractors, and service providers) that it deals with will act with integrity and without thought or actions involving fraud and corruption. Where relevant, the Council will include appropriate clauses in its contracts about the consequences of fraud, bribery and corruption; evidence of such acts are most likely to lead to a termination of the particular contract and may lead to prosecution.

The Anti-Fraud & Corruption Policy Statement and Strategy are commended to the Council's schools governing bodies, with the expectation that they will be adopted.

### ***3 Culture and Stance Against Fraud & Corruption***

Responsibility for an anti-fraud culture is the joint duty of all those involved in giving political direction, determining policy and management. The strategy should be directed against fraud and corruption whether it is attempted against the Council from outside or from within its own workforce.

The Council expects that Members and employees at all levels will lead by example in ensuring adherence to legal requirements, contract procedure rules, financial procedure rules, codes of conduct, other procedures and practices.

As part of this culture, the Council will provide clear routes by which concerns can be raised by both Members and employees, and those outside who are providing, using or paying for public services.

Senior Management is expected to deal swiftly and firmly with those who defraud the Council or who are corrupt. The Council, including Members, senior management and governors, should be robust in dealing with financial malpractice.

The Council also has in place two Committees whose monitoring roles are relevant

- The Standards Committee, which sets and monitors standards of conduct, and includes independent members who are neither Councillors nor Employees.
- The Resources Scrutiny Committee which scrutinises the way in which the Council's Financial and Human Resources are controlled and deployed.

### ***4 Raising Concerns***

Although this document specifically refers to fraud and corruption, it equally applies to all financial malpractice. This includes a wide range of irregularities and criminal acts that are financial or finance-related. It includes, for example, the criminal acts of theft of "property", which includes all assets and cash; false accounting; obtaining by deception; pecuniary advantage by deception; computer abuse and computer crime. Also, it includes bribery and corruption. Employees and Members can be exposed to a number of "pressures", from contractors, landlords, the public etc. to act in a particular way in a particular case; this may involve "favouritism" regarding the access to all kinds of services and benefits (e.g. grants, awards, benefits, council housing, or gaining contracts, planning permission, etc.).

Members and employees are an important element in the Council's stance on fraud and corruption, and they are positively encouraged and expected to raise any concerns that they may have on these issues where they are associated with the Council's activity.

Employees should normally raise concerns through their immediate manager, who will inform the Director of Corporate Services and their Director, if different. However it is recognised that they may feel inhibited in certain circumstances. In this case, employees and members should contact either the Chief Executive, the Director of Corporate Services or the Borough Solicitor. The Council's Confidential Reporting ("Whistleblowing") Policy gives further guidance on how to raise concerns and it gives details about the support and safeguards that are available to those that do raise concerns.

Concerns will be treated in confidence, properly investigated and dealt with fairly.

There is, of course, a need to ensure that any investigation process is not misused, therefore, any internal abuse, such as raising malicious or vexatious allegations, may be dealt with as a disciplinary matter.

### ***5 Anti-Fraud & Corruption Strategy***

This Policy Statement forms an important part of the Anti-Fraud & Corruption Strategy by setting out the tone, culture and expectations of the Council, as part of the corporate framework.

The Strategy itself details such key features as the corporate framework, prevention, detection and investigation, training and deterrence.

### ***6 The Responsible Officer***

Under Section 151 of the Local Government Act 1972 and Regulation 5 of The Accounts and Audit Regulations 2003 (S.I. No.533), the "Responsible Financial Officer" (i.e. the Director of Corporate Services) is responsible for ensuring that the Council has control systems and measures in place "to enable the prevention and detection of inaccuracies and fraud, and the ability to reconstitute any lost records". An Anti-Fraud & Corruption Policy Statement and Strategy helps towards discharging part of this responsibility.

Also, under Regulation 6 of The Accounts and Audit Regulations 2003, the Council has delegated to the Director of Corporate Services, the responsibility for maintaining "an adequate and effective system of internal audit of the Council's accounting records and its systems of internal control in accordance with proper internal audit practices", together with the statutory right of access to documents, records, information and explanations considered necessary for that purpose.

Accordingly, the Director of Corporate Services will:-

- take overall responsibility for the maintenance and operation of this Policy;
- maintain records of financial malpractice, including concerns and allegations received; matters arising from audits; investigations and evidence; and the outcomes;
- report as necessary to the Council

# Darlington Borough Council

## Anti-Fraud & Corruption Strategy

### *1 Introduction*

1.1 The Council's Anti-Fraud and Corruption Strategy is based on a series of comprehensive and inter-related procedures designed to deter, frustrate, or take effective action against any attempted fraudulent or corrupt acts affecting the Council.

1.2 An effective Strategy will require support across the Council and involves:

- A Corporate Framework;
- Prevention (of error, irregularities, fraud and corruption);
- Detection and Investigation;
- Training;
- Deterrence.

### *2 Corporate framework*

2.1 The Corporate Framework requires a whole range of high level component parts, if it is to contribute to the Council having an effective counter-fraud strategy, and some of the key ones include:-

- An Anti-Fraud & Corruption Policy Statement which emphasises the importance of probity to all concerned;
- Member support;
- Codes of conduct for Members and Employees;
- Protocol for Members on Gifts and Hospitality
- Proceeds of Crime Act (Anti-Money Laundering) Policy
- Confidential Reporting ("Whistleblowing") Policy, and Complaints Procedures;
- Benefits Anti-Fraud Policy, Strategy and Sanctions Policy.
- Contracts Procedure Rules and Financial Procedure Rules;
- IT Security Policy
- Sound internal control systems, procedures and reliable records;
- Effective internal audit;
- Effective recruitment procedures;
- The Council's Disciplinary Procedure;
- The Regulation of Investigatory Powers (RIPA) Procedure
- Clear responsibilities, accountabilities and standards;



- Induction and training.

### **3 Prevention**

3.1 Within the overall corporate framework there are a number of key people and measures which can help in the prevention of fraud and corruption, and these are:

- Employees of the Council;
- Members;
- Internal Control Systems;
- Combining with Others to Prevent and Fight Fraud.

#### **Employees of the Council**

3.2 A key preventative measure in the fight against fraud and corruption is to take effective steps at the recruitment stage to establish, as far as possible, the previous record of potential employees, in terms of their propriety and integrity. In this regard, temporary staff should be treated in the same manner as permanent employees.

3.3 Employee recruitment should be in accordance with procedures laid down by the Head of Human Resource Management. Whenever possible, written references should be obtained with specific assurances regarding the known honesty and integrity of potential employees before formal employment offers are made.

3.4 All employees must abide by the Council's Code of Conduct for Employees, which sets out the Council's requirement on personal conduct. This Code forms part of the Employee Handbook and is referred to in all Contracts of Employment. Employees of the Council are expected to follow any code of conduct related to their personal Professional Institute.

3.5 The Council has in place employee disciplinary procedures. Any breach of conduct will be dealt with under these procedures and may result in dismissal.

3.6 Employees are reminded under the Council's Contracts Procedure Rules that they must operate within Section 117 of the Local Government Act 1972, regarding the disclosure of pecuniary interests in contracts relating to the Council or the non-acceptance of any fees or rewards whatsoever other than their proper remuneration. These requirements are set out in the Council's Code of Conduct for Employees.

