

**BENEFITS ANTI-FRAUD
POLICY
2013/14**

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Statement of Intention

Fareham Borough Council (the Council) is committed to the delivery of Housing Benefit and Council Tax Support to its residents. Housing Benefit and Council Tax Support are for those who are most vulnerable in society and should be assessed and paid within Government guidelines and the relevant legislation.

The Council is committed to ensuring that claimants receive the benefits and support to which they are entitled and will ensure that these are taken up by those people who need access to the service.

However, the Council acknowledges that some people will attempt to obtain money to which they are not entitled. The Council will not tolerate abuse of the benefits system and will take proactive and reactive steps with a view to the prevention and detection of fraud and recovery of overpayments.

This Benefits Anti-Fraud Policy details our approach to reduce the opportunity for fraud and error to occur within the benefits system and sets out our commitment to use all legal sanctions available, including prosecution.

Background and introduction

1. Local authorities have a statutory duty under section 151 of the Local Government Act 1972 to make arrangements for the proper administration of their financial affairs. This statutory duty includes the prevention, detection and deterrence of Housing Benefit and Council Tax fraud. With the abolition of Council Tax Benefit from 31 March 2013 and the requirement to devise a Council Tax Support scheme under Section 10 of the Local Government Finance Act 2012, there are new offences under this new scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.
2. This policy represents a commitment by Fareham Borough Council to implement a revised robust anti-fraud strategy to take into account these new Regulations in order to protect public funds and to ensure that Housing Benefit and Council Tax Support are delivered to those who have a true entitlement to them.
3. This policy outlines the mechanisms whereby the Council will deliver the above commitment to its citizens and demonstrate how it meets its duty to prevent, detect and deter benefit fraud as required in law.

Key Outcomes

4. The Council's vision is that Fareham remains a ***'prosperous, safe and attractive place to live and work'*** and to achieve this vision, the Council focuses its efforts and resources on achieving seven corporate priorities, two of which are applicable to this policy:
 - To build **strong and inclusive communities**
 - To be a **dynamic, prudent and progressive council**
5. An important contributor to both these priorities is the payment of the **right benefits to the right people at the right time.**

Service objectives

7. Housing Benefit and Council Tax Support are administered in Fareham by the Benefits Service in the Department of Finance and Resources. Dedicated Investigation Officers work with other Benefit Officers to carry out counter-fraud initiatives.
8. The Benefits Service Unit has the following service objectives:
 - Provide a Housing Benefit and Council Tax Support Service that meets the needs of claimants whilst reflecting the constraints of existing legislation.
 - Ensure that the correct benefits and support are being paid to those who are entitled to them.
 - To provide an efficient and effective investigation function

Definition of Fraud

9. In this policy, the definition of "fraud" shall be ***knowingly and intentionally obtaining or attempting to obtain Benefits or Support to which there is no entitlement through:***
- Making false declarations about the circumstances of a claim
 - Failing to report a change of circumstances
 - Colluding with others to commit Benefit fraud
 - Any other criminal actions for the purpose of facilitating the commission of Benefit fraud

Aims of the Investigation Function

10. The Benefits Service will strive to:

- **prevent fraud** by establishing systems of control and procedures that seek to ensure that only genuine claims are processed and paid;
- **detect fraud** by investigating and, where appropriate, recommending the disallowance or reassessment of fraudulent or irregular applications and existing claims; and
- **deter fraud** by creating and developing a culture which discourages applicants from making fraudulent claims and ensuring that existing benefit claimants fulfil their responsibilities to continue to provide accurate information including any and all relevant changes of circumstances.

Legislation

11. For the purposes of this policy, all Members and officers will be expected to comply with all codes of practice, legislation and corporate policies when dealing with issues relating to benefit fraud. These include:

- Codes of conduct for employees and Members.
- Social Security legislation including the Housing Benefit Regulations.
- Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012
- Fareham Borough Council's Local Council Tax Support Scheme
- The Theft Act 1968, The Fraud Act 2006 and supporting Circulars.
- The Forgery and Counterfeiting Act 1981
- Verification guidance and codes of practice.
- Health and Safety Acts with the supporting Statutory Instruments.
- Public Interest Disclosure Act.
- Regulation of Investigatory Powers Act.
- Financial Regulations and Standing Orders.
- Corporate Customer Care policy.
- Anti Fraud and Corruption policy.
- Discrimination and Race Relations legislation.

