

AUDIT COMMITTEE

17 JULY 2014

CORPORATE FRAUD

Report from: Internal Audit

Author: Alison Russell, Head of Internal Audit and Counter Fraud

Summary

To inform Members of matters relating to corporate fraud, including outcomes of investigations and fraud referrals received by Audit Services. This report does not include details of any investigations which need to be reported as exempt items.

1. Budget and Policy Framework

1.1 It is in the remit of the Audit Committee to take decisions regarding accounts and audit issues.

2. Background

2.1 The Anti-Fraud and Corruption Policy forms part of the Council's Constitution and sets out the council's commitment to ensuring the opportunity for fraud and corruption is reduced to the lowest possible risk.

2.2 Prosecutions, cautions and administrative penalties relating to benefits and council tax reductions are reported in **Annex A**, along with a year on year comparison of identified overpayments with the prior two years. This report relates to Quarter 4 of 2013/14. Where a case included on this report relates to a member of staff an additional report will be provided to Audit Committee as an exempt item.

2.3 Audit Services are responsible for investigating all suspected fraud perpetrated against the council by employees and contractors. **Annex B** provides an update on internal fraud and irregularity investigations. The report includes a record of any control weaknesses identified and management actions put in place to strengthen existing arrangements.

3. Single Fraud Investigation Service (SFIS) - Update

3.1 On 1 May 2014 Local Authorities were issued with a schedule detailing the programme for the national migration to SFIS. Existing pilot Local Authority sites transferred on 1st July 2014. National roll-out will commence in October 2014 and conclude in March 2016. Kent Local Authorities are in the final implementation phase, with Medway scheduled to transfer in February 2016.

- 3.2 On 7 May the House of Commons Work and Pensions Select Committee: Fraud and Error in the Benefits System report was published. The report concluded that SFIS is, in principle, a good idea but included a recommendation that the DWP pause implementation to enter into negotiations with relevant trade unions about a national framework for the transfer of local authority fraud investigation staff into the DWP. **Annex C.**
- 3.3 On 15 May the DWP issued the Government response to the Statutory Instrument consultation on the Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Department for Work and Pensions) Regulations 2014. **Annex D.**
- 3.4 After SFIS implementation the prosecution of Welfare Benefit fraud will be undertaken solely by the Crown Prosecution Service (CPS). On 19 May the DWP issued letters to local authorities, on behalf of the CPS, requesting data in relation to the scale of housing benefit and legacy council tax benefit prosecution work currently undertaken by each council and the number of personnel currently engaged primarily in this type of work. On 26 June DWP contacted Medway Legal Services acknowledging receipt of their data but advising a significant number of local authorities had failed to respond. Further letters have been sent to these councils, giving a final deadline of 7 July. Further information is unlikely to be issued before August.
- 3.5 On 29 May the DWP advised Chief Executives that Lord Freud, Minister for Welfare Reform had considered the Select Committee recommendation and had confirmed implementation of SFIS should continue as planned. **Annex E.**
- 3.6 Questions regarding the HR implications of the transfer of the service to DWP have been responded to through a series of roadshows. There was also a Statutory Instrument consultation where councils were provided the opportunity to raise further queries regarding the mechanics of the transfer arrangements.
- 3.7 In acknowledgment that the transfer of benefit fraud investigators to SFIS may create challenges to some authorities' investigative capacity DCLG announced in December 2013 that they would be making available £16.6million to English local authorities over two years 2014/15 and 2015/16. On 2 July 2014 DCLG issued a prospectus and application form for this "Counter Fraud Fund". All bids must be submitted by 5 September, after which an assessment panel will consider bids against the criteria detailed in the prospectus, with ministers making a final decision on the allocation of funds.

4. Risk Management, Financial and Legal implications

- 4.1 There are no risk management, financial or legal implications arising from this report.

5. Recommendations

- 5.1 Members are asked to note progress in investigating fraud in accordance with the approved Anti Fraud & Corruption policy.

Lead officer contact

Name Alison Russell
Job Title Head of Internal Audit and Counter Fraud
Telephone: 01634 332355
email: alison.russell@medway.gov.uk

Background papers

Sanction Policy (revised 2006) & Anti-Fraud & Corruption Policy (updated August 2012)
Fraud Resilience Strategy 2014/16 – last update presented to Audit Committee March 2014

External Investigation Outcomes

Table 1 – Benefits & Council Tax Reductions / Discounts - Prosecutions completed in the 4th Quarter 2013/14
 (Amounts of overpayments outstanding as at 05/06/14)

Prosecutions					
Case ref.	Fraud Type	Fraudulent overpayment £	Period of overpayment or Evasion of liability	Court and sentence	Comment
12659 / 1031511	LT	£7,266.10 (HB/CTB) £5,407.93 (IS)	26/11/10 – 08/07/12 26/11/10 – 04/07/12	Medway Magistrates Pleaded guilty to 3 x offences. Sentenced to 150hrs Community Punishment Order. £700 Costs.	Department for Work and Pensions led prosecution, prosecuted by Crown Prosecution Service. The Housing Benefit overpayment of £6,018.11 remains outstanding. Bailiffs last attempted to make contact with debtor on 04/03/14, but no response. In addition there is outstanding Council Tax debt of £3,295.81 for previous years and £1,071.64 for current year.
12749 / 1038878	LT	£7,629.30 (HB/CTB) £2,526.43 (JSA)	25/04/11 – 22/07/12 20/04/11 – 06/01/12	Medway Magistrates Pleaded not-guilty to 1 x DWP & 2 x Medway offences. Sentenced to 50hrs Community Service to be completed within 12months. No costs awarded.	Department for Work and Pensions led prosecution, prosecuted by Crown Prosecution Service. Housing Benefit overpayment of £5,789.96 remains outstanding. Debt has recently been returned to Medway by Bailiffs as unable to obtain payment. This prompted issue of a "Final Notice" on 19/05/14.