3.7 The Borough Solicitor is the appointed Monitoring Officer in line with the Local Government and Housing Act 1989. As part of this role, the Borough Solicitor has overall responsibility for the maintenance and operation of the Authority's Confidential Reporting ("Whistleblowing") Policy.

#### **Members**

3.8 Members are required to operate within:

- The Council's Code of Conduct for members;
- Local Authorities Members' Interest Regulations 1992 (SI 618); SI 1996/121.5
- Council Rules of Procedure.

3.9 These matters and other guidance are specifically brought to the attention of Members at the induction course for new Members and are in each Member's Handbook; they include rules on the

declaration and registration with the Chief Executive of potential areas of conflict between Members' Council duties and responsibilities and any other areas of their personal or professional lives.

3.10 The Authority has in place a Standards Committee, which promotes high standards of member conduct and assists members to observe the code of conduct.

### **Internal Control Systems**

3.11 The Council has Contracts Procedure Rules, Financial Procedure Rules and various rules and codes of conduct in place that provide a requirement on employees, when dealing with the Council's affairs, to act in accordance with best practice.

3.12 The Director of Corporate Services has a statutory responsibility under Section 151 of the Local Government Act 1972 to ensure that proper arrangements are made for the Council's financial affairs. In addition, under the Accounts & Audit Regulations 2003 as the "responsible financial officer", he is required to determine the accounting control systems which include:

- "measures to enable the prevention and detection of inaccuracies and fraud",
- "identification of the duties of employees dealing with financial transactions and the division of responsibilities of those employees in relation to significant transactions".

The latter requirement is a key control in the prevention of impropriety.

3.13 The Council's aim is to have sound financial systems and procedures which incorporate efficient and effective internal controls. As part of the Strategy, the "separation of duties" should be considered as a fundamental control in systems, especially when involving significant transactions.

3.14 Under the Council's Financial Procedure Rules, Directors are responsible for ensuring that adequate controls are in place. The existence, appropriateness, and effectiveness of these internal controls is independently monitored and reported upon by the Council's Internal Audit Section.

### **Combining with Others to Prevent and Fight Fraud**

3.15 The Council is committed to exchanging information with other local and national agencies in order to identify and prevent fraud. Such activity is carried out in full compliance with the Data Protection Act 1998 and with the Code of Practice for National Fraud Initiative Data Matching Exercises and includes providing payroll information to other agencies for data matching purposes. Any employee found to be perpetrating fraud on another local or national agency is liable to face disciplinary action where this has implications for the Council's trust and confidence in the employee. In certain cases disciplinary action could lead to dismissal.

3.16 The Council operates the Verification Framework (VF) in line with central government initiatives to reduce benefit fraud.

3.17 The Council also participates in an intelligence gathering, collation and dissemination service on fraud and corruption known as the National Anti-Fraud Network (NAFN) and is a member of the Chartered Institute of Public Finance and Accountancy (CIPFA) Better Governance Forum.

## **4 Detection and Investigation**

4.1 It is the responsibility of Directors and their managers to prevent and detect fraud and corruption.

4.2 In addition, Internal Audit and External Audit will liaise closely and implement a cyclical programme of audits which will test for fraud and corruption.

4.3 However, despite the best efforts of managers and auditors, many frauds are discovered by chance or "tip-off". It is often the alertness of employees and the public that enables detection to occur. In such cases there is a requirement within the Council's Financial Procedure Rules to inform the Director of Corporate Services.

4.4 The Anti-Fraud & Corruption Policy Statement provides a clear path for raising concerns and facilitating "tip-offs", and the fraud-response arrangements, outlined in this Strategy, enable such information or allegations to be properly dealt with. The Council's Proceeds of Crime Act (Anti-Money Laundering) and Confidential Reporting "Whistleblowing" Policies also gives advice on how to raise a concern and the safeguards and support that are available to those who raise concerns.

4.5 All Allegations of fraudulent activity notified to the Director of Corporate Services are considered by Internal Audit. Some are followed up with a full investigation, others are better dealt with as a management issue. However, in order that appropriate action can be taken in each case it is vital to;

- report allegations swiftly
- record all evidence that has been received;
- ensure that evidence is sound and adequately supported;
- make secure all of the evidence that has been collected;
- refer, where appropriate, to the Council's disciplinary procedures;

4.6 Reporting suspected irregularities is essential to the Anti-Fraud and Corruption Strategy and ensures:-

- consistent treatment of information regarding fraud and corruption;
- proper investigation, if necessary, by an independent and experienced audit team;
- the optimum protection of the Council's interests.

4.7 Depending on the nature and anticipated extent of the allegations, Internal Audit will normally work closely with management, HR, legal etc., and other agencies, such as the Police. This is to ensure that all allegations and evidence are properly investigated and reported upon, and where appropriate, maximum recoveries are made for the Council.

4.8 The Council's disciplinary procedures will be used to the fullest extent where the outcome of the Audit investigation indicates that fraud has taken place.

4.9 Where financial impropriety is discovered, the Council's presumption is that the Police will be called in. The Crown Prosecution Service determine whether or not a prosecution will be pursued. Referral to the Police is a matter for the Director of Corporate Services and the relevant Director. Various employees will be consulted during investigations and the Chief Executive will be kept informed of referrals to the Police. Referral to the Police will not inhibit action under the disciplinary procedure.

4.10 The Council's External Auditor also has powers to independently investigate fraud and corruption, and the Council can use his services for this purpose too.

## 5 Training

5.1 The Council recognises that the continuing success of its Anti-Fraud and Corruption Strategy and its general credibility will depend largely on the effectiveness of programmed training, communication and responsiveness of employees throughout the organisation.

5.2 To facilitate this, the Council supports the concept of full induction, training and follow-up training; this applies particularly to employees involved in internal control systems and financial and finance-related systems, to ensure that their responsibilities and duties in this respect are regularly highlighted and reinforced, and to casual, temporary and agency staff, who may not be aware of the high standards of probity that are required in the public sector.

5.3 The Council intranet will be utilised to promote the Anti-Fraud and Corruption Policy and Strategy and associated documents, procedures and information.

5.4 The review of the Council's internal control systems and the investigation of fraud and corruption centres on Internal Audit, apart from the investigation of fraudulent Housing Benefit claims which rest with Housing Benefits Investigation Team.

5.5 The employees involved in the review of internal control systems and investigative work should be properly and regularly trained; the training plans of Internal Audit and the Housing Benefits Investigation Team will reflect this requirement.

### **6 Deterrence**

6.1 There are a number of ways to deter potential fraudsters from committing or attempting fraudulent or corrupt acts, whether they are inside and/or outside of the Council, and these include:-

- Publicising the fact that the Council is firmly set against fraud and corruption and states this at every appropriate opportunity - e.g., clause in contracts, statements on benefits claim forms, website, publications etc.;
- Acting robustly and decisively when fraud and corruption are suspected and proven - e.g., the termination of contracts, dismissal, prosecution etc.;
- Taking action to effect the maximum recoveries for the Council - e.g. through agreement, Court action, penalties etc.;
- Having sound internal control systems, that still allow for innovation, but at the same time minimising the opportunity for fraud and corruption.
- The operation and advertising of a Benefit Fraud Hotline.

### **7 Conclusion**

7.1 The Council has in place a clear network of systems and procedures to assist it in the fight against fraud and corruption. It is determined that these arrangements will keep pace with any future developments, in both prevention and detection techniques, regarding fraudulent or corrupt activity that may affect its operation or related responsibilities.