- The Human Rights Act
- The Data Protection Act.
- The Police and Criminal Evidence (PACE) Act and the Criminal Procedure and Investigations Act.
- The Proceeds of Crime Act
- Local Authority Fraud Investigators' Code of Practice produced by the Department for Work and Pensions.(DWP)
- Departmental Health and Safety policy and other relevant corporate policies.
- Disciplinary Code of Practice.
- Any other relevant policies.

Anti-fraud measures

12. The following are some of the anti-fraud measures that are taken to prevent, detect and deter benefit fraud in Fareham:

12.1 Verification

The Housing Benefit Regulations permit rather than require Local Authorities to ask for such verification as is needed to put benefit into payment, subject to what it is reasonable to request. Whilst Fareham Borough Council's Benefits Service respects this, as we are accountable for Fraud and Error within Housing Benefit and Local Council Tax Support, we have sufficient controls in place to provide assurance that correct decisions have been made. We obtain original documentation when assessing benefit entitlement and proof of identity when the claimant first applies. All employees responsible for receiving and verifying documents are trained on the latest evidence requirements including identifying false documents.

12.2 Dedicated Anti-Fraud Investigations Team

A dedicated team of investigation officers has been appointed who are accredited Counter Fraud Officers through the National Professionalism in Security qualifications (foundation and advanced). They are also "Authorised Officers" therefore are able to use investigative powers in accordance with the Social Security Administration Act 1992 and The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

12.3 Interventions

Inevitably there will be some changes that are not reported by customers, and not identified through data-matching. Fareham Benefits Service will use risk based data on claims as provided by the DWP on a monthly basis and local based risk criteria to carry out reviews of existing benefit claims. We will also undertake specific checks on claims and request ad-hoc data scans.

12.4 Data-Matching

Fareham's benefits data is matched against other data sources on a monthly basis with external data obtained by the Department for Work & Pensions to identify inconsistencies that may indicate the existence of incorrectness on a Housing Benefit award. This data will also be used for cases where Council Tax Support has been awarded. Fareham Borough Council also

takes part in the Government's National Fraud Initiative, where data is matched every 2 years (internal & external) with agencies, including other Local Authorities, across the country.

12.5 Publicity

Fareham Borough Council's Benefit Service takes every opportunity to remind benefit claimants to report changes in their circumstances. We use a variety of methods to publicise the requirements to report changes.

The Investigation Team maximises the use of a range of publications to inform Fareham's residents, Fareham Borough Council staff and Members of successful investigations as well as the provision of information about how to report a suspected fraud.

12.6 Telephone Hot Line

The public is encouraged to disclose information, confidentially or otherwise, that may assist in the identification of potentially fraudulent claims. The provision of the dedicated "telephone hot-line" assists this aim.

12.7 Employees' Duty to Report & Whistleblowing Policy

All employees have a duty to report any suspicious circumstances which may affect a claimant's entitlement to benefit and to report this to the investigators. The Council's Disciplinary Procedure applies in all such cases. Failure to report suspicious circumstances may result in disciplinary action being taken against the officer who failed to carry out their duty to report.

The Council has an agreed Code of Practice for Confidential Reporting (also known as the "Whistleblowing Policy") which encourages and protects members and employees who wish to raise concerns or disclose irregularities.

12.8 Targeting Specific Groups

Under Human Rights legislation, it is not considered to be good practice to target or pursue unjustified reviews on specific groups of people. However, if a high level of benefit fraud is established within a particular area or amongst a particular group, it may be appropriate to carry out a detailed review to ensure that there are no further cases.

12.9 Redirected Benefit Mail

Fareham Borough Council participates in the Royal Mail 'Do Not Redirect' scheme, whereby benefits correspondence is sent out using distinctive envelopes. Any benefit recipient who has moved away from the address where he or she was claiming will not have any mail sent on to their forwarding address and the correspondence will be returned to the Benefits Service for further investigation.

12.10 Service Level Agreements (SLAs) with the DWP

A Partnership Agreement has been agreed with the DWP until the rollout of the Single Fraud Investigation Service (SFIS) in 2014, which will be the main investigative body for investigating all Social Security Benefits. This agreement sets out the principles for effective partnership working between the DWP Fraud Investigation Team and the Local Authority. The agreement covers the main

aspects of how each organisation will work together on matters of Administration, Security and Fraud on claims which have a joint Jobcentre Plus and Local Authority interest. It sets out the reasons *why* we should work together and *what* we are jointly trying to achieve in doing so.

12.11 Documentation

We endeavour to provide all documentation in plain English and in a format that claimant's can understand, to ensure that they are aware of their responsibilities to provide accurate and timely information. Facilities are also available to have documents translated or made available in large print.

