

NORTH LINCOLNSHIRE COUNCIL

AUDIT COMMITTEE

COUNTER FRAUD PROGRESS REPORT

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To provide the Audit Committee with an appropriate level of assurance that counter fraud arrangements are adequate.

2. BACKGROUND INFORMATION

- 2.1 Counter fraud work is an important feature in the audit plan. Resources have been identified for preventative work and a contingency for responsive work such as investigations. During 2012/2013 the emphasis remains high on counter fraud work in response to CIPFA and Audit Commission guidance and the increased risk of fraud across the public sector as a result of the economic conditions. A summary of the work is provided in appendix A.
- 2.2 As part of the National Fraud Authority (NFA) remit to help the public sector 'Fight Fraud Locally' an on line toolkit has been developed which can be used to assess effectiveness of local counter fraud arrangements. The toolkit is based largely on CIPFA guidance 'Managing the Risk of Fraud' which has been used previously to assess our arrangements. NFA's toolkit has the added benefit of providing the opportunity to compare and assess against other public sector bodies that have also submitted results. The questionnaire results based on a maximum score of 50 show the council to be in the 71st percentile of effectiveness of counter fraud arrangements. Areas for further consideration are in relation to specialist counter fraud training and the consistent recovery of losses through disciplinary, criminal and civil processes.
- 2.3 The Audit Commission's National Fraud Initiative is an annual exercise with different data sets being submitted in a two year cycle. In year one data is submitted for benefits, payroll, creditors and licences. In year two council tax discounts and electoral roll data is submitted. Matches are received in the following February for investigation. In

relation to year one 67 reports have been received containing 8501 matches, 7,686 have been investigated resulting in savings of £183k (£13k duplicate creditors and £173k benefits). In February 2012 the council tax matches, 1,254 were received, these are currently being investigated and savings will be recorded in due course. In 2012 a real time system is being introduced to allow flexibility in when councils submit data and also local data sets between specific authorities can be submitted. The system can also be used for point of access checks such as checks on existing tenancies in other areas before awarding a council home, as part of the NFA's approach to prevent rather than just detect fraud.

2.4 Referrals received via the Whistleblowers' hotline continue to increase steadily:

Year	Calls/emails received
2008/2009	194
2009/2010	256*
2010/2011	221
2011/2012	373*
2012/2013 (April & May)	49

(* high number of spurious calls -67 in 2009/10 and 78 in 2011/12)

This would indicate that:

- The facility is properly promoted
- Users feel confident to use it.

2.5 The number of investigations is similar to that during 2011/12. Thirty seven investigations were carried out last year (7 were led by HR) compared with 6 new cases during April and May this year. Investigations are on going and mainly concern cash/income anomalies and failing to safeguard or misuse of assets or equipment. In one case a fraudulent but plausible invoice was sent to a school with the intention that payment would be made without carrying out proper checks. This is a common opportunistic scam which was fortunately avoided through the application of proper checks carried out. A reminder was sent as a council wide message of the need to check the validity of invoices before authorising payment.

2.6 It has been another successful year for the benefit fraud team; during 2011/12 1,029 allegations were received from a variety of sources such as the hotline, from data matching, from DWP and other sections of the council. A total of 921 investigations were completed during the year of which 256 resulted in a reduction in the customer's benefit.

2.7 Investigations identified £377,513 of housing benefit, £147,665 of Council Tax Benefit and £415,094 of DWP benefits that had been claimed falsely. There were 11 individual cases where the total HB/CTB

fraud exceeded £10,000. Twenty nine people were successfully prosecuted for benefit fraud and a further 81 people received Formal Cautions or Administrative Penalties as an alternative to prosecution. By working in partnership with the DWP many of the results referred to above were achieved because of the joint investigations, 41% of cases resulting in prosecution, cautions and administrative penalties were joint investigations with DWP.

