

**REPORT TO:** Audit and Governance Committee

**MEETING DATE:** 14 March 2017

**BY:** Depute Chief Executive – Resources & People Services

**SUBJECT:** Audit Scotland Review of Housing Benefit Fraud Investigation Liaison Arrangements in Scotland, (December 2016)

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## **1 PURPOSE**

- 1.1 To inform the Audit and Governance Committee of the recent Review of Housing Benefit Fraud Investigation Liaison Arrangements in Scotland carried out by Audit Scotland, (in December 2016).

## **2 RECOMMENDATIONS**

- 2.1 That the Audit and Governance Committee notes the content of the review and the Executive Summary contained within this report.
- 2.2 That the Audit and Governance Committee notes that the ELC benefits and Financial Assessments Service is continuing to liaise with the DWP's Fraud and Error Service through its involvement in the HB Fraud Issues Progression Group, (HBFIPG).

## **3 BACKGROUND**

- 3.1 Traditionally the investigation of Housing Benefit, (HB) fraud was the responsibility of the local authorities administering Housing Benefit on behalf of the Department for Work and Pensions, (DWP). However, a decision taken by the DWP in 2014 saw the creation of a Single Fraud Investigation Service, (SFIS). In November 2014 the responsibility for investigating Housing Benefit fraud passed from East Lothian Council to the DWP's Fraud and Error Service, (FES).
- 3.2 The creation of this new service saw 2 ELC Investigation Officers transfer to the DWP Fraud and Error Service where they continued to work from Musselburgh Job Centre investigating HB, (and other DWP & HMRC fraud) as part of a larger FES team operating from Sylvan House in Edinburgh.

- 3.3 Whilst Audit Scotland previously included HB Fraud Investigation as part of its regular local authority HB Performance Risk Audit, this ceased to be part of this audit's remit following the transfer of responsibility. More recently, concerns about the efficacy of the new counter fraud arrangements have been the catalyst for Audit Scotland to undertake a review of the Housing Benefit investigation liaison arrangements which have been set up since 2014 between local authorities and the DWP's Fraud and Error Service.
- 3.4 This Audit Scotland review report has established that whilst there is generally good liaison between local authorities and FES, (particularly where the local authority previously employed the investigators) there is a risk that the current process does not provide sufficient assurance that public funds administered by local authorities are being adequately protected. Key issues identified in the report include:
- Potentially fraudulent claims are not always being dealt with appropriately
  - Fraudulent claimants are not always being subject to sanction or prosecution action
  - Fraudulent overpayments are not consistently being created and recovered where appropriate
  - Performance against the liaison agreement between local authorities and FES is not being routinely monitored and reported
  - Numbers of fraud cases referred to FES by local authorities being reported on to the Procurator Fiscal for prosecution have declined.
  - The UK-wide referral form used by the DWP's Central Referral Service (CRS) needs to be reviewed and updated.
  - Local authority decision makers need to provide clear guidance to FES on what information is required to allow an HB overpayment decision and calculation to be made.
  - DWP should consider reviewing the funding methodology to ensure local authorities are suitable resourced and encouraged to make high quality referrals.
- 3.5 The Audit Scotland report welcomed the establishment of the HB Fraud Issues Progression Group, (HBFIPG) as a forum for local authorities and FES to discuss, prioritise and resolve issues and acknowledged that FES had held a seminar for Scottish local authorities in July 2016.

## The East Lothian Council Perspective

- 3.6 During the last full year that the ELC was responsible for its own HB fraud investigations 2013/14 ELC Investigations Team referred 25 cases to the Procurator Fiscal, of which 23 resulted in guilty outcomes. In doing so ELC provided greater level of assurance that public funds it administered were being protected.
- 3.7 Since HB fraud investigations became the responsibility of FES in November 2014, ELC are unaware of any HB Fraud cases resulting in a prosecution. As a consequence, both the deterrent effect of prosecutions and the assurance gained through prosecuting Benefit fraudsters has been diminished.
- 3.8 The Audit Scotland review report highlights some of the key issues and shortcomings which may be affecting FES's current counter fraud performance. However, it should be noted that at least 3 further factors have also had significant impacts on counter HB fraud activity in East Lothian:
- **Key differences between ELC and DWP fraud prosecution policies:** Previously ELC referred all fraud cases with a potential overpayment value of over £1,500 for prosecution. However, the DWP policy features a higher threshold and favours "compliance" measures which include alternative sanctions such as the appliance of "Administrative Penalties" instead.
  - **The closure of Haddington Sheriff Court:** This has meant that since December 2014 any/all potential Benefit fraud cases have had to be routed through the busier Edinburgh Sherriff Court.
  - **The rollout of the Universal Credit "Full Service" (UCFS) across East Lothian:** From April 2015 to-date, his has seen 20% of ELC Housing Benefit claimants migrate over to receive their "Housing Costs" from Universal Credit, (UC). Given that UC is claimed by people of working age, (the group where majority of fraud referrals are found) this is reducing the potential pool of HB cases from which fraud investigation referrals can be drawn from.
- 3.9 Whilst the ELC Benefits Service acknowledges the findings of the Audit Scotland review report it also considers that the current arrangements for HB fraud investigation have been made more complex by the transfer of the investigation responsibility to FES. Whilst the Council is often left unaware of the outcomes of investigations, the small number which have come to fruition have invariably resulted in ELC decision makers being asked to apply additional administrative penalties which the Council is then required to collect, (in addition to the resulting HB overpayment).
- 3.10 In an effort to help implement some of the recommendations for improvement Benefits Service has committed to attend HB Fraud Issues Progression Group, (HBFIPG). Both the Service Manager and the designated "Single Point of Contact" are engaged with this group.