12.12 Electronic Payments

Claimants and landlords are encouraged to accept payments by electronic transfer, so that payments are made directly to bank/building society accounts.

12.13 Random Checking and Visits

Regular random checking of claims is undertaken to ensure that claims have been processed correctly and that all supporting documentation is correct.

Overpayments

13. In order to prevent excessive overpayments, overpayments will be kept to a minimum by:

- ensuring that original evidence supports the application for benefit;
- accurately calculating the entitlement from the outset;
- undertaking reviews at appropriate times; and
- encouraging claimants to report changes in their circumstances at the time they occur.

14. We will take robust steps to recover overpayments that relate to charges of fraud and in the collection of any resulting administrative penalties.

15. In accordance with the Corporate Recovery and Collection Policy, when an instalment plan to recover a fraud overpayment is needed, we will seek to secure maximum recovery rates.

16. Deductions from ongoing Housing Benefit will be set at the maximum rate outlined in the DWP's overpayment recovery guidelines, unless a reduced rate has been agreed on hardship grounds.

17. We will be equally robust in our collection of administrative penalties and collection of the penalty will commence immediately following repayment in full of the fraud overpayment.

Investigations

18. Investigations are to be undertaken in accordance with agreed written procedures and at all times with full consideration of the Human Rights Act. At all times, it must be possible to demonstrate that the investigation is necessary, that

enquiries are not excessive (i.e. are proportionate to the potential fraud) and that there is no harassment of individual claimants as set out in the provisions of the Criminal Procedure and Investigations Act 1996.

19. The Investigation Officers are expected to treat all persons suspected of benefit fraud with respect and courtesy at all times, in line with the Council's standard policies on customer care.
20. Written records of all investigations must be maintained and updated with any supporting evidence as the investigation progresses. The outcome must also be recorded.
21. The Investigation Team will ensure that information held by the Council is only disclosed in line with the Data Protection Act and associated procedures concerning confidentiality.
22. At all times during an investigation, the Investigation Team should consider and observe the rights of any individual they are interviewing or investigating. It is the duty of the Investigation Officers to establish the facts of the case and not reach conclusions based solely on intuition or supposition.
23. Where fraud is suspected and it appears reasonable to prosecute in accordance with this policy, only employees trained in the Police and Criminal Evidence Act (PACE) procedures (as amended or substituted) must undertake the Interview Under Caution (IUC) with the claimant. Where appropriate, interviews should be conducted in conjunction with the police.
24. The PACE code of practice, a national standard produced in accordance with the Police and Criminal Evidence Act 1984 must be used to conduct IUC's and this will ensure compliance with the Human Rights Act. Copies of the code of practice are held by the Investigations Team and are available for examination on request.

Appointment of Authorised Officers

25. Legislation allows the Council to appoint existing employees as "Authorised Officers". An Authorised Officer is able to enter premises to make enquiries and examine records relating to any person believed to be a benefit claimant, or, after a test of reasonableness, a person who could supply information relating to the investigation, for example partners of claimants or employers. The Council can prosecute the company or any third party who has relevant information but refuses to co-operate with such an investigation.
26. The Council has appointed employees within the benefits Investigation Team as Authorised Officers.

Use of surveillance

27. Surveillance will be undertaken by trained officers where it is justified and in accordance with the statutory code of practice. Corporate surveillance procedures will be adhered to at all times.

28. Authority to carry out surveillance for Housing Benefit claims, Council Tax Support claims and other Council Tax or Business Rates matters where it is believed a criminal offence may be being committed, may only be granted when initially agreed by an Authorised Officer as set out in the Council's Surveillance Policy and then authorised by a Magistrate as required by the provisions with The Protection of Freedoms Act 2012.
29. All surveillance requests, agreements, cancellations and amendments must be recorded and retained, and signed by an Authored Officer where appropriate. All surveillance requests will be time-limited, and all amendments and renewals to authorised surveillance requests must be re-authorised by an Authorised Officer and a Magistrate as highlighted above.
30. All records must be kept accurately and conveniently so that they are readily available for inspection on request by the Office for the Commissioner for Surveillance or by other auditing bodies,
31. A central record will be kept by the Director of Regulatory and Democratic Services of all authorised surveillance,

Recording and checking previous cautions and administrative penalties

32. Best practice on the application of sanctions/prosecutions states it is essential that records on previous convictions, cautions and administrative penalties are checked before a sanction/prosecution action is taken. It is also a requirement that all sanction/prosecution activity is logged to allow others to check an individual claimant's records.
33. The DWP maintains a sanctions and penalties database that records the issue and acceptance of cautions and administrative penalties. The database allows access to information on previous administration penalties and cautions administered by the DWP and other local authorities.
34. Basic disclosures of past convictions may be sought prior to the appointment of certain positions within the Council. Evidence of previous convictions for benefit fraud may be relevant to the decision to appoint individuals to vacant posts.

