



Social Security Scotland
Tèarainteachd Shòisealta Alba

Code of Practice for Investigations

Dignity,
fairness,
respect.



Scottish Government
Riaghaltas na h-Alba
gov.scot

Foreword

The delivery of devolved social security benefits is the largest programme of change the Scottish Government has undertaken since devolution. It is estimated that Social Security Scotland will eventually be supporting 1.4 million people and providing in excess of £3.5 billion in payments every year. It is important to ensure the right payments are made to the right people at the right time.

Social security is an investment in the people of Scotland, and the system should be efficient and deliver value for money. The Scottish Government is guided by the Scottish Public Finance Manual (SPFM)¹ and counter fraud strategy “Protecting Public Resources in Scotland”² on the proper handling of fraud and reporting of public funds. These documents also underline the importance of a commitment to ethical standards in public life.

When suspicious activity is found during the processing of a claim for a benefit, or an allegation of fraudulent activity is made by a third party, an investigation may be launched. The principles underpinning the Social Security (Scotland) Act 2018³ (the Act), in combination with the Social Security Charter⁴, underpin the front line delivery of services to improve the everyday experiences of individuals. Like all other aspects of Social Security in Scotland, this code aligns with them. It is designed to take a rights based approach and to ensure that people will be treated with dignity, fairness and respect throughout any investigation.

Investigations involve gathering information from a variety of sources and giving the person being investigated an opportunity to explain how the circumstances have arisen. This statutory code is required under section 76 of the Act. It sets out how Social Security Scotland will undertake investigations utilising both existing powers and those created by the Investigation of Offences regulations made under section 75.

The publication of this Code aims to ensure that, as well as meeting the legal requirements for an investigation, Social Security Scotland investigators follow best practice at all times. It is designed to give assurances about training and accountability of staff carrying out investigations and an overview of the requirements and guidelines that they must follow. It does not include detailed or comprehensive guidance on all investigation processes.

¹ <https://www.gov.scot/publications/scottish-public-finance-manual/>

² <http://www.gov.scot/Resource/0047/00478742.pdf>

³ <http://www.legislation.gov.uk/asp/2018/9/section/1/enacted>

⁴ <https://www.gov.scot/publications/charter/>

The Code sets out the standards that Social Security Scotland should meet in its procedures and practices when investigating an allegation or suspicion of an offence. It also provides information on what people should expect if they or someone else they know, or represent, is under investigation. It underlines that enforcement action will not be taken lightly. This will only happen when there is reasonable suspicion that fraud has actually occurred or has been attempted by an individual, group, or organisation. Genuine errors will not be criminalised.

In line with a rights based approach, the guidance also sets out how a complaint can be raised where a person who has been investigated feels staff have fallen short of these standards. Social security tribunals and civil and criminal courts will also have regard to this Code when deciding any question to which it is relevant.

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Introduction

1. Social security is an investment in the people of Scotland, and we start from the premise that everyone may be entitled to support. To ensure this public investment is maximised and spent appropriately, one of the key principles is that the Scottish social security system is efficient and delivers value for money. As part of this we need to prevent and protect against social security fraud.
2. Social Security Scotland's systems and processes are being designed to reduce the risk of fraud and error. Social Security Scotland's approach to prevention is set out clearly in its 'Counter Fraud Strategy'⁵. However, firm action is needed where deliberate attempts to defraud the social security system are made. Social Security Scotland has a duty to identify and manage risk, make sure there are both internal whistle-blowing and external reporting procedures, and to effectively, professionally and sensitively investigate where there is a suspicion of fraud.
3. The Scottish Public Finance Manual (SPFM)⁶ also sets out principles to guide the Scottish Government and other relevant bodies on the proper handling of fraud and reporting of public funds. It sets out legal, parliamentary and administrative requirements and promotes good practice and high standards of behaviour.
4. The Social Security (Scotland) Act 2018 (the Act) provides the basis for claims and payments of devolved benefits. Sections 71-74 set out the specific social security offences that may be committed. Where there is a suspicion that an offence may have been committed, thorough investigation to establish the facts will be needed. This is a key aspect of the Scottish Government's counter fraud strategy "Protecting Public Resources in Scotland"⁷.
5. Section 75 sets out that Scottish Ministers may make regulations to confer investigatory powers upon some staff within Social Security Scotland specifically in relation to these offences. All staff who undertake tasks in relation to the investigation of fraud are considered to be Counter Fraud Officers. Those authorised to utilise the statutory powers outlined within the regulations under Section 75 of the Act will be referred to as 'Authorised Officers'.
6. Section 76 of the Act requires that Scottish Ministers publish and lay in Parliament a Code of Practice that explains how powers of investigation given by regulations made under section 75 will be used. The publication of this document fulfils that statutory obligation. However, the Scottish Government has always been clear that this Code will also set out how pre-existing powers

