

Report by the
Benefit Fraud Inspectorate

***Berwick-upon-Tweed Borough
Council
Security Against Fraud and
Error Inspection***

July 2005

Highlighted parts of this report are omitted from the published version as they may assist fraudsters or may contain confidential commercial information.

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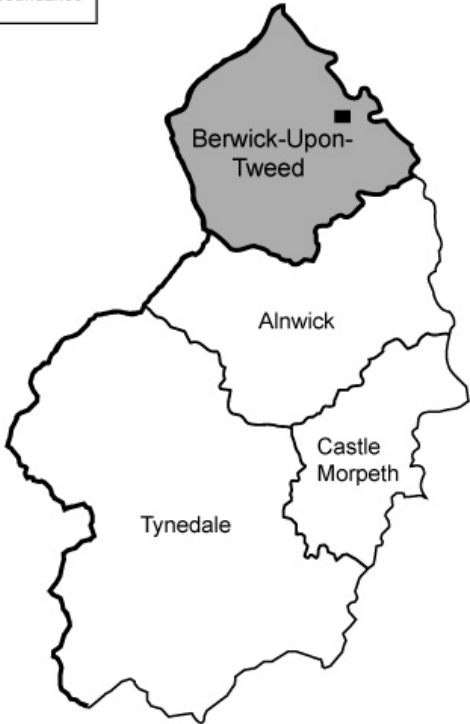
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The maps on this page show the area covered by Berwick-upon-Tweed Borough Council in relation to neighbouring authorities, and its geographical location in the country.

■	Administrative Centre
□	Local Authority Locator
—	Local Authority boundary
—	Other Authority boundaries



Abbreviations

All abbreviations used in this report are written in full when they are first used. For easy reference the more commonly used abbreviations are listed below.

BFI	Benefit Fraud Inspectorate
CTB	Council Tax Benefit
the Department	Department for Work and Pensions
HB	Housing Benefit
JSA(IB)	Income-based Jobseeker's Allowance
SAFE	Security against fraud and error

Executive summary

Introduction

1.1 The role of the Benefit Fraud Inspectorate (BFI) is to inspect Benefits administration and counter-fraud activity within local authorities, the Department for Work and Pensions (the Department) and its agencies. The findings from our inspections are reported to the Secretary of State.

1.2 Housing Benefit (HB) and Council Tax Benefit (CTB) are important contributions to many household budgets. Just under 4 million people receive HB, including many pensioners and families with children. It helps one in 6 households meet the cost of their housing at an annual cost of £12.1 billion. There are over 4.6 million people in receipt of CTB, at a cost of over £2.8 billion.

1.3 In its response to the *Housing Green Paper* of November 2000, the Department agreed to develop a performance framework for HB. BFI played a major role and the HB and CTB Performance Standards were launched and published in April 2002. They are standards the Department expects local authorities to aspire to and achieve in time. Every local authority has received a copy of the Standards and receives amendments when changes are introduced. Local authorities are encouraged to complete a self-assessment against them.

1.4 The Performance Standards allow local authorities to make a comprehensive self-assessment of whether they deliver benefit effectively and securely. While the Department has chosen to consider the full picture of what constitutes an effective and secure Benefits service that meets wider strategic objectives, this does not preclude inspections of specific aspects of HB and CTB administration.

1.5 This report reviews the counter-fraud performance of Berwick-upon-Tweed Borough Council. In the 2003 Comprehensive Performance Assessment, the council scored *Fair towards Good*. In its 2004 self-assessment of counter-fraud activity, the council assessed itself as being at Standard in 83 of the 89 components.

1.6 This inspection has focused on the council's efforts to deter, prevent and detect fraud, and to deal with it when it is detected. The inspection also considers the council's subsidy claims processes and performance relating to counter-fraud activity.

1.7 The council agreed with BFI that we would examine its performance against the Counter-fraud Performance Standard, and any related Strategic Management elements. As part of our inspection we agreed that we would:

- examine a random sample of cases selected from the council's fraud database
- examine a sample of cases that had resulted in sanctions
- report on closer working arrangements with the Counter-Fraud Investigation Service
- recommend steps that the council needs to take to improve performance.

1.8 We have supplemented our analysis of fraud cases with information from interviews and workshops with managers, staff and key stakeholders.

1.9 We would like to thank the management and staff of Berwick-upon-Tweed Borough Council for their help and support during this inspection, the on-site phase of which took place in March 2005.

Security against fraud and error scheme

1.10 The *Security against Fraud and Error* (SAFE) scheme was introduced on 1 April 2002 and is described as:

...a new anti-fraud and error incentive scheme that reflects the Department's overall strategy to reduce incorrectness in the administration of HB and CTB. The emphasis is firmly on the identification of all overpayments, without bias towards either fraud or error...

1.11 Another element of the scheme is to give local authorities greater financial rewards for outcome driven fraud activity. The scheme was designed to provide a more wide-ranging approach to tackling fraud and error in HB and CTB. Key elements include:

- prevention – offering higher incentive payments to local authorities that comply with the Verification Framework, as recognition of their efforts to prevent fraud entering the system
- detection – offering incentive payments to local authorities for the identification of both fraud and error overpayments
- sanctions and prosecutions – offering incentive payments to local authorities, not only for successful prosecutions but also for issuing an administrative penalty or formal caution.

1.12 Local authorities are able to claim payments for the following sanctions activity:

- administrative penalties issued and accepted
- formal cautions issued and accepted
- information laid with a Court and the Court issues a summons
- successful prosecutions.

1.13 To qualify for the appropriate incentive payment local authorities have to ensure that:

- the correct procedure for administering sanctions is followed

- an audit trail is kept to show previous convictions checks have been carried out.

Overall Performance

1.14 We found that within Berwick-upon-Tweed Borough Council there is a commitment at all levels to deter and prevent fraud and comply with the SAFE scheme. From the cases that we sampled, and from our discussions with Internal and External Audit, we are satisfied that investigative processes are sound, and sanctions, in the main, comply with the Department's guidance.

1.15 Berwick-upon-Tweed Borough Council regards combating benefit fraud as a high priority. The work of the Counter-fraud Investigation team is well supported by the Leader of the Council, Members, the Chief Executive and senior managers and this was evidenced by the increased resource allocated to the Counter-fraud Investigation team in 2003. We also found that the Counter-fraud Investigation team is committed to delivering a professional and high quality service.

1.16 The council has an *Anti-fraud Policy and Strategy* that commits it to improving the detection of fraud and implementing effective deterrent and prevention measures. It also has a *Benefit Fraud Sanction Policy* that is comprehensive and clearly defines the circumstances to be taken into consideration when determining the most appropriate sanction.

1.17 The council is the second smallest local authority, by population, in England and has only prosecuted 3 benefit fraudsters since 2002. However, we found that the quality of the preparatory work leading up to these successful prosecutions was of a high standard. All 3 cases were well publicised as a deterrent to others.

1.18 We found the Counter-fraud Investigation team had established very good working relations with key stakeholders. For example, the Department's Counter-Fraud Investigation Service described their relationship with the team as *excellent* and there is regular discussion with Benefit officers about referrals.

1.19 We found other examples of good practice. These include:

- a high standard of recording and filing of documentation in case files
- a code of conduct for investigators that lists all relevant legislation and associated Codes of Practice and a requirement to act in accordance with these at all times
- full compliance with legislation and the statutory or non-statutory Code of Practice when obtaining information from listed organisations such as banks and utility companies
- up to date procedural guidance
- a high percentage of referrals is investigated
- accurate subsidy claims that fully comply with Departmental guidance
- vigorous recovery of fraud overpayments and administrative penalties.

1.20 However, we also found several weaknesses in the investigation process and the management of the Counter-fraud Investigation team.

1.21 In the taped interviews under caution that we listened to we found elements of good practice but also areas of concern. For example, suspects were not reminded of the availability of the Police and Criminal Evidence Act 1984 Code of Practice during the taped interview under caution. We were also concerned to find examples of poor interviewing technique that included the overuse of leading questions and repetitive questioning. We also found that formal cautions were being offered despite no admission of guilt. This is contrary to Departmental guidance and the council's own sanctions policy.

1.22 We found numerous delays in investigation activity and were particularly concerned about delays of more than 50 days between the interview under caution and the sanction interview. This is unacceptable, because the customer will be anxious to learn the council's decision on whether it intends to prosecute, and such delays could cause distress.

1.23 We saw some evidence of management checking in our sample but this was inconsistent and there was no evidence of a systematic approach. The weaknesses we have described in interviews under caution and the delays we have found on the progression of cases would probably have been identified if the council had in place a systematic and documented management checking regime covering all aspects of counter-fraud work.

1.24 The decision on the appropriate sanction to offer to fraudsters involves the council's Senior Auditor and the Head of Finance (Accountancy and Audit). Neither of these officers has had any legal training. As a result, we noted that delays in investigations were not picked up as part of the evidential test, which meant that some cases would have been unsuitable for prosecution. We are pleased to find that when we discussed this with the council it agreed that in future the evidential test will be carried out by its high street solicitor.

