

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT FOR WORK & PENSIONS
AND
THE FRAUD INVESTIGATION SERVICE
AND
THE CROWN PROSECUTION SERVICE

Introduction

1. This Memorandum of Understanding (MOU) between the Department for Work and Pensions (DWP), the Fraud Investigation Service (FIS) and the Crown Prosecution Service (CPS) reflects the DWP policy on fraud and error and CPS policy in respect of the prosecution of offences and recovery of assets. It describes the cooperation arrangements between the Parties in respect of the investigation, the institution and prosecution of proceedings and the recovery of assets in respect of FIS Casework in England and Wales; following the assignment of relevant functions by the Attorney General to the Director of Public Prosecutions (DPP).

Objectives

2. The aim of this MOU is to ensure that Government and departmental objectives are met with regard to tackling welfare fraud and error; pursuing through criminal investigation and prosecution, where appropriate, those who receive illegitimate overpayments thereby protecting and preserving public funds. Additionally this MOU seeks to ensure that criminals do not benefit from the proceeds of crime by the appropriate use of restraint and confiscation proceedings.
3. In discharging their responsibilities under this MOU, the DWP, FIS and the CPS will bear in mind the need to investigate and prosecute cases as efficiently, effectively and expeditiously as possible thereby ensuring the best use of public funds whilst always acting in a manner designed to achieve the overriding objective that criminal cases be dealt with justly.

4. The MOU is a guide to co-operation between the Parties. It also sets out the shared aims of the Parties in respect of the handling of FIS Casework, namely:
- a clear understanding of the respective roles, responsibilities and procedures;
 - a framework for formal liaison and cooperation at all levels;
 - working collaboratively to investigate and prosecute FIS cases effectively and to a high standard always operating under the relevant legislation as well as any applicable case law;
 - effective and efficient communication, including full and timely exchange of information; and
 - supporting each other to improve skills and knowledge.

Parties

5. The Parties to this MOU are:
- The Department for Work & Pensions (DWP)
 - The Fraud Investigation Service & its successors (FIS)
 - The Crown Prosecution Service (CPS)

Interpretation

6. For the purpose of this MOU, FIS Casework means cases referred to the CPS by FIS for advice on charging and investigation, and for the conduct of any proceedings.

Responsibilities

7. For the purposes of this MOU,
- (a). the Secretary of State for Work and Pensions is responsible for:
- The fraud and error policy and enforcement policy in respect of welfare law
 - The adoption of cases for criminal investigation
 - the collection of admissible evidence and the recording, retention and revelation to the prosecutor of relevant unused material including the continuing duty to review the material throughout the life of a case and to report changes to the CPS;
 - the timely submission of case papers to the CPS.
 - The quality of FIS investigations.

(b). the Director of Public Prosecutions is responsible for:

- the provision of appropriate advice in relation to criminal investigations conducted by FIS and any proceedings instituted in respect of such investigations.
- making independent charging decisions in accordance with the Code for Crown Prosecutors and in a timely fashion in respect of all cases referred to the CPS by the FIS.
- fairly and robustly conducting prosecutions and linked proceedings in accordance with the Code for Crown Prosecutors and the DPP's Statement of Ethical Principles for the Public Prosecutor.
- the quality of CPS casework.

8. The respective roles and responsibilities of the CPS and FIS are set out in Annex A.

Monitoring the MOU

9. The Head of the CPS Welfare Rural & Health Division (the Head of Division) will update the Head of FIS monthly on the progress of FIS Casework conducted for the DWP.
10. The Head of FIS will keep the Head of Division fully informed about the number and weight of criminal investigations in progress and any proposed changes in policy that might have any impact on those numbers.
11. A Sensitive Case list will be maintained listing cases that may involve any combination of high risk, high impact or potentially high profile. It will be kept up to date by the WRH Division, which will own the Sensitive Case List, and shared with FIS and DWP. The CPS will provide contributions as appropriate to the DWP / FIS Sensitive Case List.
12. The Supervisory Board will meet on a quarterly basis or as necessary to receive reports on the operation of the MOU. The Supervisory Board will conduct a review of the

provisions of the MOU after 6 months and at the end of its first year of operation and thereafter as agreed between the parties.

13. The CPS will provide briefings on specific cases as requested by FIS and DWP when appropriate.
14. The CPS will provide reasonable assistance to FIS in relation to reports on criminal enforcement matters including the use of out of court disposals, administrative penalties and alternatives to prosecution. The FIS and the Welfare Rural and Health Division will each nominate a contact for this purpose.