12958 / 1058706	LT	£6,403.05 (HB)	04/04/11 – 28/10/12	Medway Magistrates Pleaded guilty to 1 x Medway offences. Sentenced to 24 month conditional discharge. £600 costs.	Medway investigation and prosecution. Housing Benefit overpayment of £6,403.05 remains outstanding. Debt was passed to Bailiffs on 04/12/13. Bailiffs records show debtor has failed to respond to SMS / letters / home visits.
13111 / 1061749	Working whilst claiming	£6,127.45 (HB) £4,718.03 (JSA)	04/07/11 – 20/01/13 10/08/11 – 14/02/13	Maidstone Crown Court. Pleaded guilty to 21 x DWP offences and 6 x Medway offences. Sentenced to 6months prison, suspended for 2 years. Ordered to undertake 170 hours unpaid work. £900 costs.	Medway led investigation and prosecution. Housing Benefit overpayment currently being recovered from on-going benefit at the rate of £18:25pw. The current balance outstanding is £4,987.23.
13129 / 1021228	LT	£16,720.09 (HB/CTB) £8,386.55 (IS)	21/03/11 – 07/07/13 16/03/11 – 08/07/13	Medway Magistrates Pleaded guilty to 1 x DWP & 1 x Medway offences. Sentenced to 6months imprisonment (suspended for 2years). Plus 150 hours unpaid work. £85 costs.	Department for Work and Pensions led investigation, prosecuted by Crown Prosecution Service. Debtor failed to adhere to an interim arrangement, made in September 2013, to repay the Housing Benefit overpayment at the rate of £15 per month. Further action is currently being pursued. The current balance outstanding is £14,370.00.

13140 / 1042817	CAP	£3,029.39 (CTB) £5,197.79 (IS)	27/04/09 – 23/04/13 02/12/09 – 24/04/13	Medway Magistrates Pleaded guilty to 1 x DWP and 1 x Medway offences. Sentenced to 24 months conditional discharge. £15 Victim Surcharge. £85 costs.	Department for Work and Pensions led investigation, prosecuted by Crown Prosecution Service. Paid the Council Tax debt in full immediately after the benefit was recalculated.
13177 / 59661	CAP	£1,748.03 (CTB) £12,879.29 (ESA)	27/12/10 – 31/03/13 23/12/10 – 18/04/13	Medway Magistrates Pleaded guilty to 1 x DWP and 1 x Medway offences. Sentenced to 56 days imprisonment suspended for 12 months. £85 costs.	Department for Work and Pensions led investigation, prosecuted by Crown Prosecution Service. Paid the Council Tax debt in instalments, in full, before the end of the 2013/14 financial year.
13262 / 1059297	WC	£7,959.72 (HB/CTB) £5,007.36 (JSA)	30/05/11 – 12/05/13 27/05/11 – 29/05/13	Medway Magistrates Pleaded guilty to 1 x DWP & 4 x Medway offences. Sentenced to 60 days imprisonment, suspended for 12 months. No costs awarded.	Department for Work and Pensions led investigation, prosecuted by Crown Prosecution Service. No longer in receipt of benefit. Landlord reported absconded from the property with no forwarding address. Efforts are currently being made to trace the debtor. Housing Benefit overpayment of £7,159.74 remains outstanding. There is also an outstanding Council Tax debt of £1,771.98.

12934 / 87772	WC	£49,464.73 (HB/CTB) £55,842.08 (Incapacity Benefit / IS)	12/02/01 – 22/04/12 19/04/02 – 29/05/12	Maidstone Crown Court Pleaded guilty to 2 x DWP offences and 7 x Medway offences. Sentenced to 14 months imprisonment.	Department for Work and Pensions led investigation, prosecuted by Crown Prosecution Service. Housing Benefit overpayment of £41,276.22 remains outstanding. There is also £7,879.37 Council Tax liability outstanding. Recovery actions are being followed, despite the debtor's current imprisonment.
Totals (£)		£106,347.86 (HB/CTB) £99,965.46 (DWP)			

Table 2 – Benefits & Council Tax Reductions / Discounts – Cautions issued in the 4th Quarter 2013/14
 (Amounts of overpayments outstanding as at 05/06/14)

Cautions					
Case ref.	Fraud Type	Fraudulent overpayment £	Period of overpayment or Evasion of liability	Date Caution accepted	Comment
12601/ 21545	CofC	£963.93 (CTB/CTR)	19/09/11 – 24/07/13	06/02/14	Outstanding Council Tax liability paid in full in May 2014.
13338 / 2000436 157-7	CofC	£258.97 (SPD)	01/12/11 – 01/12/12	06/02/14	Outstanding Council Tax liability paid in full before end of financial year 2013/14.
13374 / 1005371	CofC	£2,342.65 (HB)	02/08/10 – 15/09/13	06/02/14	Overpayment is being repaid under an arrangement at the rate of £60 per month. The current balance outstanding is £2,680.37 (which includes a further overpayment which was not considered fraudulent).
Total		£ 3,565.55 (HB)			

Table 3 – Benefits & Council Tax Reductions / Discounts – Administrative Penalties issued in the 4th Quarter 2013/14

Administrative Penalties					
Case ref.	Fraud Type	Fraudulent overpayment £	Period of overpayment or Evasion of liability	Date Administrative Penalty issued	Comment
N/A	N/A	N/A	N/A	N/A	N/A

Table 5 – Benefits, Council Tax Reduction and Single Person Discount overpayments identified and recorded by the Corporate Anti-Fraud Team during the 4th Quarter 2013/14 – With comparison to the same quarter in previous financial years.
 (The figure in brackets denotes the number of cases with identified overpayments).