1.25 Other areas where improvements need to be made include:

- surveillance is not always used when appropriate
- there is no separate Counter-fraud Business Plan
- fraud awareness training should be provided to all council employees.

1.26 During our inspection, the council showed a receptive attitude to our findings. It demonstrated a willingness to improve its counter-fraud performance by revising its procedures promptly, including:

- amending the script used during interviews under caution to reflect good practice
- revising its working practice on establishing an admission of guilt
- agreeing to use its high street solicitor to carry out public interest and evidential tests
- transcribing all interviews under caution
- formally recording all management checks.

Background

1.27 Berwick-upon-Tweed Borough Council is located in Northumberland and is the northernmost borough in England. The borough is bordered to the north and west by Scotland and to the east by the North Sea and covers an area of 370 square miles. The resident population is 26,000, making Berwick-upon-Tweed the second smallest local authority, by population, in England. The borough is rural, with half of the population living in the main town of Berwick and the remainder living in outlying villages, none of which exceeds 2,000 residents.

1.28 Tourism plays a major part in the local economy and visitors can increase the summer population in the borough to an estimated 100,000. The borough contains 2 large caravan parks, several smaller caravan parks and numerous bed & breakfast accommodations.

1.29 In 2004/05, Berwick-upon-Tweed Borough Council's gross revenue budget was £19.6 million. The council's annual HB and CTB expenditure in 2003/04 was £5.37million. There are approximately 1,800 residents in receipt of both HB and CTB and approximately 700 residents in receipt of CTB only.

Independent assurance

Internal Audit

2.1 Internal Audit provides assurance to senior managers and Members about the effectiveness and security of HB and CTB administration.

2.2 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. We do not agree with this assessment because the weighting factors in the risk assessment model used by the council do not sufficiently reflect the monetary value of the HB and CTB payments made by the authority compared to expenditure on other services.

2.3 The last Internal Audit review of the procedures, systems and controls in place for the administration of the council's Counter-fraud service took place in November 2001. Ten recommendations were made and all were implemented.

2.4 The last Internal Audit review of the procedures, systems and controls in place for the administration of the council's HB and CTB service took place in May 2002, when 25 recommendations were made. One was withdrawn, 22 were agreed and implemented and at the time of our inspection, 2 recommendations had still not been implemented because of a lack of resources.

2.5 Figure 2.1 shows the number of Internal Audit days allocated and actual days spent during the period 1 April 2002 to 31 March 2005.

Fig. 2.1: Internal Audit activity			
	2002/03	2003/04	2004/05
Total number of Internal Audit days allocated (all services/departments)	230	218	207
Total number of Internal Audit days used (all services/departments)	196.5	156.5	194
Number of Internal Audit days allocated to HB and CTB administration	25	45	15
Number of Internal Audit days used on HB and CTB administration	55	15	0
Number of Internal Audit days allocated to counter-fraud work (including National Fraud Initiative related work)	12	15	0
Number of Internal Audit days used on counter-fraud work (including National Fraud initiative related work)	12*	15*	0

Source: Berwick-upon-Tweed Borough Council

* Used on National Fraud Initiative and reviewing Performance Standards

2.6 Figure 2.1 shows that 55 Internal Audit days were used in 2002/03 on HB and CTB administration. This was 30 days more than allocated. We were told that the additional days were necessary because of the introduction of a new Internal Audit methodology, the comprehensive nature of the audit and the large number of recommendations made.

2.7 The 12 days used on counter-fraud work during 2002/03 were all related to work emanating from the Audit Commission's National Fraud Initiative. This initiative compares the data held by different local authorities. It provides English and Welsh local authorities with an opportunity to identify discrepancies between HB and CTB records and other records such as:

- student awards
- staff loans
- private pensions
- payrolls.

2.8 In 2003/04, 10 days were also allocated to National Fraud Initiative work and 5 days were used to review the council's performance against Performance Standards.

2.9 Figure 2.1 also shows that 15 Internal Audit days had been allocated in 2004/05 to HB and CTB administration. However, at the time of our on-site visit in March 2005, no Internal Audit days had actually been used. We were told that the reason for this was a shortfall in the resources available to fully implement the 2004/05 Internal Audit plan. No Internal Audit days were allocated to counter-fraud work in 2004/05.

2.10 The council does not therefore, have any independent assurance on the quality and security of either its administration of HB and CTB or the Counter-fraud service in 2004/05.

2.11 The council should consider whether Internal Audit resources are sufficient to give Members and senior managers independent assurance that the administration of HB and CTB and the Counter-fraud service are secure and efficient.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council ensures that the level of Internal Audit resources available is sufficient to give Members and senior managers annual assurance that the administration of HB and CTB and the Counter-fraud service are secure and efficient.

External Audit

2.12 External Audit has a statutory duty to report on the arrangements that the local authority has put in place to secure economy, efficiency and effectiveness in its use of resources. It also gives independent assurance on matters relating to the accounts, and reports on the local authority's arrangements to secure propriety. Local authorities must act on this independent advice and assurance, while having their own systems of assurance. They cannot rely on External Audit to identify faults.

2.13 We found that Berwick-upon-Tweed Borough Council was at Standard for this element.

2.14 In accordance with the Audit Commission's *Code of Audit Practice*, External Audit undertakes an annual review of Internal Audit to ensure that its work meets the appropriate professional standards and that it supports the system of internal financial control. In doing so, External Audit, applies a risk-based approach using the Audit Commission's National Risk Assessment Tool. As there was no Internal Audit of either the administration of HB and CTB or the Counter-fraud service in 2004/05, there had been no External Audit examination of Internal Audit's work in either of these areas in 2004/05.

2.15 External Audit told us that the audit of the subsidy return is carried out as specified in the Certification Instruction, which is agreed by the Audit Commission and the Department. The audit involves a validation of the financial amounts claimed and an examination of a sample of sanction files to confirm that the action taken is supported by key documentation. For formal cautions, this would mean confirming that a signed copy of the *Certificate of Caution* was held on the case file. For administrative penalties, it would mean confirming that a signed copy of the *Administrative Penalty Agreement* was held on file. For prosecutions, it would mean confirming that a legally qualified person had authorised the prosecution.

2.16 External Audit confirmed that its audit does not involve any detailed scrutiny of investigation files to establish compliance with legislation such as the Police and Criminal Evidence Act 1984 or the Criminal Procedure and Investigations Act 1996.

2.17 In common with all other local authority external auditors, External Audit will however, report any matters concerning benefits administration arising out of its audit work to officers of the council. If any of these matters are considered significant, they are brought to the attention of Members via the *Annual Audit and Inspection Letter*. At the time of our on-site visit, the latest *Annual Audit and Inspection Letter* issued was for 2003/04. There were no issues relating to HB and CTB that needed to be drawn to Members' attention.

BFI findings

Vision

3.1 A statement expressing the strategic vision for the Benefits service enables Members, managers and staff to have a clear sense of direction, purpose and focus for their work. It also allows the public to understand where the key priorities for the service lie and how these fit into the overall vision and strategic objectives of the council. In particular it sets out how the vision relates to the council's strategy for dealing with benefit fraud.

3.2 The council has a corporate vision:

To create with others, and within the next fifteen years, communities across the Borough which are better places for people to live and work in, and for others to visit.

3.3 The council's vision statement does not therefore, include a specific reference to combating fraud. However, overall, we found that the council is committed at a corporate level to preventing and detecting fraud.

3.4 We found a range of initiatives that demonstrate the council's commitment to combating fraud. These include:

- clear and unequivocal statements on the council's website about its determination to detect and prevent fraud
- joint working with other agencies and organisations to detect fraudsters
- a clear and comprehensive policy on sanctions to be imposed upon fraudsters
- a corporate anti-fraud policy and strategy, approved by Members annually
- a whistle-blowing policy
- a commitment to be compliant with Verification Framework by December 2005
- approval by Members of additional resources for counter-fraud work
- performance targets for sanctions.

Policies and procedures

3.5 Local authorities should have specific counter-fraud policies, built on the policy objectives of the authority as a whole. These policies should be supported by comprehensive procedures to ensure effectiveness and consistency in:

- investigations

- recovery action
- prosecutions and other alternatives.

3.6 Berwick-upon-Tweed Borough Council assessed itself as not at Standard in this element, and we agree with this assessment.

3.7 The council has a *Housing and Council Tax Anti-fraud Policy and Strategy*, which includes a summary of the council's approach to counter-fraud activity. The summary states that:

- *the council is committed to ensuring that people should get all the benefits to which they are entitled*
- *the council will act against those people who systematically obtain benefits to which they are not entitled*
- *any benefit obtained to which a claimant is not entitled will be repaid in full to the council. However, the council will take care not to place anyone into hardship*
- *the council will respect the civil liberties of all persons involved in an investigation of alleged fraud*
- *this policy follows principle seven of the Government's Green Paper on welfare reform in-so-far as it implements the three-pronged campaign against fraud: improved detection; implementation of a more effective deterrence and better prevention. Principle seven states "the system should encourage openness and honesty and the gateway to benefit should be clear and enforceable".*

3.8 The strategy includes references to investigative legislation, and the council's commitment that its Benefit Investigation officers will comply with investigative legislation in the execution of their duties. The strategy also includes the council's *Whistle-blowing Policy*, and the responsibility for all staff and Members to make declarations of interest, outlining their connection with any claim to benefits or associated properties they own, for which they are landlord.