Recording and checking previous convictions

35. For checks on previous convictions, DWP fraud investigators obtain information, under agreement from the Home Office, via the Crown Prosecution Service. Local authorities may not legally have access to this information independently. Therefore, to meet the requirement to check previous convictions on benefit cases, joint interviews under caution need to be carried out.
36. If no DWP benefits are involved, investigations officers must approach the local Police force which has access to previous convictions information.

Joint-working

37. Due to the nature of the checking involved in correctly applying sanctions/prosecutions, it is recommended by the DWP that joint working is applied wherever possible.
38. The Council has agreed a Partnership Agreement with the DWP to assist in the process of joint-working.
39. In general, where there is a fraud investigation which involves more than one benefit, the organisation which discovers the fraud will take the lead with decisions regarding prosecution, cautions or administrative penalties.
40. The Council will abide by an agreed set of protocols for joint-working so that all legal action which involves solicitors or investigations officers is undertaken in an agreed and efficient manner.

Factors to be considered when deciding to prosecute or administer administration penalties or cautions

41. The aim of this policy is to provide a framework which will allow each incident of fraud to be considered for prosecution in a fair, reasonable and consistent manner taking into account circumstances relating to the case.
42. After a full investigation and collection of evidence, including an IUC, a decision will be made on whether to prosecute or if another penalty is appropriate.
43. Before making this decision, officers will have regard to all the factors and in particular to:
 - the mental and physical condition of the claimant;
 - the other social factors relating to the claimant or other members of the household;
 - ensuring that there is sufficient evidence for the prosecution and that there has been no undue delay in completing the investigation;
 - the administration of the benefit;
 - the period of the overpayment;
 - the amount of the overpayment and the entitlement to other benefits; and
 - any previous history of benefit fraud.
44. As a general rule, where the overpayment is less than £2000, a prosecution will not occur. For most frauds of less than £2000 it may be more appropriate to use an administration penalty or a caution.
45. When considering the net loss to public funds, due regard must be given to the underlying entitlement to other public benefits. This is a factor that the defendant could use in mitigation to minimise the offence.
46. A fraud carried out over a long period of time would be viewed as seriously as one involving a large sum, discovered shortly after it occurred.

47. The Sanctions Panel (Terms of Reference can be seen at [Appendix A](#)) will ensure that sufficient evidence has been obtained and in a manner which will support a prosecution. This includes conducting IUC's where it is appropriate. All the evidence which forms the basis of the sanction must be admissible in a court of law and obtained within the current legislation and supporting regulations.
48. Any delay in starting the investigation or in conducting the investigation that is directly attributable to administration will be taken into account. A prosecution will not proceed where the delay has been unreasonable.
49. Where the fraud has occurred or has been allowed to continue due to poor administration it would not normally be appropriate to prosecute. Examples would include:
- where benefit has been paid on incomplete information;
 - where the form has been badly completed by the interviewing officer; or
 - where there has been a failure to observe flaws in a statement or document.
50. A decision to prosecute would not normally be appropriate where the claimant or partner:
- is suffering from medically confirmed stress or nervous problems;
 - is elderly or bedridden;
 - has hearing or sight problems – for example has difficulty reading or understanding questions;
 - has a severe mental impairment; or
 - is pregnant and confinement is due within three months or is unwell (a delay in enforcing a decision to prosecute would be more appropriate).
51. Where in the opinion of the Sanction Panel, the effect of a prosecution is likely to result in another member of the household suffering from any of the conditions mentioned in the previous paragraph, then a prosecution would not occur unless there has been a persistent abuse.
52. Where there is evidence the offence has been committed due to exceptional social factors then a prosecution would not be undertaken. Examples would include:
- the claimant was driven to commit the offence due to tragic domestic circumstances; or
 - prosecution would cause unnecessary injury to a third party.
53. Although the amount involved may be small and the period of the offence short, prosecution may be appropriate if there is evidence that fraud has previously been committed and that a decision not to prosecute was made.
54. In all cases where it is decided that a caution or administration penalty is more appropriate than prosecution, the evidence must still be sufficient to go through

with the case to prosecution, if necessary. This is because the claimant must agree to receive a caution or penalty and the sanction for failing to agree must be to prosecute. This means that it is possible that a fraudulent overpayment for less than £2000 may still end up being prosecuted.