⁵<https://dgxmvz0tgkndr.cloudfront.net/production/images/general/Social-Security-Scotland-Counter-Fraud-Strategy.pdf>

⁶ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro>

⁷ <http://www.gov.scot/Publications/2015/06/7635>

will be used. It will also set expectations about standards that must be met in the course of any investigation.

7. Section 76 of the Act also sets out a duty to keep the Code under review. As recognised by respondents to the consultation, this is particularly important in relation to the first version of the Code to be published. As Social Security Scotland matures, it will seek to continuously improve and update the Code at appropriate times when there is feedback and experience from a period of operations to inform changes.
8. The powers within the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 only apply to benefits paid under the Act. However, the Code of Practice describes how investigations will be undertaken using both powers created under the Act and existing statutory powers (for example the information-sharing provisions in section 34 of the Scotland Act 2016).
9. Fraud investigations relating to benefits that the Department for Work and Pensions (DWP) will continue to deliver in Scotland are not covered by this Code. Further information can be found online at www.gov.uk/benefit-fraud.
10. Fraud investigators, social security tribunals and civil and criminal courts should take this code into account when deciding questions to which it is relevant. However, a failure to comply with it does not of itself give grounds for any legal action.

Consultation

11. As part of a wide-ranging consultation⁸ on the content of the Act carried out between 29 July and 30 October 2016, respondents were invited to express their views on issues related to fraud.
12. Building upon this, the Scottish Government consulted on a draft Code of Practice for Investigations and the information gathering powers and associated offences contained within the proposed Social Security Assistance (Investigation of Offences) (Scotland) Regulations⁹ between 6 August and 29 October 2018.
13. The Scottish Government engaged KSO Research Ltd to undertake an independent analysis of the consultation responses and produce a report for publication. The analytical report and the Scottish Government response can be found at <https://consult.gov.scot/social-security/fraud-investigations/>.
14. Further engagement has taken place with respondents on specific and technical points raised which have informed the revised versions of both the regulations and Code.

⁸ <https://consult.gov.scot/social-security/social-security-in-scotland/>

⁹ <https://consult.gov.scot/social-security/fraud-investigations/>

Chapter 1

Powers to Investigate and Safeguards

Social Security Offences

15. Sections 71 to 73 of the Social Security (Scotland) Act 2018 provides for three specific types of offences that may be committed – by both individuals and organisations. These are: Trying to obtain assistance by deceit (through providing false or misleading information);
 - Failing to notify a relevant change of circumstances without a reasonable excuse; and
 - Causing another person to fail to notify a change of circumstances.
16. Section 74 of the Act provides that individuals within an organisation can be held responsible for an offence committed by the organisation, where there is active involvement or neglect by a senior member of the organisation. The offences are those provided for by the Act under sections 71 – 73, and any that are introduced by regulations made under it.
17. Section 75 of the Act enables regulations to be laid before Parliament providing for the investigation of the offences created by sections 71-74, as well as new offences relating to obstruction and delay of investigations. These are the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020.

Investigations

18. The purpose of an investigation is to gather evidence to decide whether there are reasonable grounds to conclude that an offence has been committed, and by whom. In most cases where a suspicion has arisen, Counter Fraud Officers will need to gather evidence from a range of people and organisations to establish the facts.
19. Any investigation will be based on the principle that everything Counter Fraud Officers do must be proportionate. They will only carry out activities that are strictly necessary to collect enough information to help them decide whether an offence has been committed.
20. Counter Fraud Officers can only request information within the limits permitted by law. For example, they can only do so where it is necessary for the prevention and detection of crime and the request is linked directly to the investigation. They must also ensure all the information they receive is transferred and held securely and confidentially. Information can only be disclosed where it is lawful to do so and in accordance with the Data Protection Act 2018.

Evidence will be gathered in the least intrusive way appropriate. There are a number of ways this might be done:

Open Source

21. Depending on the type of information required, Counter Fraud Officers may be able to get what they need from open or public sources of information such as the electoral roll, Registers of Scotland or where appropriate, sources on the internet. This will only be done in accordance with the relevant guidelines on covert online activity. A record will be kept of all searches undertaken and these will always be carried out in a way that provides an audit trail.