3.9 While it is good practice to require declarations of interest to be made, we were concerned to find that Benefit officers were unaware of the supporting procedures or processes the council has in place to back up their declaration of interest policy. This means that the case file associated with a declaration of interest remains accessible to the staff member involved and their colleagues in the open file run. Officers who have declared an interest should be prevented from accessing associated records on the council's Benefits IT system and associated clerical papers. In addition, the case file should be removed and held securely to maintain confidentiality. Following the on-site phase of the inspection, we are pleased to report that the council told us that an enhancement has been made to the Benefits IT system to prevent cases where a declaration of interest has been made from being accessed or viewed by the officer making the declaration.

3.10 The council also has a *Benefit Fraud Sanction Policy* that outlines its commitment to preventing and detecting fraud. The policy describes the different sanctions available to the council when a fraud is proven, and is fully endorsed by Members. The policy is comprehensive and clearly defines the

financial guidelines to be taken into account in determining the most appropriate sanction, and the circumstances that must be considered in determining whether or not the sanction would be in the public interest. However, the policy requires amendment at section 4 because it specifies that a prosecution could ensue if a sanction is refused, unless the council's solicitor decides the case is unsuitable for prosecution. The decision regarding the suitability of a case for prosecution should always be made before any decision to offer a sanction is made. The council's policy statement must therefore, be amended to reflect the correct procedure.

3.11 We noted that the policy had not yet been brought up to date with the recent guidelines issued by the Department, in *HB and CTB circular F(14902)/2005*. We also found evidence that the sanction policy is not always adhered to when determining the appropriate sanction. We discuss this further under *Management of investigations*.

3.12 There is currently no separate Counter-fraud Business Plan. A *Counter-fraud Action Plan* is included in the *Service plan for the Corporate Services Directorate*. We were told that the council had made a corporate decision that service plans would only be produced for each of its 3 directorates, and not for individual service areas. However, Performance Standards require that there is a separate Counter-fraud Business Plan. The council cannot therefore achieve Standard without this.

3.13 Fraud operational procedures are available for Benefit Investigation officers in both hard copy and electronic format. The council has also recently subscribed to an on-line service that provides additional procedural guidance in support of investigations.

3.14 We found that procedural guidance covered most aspects of investigative work. However, we found no guidance:

- on the authorisation of officers and the provision of Certificates of Appointment
- on the procedures to be followed should a Certificate of Appointment be lost or stolen
- on the management checking responsibilities of the Senior Auditor.

3.15 There is no systematic approach to updating procedural guidance to ensure it reflects current Departmental guidance and legislation. The Senior Auditor, who is currently responsible for this, told us that new fraud circulars and changes to legislation are incorporated immediately into working practices. However, the clerical amendments to procedural guidance are done whenever time allows.

3.16 We also found no systematic, regular reporting mechanism in place to update senior managers or Members with performance against the corporate business plan. A Member/staff bulletin and a committee report are produced annually to give information about performance. However, the provision of performance information on an annual basis only, means that there is no opportunity for senior managers or Members to monitor performance in-year on a regular basis or make recommendations to improve performance if the Counter-fraud Investigation team is not on track to meet its targets. The council should produce reports at least quarterly for this purpose.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- **introduces a process to prevent staff who have declared an interest in either a claim to HB and or CTB from accessing the associated clerical papers, and ensure that case file access is restricted to maintain the confidentiality of the person making the declaration of interest**
- **amends its Benefit Fraud Sanctions Policy to reflect the need to perform a legal evidential test and a public interest test before the offer of a sanction is considered**
- **amends its Benefit Fraud Sanctions Policy to reflect the latest Departmental guidance on sanctions**
- **provides a separate Counter-fraud Business Plan**
- **ensures that its procedural guidance covers all aspects of investigative work**
- **ensures that fraud operational procedures fully comply with Departmental guidance**
- **sets up a formal reporting mechanism on counter-fraud activity to report progress against business plan targets and objectives to senior managers and Members on a quarterly basis.**

Organisational structure

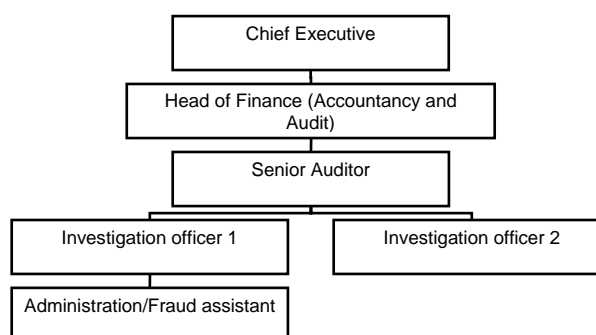
3.17 A Counter-fraud Investigation team has been in existence in Berwick-upon-Tweed Borough Council since 1997. The Head of Finance (Accountancy and Audit) has overall responsibility for the Counter-fraud Investigation team, and reports to the Chief Executive. He is also the council's Section 151 Officer.

3.18 The Counter-fraud Investigation team has 4 staff, comprising:

- a Senior Auditor, responsible for the day to day management of the Counter-fraud Investigation team
- 2 Benefit Investigation officers, one of whom is part-time, who investigate fraud referrals
- an Administration/Fraud assistant, who provides administrative support to the team.

3.19 Figure 3.1 outlines the structure of the Counter-fraud Investigation team.

Fig. 3.1: Berwick-upon-Tweed Borough Council's Counter-fraud Investigation team organisational structure



Source: Berwick-upon-Tweed Borough Council

Fraud referrals

3.20 Good quality fraud referrals are important. They:

- are essential to detecting and deterring fraud
- establish an authority's reputation for rigour in claims processing
- indicate the type of fraud which may be prevalent in an area
- identify weaknesses in benefit administration systems and the remedial action necessary
- influence the allocation of fraud investigation resources
- assure management that verification processes operate to identify fraud and error effectively.

3.21 Berwick-upon-Tweed Borough Council assessed itself as not at Standard in this element, and we agree with this assessment.

Referral Form

3.22 Berwick-upon-Tweed Borough Council has a clerical referral form and also an electronic referral form which is available from its website. Benefit officers are also provided with procedural guidance that explains how to make a fraud referral.

3.23 However, we found that referrals did not always include all of the information available to assist an investigation, because the design of the forms did not prompt or guide referrers to include all relevant details. The referral forms should therefore, be amended to encourage referrers to include information about:

- potentially violent status
- the source of the suspicion
- a description of the suspected person
- any employment information

- any vehicle details
- any living together information.

Referrals process

3.24 Although Benefit officers are located away from the Counter-fraud Investigation team, we were told that they regularly discuss referrals with investigators. Sometimes, because information is passed to the Counter-fraud Investigation team during these discussions, it is not formally recorded on the referral form. This made it difficult to determine the source and background to some referrals while we were engaged in sampling fraud files. Procedural guidance should be amended to remind staff to include all relevant information, regardless of whether or not the details have been discussed with the Counter-fraud Investigation team. This would also assist in any subsequent management check.

3.25 We were told that all referrals that were accepted for investigation were entered onto the fraud management system. However, we found one case where this did not occur. The referral was dated 12 September 2002 but was not set up on the fraud management system. We were told that the referral was not entered onto the system because it was overloaded, but the overload status was not recorded. The case was eventually investigated in November 2003, but was not set up on the fraud management system until 12 January 2004. Further delays then occurred throughout the investigation. The Senior Auditor did not discover these delays, because the case was not the subject of a management check. We discuss this further under *Management of investigations*.

3.26 We found that work often begins in support of the investigation before details of a referral are entered onto the fraud management system. Any delay in entering details of a referral onto the system reduces the effectiveness of the diary facility in preventing delays to investigations, and could also lead to inaccurate management information on the length of time taken to investigate a case. It is important therefore, that the fraud management system is updated with details of the referral immediately upon receipt.

3.27 Figure 3.2 gives information about the source of the referrals received by the Counter-fraud Investigation team.

Fig. 3.2: Source of referrals, 1 April 2003 to 31 December 2004

Source	2003/04	1 April 2004 to 31 December 2004
Anonymous letter	21	26
Anonymous phone call	Included in Hotline	Included in Hotline
Benefit staff	81	40
Other departments in Berwick-upon-Tweed Borough Council	23	6
Fraud staff including proactive fraud drives	0	3
National Fraud Initiative data matching	0	Not Available
Housing Benefit Matching Service data matching	49	70
Housing Associations and other landlords	0	0
The Department, Counter-Fraud Investigation Service, Jobcentre Plus	4	18
Hotline (Berwick-upon-Tweed Borough Council)	27	18
Hotline (National)	0	0
Police	0	2
Public	0	0
Other external sources	3	3
Other Local Authorities	0	0
Total	208	186

Source: Berwick-upon-Tweed Borough Council

3.28 The council subscribes to the Department's National Fraud Hotline and also has its own hotline. The Counter-fraud Investigation team's telephones are linked to an answering machine service that operates whenever the team is absent. The council's hotline number is advertised at post office counters, in the council's reception areas, and is included in the annual correspondence issued with bills.