#### **4 POLICY IMPLICATIONS**

- 4.1 The main implications of the Audit Scotland review report relate to the Council's Housing Benefit Overpayments Recovery Policy, (see copy attached). Other implications may exist for DWP policies relating to sanctions and prosecutions.

#### **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – If FES counter fraud performance continues at its current level, the deterrence of potential HB fraudsters (previously achieved through prosecutions) may be diminished thereby increasing the risk of financial loss due to fraudulent HB overpayments.
- 6.2 Financial – The DWP's current policy of applying the sanction of administrative penalties, (as opposed to prosecuting HB fraudsters) may increase the amount of HB debt that the Council would then have to raise and pursue. Opportunities to recover debts from HB claimants will be further reduced due to migration of HB caseload to UC.
- 6.3 Personnel – 2 FTEs already transferred to FES November 2014.
- 6.4 Other - None

#### **7 BACKGROUND PAPERS**

- 7.1 Audit Scotland Report – “A Review of Housing Benefit Fraud Investigation Liaison Arrangements in Scotland” (attached).
- 7.2 East Lothian Council's Housing Benefit Overpayments Recovery Policy (attached).

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# A review of housing benefit fraud investigation liaison arrangements in Scotland

ACCOUNTS COMMISSION 

Prepared by Audit Scotland  
December 2016

**Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. We help the Auditor General for Scotland and the Accounts Commission check that organisations spending public money use it properly, efficiently and effectively.**

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# Executive summary

1. The Department for Work and Pensions (DWP) recently estimated that overpayments of housing benefit (HB) due to fraud and error increased between 2014/15 and 2015/16 from 5.3% to 6% of HB expenditure. This amounts to a rise in monetary terms from £1.28 billion to £1.46 billion, the highest rate recorded.
2. The prevention, detection and investigation of fraudulent HB claims are important aspects of a secure and effective benefit service. Counter-fraud activities help to protect public funds by ensuring that fraudulent claims are identified and sanctions are applied where appropriate.
3. Since November 2007, Scottish local authority HB counter-fraud arrangements have been reviewed as part of Audit Scotland's HB risk assessment process. This report provides the findings from a review of the efficacy of the arrangements between local authorities and DWP since the responsibility for HB counter-fraud work transferred from local authorities to DWP's Fraud and Error Service (FES).
4. This process commenced in July 2014 and concluded in March 2016, and our report is intended to highlight areas of good practice, while identifying issues affecting performance, and recommending where improvements could be made. The key messages from our review are as follows:
  - There is generally good liaison between local authorities and FES, particularly where the local authority previously employed the investigator.
  - There is a risk that the current process does not provide sufficient assurance that public funds administered by local authorities are being protected as:
    - potentially fraudulent claims are not always being dealt with appropriately
    - fraudulent claimants are not always being subject to sanction or prosecution action
    - fraudulent overpayments are not consistently being created and recovered, where appropriate.
  - Performance against the performance indicators contained within the UK 'Local agreement' is not being routinely recorded, monitored, and reported by FES or local authorities.
  - There is no standard approach for local authorities, using internal IT systems, or via DWP's Fraud Referral and Incident Management System (FRAIMS), to record and monitor the progress of fraud referrals sent to FES, and consequently there is a lack of management information nationally and locally that could be used to:
    - measure the outcomes from local authority fraud referrals
    - determine the effectiveness of the fraud referral process against UK performance indicators



- help identify and resolve recurring issues
- highlight good practice.
- As part of the review of management information, the effectiveness of the new arrangements in respect of the number of local authority referrals that result in a referral to the Procurator Fiscal should be undertaken. Analysis of the questionnaire data suggests that numbers have declined significantly since responsibility transferred to DWP.
- The UK fraud referral form should be reviewed and updated to ensure that it captures a minimum level of information to allow DWP's Central Referral Services (CRS) staff to make a fully informed decision on appropriate further action.
- Local authority decision makers need to provide clear guidance to FES on what information is required to allow an HB overpayment decision and calculation to be made.
- In order to encourage high quality referrals, and ensure that local authorities are being suitably funded, DWP should consider reviewing the funding methodology to take account of the number of referrals made that meet a pre-defined and agreed quality standard, that are subsequently accepted for compliance or investigation action.
- DWP and local authorities in Scotland are committed to delivering process improvements and changes to procedures, and to implementing a structured and regular approach to local liaison. These activities included the establishment of the HB Fraud Issues Progression Group (HBFIPG) as a forum to discuss, prioritise and resolve issues.
- In addition, a FES seminar was held for Scottish local authorities in July 2016 with a view to understanding and addressing the issues that were affecting performance, and developing a strategy for improved liaison and joint working.

## Background

5. The Local Government in Scotland Act 2003 introduced statutory duties relating to Best Value and Community Planning. The key objective of this review is to determine the extent to which benefit services are meeting their obligations to achieve continuous improvement in respect of HB counter fraud activities. Information for this review was gathered from officers in Scottish councils and the DWP.

### Development and pilots

6. In 2010, the joint DWP/HM Revenues and Customs (HMRC) fraud and error strategy proposed a Single Fraud Investigation Service (SFIS) to address fraud across all benefits and tax credits, whether administered by DWP, HMRC, or local authorities. The main objective of

the policy was to ensure that all types of social security benefit and tax credit fraud are investigated according to a single set of guidance and priorities.