DWP Fraud and Error Policy and Sanctions policy

15. The DWP will consult with the CPS early in the consideration of any policy or legislative changes in connection with its fraud and error policy or sanctions policy including the use of out of court disposals, administrative penalties and alternatives to prosecution.
16. The CPS will take appropriate account of DWP Policy, followed by FIS investigators, when, making review and charging decisions.

Casework Management

17. FIS Casework will be handled by prosecutors based in a Central Casework Division unless there are good reasons to do otherwise.
18. FIS will notify the CPS of all major investigations, which are in its view likely to require the input of a prosecutor at an early stage and DWP Internal Audit and Investigations will engage with CPS on those they consider might result in a criminal investigation. The CPS will appoint prosecutors to provide advice to FIS on criminal investigations.
19. FIS will inform the CPS of any intended operational activity that may result in the arrest of a number of suspects potentially requiring the consideration of an immediate charging decision.

20. The arrangements in respect of the specific discharge of both FIS and CPS duties in relation to the disclosure of unused material in criminal cases are set out in Annex B – Disclosure.

Charging Decisions/instituting proceedings

21. A charging decision includes any decision on whether to institute or terminate criminal proceedings and any decision on whether to accept guilty pleas to a lesser offence
22. The CPS will make independent charging decisions in accordance with the Code for Crown Prosecutors, taking appropriate account of the DWP penalties Policy and the use of administrative penalties followed by FIS investigators.
23. Where the decision is taken to prosecute, the CPS, will lay the information(s) or issue the written charge and requisition. Proceedings will therefore be brought in the name of the DPP.
24. FIS recognise that the decision to terminate criminal proceedings rests solely with the CPS. However, where possible, the CPS will consult with FIS and the Investigator before such decisions are made, and will explain its decisions when charges are dropped or added, or it accepts a plea to a lesser offence.
25. When FIS refers a case to the CPS for pre charge advice all the necessary information will be provided to the CPS within a reasonable period (being at least 10 day) before the expiry of any time limit for the investigation of proceedings. In complex cases FIS will consult the CPS when consideration is being given to the commencement of an investigation.
26. In all cases where the Secretary of State may be asked to issue a PII certificate these must be referred to the Head of the Welfare Rural and Health Division in advance of certification.

Disputes & Escalation Process

27. Any dispute in relation to the conduct and handling of FIS Casework, or the failure of any of the Parties to adhere to this Memorandum of Understanding, which cannot be resolved locally, shall be escalated to the head of the CPS Central Casework Division dealing with FIS Casework and the Head of FIS in accordance with agreed local procedure.

Resources

28. The Parties will consult with each other regularly about predicted case numbers and types, investigation and policy and prosecution priorities, and other issues relevant to the efficient and effective management of the Parties' resources.

29. The DWP will ensure that sufficient resources are available for the effective and efficient conduct of investigations. The CPS will ensure that there are sufficient resources available for the effective and efficient prosecution of FIS Casework in England and Wales. Unless there are good reasons to do otherwise, such casework will be reviewed and prosecuted by CPS staff with specialist expertise in the relevant legal frameworks and who are located in a new Central Casework Division at CPS Headquarters at Rose Court, London, and also at the CPS offices in Birmingham, Liverpool, Cardiff and Leeds.

30. The Parties recognise the importance of early and regular consultation to facilitate the efficient management of investigation and prosecution resources.

Training

31. FIS will ensure that its investigators are trained and have the appropriate level of experience to deal effectively with all aspects of its criminal investigatory work. The CPS will ensure that their prosecutors are trained and have the appropriate level of experience and expertise to deal with all aspects of FIS casework

32. The Parties will support each other's training initiatives and will endeavour to undertake this whenever possible.

Exchange of Information

33. All exchanges of management information between the Parties will be dealt with in accordance with the law.
34. The Parties will have a joint de-briefing meeting when it is believed that useful lessons can be learned about particular completed cases or types of cases. Where lessons are identified, the Parties will disseminate them across their organisations as appropriate.
35. FIS will provide the CPS with management information on the volumes and types of cases being investigated by FIS in order to assist the CPS with its forward planning and resourcing. FIS will also provide the same information to DWP as appropriate.
36. The CPS will provide FIS with management information on the cases being prosecuted, and their outcomes in order to assist FIS in developing its strategies and to help in the monitoring and improvement of case preparation. The CPS will also provide the same information to DWP.
37. The CPS will provide FIS with management information on the overall cost of FIS casework; together with average costs for specific fraud types should FIS require such information. This will depend upon FIS providing the CPS with case numbers for specific fraud types.