3.29 If a customer makes a referral by telephone, the call is passed through to the Counter-fraud Investigation team. This ensures that all relevant information is captured as the caller can be prompted, guided and questioned by an experienced Benefit Investigation officer. However, this also means that Benefit officers do not get the opportunity to build up experience in handling

referrals made by telephone and this could account for the sparse information that is often recorded on referral forms.

Sifting of referrals

3.30 We found that sifting of referrals to prioritise them for investigation occurs on the day of receipt of the referral, and the priority attached to the sifting process is commendable. The Senior Auditor has the authority to override the score produced during this process if he feels that the information provided is likely to result in a positive outcome, and we found evidence of this occurring in our sample. However, we found the reasons for the decision to override the sift score was not detailed in a summary provided at the start of the investigation. We discuss this further under *Management of investigations*.

Referral feedback

3.31 Benefit officers told us that they have a very good relationship with the Counter-fraud Investigation team, and that they regularly talk to team members about referrals. Their view is that the team is very effective in combating benefit fraud, and that investigators are very approachable.

3.32 Feedback on the outcome of a case is given to Benefit officers by e-mail as part of the formal closure procedure of an investigation. We were told that feedback is given for every referral but it is not recorded on the fraud file and is not therefore, evident from the case notes.

3.33 The Counter-fraud Investigation team provides an annual article for the council's internal newsletter, giving information about its work. However, more regular internal publicity should be provided for all council staff to encourage them to make referrals. Figure 3.2 shows that there was a significant drop in the number of referrals from other council departments in 2004/05, and more internal publicity could help to increase the number of referrals from council employees.

Analysis of referrals

3.34 We were told that referrals are not presently analysed by source, type and outcome, owing to the lack of fraud management resources. The Senior Auditor told us that he is engaged for 75% of his time on audit work, and as a result, he feels that he cannot perform all the duties expected of a counter-fraud manager as specified in the Performance Standards.

3.35 Figure 3.3 shows the number of referrals by fraud type.

Fig. 3.3: Referrals by type

Fraud type	2003/04	1 April 2004 to 31 December 2004
Living Together As Husband And Wife	22	35
Income	135	116
Capital	4	6
Identity	0	0
Tenancy	0	0
Non-residency	16	17
Instrument of payment	0	0
Landlord fraud	0	0
Students	0	0
Undeclared non-dependants	22	12
Other	9	0
Total	208	186

Source: Berwick-upon-Tweed Borough Council

3.36 Figure 3.3 shows that no referrals involving identity fraud have been referred for investigation since 2003. We were told that Benefit officers have been trained in the use of ultra-violet scanners, and how to detect false documentation, but they are not using the scanners. We brought this to the council's attention and were told this would be addressed with immediate effect.

3.37 We also found that Do Not Re-direct referrals are not identified separately on the fraud management system. This should be rectified as these referrals cannot easily be identified, nor can any management information regarding the effectiveness of these referrals be extracted from the fraud management system.

3.38 The council uses Do Not Re-direct envelopes for all Benefits post. If this post is returned to the council, it is passed unopened to the Counter-fraud Investigation team. This means that any valuables within a Do Not Re-direct envelope could be passed to the Counter-fraud Investigation team without having been securely dealt with at the post opening stage. This is a security risk.

3.39 As Do Not Re-direct post is not strictly fraud post, it should be opened at the same time as other post, and where a re-direction is in place, as identified by the appropriate Royal Mail sticker, a referral should be made by a Benefit officer, with the envelope attached.

3.40 While it is commendable that post addressed for the attention of Benefit Investigation officers arrives at the Counter-fraud Investigation team

unopened, other post should be opened during the post opening process. By referring all post that is returned in Do Not Re-direct envelopes to the Counter-fraud Investigation team, the council is not using its investigation resources effectively, and is not ensuring that valuables are dealt with securely.

3.41 Figure 3.4 summarises the number of fraud investigations received and investigated, and the outcome of these investigations from 1 April 2002 to 31 December 2004.

Fig. 3.4: Summary of fraud investigations

Year	Number of referrals received	Number of referrals investigated	%	Number where fraud established	%	Number of investigations resulting in Weekly Incorrect Benefit	%
2002/03	198	108	55	29	27	27	14
2003/04	208	99	48	41	41	38	18
1 April 2004 to 31 December 2004	186	150	81	49	33	46	25

Source: Berwick-upon-Tweed Borough Council

3.42 Figure 3.4 shows a drop in the proportion of referrals investigated during 2003/04, from 55% to 48%. This was despite the council employing an additional part-time investigator from August 2003. However, we were told that both maternity leave and sick absence had reduced the Counter-fraud Investigation team's capacity to investigate referrals during 2003/04. Performance in the first 9 months of 2004/05 is much stronger with 81% of referrals made being investigated, and with 33% of these resulting in fraud being established. However, the success rate could be improved if the council was to analyse referrals so as to target resources at cases most likely to result in a positive outcome.

Fraud awareness training

3.43 Induction training for council staff does not include fraud awareness training. However, the council had provided some fraud awareness training for Benefits staff, although not on a regular or systematic basis. The council used an external provider in 2004 for this training. The training included a wide range of information to help staff detect potential fraud and make more effective referrals. Our discussion with Benefit officers showed that very little knowledge of the content of the training had been retained.

3.44 The Counter-fraud Investigation team does not currently deliver any fraud awareness training. However, the Senior Auditor has agreed that the team will deliver fraud awareness training in the future and this will be delivered to all council staff.

3.45 There is no formal feedback arrangement to enable staff to receive information about the quality of their referrals. However, an informal process exists to enable investigators to give feedback at meetings with Benefit officers, should any weaknesses in the quality of referrals become evident.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- enhances its referral forms to include all required information
- enters all fraud referrals onto its fraud management system upon receipt
- records feedback to Benefit officers on fraud file case notes
- analyses referrals by source, type and outcomes, to inform risk assessment, awareness training and targeting of resources
- makes use of ultra-violet scanners to confirm the authenticity of all identity documentation provided in support of a claim
- identifies Do Not Re-direct referrals on its fraud management system as a referral source
- ensures post is dealt with securely before referring it to the Counter-fraud Investigation team
- provides fraud awareness training for all council employees.

Quality of investigations

3.46 It is important that investigations are focused to make best use of the resources available, each case is thoroughly investigated and proper consideration is given to recommending closure or sanction.

3.47 Berwick-upon-Tweed Borough Council assessed itself as not at Standard in this element and we agree with this assessment.

Code of conduct

3.48 The council operates a code of conduct for investigators, in addition to the code of conduct that is in place for all council employees. This is incorporated within the council's *Housing Benefit and Council Tax Benefit Anti-fraud Policy and Strategy*. The investigators' code of conduct lists all relevant legislation, and states that all investigations will be undertaken strictly in accordance with the code of conduct. It also includes the need for investigators to ensure their own health and safety while investigating fraud.

Start of investigation target

3.49 Performance Standards require investigators to commence activity on all cases within 5 days of the case being sifted and accepted for investigation. The council's Benefit Investigation officers were fully aware of this target.

3.50 In the 30 cases we sampled, we found delays at the start of the investigation in 15 cases, ranging from 11 days to 88 days. We found little evidence of management checking during our sampling, and this could account for the occurrence of these delays. We discuss this further under *Management of investigations*.

Record keeping

3.51 Performance Standards require that records relating to fraud investigations are kept in accordance with the:

- Police and Criminal Evidence Act 1984
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 1998.

3.52 All persons charged with investigating offences, must have due regard to the Code of Practice of the Criminal Procedure and Investigation Act 1996. This Code of Practice lays down a number of general and specific responsibilities on investigators on how to carry out investigations and the recording and retention of material.

3.53 The sanction files we sampled revealed good record keeping that fully complied with the requirements of the Criminal Procedures and Investigations Act 1996 and Code of Practice. Files were consistently arranged, with documentation and evidence stored correctly.

3.54 We were pleased to find that one of the investigators used a QB50 notebook to record their activities while engaged in investigations. These notebooks can be used as an aide-memoire in the event that an investigator is required to give evidence in court. However, we found that the entries in the QB50 notebook were not always cross-referenced to the fraud file and were not therefore being used effectively. We were told that as case notes on the fraud management system were now automatically kept, this had negated the need for investigators to continue to use QB50 notebooks, and that in future, printouts of case notes would be used to support any officers attending court to give evidence. This is acceptable and satisfies Performance Standards.

3.55 There have not been any instances where submissions for prosecution were refused due to lack of evidence in support of conclusions. This is commendable.

3.56 The council has a policy for the destruction and archiving of fraud investigation documentation. The policy correctly outlines different destruction dates for cases with different outcomes. This fully complies with the Data Protection Act 1998.

3.57 We found that some referrals that had not been accepted for investigation had not been recorded on the fraud management system. All fraud referrals, regardless of whether or not they are investigated, should be recorded and closed on the fraud management system, and the reasons for the referral not being investigated recorded. This protects investigators from accusations that referrals relating to friends or relatives may have been destroyed, and ensures that intelligence and the identification of patterns and trends is based on all fraud referrals received.