Types of overpayment	4th Qtr 2011/12 £	4th Qtr 2012/13 £	4th Qtr 2013/14 £
Housing Benefit / Council Tax Benefit / Council Tax Reduction (HB/CTB/CTRS)	286,888	175,860	118,230
Single Person Discount (SPD)	0	0	475
DWP benefits	255,397	40,319	123,069
Other (e.g. Tax Credits)	0	0	0
Totals	542,285	216,179	241,774

Key: -

- Clmt Claimant
- LT Living together as husband & wife
- WC Working & claiming
- CAP Failure to declare capital
- ND Non Dependent
- CofC Failure to report a change in circumstances
- Inc Failure to declare income
- QB9 Employer prosecuted for failing to supply information requested under Social Security Legislation.
- SPD Single Person discount

Note re costs – Medway no longer receives details of Costs awarded where Crown Prosecution Service undertake proceedings on behalf of DWP / Medway Council.

INTERNAL FRAUD AND IRREGULARITY INVESTIGATIONS

Audit Services are responsible for undertaking investigations into possible fraudulent activity by members of council staff and contractors. Referrals requiring investigation by Audit Services are received from managers across the council or through the whistleblowing arrangements. In addition some investigations arise as a direct result of internal audit work.

Audit Services conduct an initial assessment of the case in order to determine whether an investigation is required. In some instances the referral will require nothing more than the provision of advice to management, who may be required to investigate the matter further, in compliance with the council's disciplinary policy. In some cases Audit Services undertake a full investigation, which may result in disciplinary and/or criminal proceedings.

There is an investigation protocol between Audit Services and HR which sets out how the respective roles of the two teams when undertaking investigations into suspected employee fraud. The protocol was agreed in 2013 and has resulted in an increased number of referrals to Audit Services.

The table below sets out the completed internal fraud and irregularity investigations undertaken, and advice provided, since the last report presented to Audit Committee (excluding those cases which have to be reported as a restricted item, in line with Data Protection Act requirements). The table includes a summary of control weaknesses identified and management actions agreed.

Referral	Audit Services Involvement	Finding	Control Improvements
<p><u>On-Call Arrangements</u> Investigated as result of a whistleblowing allegation. Allegation related to a supervisory officer paying a member of his team to cover his on call shift.</p>	<p>Full investigation</p>	<p>The investigation confirmed that the three senior staff in the team received an on-call allowance for providing out of hours cover. However there was an occasion where the three staff could not cover the shift and therefore a lower graded member of the team provided the cover and was reimbursed personally by the senior manager. This was done with the knowledge of the supervisory officer's line management.</p> <p>In undertaking a review of the allegation we reviewed the operational arrangements for this service and identified some operational issues which management have agreed to review.</p>	<ul style="list-style-type: none"> • Instruction has been given that the practice of paying others directly for covering duties must cease. • Management will be liaising with HR as to what options there are to provide appropriate and sufficient out of hours cover • Management will review methods of accurately recording and following the progress of each case.

Referral	Audit Services Involvement	Finding	Control Improvements
<p><u>Out of Hours Working</u> Payroll identified that one member of staff had claimed “on call” allowance for every day for a year, with no breaks to account for annual leave. In addition, the spreadsheet claim forms for the entire project team are signed by the team leader only before submission to payroll – the forms are then authorised retrospectively by a variety of different managers.</p>	<p>Review of payments made to this employee and, to a lesser extent, other members of the project team</p>	<p>There have been several changes of line management responsibility for the service during the period these queries relate to and there is no record of the practice of claiming standby allowance for every day being approved, although there is some documentation indicating management awareness of the arrangements. We were advised by the individual that a shared on-call arrangement was agreed with a previous manager (who has since left the council) prior to 2011. In 2011 the responsibility became solely that of the individual to cover the on-call service. The individual advised that the arrangement, which largely involves dealing with issues over the telephone, was agreed on the basis of payment being made whether in work or not as families needing assistance could not be expected to wait until his return to work for a response.</p> <p>Sleeping-in payments had also been made but it emerged that the practice of young people residing at the service’s premises had ceased some time prior to June 2012. This is not totally at odds with the last claim for sleeping-in duty being made in a combined claim for July and August 2012.</p> <p>Throughout the period the standby allowance was claimed any journeys in relation to on-call duties were apparently made using the vehicle purchased for the project, the running costs of which are charged to the council. It was confirmed that this is the vehicle used for travel between home and work since this is the only practical solution for any visits needed out of hours.</p>	<p>Payroll often processing the spreadsheet claims in advance of approval/sign-off by an authorised payroll signatory. We acknowledge that the forms processed are matched against authorised forms, but as payment may have already been made by this point there is a risk that inaccurate payments may be made.</p> <p>We believe that placing a single member of staff in a situation of being ‘on-call’ 365 days a year could expose management to allegations of unfair treatment or failure to exercise reasonable duty of care to employees. However, as we understand that the service is being discontinued in the near future no further action may be needed.</p> <p>Use of a council provided vehicle and fuel for normal home-work travel and other personal purposes should constitute a taxable benefit. As no reimbursement is being made for the cost of fuel used for home-work travel, this therefore constitutes a taxable benefit which should be accounted for properly.</p>

