

# **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 Serious Organised Crime Agency (SOCA) for a particular transaction to proceed.

6.2 If so then the MLRO must disclose this as soon as practicable to the SOCA (the Serious Organised Crime Agency) on their standard report form and in the prescribed manner, unless there is a reasonable excuse for non-disclosure to the SOCA (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 SOCA 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 SOCA.

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.

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

**APPENDIX A**

**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 SOCA? (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 SOCA?**

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.***

**APPENDIX A**

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 SOCA?**  
Yes/No

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

<b>Details of liaison with the SOCA regarding the report:</b>  <b>Notice Period:</b> ..... to .....  <b>Moratorium Period:</b> ..... to .....
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**Is consent required from the SOCA 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 SOCA:**

.....

**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 SOCA, 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 Benefits Anti-Fraud Policy

- Statement of Intent

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 the relevant legislation such as s.111A or s112A of the Social Security Administration Act (1992).

- Action on Overpayment of Benefit

In some instances, 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.

Where appropriate, the Council will consider applying an overpayment penalty (called an administrative penalty which is currently set at 30% of the total gross overpayment) or issuing a local authority caution (called a formal caution).

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 can be 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 (either an administrative penalty or prosecution) 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 may 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 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 relative, as described by Regulation 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 Her Majesty's Revenue and Customs may 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.

- Duties and Considerations of Elected Members

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

- Whistleblowing Policy

The Council has set out its policy on whistle blowing in "The Whistleblowers Charter".

- 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 implement vigorous procedures for the verification of claims. The minimum standard for verification will be the guidelines given in the Department of Work and Pensions Security Guidance Manual. Generally, 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, and they are not entitled to Income Support, Job Seekers Allowance (income based) or Pension Credit, 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 to a supervisor or a member of the Benefit Enquiry Unit, for further investigation.

Where a customer has applied for Housing Benefit through the Department of Work and Pensions (DWP) Customer Management System, the DWP will undertake all checks on identity, National Insurance Number, and income, capital

etc. They will forward any rent proof they receive. 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 Department of Work and Pensions Security Guidance Manual. 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 any other suitable means. The form will collect the minimum standard of data set out in the DWP Security Guidance Manual.

However, although claims for benefit will be subject to close scrutiny, the Council is committed to delivering benefit within the Performance Standards. 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 Benefit Fraud Inspectorate 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.

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 may be considered.

- 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.

# Housing Benefit Anti fraud strategy

## Introduction

Darlington Borough Council's Housing and Council Tax Benefit Anti-Fraud Policy represents a commitment by the Council to implement a robust anti-fraud strategy in order to protect public funds and to ensure that benefits are delivered to those who have a true entitlement to them.

This strategy outlines the mechanisms whereby the Council will deliver the above commitment to its citizens.

## Resources

The Benefit Enquiry Unit (BEU) comprises of 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, 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.

## Performance Objectives

Targets will be set for the Benefits Investigators. These will be set annually in the Benefit Service plan after consultation with Staff. They will reflect the national Best Value Performance Indicators, 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 objectives to audit standards. 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 the appropriate training in the standards of verification shown in the Department of Work and Pensions Security Guidance Manual 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 authenticated. Only original documents, or documents which are considered to be from a secure source such as information received over the phone from Her Majesty's Revenue and Customs 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 a supervisor or BEU for further investigation.

Care will be taken to verify information on the form and documentation. Whenever necessary, this will include 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.

Claimants of Housing Benefit/Council Tax Benefit will be reviewed following a programme of visits or by other appropriate methods in accordance with guidance received from the Department of Work and Pensions.

### 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. 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 may include some of 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 Department of Work and Pensions(DWP), the Pension Service, or by telephone via the Department of Work and Pensions Customer Management Service. The DWP will then forward to the Council a document called an “LA Input document”, or an HCTB1, and the Pension Service will forward their own Housing and Council Tax Benefit forms 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 its authenticity to the standards established in the Department of Work and Pensions Security Guidance Manual. 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 the Security Guidance Manual.

### 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. The Benefits Section 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 Communications Team 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.

### Whistleblowing

The Council will investigate all allegations of abuse made under The Whistleblowers Charter.

### Register of Interests

The Council will undertake annual 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 he or she has 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, Her Majesty's Revenue and Customs, 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 District Audit, 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 principals 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,
- Her Majesty's Revenue and Customs,
- 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 may undertake fraud campaigns each year. 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 interfaces 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 also assists 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



## APPENDIX C

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 verification required in the Security Manual to all new employees of the Benefits Section and the Customer Services Section. It will also undertake to provide this training to all new employees of the Housing Division 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, Customer Services Section and Benefits staff on the standards of verification required by the Security Manual, Original Documents training and Identity Fraud.

# Housing Benefit Sanctions Policy

## Introduction

Darlington Borough Council is committed to the delivery of Housing Benefit and Council Tax Benefit to its residents. However the Council understands that some people will attempt to obtain benefit to which they are not entitled. The Council believes that it is important to discourage and prevent fraud in the first instance, and has implemented the minimum standards of evidence provided by the Department of Work of Pensions Security Guidance Manual. The Anti-fraud Strategy and Policy detail how this will be implemented by the Benefit Section.

This policy 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

## Policy

The purpose of this policy 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 Corporate 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.

Every case will be decided based on the facts.

## APPENDIX D

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 some of the following apply: -*

- 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 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 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 £100 but less than £2,000.
- This is a first offence or 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 more than one of the following conditions 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.
- The Solicitors Branch recommends that prosecution is appropriate rather than an Administrative Penalty or Formal Caution.

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 shall 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 or offer it at the same meeting.
- If both parties consider prosecuting for the benefit offence, the Council will use Solicitors Branch (SOLP) as prosecuting solicitor.
- When deciding whether a sanction or prosecution is appropriate, the decision will rest with the lead organisation. The other organisation will then decide whether they wish to join in with that party's sanction action.

***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, and the Overpayment Policy..

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