Interviews under caution

3.58 Performance Standards require that investigators interview under caution, in accordance with the Police and Criminal Evidence Act 1984, when

reasonable, objective grounds for suspicion exist that an offence has been committed.

3.59 We sampled 30 cases that had included an interview under caution in the investigation. Many of these cases demonstrated elements of good practice. However, a breach of the Police and Criminal Evidence Act 1984 Code of Practice was found in every case, namely that there was no mention of the availability of the Code of Practice for reference by the suspect, during the taped interview under caution. Benefit Investigation officers told us that the Code of Practice was referred to off tape, prior to commencement of the interview. However, the Senior Auditor, who also conducts interviews under caution, admitted that during his interviews he did not make reference to the availability of the Code of Practice, but that the Code of Practice was always available.

3.60 We raised several other concerns about questioning techniques observed during our sampling. Figure 3.5 shows the nature of our concerns and the numbers involved.

Fig. 3.5: Concerns raised about questioning techniques during our sampling of 30 cases that included an interview under caution

Concern	Number of cases
Not explaining the role of third parties present at the interview	1
Not establishing fully whether the suspect required legal advice	2
Not confirming that no one else was present other than the parties referred to on tape	24
Not confirming on tape that the tapes had been unwrapped in the suspect's presence	24
Audible background noise during the interview	10
Overuse of leading questions	1
Information being given to a mother during her interview, that had been disclosed by her daughter during a separate interview relating to a separate offence	1
Benefit Investigation officers repeatedly asking the same questions in an attempt to secure a confession	4
A request for a break not being granted	1
Describing a local authority caution as being the same as a police caution	4

Source: BFI analysis

3.61 In addition we found there was a lack of clarity in one interview under caution when a distressed suspect said she was feeling a *bit thingy*. We actually believed she said a *bit bullied* but the council disagreed with our view. However, we maintain that the customer's meaning was unclear and should have been explored on tape.

3.62 We also found in one interview under caution an incorrect statement had been made to a husband, namely that his wife had said he was a resident at her property. She had actually stated he *sometimes stayed more often than he should* and she had not said that they were living together as man and wife.

3.63 We also found that despite no admission of guilt during the interview under caution, a formal caution was offered to customers in 13 of the 17 cases that we sampled. This is contrary to Departmental guidance and the council's own sanction policy. We discuss this further under *Sanctions*. Although the council believed it had achieved the necessary level of evidence to administer a formal caution, we are pleased to report that it has agreed to strengthen its approach to establishing guilt in response to our guidance.

3.64 Formal cautions should only be offered if the case is suitable for prosecution. In the 17 formal caution cases we examined, there were breaches of legislation in 2 cases, and failure to follow guidance and good practice in all 17 cases. We also found that significant delays had taken place in 8 of these investigations.

3.65 In the cases where legislation had been breached, we consider that the evidence would have been inadmissible had prosecutions ensued. When we discussed our findings with the Senior Auditor, we were told that tapes of interviews under caution were sometimes listened to prior to deciding an appropriate sanction. However, there was no documentation in support of these management checks and the Senior Auditor was unaware of the weaknesses we discovered. No management checks were performed on the quality of interviews under caution where no sanction was to be imposed.

3.66 We noted that the earlier sanction files in our sample did not include any reference to or documentation about legal evidential and public interest tests being performed, but that later files in our sample did. We were told that legal evidential and public interest tests had not been documented in the past, but that a change to procedures had been implemented and the performance of these tests was now formally documented in all cases.

3.67 At the time of our on-site visit, Berwick-upon-Tweed Borough Council did not have a dedicated and adequately equipped interview room for use when conducting interviews under caution. This had been a problem for some time, but it is an indication of the council's commitment that it had funded and procured building work to provide a suitably equipped room, which was being refurbished at the time of our on-site visit.

3.68 However, Benefit Investigation officers had expressed concern as to the availability of the refurbished room as it is to be shared with the council's Housing Department. We discussed this with the council's Chief Executive, who is confident this will not be a problem, and that the room will be available to the Counter-fraud Investigation team whenever required.

3.69 When we brought our concerns regarding the quality of interviews under caution to the attention of the council, it was immediately receptive to our findings. Measures were put in place to remedy weaknesses. For example, the scripts used by Benefit Investigation officers during interviews under caution were amended to ensure that a reference was made to the availability of the Police and Criminal Evidence Act 1984 Code of Practice.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- ensures that activity commences on all cases accepted for investigation within 5 days
- ensures that all fraud referrals are entered onto its fraud management system
- ensures that interviews under caution fully comply with all legislation and Departmental guidance
- ensures that Benefit Investigation officers are trained to recommend the correct sanction in accordance with its Benefit Fraud Sanctions Policy
- ensures that legal evidential and public interest tests are performed and fully documented before offering any sanction to a proven fraudster.

Regulation of Investigatory Powers Act 2000

3.70 As a last resort, when all other avenues of enquiry have been considered and discounted, a counter-fraud manager may decide to authorise surveillance as a method of investigation. Legislation and associated codes of practice provide for such authorisation, but require that it is appropriate and is strictly controlled.

3.71 A local authority authorising surveillance activities must determine that the need for this is proportionate to what it seeks to achieve. Circular *F20/2001* describes the grounds on which surveillance under the Regulation of Investigatory Powers Act 2000 can be authorised, and the level of management authorisation required. Regulation of Investigatory Powers Act 2000 forms are provided for initial authorisation, urgent authorisation, renewal authorisation and cancellation of authorisation.

3.72 In May 2003, Berwick-upon-Tweed Borough Council was inspected by the Office of Surveillance Commissioners. The inspection report acknowledged that the council was not a major user of covert surveillance. However, it identified a number of areas where improvements were required. These included ensuring that:

- the council's policy and guidance complies with the Regulation of Investigatory Powers Act 2000 Code of Practice
- there is a formal monitoring and quality control procedure
- the central record of authorisation complies with the Regulation of Investigatory Powers Act 2000 Code of Practice

BFI findings

- investigation practices are reviewed to ensure compliance with the Regulation of Investigatory Powers Act 2000 Code of Practice
- the Regulation of Investigatory Powers Act 2000 Code of Practice is available to all relevant staff and members of the public
- Authorising Officers specify what conduct is being authorised.

The council told us that it had implemented all of the above recommendations.

3.73 In Berwick-upon-Tweed Borough Council, responsibility for authorising surveillance rests with the Head of Finance (Accountancy and Audit). During the on-site phase of our inspection, we took the opportunity to review the arrangements for the authorisation of surveillance.

3.74 The council has a corporate file, where all Regulation of Investigatory Powers Act 2000 forms are retained. Figure 3.6 shows the numbers of authorisations for surveillance from 1 April 2000 to 28 February 2005.

Fig. 3.6: Requests for authorisation of surveillance

2000/01	2001/02	2002/03	2003/04	1 April 2004 to 28 February 2005
5	4	7	1	1

Source: Berwick-upon-Tweed Borough Council

3.75 Figure 3.6 shows that only one surveillance operation took place in 2003/04, and that at the time of our inspection, only one had taken place in 2004/05. Benefit officers told us that the Counter-fraud Investigation team often rejects *living together* referrals. As surveillance is the main investigation method used for these referrals, the low number of surveillance operations carried out in 2003/04 and 2004/05 is consistent with the rejection of these cases for investigation. We were told that there is a lack of investigation resources and that this has prevented the council from using surveillance regularly. We were also told that a car is not always available for use by investigators during out of office hours surveillance activities.

3.76 The control matrix for authorisation was amended on 1 April 2004 following the Office of Surveillance Commissioners' report. It now fully complies with the Regulation of Investigatory Powers Act 2000.

3.77 We reviewed the control matrix, and found 3 cases where surveillance had been authorised post March 2003. Two cases fully complied with the Regulation of Investigatory Powers Act 2000. Surveillance for the remaining case was still authorised at the time of our inspection in March 2005. We are unable therefore to comment on whether or not this surveillance authorisation complied with the terms of the Regulation of Investigatory Powers Act 2000. However, we were pleased to find that each authorised surveillance application had been allocated a maximum 3-month surveillance authorisation period.

3.78 We found that in one case in our sample, the application for authorisation of surveillance was recorded as having been made in March 2004. However, there was no note of this on the control matrix, and

surveillance was not authorised. The reason for this was not documented either on the control matrix or on the fraud file. There were numerous delays in obtaining evidence in this case, and the authorisation request was never pursued.

3.79 However, we were pleased to find that authorisation applications explained why directed surveillance was deemed necessary, and detailed the findings of the investigation to date. Cancellations of surveillance were completed when activity ceased. This confirms that the Regulation of Investigatory Powers Act 2000 file is being regularly monitored, and authorisations are being strictly controlled.

Training for fraud investigators

3.80 Counter-fraud officers should be fully trained in:

- relevant social security legislation and regulations
- relevant legislation, such as:
 - Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigations Act 1996
 - Regulation of Investigatory Powers Act 2000
 - Human Rights Act 1998
 - Theft Act 1968
- professional standards such as Professionalism in Security
- good practice such as that contained in Performance Standards and in the Department's *Fraud Procedures and Instructions Manual*.

