

Report of the: Director of Policy and
Resources

Agenda
Item No: 11
Meeting: 25 June 2013

NORTH LINCOLNSHIRE COUNCIL

AUDIT COMMITTEE

COUNTER FRAUD PROGRESS REPORT

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform Members of key issues arising from counter fraud work.
- 1.2 To consider and approve the revised Benefit Fraud Prosecution Policy.
- 1.3 Regular reporting on counter fraud issues is an important source of assurance for Members to fulfil their role and provides supporting evidence for the annual approval of the Governance Statement.

2. BACKGROUND INFORMATION

Counter Fraud Plan progress

- 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 2013/2014 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.

Proactive work

- 2.2 The Audit Commission's National Fraud Initiative is an annual exercise with different data sets being submitted in a two year cycle. In year 1, data is submitted for benefits, payroll, creditors and licences. In year 2, council tax discounts and electoral roll data is submitted. Matches are received in the following January for investigation. Our 2010/12 year 1 exercise is now complete it indicated that of the 69 reports containing 9,775 matches, all internal audit matches (6,984) had been investigated and closed generating savings of £13k. The remaining benefits and council tax matches were still being investigated and had so far generated savings of £195k.

- 2.3 In October 2012 data for the 2012/14 NFI exercise was submitted and matches were returned in January 2013. Fifty seven reports containing 7,077 matches were returned and Internal Audit has started work on all 26 reports (5,368 matches). To date, 2,277 matches have been fully investigated with no fraud or error found. The Housing Benefits Investigation team is dealing with 31 reports containing 1,709 matches and to date 256 matches have been investigated and closed with approximately £2k of fraud identified. Work will continue on all matches to meet the March 2014 deadline.

Reactive work

- 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	378*
2013/14 (April- May)	113 (38 spurious calls when council tax bills were issued)

(* high number of spurious calls; 67 in 2009/10, 78 in 2011/12 and 81 in 2012/13)

This would indicate that:

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

- 2.5 There was a similar number of investigations during 2012/13 (36 cases) compared to 2011/12 (37 cases). Some cases were led by HR or the service concerned and further analysis is provided in the Internal Audit Annual Report. Five new cases have been reported so far in April this year. Investigations are on going and mainly concern cash/income anomalies flexi/timesheet discrepancies, failure to safeguard assets and opportunist theft.

- 2.6 The Audit Commission's fraud survey has been completed and submitted by the May deadline, summary results will be collated nationally and reported in the next publication of Protecting the Public Purse which is due in the autumn. Details of the survey's results will be reported to the Committee when published.

Benefit Fraud Investigation Team

- 2.7 As at 28th May the Benefits Fraud Investigation team had prosecuted or sanctioned ten cases in this financial year. There are 5 other cases currently listed at court, 3 of these are joint investigations with DWP which are progressing to the crown court as they have combined overpayments of £161,000.

- 2.8 The benefit fraud prosecution policy (appendix B) has been updated to reflect the fact that a new council tax reduction scheme has been introduced. The amended policy allows for further action to be taken if a person falsely claims a council tax reduction. The available options include prosecution, caution and penalties and are therefore the same as housing benefit and residual council tax benefit.
- 2.9 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 introduced the option of a penalty as an alternative to prosecution for council tax reduction offences. The penalty amounts are prescribed in legislation as being 50% of the excess payment with the minimum penalty being £100 and the maximum being £1,000.
- 2.10 These are the only changes to the Council's prosecution policy. Investigations into Housing Benefit claims and residual Council Tax Benefit claims are unaffected.

3. OPTIONS FOR CONSIDERATION

- 3.1 The Committee is asked to consider whether 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 2013/14. The Committee is invited to ask questions about the contents of the report and seek clarification as necessary.
- 3.2 The Committee is asked to adopt the revised prosecution policy. This allows the council to take further action when a council tax reduction fraud has been established.

4. ANALYSIS OF OPTIONS

- 4.1 The progress report is designed to provide this Committee with the assurance required to fulfil its role effectively.
- 4.2 The adoption of the revised prosecution policy means that the council can take action against council tax reduction fraud.

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

- 5.1 Regular reviews of counter fraud arrangements should safeguard the council's assets and ensure that value for money is achieved in the use of resources. Minor costs associated with the telephone and publicity for the Hotline will continue to be maintained within the Finance Service budget.

5.2 The revised prosecution policy will allow appropriate sanctions to be applied and recovery of council tax in proven cases of fraud.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 An Integrated Impact Assessment is not required.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

7.1 There are no conflicts of interests to declare.

8. RECOMMENDATIONS

8.1 That the Audit Committee considers:

- The assurance provided by the progress report on the adequacy of counter fraud arrangements, and
- Whether the counter fraud work programme delivers a sufficient level of assurance on the adequacy of counter fraud arrangements.

