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**Association of Independent Advice
Centres (NI)**

Social Policy Briefing

1 January 2002

AIAC Paper on the Social Security Fraud Act (NI) 2001

“People who are not claiming benefit assume that their banking, financial and educational records are protected from arbitrary inspection by state officials. The Bill as introduced means that anyone claiming housing benefit or social security benefit, *or* who has a family member claiming such a benefit, can have all such records made available to an official who thinks that he or she has reasonable grounds for believing that an offence has been or is being committed, or is being contemplated”¹

Background

The impetus behind the Social Security Fraud (NI) Act 2001 (referred to as the Fraud Act) can be traced to a Report by Lord Grabiner QC, published in March 2000 entitled “The Informal Economy”.²

Shortly before the pre-Budget statement made on 9 November 1999, Lord Grabiner was asked by the Chancellor of the Exchequer to conduct an investigation into the informal, or hidden economy and to produce a report in time for the March 2000 Budget. Broadly speaking, the terms of reference were to investigate the problem, examine ways to move economic activity from illegitimate to legitimate businesses, and to recommend an action plan.

In his Report, Lord Grabiner outlined the following:

“Every year billions of pounds are lost to the informal, or hidden economy. People conceal their income or the record of what they have sold in order to evade income tax and VAT. Others defraud the social security system by claiming benefit for being unemployed when they are in work. Many employers are committing or colluding in a range of different offences at the same time. Honest taxpayers have to pick up the bill.”

The report outlined a number of recommendations to tackle these issues including:

- Incentives to join the legitimate economy;
- Prevention;
- Detection;
- Punishment;
- Publicity;

¹ Social Security Fraud Bill – Response by the Northern Ireland Human Rights Commission
www.nihrc.org

² Available to view at www.hm-treasury.gov.uk

The Social Security Fraud (NI) Act 2001³

There are four main elements in the Act:

Obtaining and Sharing Information

- Introduction of additional powers to obtain information from specified private and public sector organisations to tackle benefit fraud and error;
- A measure which provides the authority for DSS to supply information to countries outside of the UK in line with agreed arrangements, where those countries have adequate safeguards against improper use of that information;
- Changing the requirement on authorities administering Housing Benefit or Council Tax Benefit to supply information to DSS, the Northern Ireland Department or other authorities from one based in regulations to one based on directions.

Loss of Benefit Provisions

- Introduction of powers to reduce or withdraw specified benefits where an offender is convicted twice of benefit offences within a period of three years.

Penalties as an Alternative to Prosecution

- Introduction of a new discretionary power which will allow DSS and authorities administering Housing Benefit or Council Tax Benefit to offer a financial administrative penalty to an employer as an alternative to prosecution;
- Introduction of powers to facilitate closer working between DSS and authorities administering Housing Benefit or Council Tax Benefit in the operation of the administrative penalty system.

Offences

- Clarification of the offence of failing to notify a change of circumstances;
- Alignment of the limit for taking proceedings in Scotland with that applying in England and Wales.

³ Social Security Fraud Act 2001, Explanatory Notes, available to view at <http://www.hmso.gov.uk/acts/acts2001/20010011.htm>

The Social Development Committee in the Northern Ireland Assembly spent some time considering this piece of legislation:⁴

- The Minister for Social Development, Mr Maurice Morrow, appeared before the Committee to brief members on the policy objectives of the proposed Bill and to take questions arising from those discussions.
- Senior officials from the Department for Social Development were called, and gave a background briefing to the Committee on the Bill. This was followed by a further question-and-answer session, supplemented by a written response to a number of further questions posed by the Committee.
- The Committee carried out a clause by clause analysis of the Bill, and again senior officials from the Department were in attendance to offer answers to questions on technical aspects of the draft legislation.

It is interesting to note the types of exchanges between the members of the Committee and the Departmental officials as they do highlight concerns raised by this powerful piece of legislation. Some points raised included:

Q. Once you have accessed an individual bank account on a tip off, for example, and find that this individual is completely innocent do you advise them that you accessed their bank details?

A. No. the details will just be destroyed.

Q. This seems unfair. Would you not consider this issue again before issuing the Code of Practice? You should also consider publishing figures of, for example, how many accounts have been accessed and in how many there was no case to answer.