- 2.8 Extensive pro-active work with DWP spanning over 2 years to investigate potentially fraudulent single person discount cases has identified 13 fraud cases with a loss to the taxpayer of £286,000. (£83k of HB/CTB fraud & £203k of DWP fraud) resulting in 4 successful prosecutions, two cases currently being prepared for court, 1 other listed at court for trial in June 2012 and 3 cases where formal cautions / administrative penalties were offered.
- 2.9 There has been a significant increase in the level of joint working with DWP; for example, in the last 3 years 41% of all successful sanctions and prosecutions were as a result of joint investigations. Due to the council working closely with DWP it is important to have a similar prosecution policy to ensure cases investigated jointly are dealt with consistently. The revised Housing Benefit Fraud Prosecution Policy (appendix B) reflects the fact that DWP are unable to offer cautions and as such in joint investigations the council will offer an administrative penalty in cases that meet the criteria for further action where a prosecution is not the first option. The Policy has also been updated to reflect changes introduction by the Welfare Reform Act. The Act has increased the size of the Administrative Penalties from 30% to 50% of the overpayments (up to a maximum of £2,000) or £350 whichever is the greater. The new penalties only apply to offences committed wholly on or after 8 May 2012 therefore it will be later in the year before the new penalties start to be imposed.

3. OPTIONS FOR CONSIDERATION

- 3.1 The Committee is asked to consider whether or not the amendment to the Counter Fraud Strategy (the revised Housing Benefit Fraud Prosecution Policy) will continue to provide sufficient assurance on the council's counter fraud arrangements in 2012/2013. Members are also asked to consider whether or not regular reports on proactive and reactive fraud work (similar to those shown in appendix A) will provide sufficient assurance on the adequacy of counter fraud arrangements during 2012/2013.
- 3.2 The Committee may decide to make further amendments to the Policy. The Committee may also decide that the system of regular update reports does not provide sufficient assurance on the adequacy of counter fraud arrangements in place and may seek alternative arrangements.

4. ANALYSIS OF OPTIONS

- 4.1 The counter fraud plan complies with professional guidance available and is designed to provide this Committee with the assurance required. Members should seek further clarification if required to ensure the work programme will provide sufficient assurance to fulfil their role as set out in the Committee's terms of reference.
- 4.2 The rate of Administrative Penalty is set by legislation and as such any penalties offered by the Council must be at that rate. However the Council has two options to consider in terms of whether it continues to offer formal cautions following joint investigations with DWP or whether it only offers administrative penalties in such cases.
- The Council continues to offer formal cautions following joint investigations with DWP. It would be inconsistent and send out a confusing message to the public if the two organisations were to deal with the same person differently.
 - The Council can continue to offer formal cautions following cases where it investigates on it's own, however in joint investigations with DWP if further action is appropriate it should only offer administrative penalties to ensure consistency with DWP. This sends out a strong message and demonstrates that we are working closely with them to tackle benefit fraud.

Of these two options, the recommendation is for Option 2 to ensure consistency of approach on fraud cases of similar value.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY. IT)

- 5.1 Costs of revising the strategy, and implementing the counter fraud actions are met from the Internal Audit budget and are incorporated into the 2012/2013 Audit Plan. Minor costs associated with the telephone and publicity for the Hotline will continue to be maintained within the Finance Service budget. Savings should continue to accrue as a result of improved efficiency and the avoidance of loss.
- 5.2 There are no additional staffing implications, as the internal audit section will continue to operate the Hotline from within existing resources. Training of staff in revisions to the strategy and investigation procedures will be met from the training contingency included in the audit plan. Training of staff outside the audit team will be resourced

from time set aside in the Audit plan to develop counter fraud arrangements.

- 5.3 An effective Counter Fraud Strategy demonstrates the council has good arrangements in place to support the Annual Governance Statement and to promote good corporate governance.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)

- 6.1 The Chief Financial Officer has a statutory duty under the provisions of the Local Government Act 1972 to ensure the proper administration of the council's financial affairs.