7.2 To this end, the Council maintains a continuous overview of such arrangements, in particular, through the roles of the Monitoring Officer and Director of Corporate Services, the Contract and Financial Procedure Rules, codes of Conduct and various codes of financial practice, accounting instructions and audit arrangements.

7.3 Both the Policy Statement and Strategy will be subject to review annually by the Director of Corporate Services to ensure that they remain current

# Darlington Borough Council

## Proceeds of Crime Act (Anti-Money Laundering) Policy

### 1 Introduction

1.1 The Proceeds Of Crime Act 2002, Money Laundering Regulations 2003 and other recent legislation impose significant new burdens on Local Authorities to recognise and report "money laundering" by those they deal with.

1.2 The Acts have broadened the definition of money laundering and increased the range of activities caught by the statutory control framework; in particular, the duty to report suspicions of money laundering is strengthened and criminal sanctions imposed for failure to do so.

### 2 What is Money Laundering?

2.1 Money laundering is an act falling within section 340(11) of the Proceeds of Crime Act 2002 (POCA). **Money laundering is now interpreted very widely and includes possessing, or in any way dealing with, or concealing, the proceeds of any crime.**

#### **Organised Money Laundering.**

2.2 This is what is typically thought of as money laundering and involves organised crime and providing a legitimate cover for criminal funds. The aim is for the money to get into the financial mainstream, and therefore 'dirty' funds appear to come 'clean'. There are many different methods, from the purchase of property and luxury goods to the creation of 'shell' companies.

#### **Smaller Scale Money Laundering.**

2.3 This occurs whenever money generated by crime is placed in the economic system, i.e. any type of property crime is likely to involve money laundering.

**To most people who are likely to come across it or be affected by it, money laundering involves a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.**

### 3 What duty does the Council have?

3.1 The Council must reflect the principles of this legislation by the establishment of internal procedures to prevent the use of their services for money laundering and by the appointment of a Money Laundering Reporting Officer (MLRO).

### **Money Laundering Reporting Officer.**

3.2 The officer nominated to receive disclosures about money laundering activity within the Council is the Chief Internal Auditor, Brian James. He can be contacted as follows:

Brian James  
Chief Internal Auditor  
Audit Services  
Darlington Borough Council  
Corporate Services Department  
Town Hall  
Darlington  
DL1 5QT

Tel; 01325 388140 Ext 2140  
Email ; brian.james@darlington.gov.uk

*In the absence of the MLRO, the Audit Managers are authorised to deputise for him.  
Dawn Barron tel 388141 Paula Coxon tel 388104 Brian McGuire tel 388142.*

### ***Client Identification for Relevant Business.***

3.3 In addition to appointing a MLRO, the legislation mainly concerns the Council's 'relevant business' of accountancy and audit services, and the financial, company and property transactions undertaken by Legal Services that are provided 'by way of business' to third parties.

3.4 Legal, Finance, Accounting and Audit staff must follow the procedures set out in Appendix 1 in order to ascertain the true identity of clients and ensure record keeping procedures (e.g. for evidence of identity obtained, details of transactions undertaken, for at least 5 years afterwards).

3.5 Legal Services are subject to particular provisions applying to the legal profession and these are set out separately in Legal Services procedure notes.

## **4 Duties upon all members of staff.**

### **Criminal Offences**

**Potentially any employee could commit a criminal offence if they suspect money laundering and either become involved with it in some way and/or do nothing about it.**

4.1 The principle offences of money laundering under the legislation are

- Concealing, disguising, converting, transferring or removing criminal property (Section 327)
- Being concerned in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (Section 328)
- Acquiring, using or possessing criminal property (Section 329)

4.2 However there are also two further ‘third party’ offences that relate to the suspicion or knowledge that money laundering is taking place, and these are the ones that members of staff are more likely to commit

- Failure to disclose one of the principle offences
- Tipping Off – where someone informs a person who is, or suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated, or prejudicing an investigation.

**To comply with the legislation all staff are required to follow the reporting procedure set out in this policy if they have knowledge of or suspicion of money laundering taking place.**

### **4.3 Recognising Money Laundering.**

At all times staff should:

- be wary of unusually large cash transactions;
- be wary of the absence of an obvious legitimate source of funds
- be alert to the possibility of money laundering by a client or a prospective client;

4.4 Possible signs of money laundering are set out in Appendix 2.

## **5. Reporting Procedure**

5.1 Where you know or suspect that money laundering activity is taking place (or has happened) you must immediately notify the MLRO on the form set out in Appendix 3. If you do not immediately notify the MLRO then you may be liable to prosecution.

5.2 You must still report your concerns, even if you believe someone else has already reported their suspicions of the same money laundering activity.

5.3 After reporting:

- you must not make any further enquiries into the matter yourself and you must assist the MLRO as requested;
- at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, otherwise you may commit a criminal offence of “tipping off”. Be very careful what you say; preliminary enquiries of a client to obtain more information (e.g. confirm their identity, clarify the source of funds) will not amount to tipping off unless you know or suspect that a report has been made;
- You should not record on a client file that the MLRO has been notified – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a secure manner. Such disclosures to the MLRO will be protected in that they will not be taken to breach any restriction on the disclosure of information.

5.4 You should be aware that:

- If you deliberately shut your mind to the obvious, you will still be responsible under the legislation.
- Although you do not need actual evidence money laundering is happening, mere speculation or gossip is unlikely to be sufficient to show ‘knowledge or suspicion’.
- The legislation covers the proceeds of any crime, no matter how minor and irrespective of the size of the benefit gained.

## **6 Action by Money Laundering Reporting Officer**

6.1 The MLRO will:

- Advise you of the timescale within which he expects to respond to you;
- will consider the form and any other available internal information he thinks relevant;
- undertake such other reasonable inquiries he thinks appropriate;
- seek specialist legal and financial advice (if appropriate);
- once the MLRO has evaluated the disclosure report and any other relevant information, he must make a timely determination about money laundering, as to whether:



- ❖ there is actual or suspected money laundering taking place; or
- ❖ there are reasonable grounds to know or suspect that is the case; and
- ❖ whether he needs to seek consent from the National Criminal Intelligence Service (NCIS) for a particular transaction to proceed.

6.2 If so then the MLRO must disclose this as soon as practicable to the NCIS (the National Criminal Intelligence Service) on their standard report form and in the prescribed manner, unless there is a reasonable excuse for non-disclosure to the NCIS (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

6.3 All disclosure reports referred to the MLRO and reports made by the MLRO to the NCIS must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

6.4 The MLRO commits a criminal offence if he or she knows or suspects, or has reasonable grounds to do so, through a disclosure being made to him or her, that another person is engaged in money laundering and he or she does not disclose this as soon as practicable to the NCIS.

6.5 The MLRO should always consult the Borough Solicitor in complex or difficult cases.

**Please take prompt and proper action in accordance with this Policy if you have any suspicions and if you have any concerns whatsoever regarding any transactions then you should contact the MLRO as you can be held criminally liable for a number of offences.**

## **7 Review of this Policy**

7.1 This Policy will be reviewed and updated annually, as necessary, by the Chief Internal Auditor.

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APPENDIX 1

**IDENTIFICATION PROCEDURE AND RECORD KEEPING PROCEDURES  
FOR FINANCIAL SERVICES, AUDIT AND LEGAL STAFF**

**A. General**

The procedures set out in this Appendix apply to Council Employees conducting ‘relevant business’ (set out below) and these are mainly accountancy and audit services carried out by Financial Services and certain financial, company and property transactions undertaken by Legal Services.