7. In preparation for this change, in early 2013 a number of local authority pilots in the UK, which included Glasgow City Council, tested a variety of partnership approaches and a single set of policies and procedures in order to identify the best delivery model. The pilots also tested the different attributes of the service, including how SFIS worked in a Universal Credit environment, and how it worked as part of counter-fraud processes to help combat crime.
8. As a result of the success of these pilots, in the 2013 Autumn Statement, the Chancellor of the Exchequer formally announced the formation of SFIS (now FES), under the auspices of the DWP, with responsibility for investigating HB fraud and tax credit fraud. Previously, local authorities and HMRC were responsible for these investigations. The Crown Prosecution Service in England and Wales and the Procurator Fiscal in Scotland conduct prosecutions arising from fraud investigations.

## FES objectives

9. The main objectives of FES are to:
  - operate under a single policy and set of operational procedures for investigating all welfare benefit fraud
  - conduct single investigations covering all welfare benefit fraud
  - rationalise existing investigation and prosecution policies in order to create a more coherent investigation service that is joined up, efficient, and operates in a more consistent and fair manner, taking into account all offences that are committed
  - enhance closer working between DWP, HMRC and local authorities, and bringing together the combined expertise of all three services drawing on the best practices of each
  - support the fraud and error integrated strategy of preventing fraud and error getting into the benefit system by detecting and correcting fraud and punishing and deterring those who have committed fraud.
10. The transfer of counter-fraud work from local authorities commenced nationally in July 2014 and concluded in March 2016 (see *Appendix 1*). In total, over 70 local authority fraud investigation staff also transferred to DWP during this period, and since March 2016, FES has conducted single welfare benefit fraud investigations to one set of policies and procedures for all local authorities.

## Current arrangements

11. While local authorities have not been conducting HB fraud investigations since March 2016, there remains an ongoing need for close working with FES in respect of the exchange of data.

Local authorities can refer cases to FES for investigation and, when a case is accepted, will be required to provide FES with evidence, such as copies of claim forms and other supporting documentation.

12. When a fraud or error has been established, local authorities may also be asked to provide FES with details of the amount of overpayment that has arisen as a result, attend court if required, and take appropriate action to recover the HB overpayment.
13. In addition, FES are required to provide the local authority with information to allow them to monitor the progress of an investigation, and to take appropriate action as required, for example, to suspend a claim.
14. The requirements of the exchange of data are set out in the UK local agreement, which was agreed and signed by FES and local authorities as part of the transfer of responsibility for HB fraud investigations to DWP. The local agreement contains ten key performance indicators, the name of a single point of contact (SPOC) for each organisation, and details of the escalation route to address any issues.

## Funding

15. Local authorities receive subsidy payments from DWP at the end of each financial year in order to reclaim most of the HB paid to claimants. For overpayments of HB due to fraud or claimant error, local authorities receive 40% of the value paid. For overpayments due to local authority error, subsidy is paid at a rate between 0% and 100%.
16. In line with DWP's new burdens doctrine, local authorities receive an agreed payment to help mitigate the financial impact of the administration involved with the transfer of counter-fraud work to FES. In 2014/15, all Scottish local authorities where counter-fraud work transferred to FES between 1 July 2014 and 31 March 2015 were paid an amount dependant on the proportionate average size of the local authority HB caseload (based on the previous 12 months), and the number of months between the 'go live' date and the end of the financial year.
17. As 2014/15 was the first year of transfer, all local authorities that did not transfer during the year received a one off payment of £562 towards costs relating to human resource or other miscellaneous activity arising from the transfer project.
18. In 2015/16, payments to local authorities were based on the same methodology as the previous year, but also took into account DWP's expectation that 77,000 referrals would be made to FES from across the UK during the year.
19. In 2016/17, payments to local authorities were based on the same methodology as the previous year but also took account of FES management information for 2015/16 when 40,538 referrals were received by FES, from across the UK.

20. However, following discussions with local authority representatives, it was agreed that the number of referrals was lower than expected as local authorities adopted and became familiar with new processes. Consequently, the number of referrals used to calculate the new burdens payment for 2016/17 was increased to 45,000.
21. When we analysed the funding data in respect of the 27 local authorities that recorded referral data, for the period 1 July 2014 to 31 May 2016, we found a disproportionate amount of funding was provided to local authorities per case referred as detailed in Exhibit 1 below.

<b>Exhibit 1: New burdens payments 1 July 2014 to 31 May 2016</b>			
	<b>Number of cases referred</b>	<b>Amount of subsidy received</b>	<b>Subsidy per referral</b>
<b>All local authorities</b>	4,427	£297,324	£67
<b>Local authority A</b>	479	£9,772	£20
<b>Local authority B</b>	24	£2,417	£101
<b>Local authority C</b>	2	£2,525	£1,263

*Source: DWP subsidy circulars S9/2014, S8/2015 (revised), and S5/2016*

22. As the current funding methodology does not take account of the number of cases referred, or the quality of referrals received by FES, we consider that this approach is financially detrimental to authorities that are referring more cases, and could act as a disincentive, as the amount of resource required to manage the referral process would be significantly greater than in local authorities that refer fewer cases.
23. In order to encourage high quality referrals, and ensure that local authorities are being appropriately funded, DWP should consider reviewing the funding methodology to take account of the actual number of referrals made per local authority that meet a pre-defined and agreed quality standard, that are subsequently accepted for compliance or investigation action.

## Our work

24. In June 2016, Audit Scotland issued a questionnaire to each of the 32 Scottish local authorities in order to determine the effectiveness of the liaison arrangements. The questionnaire requested performance information, details of local good practice, local issues, and suggestions for improvement. To ensure a holistic approach, we also met with the FES Group Manager for Scotland and a FES Fraud team leader, and had discussions with senior officers from DWPs Housing Delivery Division.