The council's arrangements to prevent, detect and deter fraud and corruption comply with relevant legislation such as, Public Interest Disclosure Act 1998, Regulation of Investigatory Powers Act 2009 Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and police Act 2005), Terrorism Act 2000 (as amended by the Anti Terrorism and Security Act 2001 and Terrorism Act 2006), the Money Laundering Regulations 2003 and 2007 and the Bribery Act 2010.

7. OUTCOMES OF CONSULTATION

- 7.1 None.

8. RECOMMENDATION

- 8.1 That the Audit Committee notes the report and approves the changes necessary to the Housing Benefit Fraud Prosecution Policy as an appendix to the Counter Fraud Strategy and considers whether the counter fraud work programme delivers a sufficient level of assurance on the adequacy of counter fraud arrangements.

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Background Papers used in the preparation of this report :

Benefit Fraud Circulars HB/CTB F3 2012 and F6 2012 issued by DWP.

Internal Audit Plan 2012/13 Counter Fraud Summary

Area	Scope	Planned Days	Progress
Creating and maintaining the anti fraud culture			
Publicity	Continued development of system, promotional and awareness raising activities, refresh to risk assessments, and strategy	5	An eLearning package and desktop campaign is being designed. However the National Fraud Authority (NFA) has indicated that an eLearning package will be made available to all councils in the near future. This will be used instead of or incorporated into our campaign. The NFA training on 'What's new in fraud', has been disseminated to all audit staff; used to refresh fraud risk assessments and new areas of risk have been included in the 2012/13 audit plan.
Counter Fraud Strategy/risk assessments	Keeping the strategy current, and ensuring risk assessments are up to date	5	The Housing Benefits Prosecution Policy has been amended. The NFA are developing a central repository of good practice, when available, the Counter Fraud Strategy will be assessed against information available. In the meantime the NFA's online toolkit shows that our counter fraud arrangements are in the 71 st percentile of all public bodies that have used the toolkit. The results also identify areas for improvement.
Joint reporting	Ensure co-operation across all departments to be able to accurately assess fraud risk for the council	5	Joint working protocols are in place with HR and the police and are working well. Information sharing is in place with other councils via the Unitary Authority Groups. Joint working with other public sector organisations such as North Lincolnshire Homes (NLH) has been raised. This is encouraged by the NFA especially to tackle tenancy fraud and this will be revisited with NLH.
Prevention			
Designing out fraud	Advice in areas where changes to systems are proposed	10	Audit have supported the revenues BACS refund project currently on hold. A review of the new e-Income system is also underway. Audit provide support and advice as part of system changes and the wider worksmart project on an ad hoc basis. This year, arrangements in place to manage the transfer of the council's main bank account provider will be reviewed.
Deterrence			
Fraud Newsletter and Council Wide Communications	Publication of a quarterly newsletter and issue of alerts and council wide communications	5	The newsletter is now a regular item with articles covering current national and local anti fraud topics. Other departments across the council such as Benefits, Trading Standards and Insurance have provided articles. The police have also provided an article on local frauds. North Lincolnshire Homes have indicated that they would like to utilise the publication to joint benefit.
Detection			
Data Matching – National Fraud Initiative (NFI)	Audit assistance in the annual exercise of data matching. In 2010/11 council tax matches and data submission for 2011/12 full exercise	30	The 2010/11 exercise has been significant with extra match reports being added throughout the year. Savings to date are in excess of £183k. The council tax and electoral registration data was submitted in December and results were received in