3.81 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. We do not agree with this assessment, but the council is close to Standard.

3.82 The council has a policy to provide formal and informal training for its investigators. Figure 3.7 shows the number of training days received by investigators from 1 April 2002 to 28 February 2005. We were advised that an additional 27 days training had been procured and will take place in 2005. This was consistent with the individual training plans we examined.

Fig. 3.7: Specific training days received by investigators

Type of training	2002/03	2003/04	1 April 2004 to 28 February 2005
Internal training	0	0	0
Training from the Department	0	0	0
Other external training	10	21	10
Total	10	21	10

Source: Berwick-upon-Tweed Borough Council

3.83 Investigators told us that they received the training they need. Training logs are held for each investigator, and these are monitored to ensure training needs are met. All of the council's investigators are either Professionalism in Security trained and accredited, or have commenced this training.

3.84 Each investigator receives an annual performance appraisal, and also receives interim feedback from the Senior Auditor. However, work objectives for investigators simply outline their targets, and do not meet *Stretching Specific Measurable Achievable Realistic Time bound* criteria. The key work objectives should be agreed with investigators on an individual basis and include the quality criteria expected, as well as the number of sanctions to be achieved.

3.85 Investigators receive training circulars from the Department within 14 days of receipt by the council. They are received initially by the Senior Auditor, who summarises their content for the investigators, and ensures that they fully understand the content and any impact on their work. This is commendable.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council ensures that investigators have individual work objectives that meet with the *Stretching Specific Measurable Achievable Realistic Time bound* criteria.

Liaison with Counter-Fraud Investigation Service

3.86 The ability of local authorities to administer HB and CTB claims securely, effectively and efficiently depends on good working relationships with the Department's Counter-Fraud Investigation Service. This is because both organisations are often involved with investigating persons in receipt of benefit administered by both local authorities and the Department.

3.87 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element, and we agree with this assessment.

3.88 We interviewed 2 representatives of the Counter-Fraud Investigation Service during our inspection. They confirmed the council's view that their working relationship was *excellent*.

3.89 We found evidence from our sampling that service level agreement *form 1* and *form 3* were in use in the earliest samples. These forms notified the Counter-Fraud Investigation Service that the council was investigating fraud against one of its customers, and then notified closure of the investigation. However, we cannot confirm that they were always used when appropriate, as they were not recorded as having been issued in all of the relevant cases in our sample.

3.90 The *Joint Working Partnership Agreement* with the Counter-Fraud Investigation Service was signed in July 2004. This replaced the previous service level agreement, and introduced new *Fraud Partnership Agreement* forms. However, we were told that at a recent liaison meeting, it had been agreed that a telephone call to the council's fraud team would suffice to notify new investigations undertaken by the Counter-Fraud Investigation Service.

3.91 In our sample, we found 2 cases where the council had not issued the correct forms. One of these cases included a proven fraudulent claim to Income-based Jobseeker's Allowance (JSA(IB)) which had not been referred to the Counter-Fraud Investigation Service for consideration. This was not picked up when the closure of the case was authorised. The Counter-Fraud Investigation Service confirmed that the council does not always send *Fraud Partnership Agreement* forms.

3.92 Berwick-upon-Tweed Borough Council took part in a joint working initiative with the Counter-Fraud Investigation Service in 2004, looking at the employment records of 92 employers involved in tourism within the Borough. This was successful and resulted in a number of positive outcomes.

3.93 We found other examples of effective joint working in the sanction files we sampled. However, delays by the Department in responding to requests for overpayment information relating to Departmental benefits had forced the council to prosecute some HB and CTB cases separately, rather than jointly. The Counter-Fraud Investigation Service confirmed it had also encountered delays in obtaining details of overpayments since the centralisation of the Department's debt management function.

3.94 Berwick-upon-Tweed Borough Council monitors performance against the Joint Working Partnership Agreement with the Counter-Fraud Investigation Service by attending quarterly Northumberland Fraud Managers' liaison meetings, and at investigators' subgroup meetings. Any issues about joint working are discussed and resolved at these meetings.

3.95 The council should ensure it uses the relevant *Fraud Partnership Agreement* forms, and a management check should be introduced to ensure that the forms are completed by the council's Counter-fraud Investigation team.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council completes *Fraud Partnership Agreement* forms in all appropriate cases, and introduces a management check.

Authorised officers

3.96 Section 110A of the Social Security Administration Act 1992 provides for local authorities to authorise officers to exercise the powers under sections 109B and 109C of the Act. Authorised officers must exercise these powers reasonably and ensure that each decision made relating to the use of the powers is documented and records are available for checking by management. The officers authorised have powers to:

- require a person to provide information, including the delivery of documents
- enter certain premises
- question persons on premises that have been entered under the powers.

3.97 In addition, Section 109B(2A) gives authorised officers the additional power to approach banks and other financial institutions for information in support of fraud investigations.

3.98 Obtaining information is an important tool in the investigation of fraud. These powers are not intended to place additional burdens on organisations, but to encourage everyone to provide information to combat fraud.

3.99 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. We do not agree with this assessment.

3.100 The council has 3 fully authorised officers. These include the 2 Benefit Investigation officers and the Senior Auditor. These appointments were made in accordance with legislation and the 3 officers have completed the relevant training for investigators. All authorised officers are registered with the Department's Professional Standards Unit.

3.101 We discussed the need for the Senior Auditor to be an authorised officer and the council agreed that, as the new investigator is an authorised officer, and the Senior Auditor does not now actively investigate fraud referrals, there is no need for him to be an authorised officer. Once again, an indication of the council's commitment to improve is that it rescinded the Senior Auditor's authority while we were on site and notified the Department accordingly.

3.102 Performance Standards require that a register of authorised officers is maintained and is regularly reviewed for relevance and need. This is not done by Berwick-upon-Tweed Borough Council.

3.103 Performance Standards also require that authorised officers fully comply with either the statutory or non-statutory Code of Practice on obtaining information. The Code of Practice regarding requests for information from organisations specified in section 109B(2A) specifies that the request to the information provider should only disclose:

- the identity of the authorised officer making the request
- sufficient information to ensure that the customer and appropriate account can be identified
- the address to which the information must be sent.

3.104 The statutory Code of Practice also states that a request for information must be put to the customer first. If refused, then a Section 109B(2A) request is appropriate. The only occasions where it is unlikely that the customer would be contacted first to obtain the information, is where it is suspected that there may be a third party involved in defrauding the social security system, or where the information cannot be requested from the customer without jeopardising the investigation.

3.105 The Code of Practice also states that an authorised officer will consider in all requests whether:

- there is a question that needs to be answered
- the information is actually needed
- there is a less intrusive way of asking for the information.

3.106 Powers governing the authority of a local authority to obtain information from listed organisations, such as banks, credit card companies, and utility companies, about their customers are contained in amendments made to the Social Security Administration Act 1992. These powers must be applied in accordance with the *Code of Practice on Obtaining Information* issued by the Department. Berwick-upon-Tweed Borough Council has made arrangements for the *National Anti-Fraud Network* to provide information requested under these powers via appropriately trained officers. Requests for this service are sent via the internet to the *National Anti-Fraud Network*, and include full details as to why the information is needed.

3.107 Our sampling of fraud files established that Berwick-upon-Tweed Borough Council complies with most of the requirements of the statutory Code of Practice on Obtaining Information.

3.108 Although, as we have already said, the council does not keep a central record of the use of these additional powers, the Senior Auditor told us that he checks every request personally and therefore, provides assurance that requests for information are only made when absolutely necessary, and in accordance with the Code of Practice. However, he confirmed that he does not monitor the number of requests made and agreed to establish a central record of all requests with immediate effect.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- **maintains a central register of its authorised officers, and reviews it regularly for relevance and need**
- **establishes and maintains a central record of requests for information that are made from listed organisations.**

Sanctions

Introduction

3.109 Local authorities can offer fraudsters alternatives to prosecution. It is up to each local authority to decide how and when these alternatives should be considered. However, it is important that the offer of alternative sanctions is systematic and consistent to protect the authority from allegations of discrimination.

Formal cautions

3.110 In England, Scotland and Wales a local authority may offer a formal caution as an alternative to prosecution, as long as certain criteria are met and the case is one the local authority would wish to see in court, if the caution is refused.

3.111 To be able to offer a caution, the authority must therefore have the same standard of criminal evidence required for a prosecution. A caution

should only be offered if the local authority can then go on to prosecute, should the caution be refused.

3.112 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. However, we do not agree with this assessment.

3.113 Figure 3.8 shows the number of formal cautions offered by the council and accepted by customers from 1 April 2002 to 28 February 2005.