25. Since we commenced our study, it is acknowledged that DWP had recognised that the current arrangements were not effective overall, had identified, and was working on a number of activities to address the issues in order to improve performance and procedures.
26. These activities included the establishment of the HB Fraud Issues Progression Group (HBFIPG) as a forum to discuss, prioritise and resolve issues, including changes and recommendations arising from previous reviews of the HB counter-fraud process, and commissioning its Performance Development Team (PDT) to produce reports on:
  - the issues associated with the rollout of FES
  - a review of the end-to-end fraud referral process.
27. In addition, a FES seminar was held for Scottish local authorities in July 2016 with a view to understanding and addressing the issues that were affecting performance, and developing a strategy for improved liaison and joint working.
28. As outcomes, the reports produced by the PDT provided a number of recommendations, which DWP are taking forward through the HBFIPG, and FES (Scotland) has established a programme of liaison meetings as the platform for raising issues and the sharing of good practice. As a minimum, a DWP and a local authority representative from each District (North, East, West and Central) will attend these meetings.
29. This report is therefore intended to complement and support the work of DWP and our findings and recommendations are set out below.

# Findings

## Good practices

30. A number of working practices, which have helped improve efficiency and effectiveness, have been introduced in some local authorities. These include:
  - Dundee City Council monitors and tracks the electronic local authority information exchange form (LAIEF) between the local authority and FES on their benefits workflow system. The council has also been working closely with FES officers, and has provided training to local FES staff in order to help improve FES and local authority processes.
  - A separate team in Glasgow City Council deal with all adjudications. This allows learning from previous adjudications that may be similar. This team also attend court, as required, and there is a dedicated administrator who works with the local authority's decision makers.
  - A senior HB officer at Inverclyde Council vets all referrals before submission to FES to ensure they would have reached the standard for investigation by the local authority.

- Aberdeen City Council fraud officers input the date the case was opened by FES on the LAIEF in order to monitor progress of an investigation.
- The Scottish Borders Council is considering providing access to the local authority benefits IT system for its ex-fraud officers that transferred to FES. This would allow these officers to gather evidence for investigations independently. The local authority is also setting up sessions for FES officers to provide local authority staff with fraud and compliance awareness training.

## Key issues and areas for improvement

31. A number of recurring issues and suggested improvements to the fraud referral process and the measurement of outcomes were identified during this review.
32. As previously mentioned, the FES (Scotland) seminar in July 2016, which was well attended by Scottish local authorities, was held in recognition of the need to improve the relationship between DWP and local authorities, and to identify areas for improvement in order to deliver a more cohesive investigation process across Scotland.
33. The types of issues raised in response to our questionnaire included:
  - cases being closed or transferred to DWP's compliance team for non-criminal action without local authorities being informed, and investigation outcomes not being provided resulting in local authorities not knowing if customers had been sanctioned or prosecuted
  - the lack of sufficient information provided to local authorities to allow adjudication officers to make robust overpayment decisions
  - issues when sending supporting documentation by e-mail as size restrictions mean that documentation cannot always be sent in one e-mail. This provides additional work for FES who need to ensure that separate emails in respect of the same referral are identified and collated
  - local authorities being asked to provide FES with all 'relevant' information when it is not clear what FES considers to be relevant
  - a lack of regular liaison meetings between local authorities and FES to discuss policy and operational matters
  - the LAIEF document does not include the space or functionality to allow local authorities to update relevant sections
  - referrals being lost by FES resulting in additional workloads and cost for local authorities to re-refer the case, and the potential increase in any resultant overpayment.
34. The following section looks in detail at the fraud referral process and the local agreement, which contains the key performance measures that set the parameters for joint working.

## The referral process

35. In order to ensure a consistent approach, FES and each local authority nominate a SPOC to manage the fraud referral and investigation process. In local authorities the SPOC is responsible for ensuring that a fraud referral and supporting evidence is submitted to FES in the prescribed manner, responding to FES enquiries, and ensuring that appropriate action is taken at the conclusion of investigation or compliance activity. In FES, the SPOC is the person that the local authority would contact if there was a query, or an issue to be resolved.
36. Generally, where there is an allegation that an HB claim is potentially fraudulent and the local authority has sufficient information to support an investigation, a standard fraud referral form is completed and e-mailed to a dedicated FES email account. When received by FES, the local authority receives an automated response from the FRAIMS system acknowledging receipt.
37. Once received, DWPs Central Referral Services (CRS) carries out checks on DWP systems to provide as much background information as possible to enhance the referral. These checks include:
  - establishing if the customer is in receipt of benefit
  - the value of any potential overpayment
  - whether there has been a previous fraud
  - details of the household composition.
38. As part of this process, CRS complete a 'routing minute', which contains the details of the allegation from the fraud referral form and background information from the referral enhancement checks of DWP systems. This process allows CRS officers to make a routing decision based on the potential value of the overpayment as follows:
  - Generally, where the potential overpayment is less than £2,000, the case is routed to the FES Compliance (non-criminal) team.
  - Where the potential overpayment is £2,000 or above, or less than £2,000 and where there is fraudulent intent and/or it is a repeat offence, the case is routed to FES Local Service Investigation (LSI) to conduct a criminal investigation.
  - Where there is insufficient information to support either criminal or non-criminal action, the case is closed on the FRAIMS system and removed after 14 weeks as part of a data cleansing routine.
39. Once the routing process is complete, the electronic LAIEF is used by FES to keep the local authority informed on the progress of a referral, to request further information, as appropriate, and to advise the local authority on the outcome at the conclusion of investigation or compliance activity. The LAIEF is also used by the local authority to provide FES with HB information throughout the course of an investigation.

