

**EAST AYRSHIRE COUNCIL**

**POLICY AND RESOURCES COMMITTEE - 5 OCTOBER 2000**

**"SAFEGUARDING SOCIAL SECURITY - GETTING THE INFORMATION WE NEED" A CONSULTATION DOCUMENT**

**Report by Depute Chief Executive/Director of Corporate Resources**

**1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to seek approval for the submission of a response to COSLA following receipt of the Department of Social Security's consultation document "Safeguarding Social Security - Getting the Information we need".

**2. BACKGROUND**

- 2.1 The consultation document has been prepared to provide an outline of the possibilities for obtaining information by the DSS from the private sector. It results from the report by Lord Grabiner QC in which he recommended that the Government should examine how it can make use of information from the private sector sources, put in place a Code of Practice and, if necessary, legislation.

The consultation document also indicates that if local authorities are to be effective in the fight against Benefit fraud, they will need similar powers and the DSS have indicated that they are seeking views on whether to extend such powers to investigators working for local authorities.

- 2.2 The document is intended to provide an opportunity to express views on these possibilities before detailed proposals are brought before parliament.
- 2.3 The closing date for replies to COSLA on the consultation document is 6 October 2000.
- 2.4 A copy of the consultation document has been placed in the Members Information Point.

**3. CONSULTATION DOCUMENT "SAFEGUARDING SOCIAL SECURITY - GETTING THE INFORMATION WE NEED"**

- 3.1 The consultation document is separated into 5 main chapters which are summarised below. The proposed response is shown in appendix 1.

- 3.1.1 **Chapter 1 - What is the problem?** - This chapter sets out what the principle flaws were in the system over the past 5 years, some of the systems put in place to address these flaws along with related achievements. It also

highlights the scale of the problem remaining in the 3 most vulnerable benefits i.e. Income Support, Job Seekers Allowance and Housing Benefit.

Comments on this chapter are shown in Section 1 of the appendix.

- 3.1.2 Chapter 2 - Using information to stop the fraud** - This chapter focuses on inter-departmental cross checking of information between DSS, other Government Departments and Local Authorities, highlights progress made in a number of areas with regard to indicating fraud or error.

Comments on this chapter are shown in Section 2 of the Appendix.

- 3.1.3 Chapter 3 : Information we need** - This chapter outlines why it is important to obtain information from sources outside the Government to guard against fraud and when it is proposed to seek such information. It also invites views on whether the DSS should be able to obtain less sensitive information and if they should be able to exchange information with insurance companies. It also outlines the need to assess, review and correct claims and identifies the organisations from which information could be obtained including major financial institutions, utilities, colleges and universities.

Comments on this chapter are shown in Section 3 of the Appendix.

- 3.1.4 Chapter 4 : Safeguards** - This chapter states that the Department of Social Security will ensure that their approach is consistent with the requirements of the Human Rights Act which will come fully into force in October 2000. The chapter also highlights that the Department will provide the safeguards the public are entitled to under the Data Protection Law as well as the Human Rights Act.

The chapter also gives details of the published Code of Practice which governs the DSS's data matching activities and explains the detail of the legal basis for obtaining information and the safeguards that are provided by procedures for handling this information.

It is proposed to publish the new Code of Practice to take account of the new powers proposed in the consultation document. It sets out the circumstances in which information can be sought, who is authorised to use the new powers and the penalties for breaching the Code. It also gives a variety of measures which will be put in place to protect customer information from unauthorised access and disclosure and to detect and deter staff from doing this.

Comments on this chapter are shown in Section 4 of the Appendix.

- 3.1.5 Chapter 5 - Costs and impact on business** - This chapter begins by trying to avoid wasting resources, either the DSS's or those of the businesses from whom they seek information and that no unreasonable demands are placed on business.

It then sets out a preliminary regulatory impact assessment, including provisional estimates with the possible volume of enquiries and costs. It gives a statement of the purpose of measures and intended effects.

Comments on this chapter are shown in Section 5 of the Appendix.

#### **4. LEGAL IMPLICATIONS**

- 4.1** The provisions of Data Protection and Data Matching legislation should be adhered to at all times. Also Article 8 of the European Convention on Human Rights which respects the right of private and family life, home and correspondence is particularly relevant and this legislation should also be complied with.

#### **5. POLICY IMPLICATIONS**

#### **6. FINANCIAL IMPLICATIONS**

#### **7. CONCLUSIONS**

- 7.1** The Council has always been committed to its four core values, especially access and partnership and the partnership with the DSS, should further legislation be introduced, would be welcomed.

There is however a need to ensure that there is evidence that the additional powers sought by the DSS will both be effective and that they will deliver value for money. More needs to be done to encourage benefit take up by those who are entitled to it and the implementation of these proposals should recognise that. There is a likelihood that genuine claimants are deterred from applying for benefits to which they are entitled if increasingly each claim is treated as a possible fraud.