Referral	Audit Services Involvement	Finding	Control Improvements
<p><u>Attempted Cheque Fraud</u> Nat West bank informed a Medway School that their running security screening identified an altered cheque. The supplier's name had been altered but the date and amount had not. It was for £1005.60.</p>	<p>Review of the control arrangements</p>	<p>The cheque was intercepted by the bank and cancelled before any funds were transferred. The Police were not informed as no losses were prevented.</p> <p>The school informed the supplier of the cheque interception and a new cheque was issued.</p> <p>Our review of cheque payments at the school showed these were reasonable and that it was very unlikely that the cheque had been intercepted at the school.</p>	<p>None.</p>

Fraud and error in the benefits system - Work and Pensions Committee

Contents

4 The Single Fraud Investigation Service

Policy intent

62. As noted in chapter 2, the 2010 joint DWP/HMRC fraud and error strategy proposed a Single Fraud Investigation Service (SFIS), to address fraud across all benefits and Tax Credits, whether currently administered by DWP, HMRC or local authorities. The main objective of the policy was to ensure that all types of social security and Tax Credits fraud would be investigated according to a single set of guidance and priorities. It was also intended to increase activities to combat Tax Credits fraud, as most of HMRC's anti-fraud resources were devoted to taxation.[\[59\]](#)

63. There was widespread support amongst witnesses for the principle of a SFIS. For example, LAIOG told us that it was a "very laudable and understandable goal" and a "great idea". Derby City Council believed that it was "in theory, a common sense idea."[\[60\]](#)

Implementation timetable

64. The Government originally intended to establish SFIS from April 2011 but this was delayed in order that the new service would be "more in line with the introduction of Universal Credit".[\[61\]](#) Provisions to allow for the creation of SFIS were included in the Welfare Reform Act 2012 and its establishment was announced in the 2013 Autumn Statement.[\[62\]](#)

65. DWP ran five SFIS pilots in 2013 in: Corby Borough Council; Glasgow City Council; London Borough of Hillingdon; Wrexham Council; and Oldham (a UC Pathfinder area). DWP's conclusion from the pilots was that SFIS would "deliver greater benefits if it could be implemented as a single organisation within DWP."[\[63\]](#)

66. DWP told us that a "small number" of DWP-run SFIS sites will be operational in "summer 2014". Full national implementation is planned to take place from October 2014 to March 2016.[\[64\]](#)

Local authority and trade union concerns

67. The LGA questioned the need to establish SFIS. Councillor Taylor told us that she did not understand why it was necessary to "fix a system that was not broken". She highlighted the relatively low level of estimated fraud in relation to HB (1.3%) compared to that in DWP-administered JSA (2.9%), as evidence of local

authorities' relatively successful record on addressing benefit fraud.[65]

68. The LGA and LAIOG both believed that SFIS, in the form proposed by the Government, would not achieve one of its main aims: to address multiple frauds together in single investigations and prosecutions. LAIOG pointed out that fraud against localised Council Tax Support schemes and other types of fraud against local authority services, such as social housing tenancies and Blue Badge disabled parking, were considered "out of scope" of SFIS.[66]

IMPLEMENTATION TIMETABLE

69. Another major concern was that, under the Government's current plans, SFIS will be rolled out nationally ahead of Universal Credit (UC); therefore full responsibility for addressing the range of social security benefit fraud will transfer to DWP before it takes charge of support for housing costs. The concern is that a DWP-run SFIS will be less able than local authorities to investigate HB fraud in the interim period.[67] SFIS implementation is scheduled to be completed in March 2016, while UC national implementation is due to take place during 2016 and 2017.[68]

70. Lord Freud did not believe that the SFIS implementation timetable would significantly increase vulnerabilities to HB fraud because SFIS and UC would be rolled out on "fairly similar timescales". However, Mike Driver told us that DWP was "cognisant of the risks" and the need to be "careful how we implement." [69]

TRANSFER OF STAFF

71. UNISON, the trade union which represents local authority staff, told us that its understanding in 2011 was that, following the introduction of SFIS, local authority staff would "remain employed by local authorities but work under DWP policy and procedures." It believes that DWP's decision, following the 2013 pilots, to locate SFIS within DWP and transfer local authority investigations staff into the Department, was reached before a proper evaluation had been conducted and without sufficient consultation.[70] LAIOG's view was that the 2013 pilots "demonstrated that a local authority-led joint investigation approach is the most effective at addressing overall fraud." [71]

72. UNISON has a number of concerns about the transfer of staff into DWP, including:

- That the Government has deemed that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will not apply (TUPE Regulations ensure that, when a business or public service transfers from one organisation to another, employees transfer to the new employer under identical terms and conditions of employment);
- That local authorities might lose experienced investigators to SFIS, leaving them more vulnerable to the other types of fraud that will remain their responsibility; and

· That the Government had not entered into negotiations with local authorities and the relevant trade unions about a national framework for the transfer of staff and will instead enter into separate negotiations with each local authority as SFIS rolls out. UNISON argued that this process would be "extraordinarily inefficient".^[72]