## FES Local Service Compliance

40. FES Local Service Compliance teams carry out face-to-face interviews with customers where the level of potential fraud is less than £2,000, or there is insufficient evidence or extenuating circumstances that would not support a prosecution or administrative penalty.
41. The compliance interview is not a criminal investigation and therefore not carried out under caution. The purpose of the interview is to:
  - ensure that the customer is receiving the correct benefit entitlement
  - obtain the necessary information to enable a potential overpayment/underpayment to be calculated
  - establish the causes of the potential overpayment/underpayment
  - advise the customer how to stop any future overpayment/underpayment from recurring
  - explain the possible consequences of not complying in future, where appropriate.
42. Where it has been established following a compliance interview that there has been a failure to report a change of circumstances, where there is an HB implication, the information is referred to local authority decision makers, to create an overpayment and initiate recovery action, as appropriate.

## FES Local Service Investigations

43. Where the potential fraud is £2,000 or more, and/or where there is fraudulent intent, and/or it is a repeat offence, a fraud referral will be dealt with by FES local service investigation officers. These staff are highly trained in fraud investigation techniques and carry out interviews under caution. Where fraud is established a customer could be sanctioned or prosecuted.

### Recommendations for improvement

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| 1 | The fraud referral form should be reviewed and updated to ensure it captures all relevant information at the point of completion. This should include the name of the local authority sending the referral, the amount of the potential fraud, and the full contact details of the SPOC.   |
| 2 | Local authorities and FES should work together to define and agree a minimum quality standard for local authority fraud referrals, and to ensure that the SPOC is fully trained to deliver this standard. In addition, local authorities and FES should develop a programme of management checks to ensure that only high quality referrals are sent to FES. |
| 3 | Local authorities and FES should establish a more robust method for recording and monitoring referrals, the outcomes, and the exchange of information between both   |



### Recommendations for improvement

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| 4 | <p>organisations that provides for a complete audit trail of actions taken that is open to scrutiny.</p> <p>In HB only cases, where an overpayment is estimated to be less than £2,000, and the local authority has the required level of evidence to support this, in consultation with FES, consideration should be given as to whether the action to create and recover the overpayment is best placed with the local authority, therefore reducing the number of cases referred for compliance action.</p> |
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## Local agreement

44. The local agreement has six key performance indicators for local authority activity that FES should be monitoring, and four key performance indicators for FES activity that local authorities should be monitoring.
45. The aim of these performance indicators, which cover the end-to-end investigation process, is to provide for an efficient and effective relationship between each organisation to ensure that investigation and compliance activity is conducted in a professional and timeous manner. Exhibit 2 sets out the performance indicators in detail.

### Exhibit 2: Local agreement performance indicators

Local authority performance indicators	Timescale
<b>Local authority</b> - CRS referral routing	Within five working days
<b>Local authority</b> - during case build, respond to requests for claim forms etc. prior to Interview Under Caution (IUC)	Within 10 working days
<b>Local authority</b> - during an investigation, where identified, inform FES of changes to entitlement to HB or council tax reduction	Within two working days
<b>Local authority</b> - following IUC, respond to requests for further information, for cases appropriate for prosecution action	Within 10 working days
<b>Local authority</b> - during an investigation, inform FES of the amount of any overpayment which will include any underlying entitlement	Within 10 working days
<b>Local authority</b> - consider offering an Administrative Penalty as an alternative to prosecution and advise FES of the decision	Within 10 working days
<b>FES performance indicators</b>	
<b>DWP</b> - FES investigator to inform local authority of decision to investigate	Within two working days

**Exhibit 2: Local agreement performance indicators**

<b>DWP</b> - FES to contact local authority for consideration of claim suspension	Within two working days of establishing factual evidence
<b>DWP</b> - FES to advise the local authority of the outcome of an Administrative Penalty offer	Within five working days
<b>DWP</b> - FES to notify the local authority of the outcome at the conclusion of the investigation	Within five working days

46. In order to monitor these performance indicators, local authorities and FES should have procedures and systems in place to ensure that the recording of referrals to FES is consistent and robust, and that regular monitoring is carried out to ensure compliance. However, from our analysis of the returned questionnaires from the 32 Scottish local authorities, and our discussions with FES (Scotland) senior management, it is clear that neither organisation is routinely recording or monitoring performance.
47. We were told by FES that the FRAIMS system is limited in respect of the management information that is available, and that it is not possible to determine FES or local authority performance against any of the performance indicators. In addition, although 27 of the 32 Scottish local authorities recorded the number of cases referred to FES, none had sufficient management information to determine local authority or FES performance against all of the indicators.
48. Consequently, our analysis is limited to the information provided by local authorities on our questionnaire in respect of the four performance indicators in the local agreement that FES should be meeting to keep them informed on the progress of a referral from receipt to outcome.

**Recommendation for improvement**

5	The UK local agreement should be reviewed and updated to ensure that performance indicators are relevant and achievable, and are recorded and routinely monitored to allow FES and local authorities to report on performance in a consistent and robust manner.
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**FES performance indicators**

49. It is acknowledged that our analysis provides an indication of performance from a local authority perspective and is not based on a complete dataset, as some local authorities did not capture the necessary performance information. However, as FES are currently unable to

provide any national MIS to challenge these figures, or provide performance from a FES perspective, we consider that our analysis is representative of the issues being experienced.

50. It also provides an opportunity for both organisations to learn and improve current processes and procedures to ensure that future performance management is robust, consistent and open to scrutiny. The recent recognition and significant work already carried out by DWP into the current arrangements supports these findings.