“Relevant” for the purposes of the legislation is the provision **by way of business** of:

- advice about the tax affairs of another person by a body corporate;
- accountancy services by a body corporate;
- audit services;
- legal services by a body corporate which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction);
- services in relation to the formation, operation or management of a company or a trust.

**B. Identification Procedure**

Where the Council is carrying out relevant business (the provision of accountancy, audit and certain legal services ‘by way of business’ to third parties) and:

- a) forms an ongoing business relationship with a client; or
- b) undertakes a one-off transaction involving payment by or to the client of 15,000 Euro (approximately £10,000) or more; or
- c) undertakes a series of linked one-off transactions involving total payment by or to the client(s) of 15,000 Euro (approximately £10,000) or more; or
- d) it is known or suspected that a one-off transaction (or a series of them) involves money laundering;

then this Identification Procedure must be followed before any business is undertaken with that organisation or person. For the procedure, you must obtain satisfactory evidence of identity, as soon as practicable after instructions are received (unless evidence has already been obtained). This applies to existing and new persons or organisations, but identification evidence is not required for matters entered into prior to 1 March 2004.

Satisfactory evidence is evidence which:

- is capable of establishing, to the satisfaction of the person receiving it, that

the client is who they claim to be; and

- does in fact do so.

Evidence of identity should be obtained as follows:

1. Signed, written instructions on official letterhead at the outset of a particular matter. Such correspondence should then be placed on the Council's file along with a prominent note explaining which correspondence constitutes the evidence and where it is located.

2. If you are undertaking work for a new persons or organisations or further instructions from a person or an organisation not well known to you, then you may also wish to seek additional evidence of the identity of key individuals in the organisation and of the organisation itself, for example:

- checking the organisation's website to confirm the business address;
- attending them at their business address;
- asking the key contact Employee to provide evidence of their personal identity and position within the organisation; for example signed, written confirmation from their Head of Service or Chair of the relevant organisation.

***If satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot proceed any further until this becomes available.***

The law states that particular care must be taken when the person or organisation that is paying you to do work or who the council is an agent for, is not physically present when being identified: this is always likely to be the case for the Council, given that its relevant business can only be undertaken for other local authorities and designated public bodies (not individuals) and therefore instructions will usually be given in writing.

There are a limited number of exceptions where identification evidence does not need to be obtained, for example evidence is not required when a purchaser of property is represented by a legal professional (eg solicitor, legal executive, licensed conveyancer etc): this is because we are entitled to presume that the professional has complied with the legislation and checked the purchaser's identity (as their own client).

General guidance on money laundering legislation suggests that fairly rigorous identification checks should be made: for example, in relation to an organisation, evidence should be obtained as to the identity of key individuals within the organisation along with evidence of identity of the business entity and its activity.

You will see, however, that the Council's Client Identification Procedure provides for only the most basic of identity checks – signed, written instructions on the organisation in question's headed paper at the outset of a particular matter. This is not because client identification is not important, but because of the need to introduce a procedure that is workable, appropriate to the nature of the Council as an organisation and proportionate to the risk to the Council of money laundering, which has been assessed as low.

### **C. Recording Keeping Procedures**

Each unit of the Council conducting relevant business must maintain records for at least five years from the end of the business relationship or one-off transaction(s) of:

- identification evidence obtained; and
- details of all relevant business transactions carried out for those persons or organisations for whom we have obtained evidence

This is so they may be used as evidence in any subsequent investigation by the authorities into money laundering.

The precise nature of the records is not prescribed by law however they must be capable of providing an audit trail during any investigation, for example distinguishing the person or organisation and the relevant transaction and recording in what form any funds were received or paid.

In practice, Council business units will be routinely making records of work carried out for persons or organisations in the course of normal business and these should be sufficient for this requirement.

## POSSIBLE SIGNS OF MONEY LAUNDERING

It is impossible to give a definitive list of ways in which to spot money laundering or how to decide whether to make a report to the MLRO. The following are types of risk factors that may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity:

### General

- A secretive client: e.g., refuses to provide requested information without a reasonable explanation;
- Concerns about the honesty, integrity, identity or location of a client;
- Illogical third party transactions: unnecessary routing or receipt of funds from third parties or through third party accounts;
- Involvement of an unconnected third party without logical reason or explanation;
- Payment of a substantial sum in cash;
- Significant overpayments by a client and the subsequent requests for refunds;
- Absence of an obvious legitimate source of the funds;
- Where, without reasonable explanation, the size, nature and frequency of transactions or instructions (or the size, location or type of a client) is out of line with normal expectations;
- A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational;
- Refunds following the cancellation or reversal of an earlier transaction;
- Requests for release of client account details other than in the normal course of business;
- Poor business records or internal accounting controls;
- A previous transaction for the same client that has been, or should have been, reported to the MLRO.

### Property

- Unusual property investment transactions if there is no apparent investment purpose or rationale;
- Re property transactions, funds received for deposits or prior to completion from an unexpected source or where instructions are given for settlement funds to be paid to an unexpected destination.

**Reporting Forms**  
**CONFIDENTIAL**

**Report to Money Laundering Reporting Officer re money laundering activity**

**To: [ ] Money Laundering Reporting Officer**

From: .....  
*[insert name of employee]*

Directorate: ..... Ext/Tel  
No: ..... *[insert post title and Business Unit]*

**DETAILS OF SUSPECTED OFFENCE:**

**Name(s) and address(es) of person(s) involved:**  
*[if a company/public body please include details of nature of business]*

**Nature, value and timing of activity involved:**  
[Please include full details e.g. what, when, where, how. Continue on a separate sheet if necessary]

**Nature of suspicions regarding such activity:**  
*[Please continue on a separate sheet if necessary]*

**Has any investigation been undertaken (as far as you are aware)?** Yes/No

**If yes, please include details below:**

**Have you discussed your suspicions with anyone else?** Yes/No

**If yes, please specify below, explaining why such discussion was necessary:**

**Have you consulted any supervisory body guidance re money laundering? (e.g. the Law Society)** Yes/No

**If yes, please specify below:**

**Do you feel you have a reasonable excuse for not disclosing the matter to the NCIS? (e.g. are you a lawyer and wish to claim legal professional privilege?)**

Yes/No

**If yes, please set out full details below:**

**Are you involved in a transaction which might be a prohibited act under sections 327- 329 of the Act and which requires appropriate consent from the NCIS?** Yes/No

**If yes, please give details below:**

**Please set out below any other information you feel is relevant:**

**Signed:**.....**Dated:**.....

***Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence, which carries a maximum penalty of 5 years' imprisonment.***

THE FOLLOWING PART OF THIS FORM IS FOR COMPLETION BY THE MLRO

**Date report received:** .....

**Date receipt of report acknowledged:** .....

**CONSIDERATION OF DISCLOSURE:**

<b>Action plan:</b>    
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**OUTCOME OF CONSIDERATION OF DISCLOSURE:**

<b>Are there reasonable grounds for suspecting money laundering activity?</b>    
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*[Please tick the relevant box]*

**If there are reasonable grounds for suspicion, will a report be made to the NCIS?**  
Yes/No

**If yes, please confirm date of report to NCIS:**  
.....  
and complete the box below:

<b>Details of liaison with the NCIS regarding the report:</b>  <b>Notice Period:</b> ..... to .....  <b>Moratorium Period:</b> ..... to .....
---

**Is consent required from the NCIS to any ongoing or imminent transactions which would otherwise be prohibited acts?** Yes/ No

**If yes, please confirm full details below:**



**Date consent received from NCIS:**

.....