73. Lord Freud confirmed that around 790 staff in 380 local authorities would be "in scope for the transfer".^[73] Mike Driver believed that concerns about the implementation process had mainly been expressed by smaller district councils, which might have only one member of staff to cover the range of fraud investigations.^[74]

74. DWP recently confirmed that it would transfer staff "by way of Section 38 of the Employment Relations Act 1999".^[75] Lord Freud told us that, while TUPE would therefore not apply, transfers would take place under the Cabinet Office Standards of Practice. His view was that, in practice, this would mean that DWP would "step into the shoes of the previous employers" and honour the terms and conditions of local authority staff's existing contracts of employment. When we put it to him that, despite DWP's reassurances, UNISON still had concerns that terms and conditions of employment might not be *identical*, because TUPE had been deemed not to apply, Lord Freud undertook to "look at" the relevant draft Regulations.^[76]

75. The Single Fraud Investigation Service (SFIS) is, in principle, a good idea. However, it makes no sense to roll out SFIS nationally, ahead of the national implementation of Universal Credit, while local authorities retain responsibility for Housing Benefit. We recommend that the implementation of SFIS be aligned where practicable with the expansion of the Universal Credit Pathfinder areas and with national implementation of Universal Credit. We further recommend that, following the summer 2014 SFIS pilots, DWP pause implementation of SFIS to enter into negotiations with local government and the relevant trade unions about a national framework for the transfer of local authority fraud investigations staff into DWP.



Department
for Work &
Pensions

Adran Gwaith
a Phensiynau

The Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Department for Work and Pensions) Regulations 2014

Government response to the SI consultation

May 2014

Contents

The Response to the SI Consultation for Single Fraud Investigation Service (SFIS) Project	3
Employee Transfer Approach / why not TUPE?	4
Timescales	7
Pay, Grading, and Continuity of Service.....	8
Measures.....	9
Pensions.....	10
“In scope” decisions and Funding Residual LA Services.....	11
List of organisations who responded to the consultation:	12

The Response to the SI Consultation for Single Fraud Investigation Service (SFIS) Project

Executive Overview

DWP wrote to Local Authority (LA) Chief Executives on 3rd March 2014 to announce the proposed approach to transferring formally LA employees and employees of contractor companies who are undertaking housing benefit and council tax benefit fraud investigation work to DWP. This commenced the period of consultation with key stakeholders, who were asked for comments on the proposed Statutory Instrument (SI) by 14th April 2014, 18th April 2014 for Trade Unions.

During the period of consultation, the project additionally engaged with several representative groups, sharing the transfer approach in meetings with:

- Local Government Association (LGA)
- Convention of Scottish Local Authorities (COSLA)
- Welsh Local Government Association (WLGA)
- Department for Communities and Local Government (DCLG)
- Scottish Government
- Welsh Government

Although not part of the official SI Consultation, the Project held regional Roadshows, at which LA employees were provided with the opportunity to raise questions. Roadshows commenced 24th March 2014 and will end on 8th May 2014. Questions individuals raised at the Roadshows mirror the themes raised during the consultation period.

56 responses to consultation have been received. Some stakeholders submitted more than one letter during consultation. A detailed list of all respondents is on page 12. The main themes arising from consultation are:

- Employee Transfer Approach
- Timescales
- Pay, Grading and Continuity of Service
- Measures
- In Scope Decisions and Funding of Residual Services

Thank you to all respondents. As a result of the consultation, all responses have been reviewed and carefully considered. In light of responses received DWP has reconsidered its approach and has made some amendments to the proposed SI.

This paper sets out the official consultation response to the key themes raised. Questions not directly relevant to the SI Consultation will be responded to appropriately through existing processes, after the publication of the SI Consultation Response.

Employee Transfer Approach / why not TUPE?

What the consultation responses said:

A large number of responses advised the belief that TUPE should apply to the transfer of employees and although supportive of the transfer DWP is proposing, the majority of responses expressed concerns that employees may not be adequately protected on transfer, if TUPE was not applied.

Those responses accepting DWP's approach to implementing a Statutory Instrument (under section 38 of the Employee Relations Act 1999) also stated they had concerns for the protection of their employees.

Specifically, DWP was asked to reconsider including the following TUPE regulations in the SI:

SI 2006/246 Regulation 5 – Effect of relevant transfer on collective agreements

SI 2006/246 Regulation 6 – Effect of relevant transfer on trade union recognition

SI 2006/246 Regulation 7 – Dismissal of employee because of relevant transfer

SI 2006/246 Regulation 8 – Insolvency

SI 2006/246 Regulation 9 – Variation of contract where transferors are subject to relevant insolvency proceedings

SI 2006/246 Regulation 11 – Notification of Employer Liability Information

SI 2006/246 Regulation 12 – Remedy for failure to notify employer liability information

SI 2006/246 Regulation 13 – Duty to inform and consult representatives

SI 2006/246 Regulation 14 – Election of Employee representatives

SI 2006/246 Regulation 15 – Failure to inform or consult

SI 2006/246 Regulation 16 – Failure to inform or consult – supplemental

SI 2014/16 Regulation 8 (1) - (1) (2) and (3) Dismissal of employee because of relevant transfer

SI 2014/16 Regulation 9 – Definition of “permitted variation”

Government response

DWP has considered whether the creation of SFIS falls within the scope of TUPE. The TUPE regulations state that “...the transfer of administrative functions between public administrative authorities is not a relevant transfer” (for the purpose of TUPE). After careful consideration, DWP has concluded that housing benefit and council tax benefit fraud investigations falls within this category, and as such, TUPE would not apply. This is commonly known as the Henke exception.