Other Organisations

22. Social Security Scotland is recognised in the Data Protection Act 2018 (Schedule 7, paragraph (2)) as a 'competent authority' processing personal data in compliance with the law enforcement provisions under Part 3 of the Data Protection Act 2018 for the purpose of preventing, investigating, detecting or prosecuting criminal offences. Counter Fraud Officers may make requests to Data Controllers of other organisations to ask them to disclose information they hold where it will be used in connection with the prevention or detection of crime or the apprehension or prosecution of offenders.
23. The decision to release the information rests with the Data Controller who must satisfy themselves that there is a lawful basis to share requested information. Once released this information will be subject to the Law Enforcement Processing¹⁰ provisions in Part 3 of the same Act.
24. Section 85 of the Act¹¹ and section 34 of the Scotland Act 2016¹² also allow Scottish public authorities, as well as DWP, to share some types of data with Social Security Scotland to help carry out its functions, including the investigation of possible offences.

Information-gathering powers under the Act

25. Counter Fraud Officers will always aim to get the information they need quickly and discreetly with the least inconvenience to those that have it. However, in defined circumstances, where it is not possible to get the information from open sources or other organisations, Social Security Scotland has powers to compel individuals and organisations to provide information.

¹⁰ <http://www.legislation.gov.uk/ukpga/2018/12/part/3/enacted>

¹¹ <http://www.legislation.gov.uk/asp/2018/9/section/85/enacted>

¹² <https://www.legislation.gov.uk/ukpga/2016/11/section/34>

26. The Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 set out a process for authorising certain investigators (known as Authorised Officers) to use the powers requiring that information is provided by individuals and organisations, in defined circumstances. The authorisation process is an important safeguard against their misuse.
27. Justification for requiring any information will have to be clearly documented. It is intended that Authorised Officers will only use the powers where they have grounds to suspect that the information held is relevant to the investigation of the possible commission of an offence under section 71, 72, or 73 of the Act.
28. In practice this means where an Authorised Officer suspects:
 - a person has committed or is committing, a benefit offence;
 - a person has helped or is helping someone else to commit a benefit offence;
 - a person is being misrepresented as part of a benefit claim made on their behalf;
 - a fraudulent act against Social Security Scotland has been committed
29. The regulations also set out that where an Authorised Officer has reasonable grounds for suspecting that a body or person may have, or can access information relevant to any matter that may be investigated, they can by giving notice require that they that provide information.
30. The types of information and bodies from which information may be required will vary depending on the circumstances of the case and the nature of the benefit. Examples may include bank statements, employment information, customer account information, household utility bills or electronic information. Where the information required is held electronically, the regulations allow Authorised Officers to make arrangements to obtain electronic access and entitles them to make copies of, and to take extracts from those records.
31. While circumstances may dictate that information is required from a range of sources, the regulations excludes some bodies from the obligation to provide information. These exclusions serve as a protection for specific organisations assisting individuals in exercising their human right to social security, consistent with the principles of the Social Security (Scotland) Act 2018. Their ability to provide confidential advice is safeguarded.
32. Where an Authorised Officer is considering obtaining information using the information gathering powers provided under the Investigation of Offences Regulations, they will always have to consider the circumstances of the case and whether use of these powers is necessary and proportionate. For example, the officer will need to be able to show that the requirement to provide information is not speculative but is linked to the suspicion of a particular

offence, and that the type of information required cannot be obtained from anywhere else. This will provide further assurance that these powers are not open to abuse.

Duty on Information Providers

33. Written information may be required from organisations or individuals. For example, this could include service providers, charities, employers, businesses, mail delivery companies, utilities or sole traders.
34. Authorised Officers should always approach information providers in writing, and the regulations set out what must be included in that notice. They should give clear instructions about what is needed, why and what the law says, even where they have already spoken with the information provider face-to-face.
35. Information must always be gathered with the right legal permissions, be relevant and be in proportion to the suspected offence. Officers should never ask for information unless it is needed. They should cause the least disruption possible, except where a particular course of action would put the investigation at risk.
36. Where a person or organisation has been asked by an Authorised Officer to supply information in terms of regulations made under section 75 of the Act, they will be required by law to comply with a request within a period specified in the notice. A minimum of ten working days should be allotted for the information to be provided.
37. If the person providing the information asks for more time, the Authorised Officer may agree to an extension of the deadline. This will depend on the kind of information that has been asked for, the urgency, and complexity of the investigation.
38. Information providers will be told about their legal obligation to provide information. They will always be given reasonable opportunity to supply the information. Where a failure to comply with a written request is considered obstruction of an investigation, it could be an offence under the regulations. On summary conviction, a penalty may be imposed in the form of a fine not exceeding level 3 on the standard scale (currently up to £1000).
39. Requests will involve asking for information about a person whose name will be given. If their full name is not known, as much information will be provided as possible to help the information provider identify who the request is about. Care will always be taken to avoid inadvertently requesting information about innocent third parties who are not under investigation. Information provided which was not requested will be referred to a manager to seek confirmation of retention before being retained as an archived item until close of the investigation.