Formal cautions

55. A formal caution is a meaningful penalty and deterrent for those persons at the lower end of the range of benefit fraud where criminal proceedings are not a first option and administrative penalty action is not appropriate.
56. A formal caution is an oral warning given in certain circumstances to a person who has committed an offence. A caution can only be considered when:
- there is sufficient evidence to justify instituting criminal proceedings;
 - the person has admitted the offence during an IUC and has shown contrition for their actions;
 - the person's history of previous convictions/cautions has been taken into account;
 - the person has signed a document to show they admit to the offence; and
 - the person agrees to the caution and they acknowledge they have been cautioned.
57. If the person is subsequently prosecuted for another benefit offence the caution may be cited in court. If the person decides to refuse to accept a caution, the alternative course of action should be criminal proceedings. Therefore the quality of the evidence available to issue a caution must be of the same standard as that required to bring prosecution proceedings.
58. Where criminal proceedings are brought, the Court will be informed that the case has been brought because the person refused to accept a formal caution.
59. As a general rule, formal cautions should be applied for cases involving overpayments of less than £2000. However there may be certain circumstances, such as those outlined in sections 51-53 of this policy, where it is appropriate to use a formal caution for overpayments of more than £2000.
60. Cautions should not be administered to an offender in circumstances where there can be no reasonable expectation that this will curb his/her offending.
61. Cautions must not be given to people under the age of 18.
62. Only in exceptional circumstances should a second or very rarely, a third caution be administered in any case. Examples of exceptional circumstances in this respect include:
- When the amount of the overpayment is particularly small e.g. £30; or
 - There is an indication that the person's personal circumstances in connection with the second offence fit one or more of the mitigating factors that would normally exclude prosecution.

63. It is important to note, the officer who interviews the person under caution or is present at the interview, cannot be the same officer who administers the caution.
64. Where it decided to issue a joint sanction where both DWP and local authority benefits are involved, Fareham Borough Council may continue to offer cautions as DWP policy has changed and are no longer issuing cautions. This must be a different officer to the one who carried out the IUC.
65. A caution may only be offered until the Single Fraud Investigation Service (SFIS) is in place for Local Authorities, at which point all SFIS policies and procedures must be adhered to for all fraud cases.
66. In ALL cases which involve a decision to administer a caution for Housing Benefit and/or Council Tax Support, authority must be given and recorded. The Systems & Support Manager and the Corporate Counter Fraud Officer are the officers designated to administer cautions, unless they have been present or involved with the IUC. In such a case, cautions should be administered by the Head of Revenues & Benefits or such other properly trained officer as authorised by the Director of Finance & Resources.

Administrative penalties for Housing Benefit/Council Tax Benefit

67. The legislation governing the use of penalties is contained in section 115A and 115B of the Social Security Administration Act 1992, as inserted by section 15 of the Social Security Administration (Fraud) Act 1997 and the Social Security (Penalty Notice) Regulations 1997 and has been amended by the Welfare Reform Act to allow tougher penalties to be offered as an alternative to prosecution.
68. If there is a DWP Social Security benefit also in payment, the Council will notify the DWP before issuing an administrative penalty. Penalties may be offered by both the Council and the DWP where there are overpayments affecting both administering authorities. For example:
- the DWP may offer an administrative penalty in respect of DWP benefits overpayment; and
 - the Council may offer an administration penalty in respect of the overpayment of Housing Benefit and/or Council Tax Benefit.
69. If the Council is conducting the investigation, it should notify the DWP if there is an impact on DWP benefits. If the DWP is conducting the investigation, it notifies the Council when:
- criminal proceedings are instituted on both DWP and Council offences;
 - criminal proceedings are instituted on DWP offences only; or
 - no further action is taken i.e. criminal proceedings are not pursued and penalty action is not taken.