#### **8. RECOMMENDATIONS**

- 8.1** It is recommended:-

- (i) that the proposed Council response as shown in Appendix 1 be forwarded to COSLA in order that they may prepare a composite response to be forwarded to the Department of Social Security.

Fiona Lees  
Depute Chief Executive and  
Director of Corporate Resources

28 September 2000

JA/LI

**LIST OF BACKGROUND PAPERS**

1. Letter dated 17 July 2000 from the DSS and consultation document.
2. Letter from COSLA dated 26 July 2000.

Any person wishing to inspect background papers relative to this report should contact Julie Armstrong, Principal Administrative Officer on (01563) 576147. Any person wishing further information on this report should contact Barbara Haughan, Head of Administrative and Legal Services on (01563) 576161.

## **"SAFEGUARDING SOCIAL SECURITY : GETTING THE INFORMATION WE NEED" - A CONSULTATION DOCUMENT**

### **SECTION 1**

#### **Chapter 1 - What is the problem**

Paragraph 1.6 - makes reference to the introduction of tougher punishments, including withdrawal of benefit from persistent offenders "two strikes and you're out". Given the implications of such hard hitting sanctions, care requires to be taken with implementation to ensure that their impact is not borne by the offender's children or dependants.

Paragraph 1.9 - indicates that from April 2001 certain categories of benefit claimants who are working less than 16 hours per week, will be allowed to retain £20 of their weekly earnings. All categories listed however, with the exception of long term unemployed, are allowed to retain £15 per week under the present legislation. For most others who undertake part time work, after the first £5.00 is earned, benefit is reduced by £1.00 for each subsequent pound earned after that point. People therefore, living on the minimum level of benefit, supplemented by low earnings disregards from part time work, which have not been up-rated for a number of years, may not be particularly encouraged to take on any part time work which becomes available. Furthermore, it could be argued that such low earnings may even be instrumental in encouraging rather than discouraging benefit fraud amongst some individuals.

### **SECTION 2**

#### **Chapter 2 - Using information to stop the fraud**

Paragraph 2.7 - states that in 1998/99, some 189,000 inconsistencies were identified in data held by DSS and local authorities. These apparently led to over 149.5 million of benefit savings for the year, but as no indication is given as to the nature of these "inconsistencies" or whether they were deemed to be error or fraud, some of the impact of this statement is lost.

### **SECTION 3**

#### **Chapter 3 - Information we need**

Paragraph 3.2. The example referred to outlines a situation in which it is subsequently discovered that a self employed individual had had 12 jobs over a period of time during which he claimed benefit. Consent provided to obtain bank account details subsequently elicited the full extent of this individual's fraudulent activities. In cases such as this however, the availability of details from financial institutions are of assistance only in situations where fraud is alleged or detected. If

the anonymous allegation in the example referred to had not been received, the fraud may never have been detected.

Paragraph 3.10 - the examples in this paragraph, looking at how additional information could help to ensure that claims are correct from the onset, suggests that in the absence of other important "trigger" information, the frauds outlined may not have been suspected, and subsequently therefore, may not have been detected at all. This trigger information i.e. "large local company known to pay salaries into bank accounts" and "a street that is known to consist of small flats only" is very much "local knowledge" contributed by staff but although it is clearly crucial to the outcome of these fraud investigations no acknowledgement of the importance of such contributions appears in the paper.

Paragraph 3.13 - indicates that there is no proposal to seek information from small businesses. There is however no definition of what is meant by the term "small business". Information required is only to be sought in order to prevent or detect fraud.

Paragraph 3.15 - if the "business" referred to in this paragraph are those major institutions referred to in paragraph 3.13, then the requirement suggested would not be unreasonable. If on the other hand however a much wider range of organisations is being referred to then such an approach must be clarified.

Paragraph 3.16 - it is an over-simplification to suggest that local authorities pay Housing and Council Tax Benefit in a similar way to Job Seekers Allowance and Income Support benefits which in the main are paid to those who are unemployed and capable of work or who are over working age. Housing Benefit and Council Tax Benefit however, are frequently awarded to those who are in full time low paid work.

Schemes for data matching are already well established between DSS and local authorities with Remote Access Terminals being installed to provide IT links with benefits agency offices.

In addition to this the "ONE"\* pilots have highlighted the need for partnership working between local authorities and Benefits Agency in order to develop and deliver effective services for benefit claimants in a variety of situations. This partnership approach is dependant on sharing and exchanging a variety of information in the context of benefit claims and subsequent reviews.

Paragraph 3.17 - giving existing links with DSS, the extension of powers referred to in this paragraph may not be necessary at this point in time.

Paragraphs 3.18 to 3.20 - the proposal outlined within these paragraphs is to facilitate preventative measures by obtaining information from the major utilities which is not service user sensitive. On the face of it, this does not appear to be particularly unreasonable but steps would require to be taken to ensure that such information was used only for the purpose for which it is intended. Consideration would also require to be given to the cost to business of furnishing DSS with information of this nature.