A. Yes. We will consider this again.

Q. In relation to the proposed cut in benefit to a claimant who has committed benefit fraud twice in a 3 year period – does this not effect innocent dependents?

A. In the case of a family only the portion of benefit payable to the offender is cut.

Q. In reality will dependents not suffer hardship?

A. It is for the family to decide how to use the benefit they receive.

⁴ More detailed information can be viewed at www.ni-assembly.gov/social/report1-01r.htm#5

The Bill provides that those convicted of benefit fraud will be warned that a further conviction within three years will mean that they lose benefits for 13 weeks. That would happen when they defraud any social security benefit, and the Department refers to those benefits as "disqualifying benefits". That sanction will only apply to a small range of benefits — the sanctionable benefits. The sanction will not apply to benefits for supporting children — such as child benefit or guardians' allowance — or to those benefits that meet the extra cost of disability — DLA and Attendance Allowance.

However the Department has included a safety net in the system to protect the vulnerable — those people and their families who rely on income-related benefits. People who are on an income-related benefit — for instance, jobseeker's allowance — will be able to apply for help under a hardship scheme if their other resources are insufficient to prevent them from reaching hardship benefit levels. The rest of the household will be unaffected. The reduction will only apply to the personal allowance of the offender.

Q. What happened to the principle of innocent until proven guilty? This Bill will allow for the invasion of privacy of people who are on the dole, who may not actually be committing fraud. This will involve looking into people's private affairs, without even telling them that you are doing it. No words that you say will convince me that you need to do that. If someone is convicted of fraud, their bank accounts and utility usage should be checked, but to delve into people's private affairs on the basis of an anonymous phone call is invasive.

A. The Department must gather evidence before a prosecution can be carried out — it cannot simply go to court and claim that an individual committed fraud. That information needs to be produced in court as evidence of the alleged fraudulent activity. The court then decides whether the Department has produced sufficient evidence upon which to make a conviction. Some of that evidence may come from someone's bank account, but there will be other evidence upon which to mount the case.

Q. After reading through the explanatory memorandum, I felt that the Bill contains some draconian measures, and I am not convinced otherwise by what you have said today. As part of my work, I meet vulnerable and marginalised people who find it difficult to access benefits, and the Bill will make access more difficult. Do you have figures that support your evidence of fraud? How much money is not claimed by those who are entitled to benefit, and do problems in the system mean that people do not have access to their just entitlements?

A. You must separate the problem of benefit take-up from the level of fraud. We estimate that about £73 million per year is fraudulently claimed in Northern Ireland. If there were less fraud, there would be less need to devote resources to detecting that fraud and dealing with it. Those staff resources could be devoted to making sure that people receive the benefits to which they are entitled. Public money is being paid out, and we have a duty to make sure that it is paid to those who are entitled to it, therefore we cannot ignore levels of fraud.

Code Of Practice on Obtaining Information

The Code of Practice⁵ governs the use of powers contained within the Social Security Fraud Act (NI) 2001. (The period of consultation on the draft Code of Practice ends on 19th February 2002.) Authorised Officers must have regard to this Code when exercising their powers.

- *What are the powers?*

Information can be obtained from various organisations including banks, credit card companies, building societies, any business involved in the transfer of money, credit reference agencies, insurance companies, utility providers (such as electricity, gas, water and telephone), educational establishments, the Student Loans Company.

Requests for information must be made in writing by post, fax or email.

- *Type of information?*

Any information that will help to prevent and detect benefit fraud.

Regarding the utility providers information may include whether and in what quantities water, gas or electricity are being or have been supplied to residential premises; telecommunications data but not traffic data; the identity and postal address of a person identified by the authorised officer solely by reference to a telephone number or electronic address.

- *About whom?*

Information can be obtained in relation to any case where a benefit is or was payable, or may about to become payable; in relation to any accident, injury or disease which may give rise to a claim for benefit. The information may be in relation to an individual and family members (where their circumstances are relevant to the claim being investigated).

- *Who is authorised?*

Only a limited number of 'Authorised Officers' based within Benefit Investigation Services will be authorised to make enquiries using these powers.