70. Fraud investigators from both administrations should decide whether the case should be progressed to an IUC with a view to using administrative penalties. Arrangements should be made to conduct a joint IUC with the claimant.
71. The issue and acceptance of administrative penalties should also be logged and checked on the central database.
72. Administrative penalties have no standing in court. Therefore, if a person has previously agreed to pay an administrative penalty for an earlier overpayment, it cannot be mentioned in court.
73. Administrative penalties are made on behalf of the Secretary of State (SoS) and there is no right of appeal against the decision nor can the person ask the SoS to review the amount of the penalty which is prescribed in the legislation. Administrative penalties are made on behalf of the SoS; they cannot be issued by the Police.
74. Where a decision is reached that there is sufficient information to prosecute, consideration will be given as to whether or not the imposition of a penalty would be more appropriate. The factors to be considered will be:
- the seriousness of the fraud;
 - any previous fraudulent history; and
 - the claimant's ability to make payment.
75. As a general rule, administration penalties should be applied for cases involving overpayments of less than £2000. However, there may be certain circumstances where it is appropriate to use a formal caution for overpayments instead.
76. Overpayments that commence prior to 8 May 2012, a penalty equal to 30% of the recoverable overpayment can be imposed instead of a prosecution where it is agreed between the Council and the claimant. The penalty is payable in addition to the overpayment.
77. Overpayments that commence wholly on or after 8 May 2012 provide for a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2,000). The penalty is payable in addition to the overpayment.
78. A penalty will generally not be considered where there has been previous evidence of fraud.
79. It is important to note, the officer who interviewed the person under caution or was present at the interview, cannot be the same officer who administers the administration penalty.

Administrative penalties for Council Tax Support

80. The legislation governing the use of penalties for Council Tax Support is contained in Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.
81. This regulation applies where a person's liability to pay council tax has been reduced under a council tax reduction scheme and it appears to the billing authority that the liability to pay council tax that was reduced under the scheme is greater than the amount of reduction the person is entitled to and an 'excess reduction' occurs .
82. This regulation also applies where it appears to the billing authority that there are grounds for instituting criminal proceedings for an offence relating to an act or omission on the part of the claimant and a reduction has been claimed which is greater than the reduction the claimant is entitled to receive.
83. As with Housing Benefit cases covered in this policy, as a general rule, administration penalties for Council Tax Support should be applied for cases involving an 'excess reduction' of less than £2000. However, there may be certain circumstances where it is appropriate to use a formal caution for overpayments instead.
84. The amount of the penalty is 50% of the amount of the excess reduction (rounded down to the nearest whole penny), subject to a minimum amount of £100 and a maximum amount of £1000.

Administrative penalty interview

85. In ALL cases which involve a decision to administer an administration penalty for Housing Benefit and/or Council Tax fraud, authority must be given and recorded. The Systems & Support Manager and Corporate Counter Fraud Officer are the officers designated to administer administration penalties, unless they have been present or involved with the IUC. In such a case, administration penalties should be administered by the Head of Revenues & Benefits or such other properly trained officer as authorised by the Director of Finance & Resources.
86. It should be noted that the offer of a penalty should be made in a special interview. The offender should be told at the interview:
- It is not an interview under caution.
 - Acceptance of the penalty is not a declaration of guilt.
 - The recovery of the penalty will occur in the same way as the recovery of the overpayment.
 - The offender has 28 days in which to change their mind should they accept the penalty - in the event of non-acceptance prosecution would be instituted.
 - Failure to repay the debt or default on instalments will result in the offender facing civil proceedings for recovery.
87. It should be noted that if the offender is a Council tenant, then the penalty can

NOT be added to their rent account or treated as rent arrears.

Prosecution

88. The Legal Team will review and authorise all cases which are recommended for prosecution. Case files will be produced by the Investigation Officer and these will include all of the evidence that has been collated in a clear and orderly manner. A summary of the case and the charges which are recommended, including the relevant legislation which has been breached, will be included at the beginning of the case file.
89. Where the case involves evidence of DWP benefits, the case file will also contain sufficient information to enable the DWP benefit fraud to be taken into consideration.
90. The DWP may ask to undertake a prosecution on the Council's behalf if the Department has uncovered a DWP benefit fraud and there is evidence of Housing Benefit or legacy Council Tax Benefit fraud. Where this is the case, there is a joint-working agreement on the information that will be supplied and assistance to be given by investigations officers.
91. In all cases, the prosecuting solicitor will review the evidence and ensure that it is in the public interest to undertake the prosecution.

Loss of Benefit Provisions (Housing Benefit only)

92. The Welfare Reform Act 2009 and the Social Security (Loss of Benefit) Amendment Regulations 2010 introduced a new four week loss/reduction of benefit sanction known as 'One Strike'. One Strike sanctions apply to benefit fraud offences committed on or after 1 April 2010 that result in a Caution, Administrative Penalty or a first conviction.
93. The 'One Strike' provision reduces payment of benefit for four weeks when a claimant, their partner or a family member has been convicted or has accepted a Caution or Administrative Penalty for a first benefit fraud offence when the whole period of the fraud offence was committed on or after 1 April 2010.
94. Determining that a Loss of Benefit Sanction applies and calculating the period of the sanction is the responsibility of the DWP Fraud Investigation Service. The role of applying the Loss of Benefit Sanction to the Housing Benefit claim in payment is the responsibility of the Local Authority.
95. The application of a Loss of Benefit Sanction will result in a reduction of Housing Benefit during the Disqualification Period by pre-determined amounts as set each year by DWP.
96. In February 2012 the Loss of Benefit provisions were refreshed and updated through a joint report with the Cabinet Office and HMRC in order to further reduce financial losses due to fraud and error in the welfare system.