Fig. 3.8: Number of formal cautions		
Year	Number offered	Number accepted
2002/03	4	4
2003/04	16	15
1 April 2004 to 28 February 2005	12	12

Source: Berwick-upon-Tweed Borough Council

3.114 We sampled 17 cases where formal cautions had been imposed against benefit fraud offenders. We listened to taped interviews under caution for each and consider that only 4 of these cases contained an admission of guilt and were therefore, suitable for a formal caution to be offered. Of the 13 remaining, we consider that 2 cases were not suitable for any sanction at all, because breaches of legislation and good practice would probably have jeopardised any prosecution. No sanction should therefore, have been offered. The remaining 11 cases should have resulted in the offer of an administrative penalty. The council's *Benefit Fraud Sanction Policy* clearly specifies that an admission of guilt must be obtained during a taped interview under caution before a formal caution can be considered a suitable sanction. The council is not therefore adhering to its policy.

Notification of formal cautions to Professional Standards Unit

3.115 We are pleased to report that formal cautions are always notified to the Professional Standards Unit. Every case we sampled included notification of the sanction to the unit. We are also pleased to report that the council always contacts the unit prior to offering a formal caution, to ensure that there is no sanctions history that affects this decision.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council always adheres to its *Benefit Fraud Sanction Policy* when deciding whether a formal caution is appropriate.

Administrative penalties

3.116 Section 115A of the Social Security Administration Act 1992 provides local authorities with an opportunity to offer a customer an administrative

penalty as an alternative to a prosecution. The penalty is 30% of the value of the overpayment.

3.117 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. However, we do not agree with this assessment.

3.118 Figure 3.9 shows the number of administrative penalties offered and accepted by the council from 1 April 2002 to 28 February 2005.

Fig. 3.9: Number of administrative penalties		
Year	Number of penalties offered	Number of penalties accepted
2002/03	8	8
2003/04	11	11
1 April 2004 to 28 February 2005	15	15

Source: Berwick-upon-Tweed Borough Council

3.119 We sampled 10 cases where an administrative penalty was offered by the council and accepted by the customer. These included 2 cases that we consider could not have resulted in a successful prosecution if the administrative penalty had been refused.

3.120 The council's *Benefit Fraud Sanction Policy* states that if an administrative penalty is refused, prosecution will always be considered, unless the council's solicitor decides the case is not suitable for prosecution. This decision should always be made before any sanction is considered, and accounts for the cases we consider should not have resulted in any sanction being offered.

3.121 We brought our concerns regarding the absence of any legal evidential test being performed by a legally trained individual to the council's attention. We are pleased to report that the council agreed that all cases deemed suitable for sanction should in future be referred to its external solicitor, so that a legal evidential test can be properly performed.

3.122 We discussed under *Formal cautions* that a number of cases that resulted in a formal caution should have resulted in an administrative penalty. The council has agreed that taped interviews under caution will be transcribed and will be scrutinised as part of the sanctions decision process in future. This should prevent any recurrence of incorrect sanction decisions.

3.123 We are pleased to report that fraud overpayments and administrative penalties are vigorously recovered by the council. In every case we sampled, overpayment recovery had either begun or was complete and the associated administrative penalty collection had commenced. We also noted that subsidy claims were made after 28 days had elapsed since the acceptance of the administrative penalty, in accordance with Departmental guidance.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- always applies its *Benefit Fraud Sanction Policy* when deciding whether to offer an administrative penalty to a fraudster
- always performs a legal evidential test before offering a sanction
- does not offer a sanction where a case fails the legal evidential test.

Prosecutions

3.124 The deterrent effect is maximised by prosecuting fraudsters.

3.125 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element, and we agree with this assessment.

3.126 The council has not had any prosecution files rejected as a result of errors in its processes or poor documentation in its files. We were pleased to find that the quality of the 3 prosecution files we examined was excellent. Figure 3.10 shows details of prosecutions from 1 April 2002 to 28 February 2005.

Fig. 3.10: Number of prosecutions

Year	Number submitted	Number accepted	Number successful
2002/03	1	1	1
2003/04	1	1	1
1 April 2004 to 28 February 2005	1	1	1

Source: Berwick-upon-Tweed Borough Council

3.127 The council always publicises its prosecutions as a deterrent to anyone considering committing benefit fraud. This is commendable, and is consistent with the council's determination to combat and punish fraud.

Subsidy claimed

3.128 We found that subsidy claims made by the council for the 3 sanction types were accurate and fully complied with Departmental guidance. Figure 3.11 shows Berwick-upon-Tweed Borough Council's achievement against the SAFE scheme.

Fig. 3.11: Subsidy claimed by Berwick-upon-Tweed Borough Council

Source	2002/03	2003/04	1 April 2004 to 30 September 2004
Formal Cautions administered	£4,000	£19,200	£10,800
Administrative penalties	£5,000	£13,200	£9,600
Cases accepted in court	£1,000	£1,200	£0
Guilty verdict	£5,000	£2,000	£0
Court orders	£0	£0	£0
Total amount of sanctions and prosecutions award	£15,000	£35,600	£20,400

Source: the Department

3.129 Figure 3.12 shows the council's achievement against the Weekly Incorrect Benefit subsidy scheme. This shows improved performance in 2003/04, with a substantially increased subsidy return from the previous year. The council is on target to maintain this level of performance in 2004/05.

Fig. 3.12: Weekly Incorrect Benefit subsidy awarded to Berwick-upon-Tweed Borough Council

Source	2002/03	2003/04	1 April 2004 to 30 September 2004
Total Weekly Incorrect Benefit award	£23,440	£24,520	£5,550
Threshold	£9,323	£9,005	N/A
Total Weekly Incorrect Benefit subsidy	£14,117	£15,515	£5,550
Total SAFE subsidy	£29,117	£51,115	£25,950

Source: the Department

Management of investigations

3.130 Proper management of investigations:

- focuses resources on the reduction of fraud
- identifies and rectifies administrative and investigative weaknesses
- assures Members and senior managers of the integrity and quality of investigations.

3.131 Suitable management checking is important throughout the whole investigative process. There needs to be assurance that:

- workloads are allocated in the most efficient way to avoid delays
- resources are used effectively
- investigations comply with legislation
- trends and patterns are identified.

3.132 Berwick-upon-Tweed Borough Council assessed itself as at Standard in this element. We do not agree with this assessment.

3.133 It is good practice to include a case summary at the start of an investigation in the form of a case note on the file. The case summary should explain the background information to the case, the proposed methodology for the investigation and the risk assessment decision. Case summaries were not always in evidence on the files we examined in our sample.

3.134 We were told that the Senior Auditor performed regular management checks on the investigators' work and caseload. We saw some evidence of management checking in our sample, but this was inconsistent and there was no evidence of a systematic approach.

3.135 We identified from the case notes observed during sampling, that the Senior Auditor had reviewed some cases. However, these reviews were not consistent and were not at key review stages or properly documented. Although we observed that informal discussions between the Senior Auditor and investigators took place on the progress and direction of investigations on a regular basis, Performance Standards and the Criminal Procedures and Investigation Act 1996, require that case direction and reviews are fully and formally documented.

3.136 The cases we sampled revealed numerous examples of delays in investigation activity. Figure 3.13 shows the delays identified at key stages of the investigation process in our sample cases.

Fig. 3.13: Delays in investigation process

Number of days elapse	Receipt of referral to case set up	Case set up to first action	First action to next action	Interview under caution to sanction accepted
10–20	8	4	0	1
21–30	4	2	1	1
31–40	0	2	0	6
41–50	1	1	0	4
51–60	0	0	0	4
61–70	2	1	1	3
71–80	0	0	0	4
81–90	2	0	0	1
91–100	0	0	0	1
Over 100	1	2	1	0

Source: BFI analysis

3.137 Performance Standards require that investigation managers perform checks on investigators' casework to ensure compliance with all relevant legislation. The delays we have identified could have implications should the council decided to prosecute these offenders. Suspects are often distressed during the interview under caution and anxious to be informed as soon as possible about what action the council has decided to take following the interview under caution. We are particularly concerned therefore, about delays between the interview under caution and the sanction interview. For example, in 13 cases we examined the delay between the interview under caution and the sanction being accepted was more than 50 days. Delays of this length are unacceptable.

3.138 A more systematic and documented management checking regime will help to reduce the number of delays in investigation activities. Procedural guidance for investigators should also include a description of the management checks that will be undertaken by the Senior Auditor.

Sanction decision process

3.139 Berwick-upon-Tweed Borough Council operates a sanctions decision process but this does not involve the Legal Department. We were told this is due to the lack of resources in the Legal Department, and the lack of relevant counter-fraud experience of the Borough Solicitor.

3.140 The Senior Auditor and the Head of Finance (Accountancy and Audit) decide the appropriate sanction to be offered to fraudsters. Neither of these officers has had any legal training. As a result, we noted that delays in investigations do not form part of the evidential test, and that cases we believe would be unsuitable for prosecution still resulted in a formal caution being

offered to the customer. Some cases omitted documentation of the evidential and public interest tests. We were told that a form was introduced to document these tests early in 2004, and this is consistent with our findings.

3.141 Investigators recommend the appropriate sanction, and record a summary on the fraud file of the interview under caution. However, the associated tapes are not listened to by the Senior Auditor or the Head of Finance (Accountancy and Audit), to establish compliance with the Police and Criminal Evidence Act 1984. As a consequence, in some cases sanctions were incorrectly offered because prosecution was not an option as there had been breaches of the Police and Criminal Evidence Act 1984.