**Date consent given by you to employee:**

.....

**If there are reasonable grounds to suspect money laundering, but you do not intend to report the matter to the NCIS, please set out below the reason(s) for non-disclosure:**

*[Please set out any reasonable excuse for non-disclosure]*

**Date consent given by you to employee for any prohibited act transactions to**

**proceed:.....**

**Other relevant information:**

**Signed:..... Dated:.....**

...

**THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS**

**DARLINGTON BOROUGH COUNCIL: HOUSING BENEFIT/COUNCIL TAX BENEFIT ANTI-FRAUD POLICY.**

- Statement of Intention

Darlington Borough Council (the Council) is committed to the delivery of Housing Benefit and Council Tax Benefit to its citizens. Benefits are for those who are most vulnerable in society and should be assessed and paid at least within Government Guidelines.

The Council is committed to ensuring that claimants get the benefits to which they are entitled and, in line with our Anti-Poverty Strategy, will ensure that benefits are taken-up by those people who need to access the service.

However, the Council understands that some people will attempt to obtain benefits to which they are not entitled. Sometimes this is done with planning and intention. Where intention and planning is involved, then the Council will consider the circumstances of the individual and, where appropriate, will consider prosecution under s.111A or s112A of the Social Security Administration Act (1992).

- Benefit Administration and Counter-Fraud Action

The Council believes that it is important to discourage and prevent fraud from taking place in the first instance. The Council will therefore implement vigorous procedures for the verification of claims. The minimum standard for verification will be the guidelines given in the DWP's Verification Framework. Only original documents can be accepted as evidence of a customer's income, capital and where appropriate, rent. When a customer applies for Housing and/or Council Tax benefit for the first time, they must provide proof of their and any partner's identity and national insurance number, again providing original documents. These documents will be scrutinised by trained staff, to ensure that they are not forged or counterfeit. Where a document is found to be suspicious, it will be passed to either the Benefit Supervisor or a member of the Benefit Enquiry Unit, for further investigation.

Where a customer has applied for Housing Benefit through the CMS, they will undertake all checks on identity, National Insurance Number, and income, capital etc. They will forward any proof they receive of the rent. It is the Council's responsibility to check the information forwarded by the DWP, to ensure that it complies with the standards set by the Verification Framework. If there is any doubt regarding a document, or series of documents, then the Council will ask the customer to provide them again.

Every month, the Council will send a sample of the data held on customers to the Housing Benefit matching Service. They will apply analytical formula to the data, and will provide the Council with a list of customers whose claims should be reviewed. This list will be used by the Verification Team to select claims to be reviewed either by visiting them or by sending out a form for completion. The form will collect the minimum standard of data set out in Schedule 6 in the Housing Benefit/Council Tax Benefit Security Manual.

However, although claims for benefit will be subject to close scrutiny, the Council is committed to delivering benefit within the official government time scales. Assistance will be given by the Council to claimants of benefits in completing and applying for benefit and to maximise take-up.

The Council's application form for Housing Benefit/Council Tax Benefit will conform to the BFI model claim form and will include questions and instructions in plain language giving the customer clear directions to what is required of them. The form will carry warnings and information, so that the claimants will understand the risks to them should they misinform the Council of their personal circumstances. The form will contain all the information the customer will require to understand their rights.

- Action on Overpayment of Benefit

In some instances however, benefits or extra benefits will have been obtained from the Council where there is no entitlement, e.g. due to a change in circumstances. This may have been done without planning, but with knowledge that the changes in personal circumstances may effect benefit entitlement and that the change should have been reported to the Council. Under these circumstances, the Council will consider the particulars of the individual case and, where the claimant could reasonably be expected to know that the failure to report the change in circumstance would cause a fraudulent overpayment of benefit, the Council will consider if a sanction is appropriate e.g. formal caution, administrative penalty or prosecution under s112(1A) Social Security Administration Act 1992.

The methodology for instigating a sanction is detailed in the Sanctions Policy which compliments this document.

In some circumstances, it may not be in the public interest to take action against a person who has made either a false claim, or has failed to report a change in circumstances which has resulted in them obtaining benefit to which they were not entitled. Under these circumstances, the Council will seek to recover any overpaid Benefit. It would not be the Council's intention to place the claimant into hardship, but failure to come to a reasonable arrangement for repayment may result in taking civil recovery action through the courts.

- Action on Overpayment of Benefit to Landlords

Payments of benefit are often made directly to Landlords on behalf of the claimant. In some cases, Landlords falsify claims or assist claimants to falsify claims for benefits. The Council will prosecute landlords who commit an offence under s.111A (1D,1E,1F) of the Social Security Administration Act 2001 (Fraud Act 2001).

Landlords who are receiving benefit directly are also obliged to report any changes in their tenant's circumstances. The Social Security Administration Act 2001 states that where the landlord has notified the authority or the DWP in

**writing** that they suspect there has been an overpayment, and it appears to the Council that: -

- There are grounds for instituting proceedings against any person for an offence under s111A or 112(1) of the Administration Act (dishonest or false representations for obtaining benefit)
- There has been a deliberate failure to report a relevant change of circumstances and the overpayment occurred as a result of that deliberate failure

The Council is satisfied that the landlord has not: -

- Colluded with the claimant so as to cause the overpayment
- Acted. Or neglected to act, in such a way so as to contribute to the period, or the amount of the overpayment.

In these circumstances only, the Council cannot recover any Housing Benefit overpayments from the landlord where the rent was paid directly to them.

When a Landlord fails to notify the Council of a change of circumstances, they may be paid more benefit for their tenants than they are entitled to. The Council makes Landlords aware of their duty to report known changes and failure to do so is an offence under s.112 (1C,1D.1E) of the Social Security Administration Act 2001 (Fraud Act 2001). Where an offence has been committed, the Council will consider an appropriate sanction as defined in the Sanctions Policy and will recover any overpaid benefit either directly from ongoing payments of benefit to the Landlord or through civil recovery through the courts.

The Council will prosecute any persons involved in planned-fraud involving more than person.

- Obtaining information

The Council will use all the powers granted to the Council by the Secretary of State for Social Security under the Social Security Administration Act (1992). The Council will use the National Anti Fraud Network and the Operational Intelligence Unit to gain information under the Social Security Fraud Act (SSFA) 2001.

- Working in Partnership with Other Organisations

Where necessary, the Council will work in co-operation with other organisations such as the Police, DWP, Home Office, Pension Service, Inland Revenue and Customs and Excise in order to combat organised benefit fraud.

The Council will also sign the Service level agreement between themselves and the Counter Fraud Investigation Service of the DWP. The Council will actively monitor this service level agreement, meeting every quarter with the local DWP Counter Fraud Investigation Service to discuss any issues.

The Council will also actively look for opportunities to work together with colleagues from the DWP to investigate allegations of fraud. The Council will notify the DWP using the appropriate forms of any potential joint working cases. The Council will also invite the DWP to any Interviews Under Caution where a passported benefit is also in payment. The Council will also undertake to respond within 10 working days of any invitations for joint working or joint Interview Under Caution sent by the DWP.