It has never been DWP's position that TUPE may apply. DWP has from the outset taken the view that TUPE is unlikely to apply. It is the case that if TUPE did apply, each LA would need to be considered separately and this could have meant that some LA staff would have been protected by TUPE and others would not. However, as Henke applies here, this is not an issue.

DWP is however committed to taking on LA employees and employees of contractor organisations who currently work on investigation of housing benefit and council tax benefit fraud activities. As suggested in the Cabinet Office Statement of Practice (COSoP), DWP has sought to effect the transfer of staff through a statutory transfer scheme. DWP has confirmed, and remains committed to, ensuring transferring employees have 'TUPE like' protection and their terms and conditions are protected on transfer.

COSoP does not require DWP to replicate all of the TUPE provisions. DWP's main concern is to protect staff terms and conditions and this is set out in the draft Statutory Instrument (SI). The draft SI does not replicate all of the provisions of TUPE; there is no requirement for DWP to do this where TUPE does not apply. Certain TUPE provisions have been omitted from the draft SI as DWP does not consider them relevant nor beneficial for employees transferring.

We have set out below the Government's response to the points raised in the responses to the consultation including a detailed response advising why specific regulations have been omitted is provided below:

SI 2006/246 Regulation 7 – Dismissal of employee because of relevant transfer and SI 2014/16 Regulation 8 (1) – (1) (2) and (3) Dismissal of employee because of relevant transfer.

Following responses received, whilst DWP considers the draft SI to provide adequate protection for employees, in light of the concerns raised in relation to this provision in TUPE a decision has been taken to include the relevant provisions of regulation 7 of SI 2006/246 (as amended by SI 2014/16) in the SI.

SI 2006/246 Regulation 5 – Effect of relevant transfer on collective agreements

Terms and conditions of the employment contract will be protected on transfer. Any terms incorporated into employment contracts from collective agreements will also be protected.

Following the introduction of the SFIS project all eligible employees will move into one organisation with one employer (DWP). It would not be practical or desirable to have a large variety of collective agreements from all of their previous employers continuing to apply. DWP would have to consider withdrawing and ending all of those collective agreements as the situation would not be manageable. There is therefore little to be gained by transferring the collective agreements just for DWP to then have to withdraw from them.

Regulation 5 has therefore not been replicated in the SI to effect the transfer of employees to DWP.

SI 2006/246 Regulation 6 – Effect of relevant transfer on trade union recognition

DWP already has arrangements in place with its recognised trade unions who represent all employee grades within DWP. It would not be practical for DWP to

recognise LA trade unions and have two sets of unions being recognised for the same grades of employees.

Regulation 5 of TUPE has therefore not been included in the SI.

SI 2006/246 Regulation 8 – Insolvency

SI 2006/246 Regulation 9 – Variation of contract where transferors are subject to relevant insolvency proceedings

Insolvency provisions would not be relevant in the context of the Civil Service and therefore have not been included in the SI.

SI 2006/246 Regulation 11 – Notification of Employer Liability Information

SI 2006/246 Regulation 12 – Remedy for failure to notify employer liability information

We are already engaging with LAs (and their contractors) to identify relevant staff and obtain employee data. There is no specific need to have this provision in the SI as this work is progressing in any event. Further, regulations 11 and 12 are for the benefit of the transferee. By not including these provisions, there is no detriment to the transferring employees.

SI 2006/246 Regulation 13 – Duty to inform and consult representatives

SI 2006/246 Regulation 14 – Election of Employee representatives

SI 2006/246 Regulation 15 – Failure to inform or consult

SI 2006/246 Regulation 16 – Failure to inform or consult – supplemental

DWP is already consulting on the SI as part of a wider engagement activity. We are also informing LAs on measures. LAs will be responsible for their own consultations with their TUs. The provisions in TUPE only require information and consultation to be “long enough before a relevant transfer”. This process has already commenced and there is therefore no specific need for this to be included in the SI.

SI 2014/16 Regulation 9 – Definition of “permitted variation”

This Regulation applies in relation to variations of contract where the transferor is subject to relevant insolvency proceedings. It is therefore not relevant in the Civil Service context and therefore has not been included in the SI.

As regards variations to contract generally, COSoP recognises the need for flexibility to harmonise terms and conditions on a transfer. DWP has already confirmed that no changes are at present proposed and in any event changes will only be made following discussion and agreement with relevant staff. Our view is that it would be more beneficial to employees to have the opportunity to agree changes to terms and conditions where this is of benefit to them. We do not therefore propose to impose the restrictions in TUPE on making changes – under TUPE changes can only be agreed where there is an economic, technical or organisational reason entailing changes in the workforce.

In summary DWP considers that the transfer approach as laid out in the Statutory Instrument does protect employees’ terms and conditions of employment.

Timescales

What the consultation responses said:

Several of the responses were around the lack of clarity on when LA employees would transfer to DWP.

Government response

The employee transfer will take place in two stages:

- Phase 1 (Nine already identified pilot areas) to transfer in July 2014
- Followed by a 3 month pause to review (July – September) to perform a post implementation review and address lessons learned.
- Phase 2 to commence in October 2014 for a rolling period of employee transfers (approx 20 local authorities each month) until March 2016.

DWP wrote to LA Chief Executives on 3rd March 2014, commencing the consultation period on the transfer approach and requesting each LA to notify DWP by 14th April of any mitigating circumstances that may affect their transfer date. The information CEOs provided will allow the rollout schedule to be developed. It is expected that CEOs will have been notified of their position in the rollout schedule for Phase 2 around the same time this SI consultation response will be published.