\* The new term used by the Government to describe the one door approach for individuals seeking advice/assistance regarding work or benefits

Paragraphs 3.21 to 3.23 - the focus in these paragraphs is on fraud amongst individuals claiming payments from the insurance sector which covers the same situations as certain benefits. This is a potentially sensitive area, in which great care would require to be taken, both in terms of accessing and deploying such information. There does not appear to be any information in preceding sections as to the extent or cost of fraud in this particular Sector and this would surely require to be provided before such an approach could be justified and subsequently considered, in what would obviously be a very sensitive area.

Paragraphs 3.24 to 3.28 - the ability, as outlined in these paragraphs, to exchange benefit related information with other countries outwith the European Union, subject to appropriate safeguards being in place, appears to be a potentially problematic and controversial area of operation.

Paragraph 3.29 - concludes with the words "subject to the safeguards described above". Presumably, this refers to paragraph 3.26 which states "clearly we would expect any other countries with which we exchange information to have the same regard for human rights and data protection as we have in this country. There would be no question of exchanging information with countries that we thought might misuse information about UK citizens in any way". The expectation that other countries should have the same regard for human rights and data protection and the commitment not to exchange information with other countries "that we thought" might misuse information about UK citizens can hardly be described as "safeguard".

Paragraph 3.27 goes on to indicate the additional information exchanged would be restricted to the "minimum level necessary to prevent fraud". This should, however, refer to detecting or uncovering fraud as opposed to preventing it and if there is a strong suspicion that a fraud has occurred, it is clearly at the point where it is too late to prevent it.

## **SECTION 4**

### **Chapter 4 Safeguards**

The European Convention of Rights and the Data Protection Act are very much about protecting the right of individuals. A balance therefore requires to be struck between the desire to combat benefit fraud and the need to ensure that the rights of individuals are not illegally compromised in the pursuit of information to be used in this context.

Paragraph 4.5 - Although the Code of Practice referred to in this paragraph is restricted to activities with regard to data matching any new code developed in order to take account of wider powers proposed within the document would nevertheless be require to embrace a similar format.

Paragraph 4.8 - This paragraph seeks views as to whether safeguards outlined in the previous three paragraphs including the proposed new Code of Practice are sufficient.

The only reference made to the new Code of Practice indicates that it will set out the circumstances in which information can be sought, who is authorised to use the new powers and the penalties for breaking the code. In the absence of more detail however, it is impossible to say whether this proposed code constitutes a sufficient safeguard or not.

The Code of Practice will only be an effective safeguard if all organisations to which it relates are sufficiently aware of its content and relevant influence on their sphere of activity, and adhere to its implementation as appropriate when required to do so.

Paragraph 4.7 - a variety of measures are outlined in this paragraph, which have been introduced to deter and prevent DSS staff from misusing customer information data. Although these "safeguards" include sanctions such as dismissal or six months imprisonment for DSS staff who are found to be guilty of misusing such data, no further information is provided regarding the scale or nature of problems in this area or of associated costs. It is difficult therefore to have a view on whether the safeguards outlined are sufficient or not.

## **SECTION 5**

### **Chapter 5 - Costs and Impact on Business**

Paragraph 5.7 - the crucial question is posed as to whether the DSS should continue with only the information they already obtain, or take powers to obtain new information from the private sector. Perhaps another question which ought to be posed alongside this, is whether or not the information already obtained could be utilised in a more efficient and productive manner.

Paragraph 5.9 - concludes by suggesting that information from research into the scale and nature of fraud may result in suspicion arising because a person is in a "group" known to have a high proportion of fraud and error. No explanation is given regarding what exactly is meant by the term "group" but taken at face value, this suggests that some targeting of individual benefit claimants may be undertaken, not because they are suspected of fraud as such, but because of the "group" they are in. Further explanation of this requires to be provided.

Paragraph 5.15 - although this paragraph defines that Local Authorities, in the context of Housing and Council Tax benefits, will not need to duplicate enquiries made by the DSS, it is important to acknowledge that Local Authorities pay these benefits to a significant number of people, who are not in receipt of any benefits from DSS.

Paragraph 5.17 - suggests that DSS would work closely with businesses to minimise the impact upon them, and that any legislation would make clear that DSS could not ask for detailed information to be provided within an unreasonable time. Nevertheless, it must be recognised that what may seem to be a reasonable time-scale for DSS may still appear unreasonable to the business or organisation in question. It will be crucial therefore that the businesses referred to within the document are consulted and involved in discussion regarding such details.

## **CONCLUSION**

Despite the fact that references to “fraud and error” are made throughout the consultation document, the emphasis is clearly focused on fraud. No attempt is made to quantify benefit lost through payments made because of staff errors, or to suggest how such errors may possibly be reduced in the future by improving and developing staff skills through training programmes. Staff errors can also result in underpayments of benefit and some of the information sharing initiatives outlined within the document could also contribute towards ensuring that individuals, particularly those who are vulnerable, receive the correct amount of benefit.

## **AGENDA**