- The Data Protection Act

The Council will be correctly registered under purpose 058 of the Data Protection Act 1988. Where required, the Council will use exemption 29(1), in order to protect those organisations that may have information to supply to the Council in its investigation of fraud

- Human Rights Act

The Council will ensure all those being investigated will have their civil liberties observed in accordance with the Human Rights Act 1998 and the Regulations of Investigatory Procedures Act 2000.

- Duties and Considerations of Benefit Fraud Officers

When investigating fraud, Council benefit fraud investigators, and visiting officers will work within the guidelines of the Police and Criminal Evidence Act and apply the Council's policies on equal opportunities and customer care. The Council's officers will at all times apply appropriate procedures to maintain confidentiality.

When obtaining information from claimants, partners or third parties the council will observe a code of conduct and make that code available to those who are being asked to supply the information.

It is the duty of the fraud investigators to investigate all referrals of suspected or alleged benefit fraud and to establish the facts of each case.

- Duties and Considerations of all Council Employees

The Council is committed to controls designed to prevent fraud being perpetrated by its own staff. Therefore, all staff employed in Benefits and Investigation Units will be rigorously vetted at the time of application. If misrepresentation is found to have occurred on the application form or interview, disciplinary procedures will be considered

The Council will require all Council officers involved in the administration of benefits to report to the Benefits Manager details of any property that they are renting to tenants and any claims of benefit to which they have some connection. This may be a claim of benefit where the officer is the landlord, the claimant, a partner, dependent or non-dependant on the application. If a benefits officer has knowledge of a claim where he/she is a close family member, as described by schedule 2 of the Housing Benefit and Council Tax Benefit General Regulations, then the officer must report this case to the Benefits Manager.

Interest in a benefit claim must be registered in the Register of Interests in accordance with agreed procedures.

Any Council officer found to be involved in an offence under the Social Security Administration Act 1992, or any other criminal offence involving claims of benefit either at this Council, any other Council or the Department of Work and Pensions, the Pensions Agency or the Inland Revenue will be disciplined under the Council's Disciplinary Procedures, in addition to any prosecution proceedings that may occur.

Where any Council officer investigating a fraud abuses their powers, an investigation will take place with a view to taking disciplinary action.

- In Summary
  - The Council is committed to ensuring that people should get all the benefits to which they are entitled.
  - The Council will act against those people who systematically obtain benefits to which they are not entitled.
  - Any benefit obtained to which a claimant is not entitled will be repaid in full to the Council. However, the Council will take care not to place anyone into hardship.
  - The Council will respect the civil liberties of all persons involved in an investigation of alleged fraud.

This policy follows principle seven of the Government's Green Paper on welfare reform in-so-far as it implements the three-pronged campaign against fraud: improved detection; implementation of a more effective deterrence and better prevention.

**Darlington Borough Council: Housing Benefit/Council Tax Benefit Anti-Fraud Strategy**

**Purpose**

This strategy is designed to compliment the Housing Benefit/Council Tax Benefit Anti Fraud policy by detailing the mechanisms the Council will employ to deliver the policy's objectives.

It should also be read in conjunction with the Housing Benefits/Council Tax benefits Sanctions policy which outlines sanctions which may be taken against persons involved in fraudulent activity in this area.

The Benefit Enquiry Unit comprises the Benefit Supervisor, 3 Benefits Investigators and 1 Benefit Clerk. They will sift all allegations of Housing and or Council Tax Benefit Fraud made to the Council against set criteria. The Benefit Supervisor will then look at these allegations, and bearing in mind the result of the sifting process, will determine which allegations are suitable to be passed to the Benefit Investigators to investigate.

The Director of Corporate Services will write to the Secretary of State requesting the appointment of named Housing Benefit Authorised Benefits Officers. These Authorised Benefits Officers will have the power of entry and inspection under Section 110A of the Social Security Administration Act 1992. Letters of appointment will last for no more than one year, carry the full name of the Authorised Benefits Officer, the start and end dates of the appointment, reference to section 110A of the Social Security Act 1992, the Council's logo and address and contact number for verification, the image of the Authorised Benefits Officer and the authorising signature.

The Authorised Benefits Officers may use the letters of appointment to inspect business premises and to interview persons who may hold information that has relevance to a claim of Housing Benefit or Council Tax Benefit. Any abuse of these powers will result in the officer being subject to disciplinary action by the Council.

**Targets**

Targets will be set for the Benefits Investigators. These will be set annually in the Benefit Service plan after consultation with the Benefit Supervisor. The will reflect the Best Value Performance Indicator (BVPI) 76, the Service Level Agreement between the DWP Counter Fraud Investigation Service and the Council and the DWP performance standards. The Benefit Supervisor using a series of system reports and spreadsheets, as well as qualitative monitoring through checking individual cases will monitor these targets. The outcomes will be reported quarterly to the Benefit Manager.

### **Verification of Housing Benefit/Council Tax Benefit claims**

Benefits Officers and Visiting and Benefit Investigation Staff or other council employees who have received training in the Verification Framework will verify the information on the application form for Housing/Council Tax Benefit. All supporting documentation provided at the Benefit Office will be scanned and authenticated on the Data Image Processing System or photocopied and carry a printed name and an authenticating signature and held on file. Only original documents will be accepted as supporting evidence for a claim. These will be rigorously checked to ensure that they are not forgeries or counterfeits. Where it is suspected that a document is not an original or has been tampered with, then the employee will refer the document to either the Benefit Supervisor or BEU for further investigation.

Care will be taken to verify information on the form and documentation. Whenever necessary, this will including contacting third parties or interviewing them under section 110A, 109B & 109C of the Social Security Administration Act 1992 and in line with the Police and Criminal Evidence Act. Obtaining evidence will be done in compliance with the Data Protection Act 1998.

All claimants of Housing Benefit/Council Tax Benefit will be reviewed following a programme of visits or postal reviews, which will be no more than once every 6 months for working age customers, and no more than once every 3 years for customers aged 60 or more.

### **Data Protection Registration**

The Council will maintain its registration for purpose 058 under the Data Protection Act 1998.

### **Visiting of Claimants**

The Council will maintain a visiting regime to confirm residency and cross-reference the information on the application form. This will include claimants in receipt of Income Support and Jobseekers Allowance.

The Verification Officers may carry out some un-notified visits based on an analysis of risk, during the year, in order to confirm that the details of the claim have not altered in a way. This analysis will include the following factors:- possibility that the customer is not resident, possibility that the customer has an undeclared member of the household , possibility that another member of the household is not resident, age of customer, health and social factors, type of tenancy, any other information known about the customer or a member of their household.

### **The Application Form**

A customer in Darlington can apply for Housing Benefit either by completing a Darlington Borough Council application form, or by completing a form when they make a claim for benefit with the DWP. The DWP will then forward to the Council a document called a "LA Input document" which will contain all the information necessary to assess a claim for Housing/Council Tax Benefit. They



will also gather the necessary supporting evidence, and will undertake to verify it's authenticity to the standards established in the Verification Framework. However, it remains the responsibility of the Council to ensure that this has been done correctly, and where there is a doubt, the Council will ask for the customer to provide the information again.

The Darlington Borough Council Housing Benefit/Council Tax Benefit application form will adopt the Benefit Fraud Inspectorate's standard housing benefit/council tax benefit claim format.