			February 2012. These matches are being investigated in conjunction with the current Experian data matching exercise taking place in Local Taxation. Controls in place to prevent benefit payments being made to individuals who are not the registered tenant in NLH properties have been evaluated. Tenancy checks have now been included in the NFI exercise. The Audit Commission indicated recently that a real time service will be offered in the future to carry out point of access checks, and also ad hoc matching in currently unsupported areas. The new service is currently being piloted and the benefits and costs to the council will be considered when further details are available.
Hotline	Audit response to allegations received via the hotline	30	There continues to be an increase in calls, an average of 20-30 calls a month, received and the hotline is continually publicised via the Fraud Focus newsletter.
Money Laundering	Provision of the system set up client identification checks with services	0	The council wide eLearning package will include a summary of the council's anti money laundering arrangements. Targeted eLearning training for those staff in high risk areas is also being developed.
Investigation			
Proactive – misuse of council funds audits	Rolling programme of audits of potential misuse of council funds.	15	Internet use is now monitored via exception reports, followed up by further investigation if necessary. An audit on compliant use of Social Media has been planned for this year
Proactive – investigation of high risk income collection areas	Income based audits (5 sites)	50	Areas for audits this year include, Freshstart, Community Meals, Markets, Building Control and Registrars.
Proactive – development of IDEA software	To identify areas where software can be used to detect and investigate fraud	10	An annual review using IDEA has been introduced to identify duplicate payments. Savings in 2011/12 (which looked at invoices over two years) were in excess of £11k. To date the 2012/13 exercise (which covered 2011/12 invoices) has identified over £7k in duplicate payments.
Reactive Investigations		As required	



BENEFIT FRAUD PROSECUTION POLICY

North Lincolnshire Council is committed to tackling and countering benefit fraud, recognising the drain it places on public funds.

The measures taken by the council in order to detect and deter housing benefit and council tax benefit Fraud are set out in the Housing Benefit Anti - Fraud Strategy and Business Plan. This document sets out the council's policy on the further action which will be taken following an investigation when it has been established that housing benefit and / or council tax benefit has either been obtained or an attempt has been made to obtain these benefits fraudulently.

OPTIONS AVAILABLE

If, after the investigation of an allegation of fraud, the evidence demonstrates that fraud has been established 'beyond doubt' and the case is considered serious enough to warrant further action being taken, the council has three options: -

1. To prosecute
2. To offer a formal caution
3. To offer an administrative penalty

Each case will be considered on its own merits and the council will not operate a blanket policy of instigating a sanction purely based on the amount of the overpayment however overpayments below £2,000 will be considered for a caution or administrative penalty in the first instance.

PROSECUTION

Prosecutions will be brought using the following legislation:-

- S111 Social Security (Administration) Act, 1992
- S112 Social Security (Administration) Act, 1992
- Theft Act, 1968
- The Fraud Act, 2006

- Criminal Attempts Act, 1981
- Any other relevant legislation.

Cases will be referred promptly to the council's Legal Department.

Following joint investigations with the Department for Work and Pensions, cases will be referred to their solicitors or the Council's Legal Department. (NB: The CPS is to undertake prosecutions on behalf of DWP from 01 April 2012.)

Cases may be referred to the police and / or the Crown Prosecution Service (CPS) should a case be deemed to be too serious for the council to deal with.

DECISION TO PROSECUTE

The decision to prosecute an individual is a serious matter. Each case should be considered on its own merits.

A 'Decision to Prosecute' pro-forma must be completed in every instance giving details of the offence, the other options that have been considered and why it is proportionate and appropriate to bring proceedings.

In recommending prosecution there are two tests to consider:-

- The Evidential Test
- The Public Interest Test

The Evidential Test

The investigation must have established sufficient evidence against the defendant to provide a realistic prospect of conviction. That means that a bench of magistrates or a jury are more likely than not to convict the defendant of the offence prosecuted.

The Public Interest Test

The public interest test must be considered after it has been determined that evidence exists which would provide for a realistic prospect of conviction.

If a case is deemed serious enough to bring proceedings, a prosecution will usually follow unless there are any public interest factors tending against prosecution which clearly outweigh the reasons for prosecuting.

Although in many instances there may be some public interest factors against prosecution, usually these are outweighed by the reasons for prosecution and as such the matter should still be brought to court. If in doubt advice should be sought from Legal Services.