DWP HR will work with nominated LA HR representatives 4 – 6 months prior to the confirmed transfer date to consider Terms and Conditions and develop measures. This timescale will allow sufficient time to develop measures and provide the level of detail required for LAs to be able to consult with local Trade Unions.

Employees will be notified in writing in advance of the transfer date if they are to transfer. Only those employees notified in writing in advance will transfer under the SI.

Pay, Grading, and Continuity of Service

What the consultation responses said

Several responses related to pay, requesting to establish how transferring employees pay and grading will be treated post transfer. Queries ranged from:

- All LA employees are paid on the 15th of the month, two week retrospectively and two weeks in advance – will this continue post transfer?
- How will DWP allocate a pay grade for transferring employees?
- How will DWP treat people who are earning more than their assigned grade?
- Some LAs advised that they have a pay progression system, whereby employees continue to move up the payscale each year, which is contractual – how will this be treated post transfer?

The above list is not exhaustive.

Government response

Although specifically Pay, Grading, and Continuity of Service are not part of the consultation on SI, they are issues concerning stakeholders and do form part of the employee transfer approach.

DWP has stated that under the terms of the SI current pay and continuity of service will be protected. Where a transferring employee's salary is higher than that of the assigned grade the higher salary will not be reduced.

Where DWP cannot replicate like for like terms and conditions (for example a Dental Plan) DWP HR will work with LA HR representatives to develop measures, so that transferring employees will not be disadvantaged. LAs will have the opportunity to consult with their TUs on these.

Based on an employee's current role, responsibilities and activities DWP will assign a grade based on criteria in the DWP Grading Framework.

DWP pays their employees monthly, retrospectively on the last working day of the month via our Resources Management System. DWP is unable to alter this and will not be able to continue to pay transferring employees on the 4-weekly LA pay system. DWP will therefore develop a measure to address this.

Measures

What the consultation responses said

Several questions were asked around how DWP will match contractual Terms and Conditions. Examples given were varied, however a selection have been included for completeness below:

- some investigators have access to a car club (a pool of cars provided under council contract and available for employees to carry out their duties)?
- where will transferring employees be located?
- what arrangements will be made to compensate employees for additional travel expenses?
- how will contractual homeworkers be treated?
- how will contractual part-time workers be treated?

This list is not exhaustive.

Government response

Terms and Conditions will be protected. DWP will work with each employer to understand what is a contractual term and condition and what is a benefit. DWP HR will engage with nominated LA HR representatives 4 – 6 months prior to the confirmed transfer date to consider Terms and Conditions, develop measures and agree the office that employees will transfer to.

It is anticipated that the majority of employees will transfer into a DWP office and be co-located with Fraud Investigators, for those in a location where currently no Fraud employees are based they will be located in a DWP office. For those with mobility issues or in remote areas DWP will work with individual employees on a case by case basis to develop a reasonable measure.

The 4 – 6 month timescale will allow sufficient time to develop measures and provide the level of detail required for LAs to be able to consult with local Trade Unions.

Pensions

What the consultation responses said

A few queries were raised about Pensions, specifically asking:

- if employees will be able to stay in the Local Government Pension Scheme (LGPS)
- if they transfer to the Principal Civil Service Pension Scheme (PCSPS) will there be a Government Actuary's Department certificate of broad comparability with the LGPS?
- how will accrued pension provision be treated?
- what is the DWP normal retirement age?

Government response

Pensions are not included in the SI.

Transferring employees will be admitted into the PCSPS (NUVOS) on day one of their transfer.

They will be given the option of transferring their accrued provision from LGPS to PCSPS based on the certificate of broad comparability.

DWP does not have a mandatory retirement age for employees in grades below Senior Civil Service (SCS). Employees can decide to retire and draw pension benefits at any time from their PCSPS pension age of 60 or 65 (depending on which scheme they are in) but are not required to retire at those ages. The Department does not discriminate on the basis of age.

“In scope” decisions and Funding Residual LA Services

What the consultation responses said

A few LAs (either at the Road Shows or via their official response to consultation letter) raised their concerns about deciding who will be in scope for the transfer to DWP when they do not know their future funding.

Government response

The letter issued to LA CEOs on 3rd March 2014 set out the housing benefit and council tax benefit fraud investigation activities that will transfer from Local Authorities to DWP. Effectively DWP are transferring both the work and all the employees principally undertaking those activities. The exporting employer will submit a proposition of who is in scope to transfer. DWP HR will work with that employers HR representatives to agree the proposition and who is in scope for transfer.

However, within LAs it is clear that employees may undertake varied duties. Additionally, the LAs need to ensure they have sufficient capability to maintain their Corporate Fraud work. DWP HR has committed to working with LA HR representatives and offer additional support to help the LA decide who should transfer.

There are 3 key funding areas relating to SFIS:

Additional funding for LG Corporate Fraud

DWP has agreed a funding package with Department for Communities and Local Government (DCLG) and the Devolved Administration to support Corporate Fraud in Local Authorities and they will agree the plans for allocation.

Recycling of Funds

As the service is moving from LAs to DWP, the SFIS Project Business case recommends that an amount of money is recycled from the Housing Benefit Admin Grant. The proposals do not make any changes to the Admin grant for 2014/15 due to the introduction of the SFIS project, however there are proposals that future years' grants should reduce to reflect the cost of this service moving from LAs to DWP. These reductions are being discussed with the LA Associations and the announcement of the grant for 2015/16 will take place in the Autumn of 2014.