### FES investigator to inform the local authority of decision to investigate

51. The purpose of this performance indicator is to notify the local authority that an investigation has commenced which could lead to a sanction and/or overpayment. In notifying the local authority, it enables them to deal with any subsequent enquiries from the customer, and helps to ensure that a FES investigation is not compromised. In such cases, FES should send a LAIEF to the local authority within two working days of receiving the case.
52. In respect of the 32 local authorities that completed our questionnaire, a total of 4,427 referrals to FES were made between 1 July 2014 and 31 May 2016. Of these, we found that 16 local authorities were not fully capturing information in respect of this performance indicator and were unable to report on how many cases FES had advised of a decision to investigate within the required timeframe.
53. Details of performance against this indicator in respect of the 16 local authorities that recorded this information is provided at Exhibit 3 below.

**Exhibit 3: FES investigator to inform local authority of decision to investigate (within two working days from receipt of referral)**

	Number of cases	Number advised	Number advised within timescale
<b>2014/15</b>	1,599	191 (12%)	32 (17%)
<b>2015/16 (31 May 16)</b>	688	145 (21%)	17 (12%)
<b>Totals</b>	<b>2,287</b>	<b>336 (15%)</b>	<b>49 (15%)</b>

Source: Scottish local authorities

### FES to contact local authority for consideration of claim suspension

54. The purpose of this performance indicator is to request the local authority to suspend a claim under investigation within two working days of establishing factual evidence, to ensure that the local authority does not continue to pay HB where there is no entitlement. It is also important that FES provide the local authority with sufficient information in order to support a suspension request.

55. Details of performance against this indicator in respect of the five local authorities that recorded this information is provided at Exhibit 4 below.

**Exhibit 4: FES to contact local authority for consideration of claim suspension (within two working days of establishing factual evidence)**

	Number of cases	Number advised	Number advised within timescale
2014/15	Data not available	6	4 (67%)
2015/16 (31 May 2016)	Data not available	8	1 (13%)
<b>Totals</b>		<b>14</b>	<b>5 (36%)</b>

Source: Scottish local authorities

56. In the period 1 July 2014 to 31 May 2016, analysis of the questionnaire returns from the 32 Scottish local authorities showed that 4,427 cases had been referred to FES. It is therefore unlikely that in only 14 cases (0.3%) FES had contacted the local authority to suspend a claim.
57. However, as there is no record of the date that FES had established factual evidence on the LAIEF, and FES and local authorities are not routinely recording this information, this performance indicator cannot be accurately measured.

**FES to advise local authority of the outcome of an administrative penalty offer**

58. The purpose of this performance indicator is to provide the local authority with sufficient information to determine the impact on a customer's HB claim in the event that fraud has been established by FES. This is particularly important as the local authority is required to pursue any subsequent HB overpayment, and early intervention would help the local authority to initiate recovery action in respect of the fraudulent overpayment and the administrative penalty in a timely manner.
59. Full details of performance against this indicator in respect of the eight local authorities that recorded this information is provided at Exhibit 5 below.

**Exhibit 5: FES to advise the local authority of the outcome of an administrative penalty offer (within five working days)**

	Number of cases	Number advised	Number advised within timescale
2014/15	Data not available	98	41 (42%)
2015/16 (31 May 2016)	Data not available	8	4 (50%)

### Exhibit 5: FES to advise the local authority of the outcome of an administrative penalty offer (within five working days)

<b>Totals</b>		<b>106</b>	<b>45 (42%)</b>
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Source: Scottish local authorities

### FES to notify the local authority of the outcome at the conclusion of the case

60. This performance indicator provides the local authority with details of the outcome of an investigation in order for appropriate action to be taken. For example, to calculate and initiate the recovery of a fraudulent overpayment.
61. Full details of performance against this indicator in respect of the eight local authorities that recorded this information is provided at Exhibit 6 below.

### Exhibit 6: FES to notify local authority of the outcome at the conclusion of the investigation (within five working days)

	<b>Number of cases</b>	<b>Number advised</b>	<b>Number advised within timescale</b>
<b>2014/15</b>	Data not available	203	199 (98%)
<b>2015/16 (31 May 2016)</b>	Data not available	74	26 (35%)
<b>Totals</b>		<b>277</b>	<b>225 (81%)</b>

Source: Scottish local authorities

## Investigation outcomes

62. In order to compare the effect of the transfer of responsibility for HB counter-fraud work to FES in respect of fraud investigation outcomes, we asked each local authority to provide information on the number of cases referred to the Procurator Fiscal, and the number of administrative penalties offered in the last full financial year before responsibility transferred to FES. We also sought similar information from FES.
63. However, although the majority of local authorities provided this information, we were unable to establish the same details from FES and therefore a comparison was not possible. However, analysis of the questionnaire data suggests that numbers have declined significantly since responsibility transferred to FES.

### Recommendation for improvement

<b>6</b>	FES should seek to develop management information to determine the effectiveness of fraud investigations that it conducts on behalf of local authorities and consider
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**Recommendation for improvement**

- reporting performance on a regular basis. Such information could include:
- the number and percentage of local authority referrals dealt with by Compliance that resulted in an overpayment
  - the number and percentage of local authority referrals dealt with by Compliance that resulted in no further action
  - the number and percentage of local authority referrals dealt with by Local Service Investigation that resulted in an administrative penalty
  - the number and percentage of local authority referrals dealt with by Local Service Investigation that resulted in a prosecution.