It will be reviewed annually to ensure that it asks plain language questions that help the claimant in obtaining benefit. At the same time, the form will make clear to the claimant that misinformation will not be acceptable and could result in the claimant being prosecuted. Mandatory questions will need to be filled in by the claimant or their agent. Failure to respond to a mandatory question may result in the form being returned to the claimant.

The Council will also use a review application form that will at least meet the standard set by the model review application form found in Schedule 6 of the Verification Framework.

### **Establishment of an Anti-Fraud Hot-Line**

The Council will maintain and advertise a hot-line to enable concerned members of the public to report those concerns. The hot-line will be private and confidential. A Benefits officer will sift all calls applying risk analysis criterion. These are a set of criterion such as the level of detail about the allegation and the person concerned, an evaluation of the intelligence, the financial status of the person concerned, the age of the person and their household makeup, when the claim was last reviewed, and if any previous allegations have been received. These are all given a numerical value, and the allegation is given a total numerical value. The case along with the outcome of the Risk Analysis will be passed to the Benefit Supervisor to decide which are accepted for investigation. The hot-line will be advertised in all Council publicity as well as in the local press. The Council will also subscribe to the National Anti Fraud hot-line (called the Shared Fraud Hotline) and will publicise this service in all its publications.

### **Publicity**

Publicity will follow a twin-track approach; inviting those who feel that they have an entitlement to benefit to apply and discouraging those who might seek to defraud the system. All publicity will seek to inform the public that the Council has an investigation team whose purpose is to investigate fraud and potential fraud and to take legal action against those defrauding the Council.

Methods of publicity for the Council's anti-fraud action will include newspaper adverts, articles in the Council produced publications, and articles on the internet website. All successful prosecutions will be reported to the publicity department for them to publicise.

### **Fraudulent Actions by Landlords**

Whilst the Council recognises that the majority of the Landlords in the district are honest and fair, it also recognises that a few Landlords do defraud, or attempt to defraud, the Housing Benefit system. Therefore, the Council will expect Fraud Authorised Benefits Officers to use their powers under the Housing Benefit (Supply of Information from Landlords) Regulations 1997 in addition to powers under the social security administration act 1992 (amended) to obtain information from Landlords. These powers will be used reasonably and in compliance with the regulations. Landlords will be expected to comply with requests for information or the Council will apply for them to be fined by the Courts.

### **Confidential Reporting Policy**

The Council will investigate all allegations of abuse made under the Council's Confidential Reporting Policy.

### **Register of Interests**

The Council will undertake quarterly checks on all properties registered in The Register of Interest to ensure that no benefit payment has been made to these properties without the knowledge of the Benefit Manager or Director of Corporate Services.

### **Data Matching Exercises**

Data Matching is a method of checking details held in 2 or more separate databases, and looking for discrepancies between the data held. For example, the Council may hold a record that shows a person is claiming Housing Benefit based on an income of Job Seekers Allowance (income based), while the DWP database may hold a record that shows this person no longer claims as they have told them that they have started full time work. The law allows data matching when it is to detect or prevent crime.

The Council uses the Department for Work and Pension's Housing Benefit Matching Service, which checks claims of Housing and Council Tax Benefit for potential incorrectness against other local authorities, Inland Revenue, Royal Mail data, Pension Service and the Department of Work and Pensions benefits on a monthly basis.

The Council uses the National Fraud Initiative administered by the Audit Commission, which allows comparison of Housing Benefit data against other data sources.

The Council will also run data matching exercises against its own databases. This will include databases holding information concerning Council employees and Council Members. The Council will notify all employees beforehand that a data match is about to be conducted across their databases, in accordance with the principles of the Data Protection Act.

At all times, the Council will observe the advice and guidance of the Data Protection Registrar in the area of Data Matching.

### **Working in Partnership**

The Council is keen to undertake specific fraud drives by working with:

- the Police;
- the Department of Work and Pensions;
- the Pensions Service;
- the Inland Revenue;
- H M Customs And Excise;
- other Councils;
- other Council Departments.

*Whilst the Council is committed to the exchange of information with other organisations, either on a case basis or through the mechanism of data-matching, the Council will observe the law on Data Protection, Human Rights and the rules of confidentiality at all times.*

#### *Specific Targeted Fraud Campaigns*

*The Council will undertake a specified number of fraud campaigns each year. The number to be undertaken each year will be specified in the Benefit Service Plan. This will be done either in partnership with other organisations or alone. All campaigns will be designed with due regard to the requirements of the Council's Equal Opportunity Policy, Data Protection Act 1998 and the Human Rights Act 1998.*

### **The Use of Case Management Systems**

The Council's Benefit Enquiry Unit will use a computerised Fraud System, which will interface with the Housing Benefit Computer System. This will assist officers by aiding the proper management, monitoring and recording of relevant claims.

The Case Management System will also assist officers to adhere to the Codes of Practice outlined in the Police and Criminal Evidence Act and the Social Security Fraud Act 2001

## **Police and Criminal Evidence Act Codes of Practice**

In undertaking an investigation the Council will observe the Police and Criminal Evidence Act Codes of Practice.

## **Code of Conduct for Obtaining Information**

The council will issue a flyer to third parties when using their powers to obtain information. This will be based on the model publications issued by the Department of Works and Pensions. Full codes of conduct for obtaining information will be available on request.

### **Intelligence**

The Council will subscribe to the National Anti-Fraud Network or Operational Intelligence Unit in the Department of Work and Pensions in order to ensure the proper exchange of intelligence concerning possible and probable fraud activity. All sanctions will also be recorded with the Professional Standards Unit.

*The Council will subscribe to publications about fraud and benefits in order to maintain current knowledge of fraud issues.*

The council will enter into a Service Level Agreement with the Department of Work and Pensions Counter Fraud Investigation Service. All antecedents will be checked with the Solicitors Office (SOLP). Where appropriate the council will record cautions with the Professional Standards Unit.

The Council will subscribe to appropriate organisations such as DIG (Durham Investigators Group), LAIOG (Local Authority Investigation Officers Group) (Northern), LAIOG (Local Authority Investigation Officers Group), JOB (Joint Operational Board).

## **Training**

The Council will expect its investigators to be fully trained and to maintain this training. Wherever possible, it is desirable for investigators to hold suitable qualifications such as PINS (Professionalism IN Security) or to gain this qualification as soon as practicable.

The Council will also provide fraud awareness training for all new employees to the Benefits team. This will include a short period of time spent with a fraud investigator. The Council will provide procedures for all staff to help them to identify and refer suspicions of fraud to the Benefit Enquiry Unit. The Benefit Supervisor will provide annual refresher training to all members of the Benefits team, and the Housing and Council Tax departments.

The Council will provide training in the standards of the Verification Framework to all new employees of the Benefits team. It will also undertake to provide this training to all new employees of the Housing Department that have been identified by them as someone who will receive supporting evidence for Housing/Council

Tax Benefit applications. This will include a session on original documents and checking their authenticity, appropriate use of the UV scanner and what steps to take if they suspect a document is either not an original or has been tampered with. It will also include a session on identity fraud. The Benefit Supervisor will undertake annual refresher training for all Housing and Benefits staff on the Verification Framework, Original Documents training and Identity Fraud.