New Burdens Assessment (NBA)

The proposals for the NBA for 2014/15 are currently with DCLG and the devolved administrations and the LA associations, we have also set up a practitioner group to work through and agree the calculations. Once the NBA has been agreed for 2014/15 we will develop those for future years.

List of organisations who responded to the consultation:

Argyll and Bute Council
Barnsley Local Authority
Bradford Metropolitan District Council (2)
Brent Council
Bristol City Council
Broadland District Council
Bromsgrove and Redditch Borough Councils
Broxtowe Borough Council
Cambridge City Council
CAPITA
Carlisle City Council
Chelmsford Borough Council
Cherwell District and South Northamptonshire Council
Chichester District Council
Convention of Scottish Local Authorities (COSLA) (2)
Coventry City Council
Doncaster Metropolitan Borough Council
East Devon Council
East Staffordshire Borough Council
Gateshead Council
Gedling Borough Council
Glasgow Council
Guildford Borough Council
Harrogate Borough Council
Hinckley & Bosworth Borough Council
Hull County Council
Islington Council
Kirklees Council
Lambeth Council
Lichfield District Council
City of Lincoln Council
Local Government Association (LGA) (2)
Luton Borough Council
Mansfield District Council
Medway Council
Midlothian Council
Milton Keynes Council
Northampton Borough Council and Norwich City Council
Nottingham City Council
Chloe Smith MP – Norwich
Portsmouth City Council
Rushmore Council
Scottish Government
Security Operations Group
Society of London Treasurers – Southwark
South Staffordshire Council
Teignbridge District Council
Three Rivers District Council

Tonbridge & Malling Borough Council
UNISON (2)
Wycombe Council



Department
for Work &
Pensions

Minister for Welfare Reform
4th Floor
Caxton House
Tothill Street
LONDON
SW1H 9DA

Annex E

0207 340 4000

www.dwp.gov.uk

ministers@dwp.gsi.gov.uk

29 May 2014

Dear ,

I am writing to advise you of my response to the publication of The House of Commons Work and Pensions Committee report, *Fraud and error in the benefits system* published on 15 May 2014, specifically with regard to the recommendation made for the Single Fraud Investigation Service.

A formal response to all aspects of the report will be provided to the Committee from across DWP in July 2014 but I wanted to reply in advance in respect of SFIS due to the sensitivities around the implementation timescales.

The recommendation made in the paper regarding SFIS is as follows:
The Single Fraud Investigation Service (SFIS) is, in principle, a good idea. However, it makes no sense to roll out SFIS nationally, ahead of the national implementation of Universal Credit, while local authorities retain responsibility for Housing Benefit. We recommend that the implementation of SFIS be aligned where practicable with the expansion of the Universal Credit Pathfinder areas and with national implementation of Universal Credit. We further recommend that, following the summer 2014 SFIS pilots, DWP pause implementation of SFIS to enter into negotiations with local government and the relevant trade unions about a national framework for the transfer of local authority fraud investigations staff into DWP.

My response:

The key recommendation suggests delaying the SFIS Implementation to align with UC rollout.

The SFIS project has undertaken a substantial amount of stakeholder engagement over the last year or so and as part of that has also considered whether we should align the two projects.

Having considered the recommendation, we still believe we should continue as planned for the following reasons

- the benefits of implementing the Single Fraud Investigation Service Project from 2014/15 are clear and in fact there are increased benefits to a “single investigation” whilst Housing Benefit exists. Implementation of SFIS will lead to a single set of processes and procedures within a nationally flexible team. As a result investigations will be more efficient and effective, while benefit fraud will be treated more consistently. I believe that any delay to implementation will lead to a long period of uncertainty and concern for staff affected both inside and outside DWP, making the situation worse, not better.
- The Project already has plans to pause implementation following the rollout of the early adopters to learn lessons before embarking on Phase 2 (remaining LA areas) from October 2014 – March 2016. This will ensure that delivery plans during this period are robust and enable us to make sure that staff moving from Local Authorities into DWP do so in the smoothest possible way.
- Many of our Local Authority stakeholders have expressed concern that if the implementation were to be delayed there would be further staff reductions within fraud and this is a valuable trained resource which we would not want to lose.
- Any delay in implementation would lead to an extended period of concern and uncertainty for the LA staff affected.

The report also recommended that the project engage with Trade Unions and Local Government. This activity has already been implemented. The Project facilitates a National Joint Forum between LA Trade Unions (Unison, Unite and GMB), Departmental Trade Unions and Local Government representatives. All parties were consulted on the Statutory Instrument that allows the legal transfer of staff from LAs to DWP, and the Forum is working on an agreement that will ensure the protection of staff terms and conditions as they transfer to DWP.

Taking into account the significant progress made on the points raised since the committee met in March 2014, I am confident that the concerns raised by the Committee have already been addressed. Therefore, I have advised my officials to progress with implementation activity for Phase 1 and Phase 2 in line with the current schedule.

I am also asking SFIS project officials to write to all Local Authority Chief Executives and other key stakeholders to inform them of my response to the recommendation.

Should you wish to discuss this or other areas of the SFIS project further, please do not hesitate to contact the project lead – Melanie Frankham (mel.frankham@dwp.gsi.gov.uk).

Yours sincerely,

Lord Freud

Minister for Welfare Reform