8.2 That the Audit Committee notes and approves the revised Benefit Fraud Prosecution Policy.

DIRECTOR OF POLICY AND RESOURCES

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Background Papers used in the preparation of this report: None
The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013

Internal Audit Plan 2013/14 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	The NFA eLearning package is still awaited to adopt and disseminate training to all staff. Better Governance Forum training on tax risks and social engineering fraud was been received and incorporated into the fraud risk assessment and audit plan.
Counter Fraud Strategy/risk assessments	Keeping the strategy current, and ensuring risk assessments are up to date	5	The NFA are developing a central repository of good practice, when available, the Counter Fraud Strategy will be assessed against information available. Areas for improvement identified through our participation in the NFA's online toolkit are being progressed.
Joint reporting	Ensure co-operation across all departments to be able to accurately assess fraud risk for the council	2	Joint working protocols continue to work well. Welfare Reform changes such as the formation of a Single Investigation Service may require further protocols to be established.
Prevention			
Designing out fraud	Advice in areas where changes to systems are proposed	10	Welfare Reform changes particularly the administration of localised council tax support and community grants funds have been included for review in the 2013/14 plan
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 counter fraud topics. Other departments across the council such as Benefits, Trading Standards and Insurance have provided articles. The police also provide updates as appropriate.
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 2010/12 exercise is now completed, resulting in fraud/savings of £208k. 2012/14 matches have been received and work is underway to investigate matches.
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 and on the council website.
Money Laundering	Provision of the system set up client identification checks with services	3	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	Areas included in the 2013/14 Audit plan include Car Plan for mileage claims, Leisure Grants and Regional Growth Fund
Proactive – investigation of high risk income collection areas	Income based audits	40	Areas for audits this year include, Freshstart, Search Fees, Normanby Hall and Waters Edge Visitors Centre.
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. The last exercise identified £8k of duplicate payments.
Reactive Investigations		As required	



Housing Benefit, Council Tax Benefit and Council Tax Reduction Scheme Prosecution Policy

North Lincolnshire Council recognises the drain that fraud places on public funds and as such is committed to tackling fraud committed against Housing Benefit, Council Tax Benefit and the Council Tax Reduction Scheme.

This document sets out the council's policy on the further action that can be taken following an investigation when it has been established that housing benefit, council tax benefit and / or council tax reduction has been fraudulently obtained or an attempt has been made to obtain these benefits fraudulently.

OPTIONS AVAILABLE

After an investigation has been concluded if the evidence demonstrates that fraud has been established 'beyond doubt' and the case is considered serious enough to warrant further action, the council has three options: -

1. To prosecute
2. To offer a formal caution
3. To offer an Administrative Penalty (HB/CTB) and / or a Council Tax Reduction 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 a 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
- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.
- Criminal Attempts Act, 1981
- Any other appropriate legislation.

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

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

Cases may be referred to the police 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, these are often 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 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?
- Would a 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, administrative penalty or council tax reduction scheme penalty should only be offered if the evidence obtained supports a prosecution. The sanctions are offered as an alternative to a prosecution.

- **Formal Caution**

This 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.

A Formal Caution can be applied in respect of Housing Benefit, Council Tax Benefit and / or Council Tax Reduction Scheme offences.

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 to check the customer's antecedent history.

If cautions or prosecutions for benefit fraud and / or theft or deception offences already exist then the case may not be 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 Investigation Officers may deputise in his absence.

- **Administrative Penalty**

This can be considered for housing benefit and council tax benefit offences, which have resulted in overpayments below £2,000. The penalty is essentially a '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 fully admitted the offence therefore a Caution is inappropriate or 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. Similarly a penalty may be considered if an overpayment exceeds £2,000 however it is unlikely to be applied very often.

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.

Offences committed prior to 08 May 2012 attract a penalty of 30% of the overpayment.

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 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 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.

- **Council Tax Reduction Scheme Penalty**

This can be considered for Council Tax Reduction offences committed on or after 01 April 2013 which have resulted in excess payments below £2,000, an excess payment being an amount of council tax reduction to which a customer was not entitled. The penalty is an alternative to a prosecution and is essentially a 'fine'. The Investigation Manager is designated as the officer responsible for conducting the penalty interview although the Senior Investigation Officer or Investigation Officers may deputise in his absence. The penalty amounts prescribed in legislation are as follows:

- The amount of the penalty will be 50% of the Excess Reduction.
- The minimum penalty will be £100.
- The maximum penalty will be £1,000.

- **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 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.

28.05.13. NS