40. If the detail provided by the Authorised Officer in their request for information is not specific enough to allow the information provider to confidently identify whom the request is about, this may be considered a valid reason for failure to provide the required information. No offence would be committed in these circumstances. However, the request can be repeated, adding or changing the personal details where further specific information becomes available. Information about other people within a family can be requested only where their circumstances are directly relevant to the benefit claim being investigated.
41. Information providers will only be required to provide information that they can reasonably be expected to hold and that they keep as part of their normal business. If the information is not held or is no longer available, the person from whom it is requested cannot be committing an offence. The regulations also underline that no person is required by a notice under regulation 4 to provide any information that incriminates, or tends to incriminate, either the person or the person's spouse or civil partner
42. Information should not be required which relates to communications between a client and legal adviser giving or seeking legal advice, and a person cannot be committing an offence by failing to supply it. If communications are about seeking or giving legal advice, the person holding them has no obligation to provide them.
43. It is likely that much of the private information gathered by the methods described in this code will be personal data. Where this is the case, the Data Protection Act 2018 will apply to the processing of that data until it is securely destroyed.

Witnesses

44. In some cases, Counter Fraud Officers may also need to interview witnesses. These could be employers, people who work with the person under investigation, family members, friends, and neighbours, others in the local community or other public officials. As part of their training, they will take account of the fact that it can be worrying and difficult for a witness giving evidence about someone they know.
45. Investigations will always be handled discreetly, recognising that the key purpose is to gather the information necessary to indicate whether an offence has occurred. A person will only be asked to provide assistance if it is believed they have information to progress that aim, but in a way that does not disclose sensitive information about the person being investigated.
46. Where witnesses are interviewed, a witness statement may be drafted and signed by the witness. The purpose will be made clear and that, in the event of the findings of the investigation leading to an appeal tribunal or being referred to the COPFS, the information they provide will be included.

47. While witness statements are given voluntarily, if someone does give a statement there will be a written record and they could be required to appear before the First-tier Tribunal or a Court if cited in a criminal prosecution at a later date.

Visiting Premises

48. In some circumstances, it may be necessary for an Authorised Officer to visit premises to make inquiries, question people or collect evidence. The regulations give Authorised Officers the ability to enter and search a premises either alone or accompanied, in certain circumstances. There is no *right* of entry. An Authorised Officer must request permission to enter from the person occupying the premises. If permission is given to enter, separate permission must be requested to search the premises. This should only be sought where the carrying out of a search is considered appropriate in relation to any of the matters that may be investigated under the officer's authorisation.
49. If the occupier refuses permission for either or both entry or search, the Authorised Officer is not entitled to enter and/or search. An Authorised Officer is not permitted to enter any premises which is a dwelling house, or any part of premises used solely as living accommodation, even if given permission to do so. Where premises are unoccupied, the permission of the owner will be required.
50. Permission will only be requested to enter and search at a reasonable time of day. Only investigators who have been authorised under the regulations will be able to conduct visits to premises. Where premises are entered, no person may be required to provide information which would tend to incriminate the person themselves or their spouse/civil partner, or which relates to communications between a client and legal adviser giving or seeking legal advice.
51. While in most cases prior notice will be given, there may be circumstances where this is not possible. If an un-notified visit is the most appropriate course of action, for example if there is a particular urgency with the investigation, the authorised officer will record their reasoning.

Covert Surveillance

52. Counter Fraud Officers may also seek an authorisation by the Chief Executive of Social Security Scotland to carry out directed surveillance in Scotland under the Regulation of Investigatory Powers (Scotland) Act (RIP(S)A) 2000¹³. This directed surveillance may encompass physical and/or online covert observation. There are a number of important safeguards to ensure a person is treated with dignity, fairness and respect, particularly because, by definition, covert surveillance means a person will not know it is happening.