The factors both for and against prosecution must be balanced carefully and fairly. Public interest factors are usually the seriousness of the offence and the circumstances of the defendant. Some factors may increase the need to prosecute whilst others suggest another disposal may be more appropriate

Public Interest Factors in Favour of Prosecution

- A conviction is likely to result in a significant sentence.
- The defendant was in a position of authority or trust.
- The offence was premeditated.
- The defendant was a ringleader or an organiser of a multiple offence.
- There is evidence that the offence was carried out by a group.
- The defendant has previous convictions for benefit fraud or dishonesty or has such a poor record and is clearly a 'professional criminal' that no other disposal is suitable.
- There are grounds for suspecting that the offence is likely to continue or be repeated.
- The offence, although not serious in itself is widespread in the locality and a prosecution for deterrence purposes is highly desirable.

Public Interest Factors Against Prosecution

- The court is likely to impose a very small or nominal sentence.
- The offence was committed as a result of a genuine mistake or misunderstanding
- The loss or harm can be described as minor and was the result of a single incident, particularly if a genuine mistake as described above.
- There has been an unreasonable delay between the offence being perpetrated and the person being brought to court. (Article 6 European Convention on Human Rights).
- A prosecution could potentially have a very bad effect on the defendant's physical or mental health, (this must be considered carefully against the seriousness of the offence).
- The defendant is very elderly or is now, or was at the time of the offence being committed, suffering from significant ill health, (this must be considered carefully against the seriousness of the offence).
- The defendant has repaid the overpayment in full (but there must be no suggestion of a defendant buying their way out of a prosecution).

FURTHER PROSECUTION CONSIDERATIONS

If the evidential test and the public interest tests are satisfied, the following factors will also have to be taken into consideration.

These include: -

- The amount of the overpayment
- The duration of the fraud
- Voluntary disclosure
- Failure in benefit administration (official error).
- Prevalence of similar fraud in the area.
- Any evidence of collusion with employer or landlord.
- Deterrence factors of good publicity.
- Did the defendant continue to deny the offence even when confronted with the evidence?
- Whether prosecution would result in any negative publicity for the council.
- Whether the evidence obtained satisfies the admissibility criteria or could be deemed to be 3rd party hearsay. This is particularly relevant to “living together as husband and wife” investigations.
- Ensuring compliance with the Police and Criminal Evidence Act, 1984 (P.A.C.E.)
- Ensuring compliance with Criminal Procedures and Investigation Act, 1996 (C.P.I.A.)
- Ensuring compliance with the Regulation of Investigatory Powers Act, 2000 (R.I.P.A.)

APPLICATION OF SANCTIONS

A caution or administrative penalty should only be offered if the evidence obtained supports a prosecution.

- **Formal Caution**

This is an alternative to prosecution and is similar to a Simple Caution administered by the Police.

A Formal Caution should be applied in cases that are deemed not quite serious enough to warrant prosecution i.e. the overpayment is at the lower end of the scale - normally below £2,000.

The caution should only be considered if the defendant has fully admitted the offence at interview and has no previous convictions. It will therefore be necessary to undertake checks with the Administration and Support Unit at Scunthorpe Police Station and with the Department for Work and Pensions.

If cautions or prosecutions for benefit fraud and / or theft or deception offences already exist then the case is probably not suitable for a caution and an administrative penalty or prosecution should be considered.

However, there are instances when it might be appropriate to offer a caution for an amount in excess of £2,000 if either the Investigation Manager or Legal Department felt it was inappropriate to prosecute but the offence was serious enough to warrant further action. Any reasons will be fully recorded on file.

Similarly, there may be instances when an overpayment falls into the category to consider for a formal caution but because of the nature of the offence it is more appropriate to prosecute. Again any reasons will be fully documented on file.

Following joint investigations with the Department for Work and Pensions a caution may be offered if both parties agree it is appropriate provided that the combined overpayment falls into the financial threshold of either the council or the DWP's prosecution policy.