## Sanctions Policy

### Introduction

#### Purpose

The purpose of this document is to assist the Council in making a decision on what action should be taken in the light of a proven criminal breach of the law. The council has a fiduciary duty in relation to public resources. The delegated powers of the Council to the Director of Community Services enables officers to identify fraudulent claims for Housing and Council Tax Benefit fraud and to instigate prosecutions in appropriate cases. The Borough Solicitor has a delegated power to institute criminal proceedings.

This document has taken into consideration the requirements of the following legislation: -

- Data Protection Act 1998
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Public Disclosure Act 1998
- Freedom of Information Act 2000
- Social Security Administration Act 1992
- Social Security Administration (fraud) Act 1997
- Child Support, Pensions and Miscellaneous Benefits Act 2000
- Social Security Fraud Act 2001
- Local Government Act 2000

Every case will be decided based on the facts.

In considering whether a sanction is appropriate the Council must therefore consider the following: -

- Is there sufficient evidence for a realistic prospect of a conviction?
- Is a prosecution in the public interest?
- The deterrence value of publicity.

When a potential case is identified by a Benefit Fraud Investigator, the case papers must be passed to the Benefit Supervisor for consideration. If the Benefit Supervisor considers the case to be suitable for a sanction, they will prepare a summary and make a recommendation. A panel made up of the following people will then consider the

recommendations: -

The Housing Benefit and Supporting People Manager, the Deputy Benefit Manager, the Senior Control Officer, the Customer Services Officer, the Training and Appeals Officer, and the Systems Administrator for Housing Benefits.

The decision to apply a sanction will be taken by the Housing Benefit and Supporting People Manager in consultation with the panel.

In making the decision as to whether to apply a sanction, the following criteria will be used -

- The amount of money obtained and the duration of the offence;
- The suspect's physical and mental condition;
- Voluntary disclosure;
- Any previous incidence of fraud;
- Social factors;
- Whether there is evidence that the defendant was a ringleader or an organiser of the offence;
- Whether there is evidence of the offence being premeditated;
- Whether there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct;
- Whether the offence, although not serious in itself, is widespread in the area where it was committed;
- Whether the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they can pay compensation)
- Failure in the investigation;
- Failure in benefit administration, including delay;

### **Sanctions**

Further to the above, the level of overpayment will in part determine whether a sanction is appropriate, and if so which one.

#### Informal warning letter

*If the following apply: -*

- The overpayment is less than £50.00 in total
- This is a first offence
- There was no planning involved in the process
- There was no other person involved in the fraud
- The person is in the opinion of the panel in genuine hardship
- The person is a pensioner, or is in receipt of support and assistance from Social Services or requires supported accommodation

This case may not be appropriate to sanction. It may be appropriate for the Benefit Supervisor to send a warning letter to the customer.

Formal Caution

The formal caution system was introduced in England and Wales on 1/06/1998. It is a warning given in certain circumstances as an alternative to prosecution.

If the following apply: -

- The overpayment is more than £50.00 but less than £2,000.
- This is a first offence
- The person has admitted the offence during the interview under caution
- The evidential requirement for prosecution is satisfied
- There are no mitigating social or health factors

This case may be appropriate to offer a formal caution.

Administrative Penalty

*If the following apply: -*

- The overpayment is more than £50.00 but less than £2,000.
- This is a first offence
- This is a second offence, and the person has previously received a formal caution for an earlier offence
- The person has not admitted the offence during the interview under caution
- The evidential requirement for prosecution is satisfied.
- There are no mitigating social or health factors
- Awarding an Administrative Penalty will not cause severe hardship

This case may be appropriate to offer an Administrative Penalty. Section 115A and 115B of the Social Security Administration Act 1992, and subsequently amended by the Social Security Administration (Fraud) Act 1997 and the Social Security Fraud Act 2001 governs the use of Administrative Penalties. An Administrative Penalty is currently set at 30% of the gross recoverable overpayment, rounded down to the nearest penny.



### Prosecution

*If the following apply: -*

- The overpayment is £2,000 or more.
- There were other people involved in the fraud.
- There is evidence of planning involved in the fraud.
- The evidential requirement for prosecution is satisfied.
- There are no mitigating social or health factors.

If the panel recommends that the case be submitted for prosecution then the Benefit Supervisor will refer the file to Legal Services.

Some cases will not fall into any of the above categories. However, every case will be considered on its own merits and action will be considered as appropriate.

### Legal Services

The Benefit Supervisor will pass the file to the prosecuting solicitor in legal services. They will consider the file within 10 working days, and will consider if there is sufficient evidence to proceed with a prosecution and apply the public interest test. The prosecuting solicitor will notify the Benefit Supervisor whether the case should be prosecuted or not.

If the prosecuting solicitor determines that the case should not be prosecuted then the Benefit Supervisor will send a warning letter to the customer.

If the case is suitable for prosecution, the file will be returned to the Benefit Enquiry Unit for a prosecution file to be prepared.

### Joint Working

Where the case has been investigated as part of a joint working exercise, the Council will make its own determination of whether a sanction was appropriate, and if so which one. If the case has been jointly worked and interviewed under caution with the DWP the following procedures should apply: -

- If both parties consider offering a formal caution, both the DWP fraud sector manager and the Benefit Supervisor should offer this at the same meeting.
- If both parties consider offering an Administration Penalty, either the DWP or the Council can choose to delegate this function to the other party to offer on their behalf.
- If both parties consider prosecuting for the benefit offence, the Council will use Solicitors Branch (SOLP) as prosecuting solicitor.

Refusal to accept a formal caution or administration penalty

If a customer refuses to accept a formal caution or administrative penalty the case will always be referred to legal services to consider prosecuting for the benefit offence.

**Administration Penalties for Employers**

Section 109B(2) or 109C of the Social Security Administration Act 1992 gives Authorised Officers the powers to make enquiries with employers regarding their employees wage details, where there is reason to believe that a benefit offence may be being committed. Section 115B of the Social Security Administration Act 1992 inserted by the Social Security Fraud Act 2001 governs the use of offering Administrative Penalties to Employers.

An Administrative Penalty may be appropriate where an employer has committed an offence of

- Making a false statement or
- Obstructing an Authorised Officer or
- Failing to provide the required information or
- Committing false accounting

when dealing with an enquiry concerning their employees i.e. under Section 109B(2) or 109C of the Social Security Administration Act 1992. The Council should establish that an offence has been committed, that there are grounds to take proceedings against the employer, but that this is not a first option. In these cases an Administrative Penalty of £1,000 may be offered to the employer.

However,

- If the Administrative Penalty is being offered to the employer and
- The grounds for instigating proceedings against them is because of incitement, conspiracy or aiding and abetting (i.e. conduct that facilitated the employee to commit a benefit offence) and
- The employers conduct involved more than 5 employees

an Administrative Penalty of £5,000 should be offered to the employer.

Where the employer has less than 5 employees the Administrative Penalty offered is calculated at £1000 multiplied by the number of employees involved in the employers conduct.

Repeat offences may be considered for prosecution.

**Recovery of fraudulent overpayments**

All overpayments that are found to be created as the result of fraudulent activity, will be vigorously recovered in line with the Anti fraud policy and strategy.

**Publicity**

Where appropriate and making use of the professional services within the Council, consideration should be given to releasing detail of any successful prosecution to the press.

Alternatively supplying such details as is reasonable in response to a request from a member of the press.

The decision on this matter should be based on whether such action will assist the objective of deterring fraud.

This Sanctions Policy is not designed to be a definitive document, and any prosecutions will always have deference to individuals' circumstances.