¹³ <http://www.legislation.gov.uk/asp/2000/11/contents>

53. RIP(S)A provides a regulatory framework, which ensures that the use of those powers is compliant with the European Convention on Human Rights (ECHR). Covert surveillance will only ever be carried out as a last resort and where it is necessary and proportionate to do so. This must be clearly demonstrated in a robust business case, where authorisation will be sought from the Chief Executive of the Agency. In addition, Social Security Scotland will be subject to independent oversight and regular inspection by the independent, judicially led Investigatory Powers Commissioner's Office.
54. RIP(S)A also sets out that authorised surveillance has to be part of a specific investigation or operation and all surveillance will be carried out in accordance with the relevant RIP(S)A code of practice¹⁴. It provides guidance on when an authorisation may be appropriate and the procedures that must be followed before and while the activity is taking place. It also sets out how information from surveillance should be treated, how it should be examined, retained, destroyed and how and when it can be disclosed.

Common Interest Investigations

55. In more serious or complex cases of fraud, for example multiple benefits or organised crime, it may be appropriate to investigate with other law enforcement agencies or with other public bodies to prevent wider fraud or make sure that all of the offences are prosecuted together. These may include bodies such as DWP, Her Majesty's Revenue and Customs (HMRC), Local Authorities, the Home Office or the Police. This may mean information gathered during an investigation will be shared between these organisations, but this will always be done in accordance with the relevant law.
56. Where Social Security Scotland engages in a Common Interest Investigation it will only do so on the basis that this done in accordance with the social security principles, the Charter and this Code. However, in circumstances where an investigation is led by the police, these will not apply to their activities.
57. All investigations will be undertaken in accordance with requirements set out in other relevant legislation. This includes the Criminal Procedure (Scotland) Act 1995, the Criminal Justice and Licensing (Scotland) Act 2010, the Criminal Justice (Scotland) Act 2016, the Regulation of Investigatory Powers Act 2000, the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIP(S)A"), the DPA and the GDPR. All relevant Codes of Practice including this one should be followed. Investigations must also be carried out in a way which gives effect to the requirements of the ECHR, particularly Article 6 which is the right to a fair hearing and Article 8 which is the right to respect for private and family life. All relevant legislation is listed in the [Annex](#) to this document.

¹⁴<https://www.gov.scot/publications/covert-surveillance-property-interference-code-practice/?inline=true>

Chapter 2

Standards for Counter Fraud Officers

58. Social Security Scotland Counter Fraud Officers investigating social security offences in Scotland will be directly employed by the public sector. This provides assurance that they will be appropriately trained, accountable for the way they treat people they investigate, and that their use of powers is closely monitored and controlled.
59. The Civil Service Code sets out the standards of behaviour expected of all civil servants when performing their duties. They are expected to carry out their role with integrity, honesty, objectivity, and impartiality. This expectation extends to all Counter Fraud Officers of Social Security Scotland.
60. Counter Fraud Officers will have to show:
- **Integrity:** putting the obligations of public service above personal interests;
 - **Honesty:** being truthful and open;
 - **Objectivity:** basing advice and decisions on thorough analysis of the evidence; and
 - **Impartiality:** acting only according to the merits of the case.
61. More information about the Civil Service Code can be found at the Scottish Government website¹⁵.
62. All Counter Fraud Officers will be specially trained members of staff who have the permission, expertise and skills to use their particular powers effectively and lawfully to gather the appropriate evidence. Some specialist investigators will be specifically authorised in accordance with regulation 3 of the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 to use the additional powers set out in those regulations. This authorisation may be revoked at any time. This provides further assurance that checks will be in place on whether use of the powers is proportionate and necessary.
63. Where a Counter Fraud Officer identifies a need to obtain information using the powers in the regulations, they will be required to complete a request for information, and submit this to an Authorised Officer, who is not directly connected to the investigation.