However DWP are no longer able to offer a formal caution for offences committed on or after 01 April 2012 or where the offence spans that date but instead have to offer an Administrative Penalty. This is following legislation changes where the use of cautions has been withdrawn for their offences. Therefore to ensure consistency of disposals in joint investigations if the offence is committed in full prior to 01 April 2012 a caution can still be considered however for other offences a caution will not be suitable and an administrative penalty will be offered.

A 'Decision to Caution' pro-forma must be completed in every instance giving details of the offence, the purpose of the caution and explaining why the offer of a caution is appropriate.

The Investigation Manager is designated as the officer responsible for conducting the formal caution interview and offering the caution. The Senior Investigation Officer or occasionally the Investigation Officers may deputise in his absence.

- **Administrative Penalty**

This can be considered for offences, which have resulted in overpayments below £2,000. The penalty is essentially a 30% 'fine' of the overpayment amount.

Generally it should be considered when the Investigation Manager or Legal Department are of the opinion that a prosecutable offence has been committed but that criminal

proceedings are inappropriate in the first instance. Usually this means that the claimant has not admitted the offence therefore a Caution is inappropriate, his previous convictions preclude a formal caution being offered but as the overpayment is at the lower end of the scale a prosecution may not be the first option.

Unlike the formal caution there is no requirement for the defendant to make a written admission of the offence.

However, should the defendant refuse to accept the penalty, a prosecution should follow in most cases.

Although a penalty can be considered for overpayments below £2,000, the Investigation Manager and Legal Department may still consider commencing criminal proceedings if it was felt more appropriate.

Following a joint investigation with the Department for Work and Pensions an administrative penalty may be offered if both parties agree it is appropriate provided the combined overpayment falls into the financial threshold of either the Council's or DWP's prosecution policy.

Changes in legislation affecting DWP means that for offences committed on or after 01 April 2012 or spanning that date the only sanction available will be an administrative penalty.

From 08 May 2012 the Social Security (Administration) Act was amended by the Welfare Reform Bill resulting in changes to the amount of the financial penalty. Any offence committed wholly on or after 08 May 2012 thereby resulting in an administrative penalty will attract the following penalties:-

- There will be a minimum penalty of £350 otherwise the penalty will be 50% of the overpayment up to a maximum of £2,000.
- An attempt to commit fraud where the fraud is discovered prior to payment being made will attract a penalty of £350.

A 'Decision to Offer an Administrative Penalty' pro-forma must be completed in every instance outlining the offence, the purpose of offering the penalty and explaining why an administrative penalty is the most suitable disposal.

The Investigation Manager is designated as the officer to be responsible for conducting the administrative penalty interview. The Senior Investigation Officer or occasionally the Investigation Officers will deputise in his absence. However, legislation also allows for the DWP to conduct a penalty interview on behalf of the council and vice versa.

- **Prosecution**

All cases of **proven** fraud with an overpayment in excess of £2,000 will be considered for prosecution.

However, there is no minimum value to be prescribed and should either the Investigation Manager or Legal Department or the Department for Work and Pensions

in joint investigations consider it appropriate, a prosecution may be brought for a lesser amount.

There may be circumstances when the Legal Department or Investigation Manager considers it more appropriate to offer an alternative sanction for a case which meets the financial value for a prosecution. In such instances the reasons for doing so will be fully documented.

A 'Decision to Prosecute' pro-forma must be completed in every instance giving details of the offence, the other disposal options that have been considered and why it is suitable and proportionate to prosecute.

Files will be prepared by the investigating officer as soon as possible and referred to the Investigation Manager to check and make recommendations to the council's Legal Department. The Senior Investigation Officer will review files in the Investigation Managers absence.

Publicity will be sought by contacting Public Relations prior to a case being heard at court.

In the event of any case referred to the Police it is for them to decide the whether a prosecution or other disposal is appropriate.

28.05.12. NS