3.142 We also noted that Benefit Investigation officers' recommendations as to the appropriate sanction to be offered were often incorrect. Although the sanction decision process does provide the opportunity for the recommendation to be overruled, and this often occurred, Benefit Investigation officers should be made aware of reasons why their recommendations were incorrect and these discussions should be recorded on the fraud files.

3.143 The sanctions interview is conducted by either the Head of Revenues and Benefits, or the Head of Finance (Accountancy and Audit). The elapsed period between the interview under caution and the offering of a sanction is a cause for concern. We noted in one case that an overpayment calculation request was not responded to until 43 days later. This delayed the sanction interview, which eventually took place 78 days after the interview under caution. The longest delay we observed between the interview under caution and the sanction interview was 96 days. This is unacceptable, because the customer will be anxious to learn the council's decision on whether it intends to prosecute, and such delays could cause distress.

3.144 We could find no evidence in our sample that underlying entitlement is considered or calculated before the appropriate sanction is determined. This means the amount of the overpayment and Departmental guidance is not being properly considered.

Monitoring of performance

3.145 The Counter-fraud Investigation team does not have its own business plan, and there is no formal monitoring of counter-fraud work against the *Service Plan for the Corporate Services Directorate*, which incorporates counter-fraud activity. However, we were told that performance in securing sanctions is monitored by the Benefit Investigation officers and the Senior Auditor.

3.146 There is no formal reporting system in place to update senior managers and Members about the work achieved by the Counter-fraud Investigation team. Performance Standards require quarterly reports to be made, and this should be addressed. However, in compliance with the Performance Standards, the council produces a bi-annual report for the Audit Commission, detailing the results of its *National Fraud Initiative* investigations.

3.147 The Senior Auditor uses management information from the fraud management system to track progress made on fraud referrals by individual investigators. Fraud referrals are allocated to Benefit Investigation officers in accordance with their experience and existing caseload.

3.148 Each investigator has an individual sanctions target, broken down into non-prosecution sanctions and prosecutions. The full-time investigator has a target of 2 to 4 non-prosecution sanctions per month, and the part-time investigator has a target of 1 to 2 non-prosecution sanctions per month. The team target is 3 to 6 non-prosecution sanctions offered and accepted per month. In addition, there is an annual team target to achieve 2 to 4 successful prosecutions. Targets are discussed and agreed annually with team members. The Senior Auditor told us that in future, an annual sanctions target will be agreed that is not broken down by sanction type. This will ensure that the decision making process is not skewed if the level of achievement against a certain type of sanction is less than the monthly or annual target.

3.149 Investigators can seek legal advice whenever they need to. The council has procured the services of an external solicitor, and Benefit Investigation officers are encouraged to use the service. However, we were told this is rarely necessary as there is generally sufficient knowledge and experience within the team.

Security of fraud files

3.150 Access to fraud files is restricted by the use of a digital security lock on the door through which access to the Counter-fraud Investigation team room is gained. The Senior Auditor told us that because the code is known only to the staff employed in the area, there was no need to lock the cabinets in which fraud files are held, or to have a clear desk policy.

3.151 We were told that the cleaners never have access to the room without a Benefit Investigation officer being present. However, Internal Audit staff are also housed in this area and have the opportunity to access fraud files. The council has provided the Counter-fraud Investigation team with lockable drawers and cabinets. Fraud files should therefore, always be locked away when not being used as part of the investigation, and at the close of business, to ensure that there is no opportunity for anyone other than authorised persons to have access to fraud files. We do not therefore, agree that the council's fraud files are securely stored and this should be rectified with immediate effect.

3.152 Access levels for the fraud management system are correctly limited to Counter-fraud Investigation team members.

3.153 We were pleased to note that most of the cases in our sample contained an authorised closure form. However, some older cases did not. The Senior Auditor assured us that he authorises every file closure. However, the management check associated with closure authorisations is not recorded on the fraud file.

Recommendations

We recommend that Berwick-upon-Tweed Borough Council:

- includes a case summary in the fraud management system's case notes at the start of the investigation
- formalises its management checking regime, by including it in procedural guidance
- ensures all management checks are fully documented
- introduces and documents key review stages for investigations
- ensures investigators fully understand its *Benefit Fraud Sanction Policy* and use the criteria outlined in it when recommending the appropriate sanction
- reduces the number of days elapsed between interviews under caution and the sanction interview
- always considers underlying entitlement before determining the appropriate sanction, as described in Departmental guidance
- provides quarterly reports for senior managers and Members about the work of the Counter-fraud Investigation team
- offers administrative penalties as required by Performance Standards, and in accordance with its own counter-fraud policy
- ensures fraud files are locked away in secure drawers or cabinets at the close of business
- records all closure authorisation checks on fraud files.

Appendices

Appendix A: Summary of recommendations

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Appendix A: Summary of recommendations

The tables in this appendix show all the recommendations we have made in this inspection.

Independent assurance

Recommendations	
We recommend that Berwick-upon-Tweed Borough Council:	Paragraph
<ul style="list-style-type: none"> ensures that the level of Internal Audit resources available is sufficient to give Members and senior managers annual assurance that the administration of HB and CTB and the Counter-fraud service are secure and efficient. 	2.11

BFI findings

Recommendations	
We recommend that Berwick-upon-Tweed Borough Council:	Paragraph
<ul style="list-style-type: none"> • introduces a process to prevent staff who have declared an interest in either a claim to HB and or CTB from accessing the associated clerical papers, and ensure that case file access is restricted to maintain the confidentiality of the person making the declaration of interest • amends its Benefit Fraud Sanctions Policy to reflect the need to perform a legal evidential test and a public interest test before the offer of a sanction is considered • amends its Benefit Fraud Sanctions Policy to reflect the latest Departmental guidance on sanctions • provides a separate Counter-fraud Business Plan • ensures that its procedural guidance covers all aspects of investigative work • ensures that fraud operational procedures fully comply with Departmental guidance • sets up a formal reporting mechanism on counter-fraud activity to report progress against business plan targets and objectives to senior managers and Members on a quarterly basis. 	3.16
<ul style="list-style-type: none"> • enhances its referral forms to include all required information • enters all fraud referrals onto its fraud management system upon receipt • records feedback to Benefit officers on fraud file case notes • analyses referrals by source, type and outcomes, to inform risk assessment, awareness training and targeting of resources • makes use of ultra-violet scanners to confirm the authenticity of all identity documentation provided in support of a claim • identifies Do Not Re-direct referrals on its fraud management system as a referral source • ensures post is dealt with securely before referring it to the Counter-fraud Investigation team • provides fraud awareness training for all council employees. 	3.45

We recommend that Berwick-upon-Tweed Borough Council:	Paragraph
<ul style="list-style-type: none"> • ensures that activity commences on all cases accepted for investigation within 5 days • ensures that all fraud referrals are entered onto its fraud management system • ensures that interviews under caution fully comply with all legislation and Departmental guidance • ensures that Benefit Investigation officers are trained to recommend the correct sanction in accordance with its Benefit Fraud Sanctions Policy • ensures that legal evidential and public interest tests are performed and fully documented before offering any sanction to a proven fraudster. 	3.69
<ul style="list-style-type: none"> • ensures that investigators have individual work objectives that meet with the <i>Stretching Specific Measurable Achievable Realistic Time bound</i> criteria. 	3.85
<ul style="list-style-type: none"> • completes <i>Fraud Partnership Agreement</i> forms in all appropriate cases, and introduces a management check. 	3.95
<ul style="list-style-type: none"> • maintains a central register of its authorised officers, and reviews it regularly for relevance and need • establishes and maintains a central record of requests for information that are made from listed organisations. 	3.108
<ul style="list-style-type: none"> • always adheres to its <i>Benefit Fraud Sanction Policy</i> when deciding whether a formal caution is appropriate. 	3.115
<ul style="list-style-type: none"> • always applies its <i>Benefit Fraud Sanction Policy</i> when deciding whether to offer an administrative penalty to a fraudster • always performs a legal evidential test before offering a sanction • does not offer a sanction where a case fails the legal evidential test. 	3.123

We recommend that Berwick-upon-Tweed Borough Council:	Paragraph
<ul style="list-style-type: none"> • includes a case summary in the fraud management system’s case notes at the start of the investigation • formalises its management checking regime, by including it in procedural guidance • ensures all management checks are fully documented • introduces and documents key review stages for investigations • ensures investigators fully understand its <i>Benefit Fraud Sanction Policy</i> and use the criteria outlined in it when recommending the appropriate sanction • reduces the number of days elapsed between interviews under caution and the sanction interview • always considers underlying entitlement before determining the appropriate sanction, as described in Departmental guidance • provides quarterly reports for senior managers and Members about the work of the Counter-fraud Investigation team • offers administrative penalties as required by Performance Standards, and in accordance with its own counter-fraud policy • ensures fraud files are locked away in secure drawers or cabinets at the close of business • records all closure authorisation checks on fraud files. 	<p>3.153</p>