- *How should the powers be used?*

Authorised Officers should only use these powers when they think that it is "reasonable" to do so. "What is reasonable will vary, depending on the circumstances of the case".

⁵ Copies of the draft Code of Practice can be obtained from the Social Security Agency or by viewing www.dsdni.gov.uk

Comments made by the Data Protection Commissioner⁶

Examining her responses to the Consultation Paper “*Safeguarding social security: Getting the information we need*” and to the Social Security Fraud Bill as it passed through parliament, it is clear that the Commissioner, Mrs France, is concerned about the powers contained within this legislation.

In particular:

“she is concerned that under the proposals there will be no prior judicial authorisation of the exercise of the new powers and that too many hopes are invested in the proposed Code of Practice.”

“In the public perception at least, there will inevitably also be doubts as to the ability of the Department to conduct independent and impartial investigations of any alleged abuse.”

“the current Finance Bill contains a provision allowing the Inland Revenue to seek an order from a circuit judge for the production of original documents from private sector organisations when investigating serious tax fraud. The provision of accurate and complete information to the Inland Revenue is clearly as much an obligation of the tax payer as is the provision of reliable information by benefit claimants to the DSS. It is difficult to see, however, how the government can hope to command the confidence of the claimant when the law apparently places less value on his or her privacy than on that of the tax payer.”

Conclusion

There can be no doubt that the Department has a duty to ensure that the issue of benefit fraud is tackled.

However, it is obvious that the Social Security Fraud Act (NI) 2001 confers sweeping new powers on to “authorised officials” within the Social Security Agency. AIAC remains concerned about the need for these powers and the potential for abuse of these powers.

We are concerned about the fairness and consistency in the approach taken with regards to benefit claimants, in comparison to the detection of other forms of fraudulent activity. Social security benefit claimants are seen as an easy target in terms of protecting the public purse; benefit claimants are often excluded and disadvantaged in many ways and as such are less able to stand up of their rights. It would be interesting to discover how many claimants actually know that these powers are now in existence; and indeed we would ask about the steps being taken to publicise the existence of these powers.

⁶ Detailed responses from the Commissioner can be viewed at www.dataprotection.gov.uk

The Data Protection Commissioner has already noted a difference in the approach between the investigation of tax fraud and the investigation of benefit fraud. This difference in approach tends to support the view that the rights of benefit claimants are seen as less significant than others within society, increasing the sense of marginalisation and exclusion felt by claimants.

Furthermore, we would call for equity as regards putting an emphasis on ensuring that people, in particular those with severe health problems and pensioners, (1) are encouraged to claim all appropriate benefits; and (2) are in receipt of their full benefit entitlement.

Human Rights specialists, public representatives and the Data Protection Commissioner (an independent supervisory authority with a range of duties including the promotion of good information handling) have all expressed their misgivings about the powers contained within the Fraud Act. We share these concerns and will be actively working with our members to monitor the impact of these powers on benefit claimants.

Contact information on this briefing:

Bob Stronge (Director)
Kevin Higgins (Membership Support Worker)
Association of Independent Advice Centres
303 Ormeau Road
Belfast
BT7 3GG
Tel: 028 9064 5919
Fax: 028 9049 2313
Email: bob@aiac.net
khiggins@aiac.net
Website: www.aiac.net

AIAC Mission Statement

AIAC is a voluntary organisation for the independent advice sector in Northern Ireland, representing and giving voice to its members aspirations to deliver effective and holistic, community or issue-based advice through the provision of services, support and development opportunities.

Values

As a membership organisation, our values are embedded in promoting the application of creative community development approaches to advice giving, which place people and communities at the centre of the process and involves them in finding solutions and making informed choices.

AIAC believes in

Quality advice which is delivered free.

Advice services which are impartial and non-judgemental and respect the individuals dignity.

Advice which is wholly confidential, and accountable to the public.

Independent advice, which is free from statutory or private control and is both non-party political and non-sectarian in nature.

Advice services which are aimed specifically towards overcoming social exclusion.

Offering people choice through the provision of flexible, accessible advice services.

Social Policy Briefing

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