¹⁵ <https://beta.gov.scot/publications/civil-service-code/>

64. As part of this request, the Counter Fraud Officer will provide details of the investigation and how they have measured relevancy and proportionality considerations before making their request. The Authorised Officer will consider this request, and only use their powers if they are satisfied that the Counter Fraud Officer has provided sufficient justification to obtain the required information. If the Counter Fraud Officer does not provide the relevant justification, the Authorised Officer will reject the request in its entirety.
65. Counter Fraud Officers will be subject to civil or criminal proceedings as well as disciplinary action if they are found to be abusing these powers. They will also be subject to Codes of Practice relating to the other relevant legislation listed in the annex to this document and will have regard to the principles of the Act and our Charter.
66. As public sector employees, all Social Security Scotland staff will receive mandatory data protection, equality and diversity training as part of their induction and subsequent ongoing training. This will ensure that Social Security Scotland put dignity, fairness and respect at the heart of everything it does. In addition, Counter Fraud Officers will receive specialist training tailored to their role. They will also be subject to internal disciplinary action for wrong-doing. Any officer who unlawfully reveals information that they learned in the course of their work that relates to individuals under investigation may be prosecuted, whether or not they still work for Social Security Scotland.
67. Compliance with data protection legislation is an important aspect of any investigation, both in terms of administrative processes and the conduct of Counter Fraud Officers. As part of their remit, the Information Commissioner is responsible for: enforcement of the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA), the promotion of good practice and public awareness of risks regarding the processing of personal data and investigating breaches of the DPA. They also provide advice to government and other state bodies on their obligations on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to processing personal information. Further information can be found on the Information Commissioner's Office website¹⁶.

¹⁶ www.ico.org.uk.

Chapter 3

What to expect if you are being investigated

68. By their nature, investigations are carried out discreetly. Social Security Scotland will not normally tell a person that they are under investigation while the facts are still being established. This is to avoid prejudicing the detection, investigation or prosecution of criminal offences. It will also prevent unnecessary worry and distress to those who are found to have no case to answer.
69. As much information as possible will be gathered before the individual under investigation is informed. Where there are reasons to suspect they may have committed an offence, they will always be given an opportunity to offer their account of the events and a reasonable explanation at an interview.

Interview under caution

What is the interview for?

70. **An interview under caution is a fact-finding exercise** that helps the Counter Fraud Officer understand what has happened and decide what to do next. It does not necessarily mean the individual has done anything wrong or that they will be prosecuted.
71. **The interview is voluntary and is a chance to provide a reasonable explanation** or to dispute or clarify any of the evidence gathered during an investigation. A person can also provide any documents that may support their explanation. Social Security Scotland will be impartial and treat that person with dignity, fairness and respect and in accordance with the law.

What happens?

72. **A letter will be issued with an invitation to attend the interview.** If another person such as an appointee, guardian or a person with power of attorney is acting for the person who is receiving benefit, they will normally be dealt with directly. The agency will aim to ensure accessibility and be as flexible as possible about the time and place of the interview, working with the individual to assess any reasonable adjustments that are required. For example, it may be appropriate to conduct an interview in a person's home if they have restricted mobility, or somewhere local to their place of residence.
73. **The person who received the benefit payment will usually be interviewed,** but in some circumstances, it may be another person, for example if it is suspected they have helped someone else to claim benefits fraudulently.

74. **The interview will be recorded and is carried out under caution.** This means the suspect does not have to say anything, but that anything that is said may be used in evidence if there is a criminal prosecution. This will always be made clear to the person being interviewed before the interview begins. Recordings will be carefully stored with a clear audit trail to show how the evidence was obtained and handled until it is either produced in court or the investigation ends. A copy of the recording may be provided to the individual who was interviewed on request.
75. Where a case is passed to the Crown Office and Procurator Fiscal Service (COPFS), a person would also be able to obtain a copy of interview recordings through their solicitor. This will include a sealed copy of the interview, which will ensure the content of the interview cannot be amended.
76. **The person being questioned is entitled to have someone with them if they choose.** This is important in ensuring that people are treated with dignity, fairness and respect. A person can be accompanied by, for example, a friend, relative, advocate, welfare rights or legal representative, but there is no requirement in law for another person to be present. The agency will be very clear about the rights of the accompanying person in terms of what they can and cannot do during an interview. Information about this will be made available in advance.
77. In exceptional circumstances where the accompanying person is themselves suspected of involvement in the offence it may be necessary to exclude them from attending the interview.
78. **If the person being interviewed is an adult and because of a disability they appear to be unable to understand sufficiently what is happening or communicate effectively with the investigators, arrangements must be made to ensure that a suitable person is present at the interview to provide support.**
79. **The role of an individual accompanying someone to an interview under caution, is to provide support to the person being interviewed to help them understand what is happening and to facilitate effective communication between that person and the interviewer.** They should not answer questions on behalf of the person being interviewed, but can help them or ask investigators to clarify questions during the interview. They will be given the opportunity to speak at appropriate times.
80. **The person being interviewed is also entitled to have a solicitor present during the interview or to consult with a solicitor at any time.** Although a person may choose not to exercise their right to have a solicitor present during the interview, they may change their mind at any time. If necessary, the interview should be adjourned until the person is given the opportunity to seek legal advice.