# Endnotes

[Housing Benefit Good Practice Guide: Initiatives which deliver best value](#), Audit Scotland April 2016

[Benefit performance audit: Annual update 2015/16](#), Audit Scotland June 2016

[Review of housing benefit subsidy certification issues 2014/15](#), Audit Scotland January 2016

[Review of activity to reduce fraud and error in housing benefit](#), Audit Scotland September 2015

[Benefits performance audit: Annual Update 2014/15](#), Audit Scotland June 2015

[Review of auditors' housing benefit subsidy claim reported errors 2013/14](#), Audit Scotland, February 2015

# Appendix 1: Timetable of FES rollout in Scotland

64. The table below details the order that HB counter-fraud work was transferred from local authorities to FES.

Local authority	Date transferred
East Ayrshire	July 2014
Dumfries and Galloway	October 2014
South Ayrshire	October 2014
East Dunbartonshire	October 2014
North Lanarkshire	October 2014
Falkirk	October 2014
Glasgow	November 2014
South Lanarkshire	November 2014
Edinburgh	November 2014
East Lothian	November 2014
Fife	December 2014
North Ayrshire	February 2015
West Lothian	February 2015
Stirling	February 2015
Scottish Borders	March 2015
West Dunbartonshire	March 2015
Aberdeen City	April 2015
Aberdeenshire	May 2015
Angus	May 2015
Dundee	June 2015
Perth and Kinross	July 2015
Western Isles	July 2015

Local authority	Date transferred
Highland	August 2015
Moray	August 2015
Orkney	August 2015
Shetland	September 2015
Midlothian	October 2015
Argyll and Bute	October 2015
Clackmannanshire	October 2015
East Renfrewshire	December 2015
Inverclyde	February 2016
Renfrewshire	March 2016





**Department of Council Resources**

# **Housing Benefit Policy**

## **HOUSING BENEFIT OVERPAYMENTS RECOVERY**

## **1. Introduction**

- 1.1 East Lothian Council 's Housing Benefit overpayments policy is designed to set out guidelines for Housing Benefit staff when dealing with overpayments. It is recognised that each case should be reviewed on its merits and that the appropriate action should be taken only after considering all the facts. However this guidance is intended to set a framework within which recovery decisions can be made.
- 1.2 As a Council we have to ensure that we are fair in our treatment of claimants who have unwittingly been overpaid whilst maintaining our responsibility to the local taxpayer.
- 1.3 Having identified that an overpayment has occurred, the authority must determine:
- The cause of the overpayment;
  - Whether or not the overpayment is recoverable;
  - Whether or not recovery should be sought;
  - From whom the recovery should be sought;
  - Method of recovery.

## **2. The Cause of the Overpayment**

- 2.1 Benefit overpayments arise for a number of reasons: -
- a claimant does not inform the authority of a change of circumstances until after the event or not at all - claimant error. (Note - there is a legal requirement for claimants and landlords to provide information on changes in circumstance);
  - a claimant or landlord has knowingly claimed benefit or falsified a claim to obtain benefit to which they are not entitled - fraudulent error;
  - a mistake has been made by the Local Authority – Local Authority error;
  - a mistake has been made by DWP or Jobcentreplus - official error.

## **3. Whether an Overpayment is recoverable**

- 3.1 Where an overpayment has arisen, a decision must be taken as to whether the overpayment is recoverable.

#### **4. Whether Recovery should be Sought**

4.1 An overpayment may be recovered at the authority's discretion. Regard should be given to individual circumstances when deciding if recovery is appropriate.

4.2 There is no obligation for the Council to recover all recoverable overpayments. However, subsidy arrangements penalise us if we do not recover most recoverable overpayments, and we would bear the cost of the overpayment in full.

#### **5. From Whom Recovery should be Sought**

5.1 An overpayment may be recovered from the claimant or the person to whom it has been paid. Overpayments may be recovered from a landlord where Housing Benefit has been paid direct. Guidelines also state that the authority must act reasonably in recovering the amount due.

#### **6. Method of Recovery**

6.1 The Council may recover the overpayment by any lawful method. The following are the main methods that are adopted -

- Deductions from ongoing benefit;
- Issuing of an invoice through the Financial Ledger Sundry Debt system;
- By recovering overpayments from a landlord through a third party benefit for an overpayment in respect of another claimant;
- Deductions from other benefits paid by DWP;
- For council tax benefit only, by adding overpaid council tax benefit, onto a claimant's council tax account as an amount of council tax owed.

#### **7. Policy statement regarding all Overpayments**

7.1 The rates set out within the policy are the rates that Benefits /Overpayments Officers must use when negotiating instalments. However, where a claimant can demonstrate that these levels of overpayment will cause hardship to themselves/their family then negotiation of lower payments is acceptable. Any reduced instalment payments are to be approved by the Team Leader.

## **8. Policy statement re: Fraud Overpayments & Administrative Penalties**

- 8.1 Where appropriate, recovery rates for fraud overpayments should be set at higher level to ensure effective recovery of fraudulently overpaid Benefit. In addition to this, greater priority should be given to the calculation, notification and monitoring of these cases to ensure that the recovery process maintains a deterrent effect.
- 8.2 Administrative Penalties will be recovered through the Council's corporate debt recovery process. Once accepted, these sums will either be recovered through this process or passed over to a debt recovery service to collect on the Council's behalf.
- 8.3 All cases, where a recommendation is made to recover at a weekly level higher than the standard rates set out in this policy.