97. Part of the measures includes a tougher Loss of Benefit penalty for benefit fraud, introduced from 1 April 2013.

98. Offences occurring wholly on or after 1 April 2013 and result in a Caution or an Administrative Penalty, will be subject to one of the following 5 new Loss of Benefit levels:

- **Level 1** - offences which result in an Administrative Penalty or Caution will continue to result in a Loss of Benefit penalty of 4 weeks
- **Level 2** - for a first benefit fraud conviction the Loss of Benefit penalty duration will increase from 4 to 13 weeks
- **Level 3** - where there are two offences, within a set time period of 5 years, with the latter offence resulting in a conviction, the Loss of Benefit penalty will be for a period of 26 weeks
- **Level 4** - where there are three offences, within a set time period of 5 years, with the last offence resulting in a conviction, the Loss of Benefit penalty will be for a period of 3 years
- **Level 5** - an immediate 3 year Loss of Benefit penalty for serious organised and identity fraud cases.

99. As Council Tax Support is not a Social Security Benefit, any fraudulently claimed support cannot be included in calculating any overpayment and the Loss of Benefit Sanctions cannot be applied to a Council Tax Support claim.

Performance indicators

100. The following performance indicators will be collected each quarter to provide information to DWP to assist with establishing fraud and error in England and caseloads monitored to ensure investigations are effective and resource is allocated appropriately: :

- The number of referrals received and their source
- the number of cases investigated;
- the number of sanctions achieved for the year;

Conflict of interest

101. Conflict of interest applies where an employee is related to a claimant or landlord, or even if the claimant or landlord is merely personally known to the employee. Where these circumstances apply, the Head of Revenues & Benefits must be made aware of the circumstances in accordance with the Benefit Service Declaration of Interest Procedure. If the employee would normally be involved in the assessment of a benefit claim, the Head of Revenues & Benefits must appoint another employee to deal with the claim. Failure to notify the Head of Revenues & Benefits of a conflict of interest would be considered as a serious breach of an employee's duty to report, and would be likely to result in action being taken under the Council's Code of Conduct & Disciplinary Rules & Procedure.

102. Where a conflict of interest applies and the employee processes the claim, the case will be investigated by the Corporate Counter Fraud Officer and, if appropriate, disciplinary action will be taken. Processing work where there has been a conflict of interest, without express authority, will be viewed as a serious breach of Council procedures and may result in dismissal or even criminal prosecution if a fraud has been perpetrated.
103. Where Members of the Council or employees are involved in any capacity with a benefit claim which is subject to an investigation, the Director of Finance & Resources must be informed. The Director of Finance & Resources and Head of Personnel will decide on the methods of investigation and decide what action, if any, the Council should undertake.
104. Where an officer suspects another employee of committing fraud, then the officer has a duty to inform their manager immediately and in confidence. The Director of Finance & Resources must be informed and the matter dealt with in accordance with the corporate strategy on fraud and corruption. Failure to report a suspicion of fraudulent behaviour is likely to result in action being taken against the employee under the Council's Code of Conduct & Disciplinary Rules & Procedure.

Employee training

105. All revenues and benefits employees will be given fraud awareness training at the start of their employment and this will be updated on a regular basis.
106. Full training relevant to the position will be given in respect of legislation, systems and procedures. This will be constantly updated.
107. The Systems & Support Manager will regularly update revenues and benefits employees on the types of fraud being discovered and also update individual officers on cases which they have referred.
108. All employees have a duty to ensure that they comply with the Corporate Information and Communications Technology rules.

Responsibilities of the Head of Revenues & Benefits

109. The Head of Revenues & Benefits must ensure:
- all employees within the Benefits and Investigation sections and those in related areas (i.e. Housing Advisory Officers) are trained in fraud awareness;
 - investigation employees are fully conversant with fraud legislation and codes of practice; and
 - all new investigations officers & relevant benefit officers are subject to stringent pre-employment checks that comply with the HMG Baseline Personnel Security Standard.