81. **A person should not be interviewed without a solicitor being present in the following situations:**
- if the person is under 16 years old;
 - if the person is aged 16 or 17 years old, unless there is agreement from a parent or other responsible adult that the interview may proceed without a solicitor being present; or
 - If the person is an adult and, owing to a disability, they appear to be unable to understand sufficiently what is happening or communicate effectively with interviewing officers.
82. **It is the responsibility of the person to contact their own solicitor** for the purposes of any private consultation or to arrange their attendance during the interview. They will be told about this in advance of the interview taking place.
83. **The interview may be paused at any time for a break or to allow a person being interviewed to seek legal advice, and they are free to end the interview at any time.**
84. **The person being questioned can always refuse to answer a question or to say anything at all.**
85. **At least two Counter Fraud Officers will always be present.**
86. **An interpreter will be provided where appropriate.** In accordance with section 4 of the Act, Social Security Scotland will ensure that individuals who have difficulty communicating (in relation to speech, language or otherwise) can understand questions and express themselves in ways that best meet their needs. This may be, for example, where English is not the first language, or the individual has a sensory impairment or communication difficulty. Religious or cultural sensitivities will also be taken into account where officers are aware of them.

Documents

87. If information or documents are needed from the person being interviewed to help with the investigation, the reason they are needed will be explained and they will be asked to provide them voluntarily. A reasonable amount of time will be given to provide them, but if the time given is not long enough, the person under investigation should contact Social Security Scotland to explain how much more time they need and why.
88. If the request is reasonable, more time will be allowed. However, if it is not deemed to be reasonable, or more time cannot be given, this will be explained. If the person being investigated has any difficulty getting the information and documents requested, they should make contact immediately to discuss how they will get it.

Chapter 4

Outcome of an investigation

89. A completed investigation will have one of a number of possible outcomes.

No case to answer

90. Where there is no case to answer and the person under investigation was not aware that an investigation had been taking place, the investigation will be closed with no further action. If the person was aware of the investigation, or had already been interviewed, this closure will always be confirmed in writing and where necessary in an appropriate format.

Evidence suggests there is a case to answer

91. Once all evidence has been gathered, the Counter Fraud Officer will pass the information to a person trained to administer the specific benefit, or benefits, that have been paid. With the new information they have been given, that decision maker will decide whether it was paid correctly or incorrectly. Correctly means that an individual was entitled to receive the benefit at the level at which it was paid. Incorrectly means they were not entitled to receive it at all, or, alternatively, that they were not entitled to receive it at the level at which it was paid.

Benefit was paid correctly

92. If the decision maker decides that the benefit was paid correctly, no further action will be taken and the investigation will be closed. Social Security Scotland would then communicate with the person to confirm this.

Benefit was paid incorrectly

93. If benefit was paid incorrectly, the decision maker will also consider whether or not Social Security Scotland should ask for the money to be paid back. The individual would then be notified in writing of the outcome.

94. If money is to be recovered, it will usually be done under sections 63-69 of the Act. However, where the overpaid benefit is not paid under the Act, for example Job Start Payment, the common law powers for recovery of overpayments will be relied upon.

95. If the decision maker confirms that the benefit was paid incorrectly, they will also consider whether the recipient has acted in good or bad faith. If the facts of the case and evidence suggest an offence has been committed, the counter fraud team may also decide that it should be reported to COPFS.

96. COPFS is Scotland's independent prosecution service and is responsible for all prosecutions in Scotland. Part of their role is to consider whether the evidence presented in a report from the police or other reporting agency is sufficient and capable of proving beyond reasonable doubt that an offence has been committed. If so, COPFS will decide what action if any it is appropriate to take in the public interest. More information about the role of COPFS can be found on their website¹⁷.
97. If a decision is taken to report a case to COPFS, Social Security Scotland would then write to the person to advise of this and to let them know that their investigation has concluded. Where COPFS decide that the case should not be taken any further, they will notify the individual.

Data

98. Article 5(1)(e) of the GDPR¹⁸ and the fifth principle¹⁹ of the Law Enforcement Processing provisions of the DPA require that personal data is not kept longer than is necessary. Regular reviews will be conducted to ensure that data is stored only for as long as it is needed. When the investigation and all related action has concluded, the documents and evidence gathered will be retained and destroyed in line with Social Security Scotland's data retention policy, which will be published separately at a later date.