## **9. Recovering Overpayments from existing claimants**

### **9.1 Deductions from ongoing benefit**

Recovery Of Benefit Overpaid from existing claimants

Regulation 102 of the Housing Benefit (General) Regulations 2006 and Regulation 83 of the State Pension Credit regulations 2006 prescribe the maximum weekly deduction that can be made to recover an overpayment from on-going entitlement. There are two prescribed rates of deduction depending on whether the overpayment has arisen as a result of fraud or not.

The prescribed rates are:

- in the case of a claimant who has been found guilty of an offence whether under statute or otherwise;
- made an admission under caution of deception or fraud for the purpose of obtaining benefit; or
- agreed to pay a penalty under section 115A of the Administration Act and the agreement has not been withdrawn,

four times five percent of the personal allowance, uprated, usually annually, for a single claimant aged not less than 25 rounded to the nearest 10 pence or if it is a multiple of 5 pence but not 10 pence, the next higher multiple of 10 pence.

in any other case

three times five per cent of the personal allowance, uprated usually annually, for a single claimant aged not less than 25 rounded if it is not a multiple of five pence to the next higher such multiple.

In addition to these two deductions where a disregard is being applied to income or earnings up to half the disregarded amount may be added to the amount to be deducted.

It is necessary in each case to have regard to any special health or financial circumstances of the claimant before deciding the level of deduction, or when to commence deduction, to avoid causing undue hardship to the claimant or their dependants.

#### **10. Collection through Sundry Debtor invoices**

In the first instance, an invoice should be issued for the full amount of the overpayment. The first principle should be to seek repayment in full. Where the claimant can show that this is unaffordable, then instalments shall be negotiated by the Overpayments Officer. If the former claimant is in receipt of income support / job seekers allowance then recovery shall be at the annual prescribed rate. Where this is not the case, the claimant will have to provide evidence of earnings in order to pay by instalments.

#### **Benefits paid by Department for Work and Pensions (DWP)**

The third option for recovery will be weekly deductions from Benefit paid by the DWP, (where appropriate). Recovery will again be in line with the prescribed recovery rates.

#### **11. Collection of overpayments from landlords**

- 11.1 The collection of overpayments in respect of current claimants will be undertaken by deducting amounts from future payments to the landlord unless the landlord has agreed to pay the account direct. If a decision is taken that the landlord could not reasonably be expected to know about the change of circumstances that led to the overpayment, then recovery will be from the claimant

The Social Security Administration (Fraud) Act 1997, allows recovery of an overpayment of benefit from a current tenant in respect of another claimant. This arises where the benefit has been paid direct to the landlord and an overpayment has arisen. The current tenant's rights are protected and the deduction counts as their rent payment. This will be used to recover overpayments direct to the landlord in respect of claimants no longer entitled to claim benefit within our area.

The first principle will be to seek settlement in full from the landlord for all overpayments received. In exceptional circumstances, the Landlord may negotiate a repayment arrangement with the Council.

**12. Guidance to Officers on non-recovery of recoverable overpayments and negotiating with claimants and their representatives**

- 12.1 All overpayments are recoverable including 'official error' overpayments where a claimant could reasonably have been expected to know that they were not entitled to the benefit.
- 12.2 Government guidance allows Councils to exercise judgement when deciding whether to collect a recoverable overpayment. However the guidance explains that this should only be exercised in exceptional circumstances, otherwise, councils may be severely restricted in its ability to recover overpayments.
- 12.3 For claimants who incur an overpayment and social factors indicate that the recovery of a recoverable overpayment would be unreasonable and likely to cause distress – no recovery shall be sought and the amount written off in accordance with council policy. Further guidance is shown in 12.6 below.
- 12.4 These cases can be highlighted in a number of ways, for example, either claimants or their advisors will make representations if they feel that their social circumstances are exceptional and the overpayment should not be recovered or officers will suggest to the Benefits Manager that the overpayment be written off. Officers may interview the claimant to establish full information, either at the offices or at their home or rely on other evidence and reports at their disposal.
- 12.5 For claimants who incur an overpayment (Housing Benefit and/or Council Tax Benefit) in excess of £1,000, and where there is no immediate arrangement for full repayment, officers will consider interviewing the claimant at the offices or through a visit to their home. The purpose will be to advise them of the overpayment and establish their ability to pay. The officer will also provide help and guidance on negotiating repayments having due regard to the levels set out within this policy.
- 12.6 Officers should consider not pursuing recovery of a recoverable overpayment where the claimant's social factors are exceptional, **and** the claimant has no funds to repay. Categories include: -
- Category 1 - Claimant suffering terminal illness
  - Category 2 - Claimant entering nursing home
  - Category 3 - Claimant suffering mental illness

**Category 1 – example**

A claimant, in receipt of Income Support, with no assets i.e. house, car etc. who is diagnosed as suffering from a terminal illness and has a life expectancy of less than 6 months.

**Category 2 – example**

A pensioner, in receipt of state benefits, with no assets i.e. house, car etc. who has or will, within 1 month, enter a nursing home on a permanent basis – the cost of which is being met in full, or in part, by the state.

**Category 3 – example**

A claimant, in receipt of state benefits, who is suffering from severe mental illness and where the overpayment has been caused by an inability to understand the claim regulations and where to recover the overpayment would lead to additional mental or financial stress.

Medical and social reports should be obtained from specialists and professionals in support of the recommendation not to pursue the debt.

- 12.7 All cases, where a recommendation not to recover or to recover at a weekly level less than that set out in this policy is made, will be referred to the Team Leader for confirmation. The Team Leader will determine cases where the reduced weekly recovery is recommended and will refer non-recovery cases to the Benefits Manager.
- 12.8 All decisions to write off a recoverable overpayment should be approved by Members of East Lothian Council as required by Financial Regulations