Duties of Benefits Assessment Manager

110. The Benefits Assessment Manager must ensure:

- all employees within the Benefits sections are trained in fraud awareness, legislation and codes of practice so that high quality referrals can be made to the Investigation Team
- the calculations of fraudulent overpayments are undertaken within agreed timescales and in accordance with agreed procedures
- that through liaison and close working arrangements with the Systems & Support Manager an effective and efficient anti fraud culture within the benefits team is established

Duties of the Systems & Support Manager

111. The Systems & Support Manager must ensure that:

- all investigators are properly trained in legislation, legal procedures and practices and that their knowledge and skills are kept up to date;
- all investigations are undertaken fairly and legally and that the investigators' powers are used appropriately;
- appropriate records are maintained supporting the outcome of an investigation and that any action is correctly classified for subsidy purposes;
- the caseload of each investigator is effectively managed and that individual targets are fulfilled;
- Sanctions are accurately recorded
- resources are focused on reducing the level of fraud and, in particular, targeting in a positive but sensitive manner areas/groups where fraud is most likely to exist; and
- joint initiatives are undertaken with other agencies such as the DWP, Police, HMRC, other authorities and other government organisations, to identify fraudulent claims.

Duties of Benefit Investigation Officers

112. Benefits Investigation Officers must ensure that:

- all claimants are genuine and that information supplied by landlords, tenants and agents is accurate and up to date by investigating claims where it appears that the claimant has failed to disclose information which effects their initial entitlement or a change in circumstances;
- all claims are investigated where third parties may be providing false information which affects the entitlement of the claimant, e.g. a landlord colluding with the tenant to provide false rent payments;
- all claims are investigated where information has been received from members of the public or other sources that indicates that fraud may have taken place;
- data-matching is undertaken on a regular basis with both internal and external systems and, in particular, through the Housing Benefit Matching Service to identify cases of potential benefit fraud, and to fully investigate all such cases;
- work is carried out jointly with other organisations such as the DWP, Police or other local authorities, to investigate cases that may lead to the identification of fraudulent benefit claims; and

- where appropriate, offenders are prosecuted, penalised or cautioned in accordance with the guidelines provided in this policy.

TERMS OF REFERENCE FOR THE SANCTIONS PANEL

Background

1. The introduction of a Sanctions Panel is in line with best practice as a mechanism for ensuring a consistent qualitative approach is taken to investigation work and has been brought in to streamline the sanction authorisation since the FBC Legal Services has been devolved to Southampton City Council.
2. Details of the Sanctions that can be imposed are set out in the Benefits Anti-Fraud Policy.
3. Fareham Borough Council has established a Sanctions Panel which considers cases referred to it for imposition of Local Authority Cautions, Administrative Penalties or Prosecutions depending on the nature of the offence and in accordance with the criteria set out in the Benefits Anti-Fraud Policy.
4. All cases are judged solely on the information provided to the Panel, which will not include any reference to the claimant's race or ethnic origin in order to comply with the Equality Act and Human Rights Act.
5. The Benefit Investigation Officers refer cases to the Panel via their Line Manager, the Systems & Support Manager.

Make-up of the Sanctions Panel

6. The panel will normally consist of three people but will meet with two members if necessary during periods of absence in the office. The panel may be chaired by any of the three members.
7. The constitution of the panel will include members who are familiar with
 - Housing Benefit and Council Tax Support administration
 - Council policies and procedures
 - Audit work
 - Legal Services
8. The officers sitting on the panel will be
 - The Head of Revenues & Benefits
 - The Systems & Support Manager
 - The Corporate Counter Fraud Officer

The Scope of the Panel

9. The Panel will only consider those cases that the local authority is seeking to impose sanction

Function of the Panel

10. The referral to the Panel should include

- Details of the allegation
- Summary of the evidence to substantiate the allegation
- The length of time any fraudulent overpayment had occurred
- Whether the case is deemed fraudulent by either false declarations or failing to declare a change in circumstances
- Information about the claimant and background details
- Details of any public interest issues
- Recommendation from the Investigators

11. The Panel may ask questions relating to the investigation and if need be refer the case back to the Investigator for clarification.

Decisions of the Sanctions Panel

12. If the Panel meets with 3 members, then 2 members must agree to the recommended Sanction. If the Panel meets with 2 members and they cannot agree the recommended Sanction then the case must wait until there are 3 on the Panel.

13. After each case has been discussed all persons in attendance should sign to accept that the Sanction is appropriate before the case is referred back to the Investigator.

14. All decisions made by the Sanctions Panel will be subject to periodic review by the Director of Finance & Resources.

Frequency of the meetings

15. The Panel will meet fortnightly but this will be reviewed dependant on the volume of cases.