¹⁷ <http://www.copfs.gov.uk/>

¹⁸ <https://gdpr-info.eu/art-5-gdpr/>

¹⁹ <http://www.legislation.gov.uk/ukpga/2018/12/section/39/enacted>

Chapter 5

Complaints

99. If a person is unhappy with the way they have been treated during an investigation or believe Social Security Scotland has fallen short of the standards set out in the Code of Practice they can make a complaint:
- By Freephone: **0800 182 2222**
 - In writing:
Social Security Scotland
PO Box 10304
Dundee
DD1 9FZ
100. Social Security Scotland processes have been designed to make sure that all feedback will be valued and acted on. All feedback provided to Social Security Scotland will help it to improve and learn as an agency, and make the service better. Where possible, a complaint will be resolved quickly.
101. Complaints will always be independently and thoroughly investigated without prejudicing any other on-going claim to benefit a person may have. Individuals will be notified who is dealing with their complaint and at stage 2 of the complaints process, this will always be someone from a team that is not linked to either fraud or benefit processing, and who has had no prior involvement in the case.

Our complaints handling procedure has a two stage internal process and an independent investigation stage:

Stage One - Frontline resolution

102. Social Security Scotland aims to resolve complaints quickly and close to where the service was provided. This could mean an on-the-spot apology and explanation if something has clearly gone wrong and immediate action to resolve the problem. A decision at stage one will be given in five working days or less, unless there are exceptional circumstances.
103. If the complaint can't be resolved at this stage, this will be explained. If an individual is still dissatisfied, they can ask for the complaint to be investigated further through stage two. This can be done immediately or sometime after the initial response is received.

Stage Two – Investigation

104. Stage two deals with two types of complaint: those that have not been resolved at stage one and those that are complex and require detailed investigation.

105. Social Security Scotland will:

- acknowledge receipt of your complaint within three working days;
- discuss the complaint with you to understand why you remain dissatisfied and what outcome is sought; and
- Provide a full response to the complaint as soon as possible and within twenty working days.

106. Where an investigation will take longer than twenty working days, the individual will be informed. Revised time limits will be agreed and updates on progress provided.

Independent Investigation

107. After Social Security Scotland has fully investigated, if a complaint is still not resolved the individual may have the option of asking the Scottish Public Service Ombudsman (SPSO) to investigate. The Ombudsman will normally only be able to act if stages one and two of the complaint procedure has been completed. Additionally, there may also be some circumstances in which it would not be appropriate for the SPSO to investigate a complaint, for example a complaint about why an investigation had been instigated, the progress of an investigation or decisions made within the bounds of an investigation.

Contact the SPSO

- In person:
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS
- By Freephone: **0800 377 7330**
- Online: **<http://www.spsso.org.uk/contact-us>**
- By post: **Freepost SPSO**
(this is all you need to write on the envelope, and you don't need to use a stamp)

Complaints about Surveillance

108. If a complaint is about Social Security Scotland's use of surveillance powers, information can be found about how to complain to the Investigatory Powers Tribunal in the RIP(S)A Code of Practice²⁰.

109. For more information about this publication, contact:
SSDCounterfraudpolicy@gov.scot

²⁰ <https://beta.gov.scot/publications/covert-surveillance-property-interference-code-practice/pages/10/>

ANNEX

Relevant Legislation

- Social Security Scotland Act 2018
- Criminal Procedure (Scotland) Act 1995
- Criminal Justice (Scotland) Act 2016
- Criminal Justice and Licensing (Scotland) Act 2010
 - Criminal Justice and Licensing (Scotland) Act 2010 (Section 164) Code of Practice - Disclosure Of Evidence In Criminal Proceedings
- Regulation of Investigatory Powers Act 2000
 - Covert surveillance and covert human intelligence sources codes of practice
- Regulation of Investigatory Powers (Scotland) Act 2000 (“RIP(S)A”)
 - RIP(S)A: Covert Surveillance and Property Interference Code of Practice
 - RIP(S)A Covert Human Intelligence Sources Code of Practice
- Data Protection Act 2018
- General Data Protection Regulation
- Human Rights Act 1998
- Proceeds of Crime Act 2002
- Data Sharing Code of Practice ²¹

²¹ The Data Sharing Code of Practice is currently subject to review by the ICO.



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