Archiving and file retention and retrieval

38. Archiving, retention and retrieval of prosecution files will be in accordance with CPS procedure.

Ministerial or Parliamentary Correspondence

39. Where one of the Parties receives Ministerial or Parliamentary correspondence in connection with matters pertaining to the investigation and prosecution of fraud and connected policies, it will consult the relevant other Parties before a reply is sent to seek relevant contributions and clear lines that relate to the work of the other Parties. Contact will be via the FIS Business Support, the CPS Head of Division, and the CPS Parliamentary and Complaints Unit within two working days of receipt. Generally, whilst FIS and CPS will deal with investigative and prosecution questions respectively,

any queries in respect of welfare benefit and / or fraud types should be referred to both FIS and the CPS.

40. DWP Minister's Private Office and the Attorney General's Office will be engaged as appropriate.
41. FIS will reply to Ministerial or Parliamentary correspondence within the time limits set by the Cabinet Office.
42. DWP will reply to Ministerial or Parliamentary Correspondence within the time limits set by the Cabinet Office.
43. The CPS will reply to Ministerial or Parliamentary correspondence within the time limits set by the CPS in its Briefing for Parliament Guide.
44. If any of the Parties receives Ministerial or Parliamentary correspondence which is more appropriately handled by being transferred to another Party, they will arrange for it to be passed on to the other within two working days of receipt. If a Party is asked to accept the transfer of correspondence, they should formally accept/decline the correspondence within two working days of the request for transfer.

Parliamentary Questions

45. DWP and the CPS will liaise with FIS and the Attorney General's Office as appropriate.
46. DWP, the CPS and the Attorney General's Office will decide jointly whether DWP Ministers or the Law Officers are in the best position to answer particular Parliamentary Questions where responsibility is not immediately clear. DWP and the CPS will draft answers or contributions to Parliamentary Questions in accordance the deadlines set by the AGO, DWP or the CPS as appropriate and, where necessary, after discussion with each other.
47. If comment is to be made in an answer to a Parliamentary Question that touches upon the work of another Party then the draft answer will be cleared with that Party.

Complaints against the FIS/DWP and the CPS

48. The CPS defines a complaint as any expression of dissatisfaction about any aspect of their service by a person who is directly involved in that service (not including defendants in ongoing cases or convicted defendants). Concerns about the CPS that fall outside that definition are treated as feedback.
49. The CPS will handle complaints and feedback in relation to the CPS.
50. The DWP defines a complaint as an expression of dissatisfaction about the service (the Customer/Provider) received
50. DWP will handle complaints and feedback in relation to DWP.
51. Subject to the work of external scrutiny bodies, FIS will handle complaints and feedback in relation to the FIS.
52. Wherever, in the opinion of the Parties, a complaint or any feedback requires joint handling, they will consult the appropriate participant/s before replying.
53. If the Parties receive a complaint or feedback intended for another Party, they will pass it to the other(s) within one working day. If a Party is asked to accept the transfer of a complaint, they should formally accept/decline within two working days of the request for transfer.

Press handling

54. The communications teams within the CPS and DWP will work together as appropriate, reflecting the organisations' separate roles.

Requests for information from the public

55. If any of the Parties receives a request under the Freedom of Information Act 2000 (FOIA), or the Data Protection Act 1998 (DPA) for information they must ascertain what information they hold and respond to the requester accordingly. If they do not hold the information and believe it may be held by another Party, they will, after first

liaising, respond to the applicant within two working days informing the applicant that they do not hold the information and give the alternative Party's appropriate contact details. Generally, whilst FIS and CPS will deal with investigative and prosecution questions respectively, any queries in respect of welfare benefit and / or fraud types should be referred to FIS / DWP even if the query relates to a prosecution case.

56. For the CPS, requests for information under FOIA and Subject Access Request (SAR) under DPA are dealt with by a central unit based at HQ Rose Court.

Miscellaneous

57. An up to date list of contact details for the relevant staff under this MOU will be retained by all the Parties.

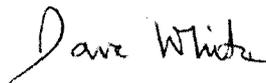
58. This MOU may be modified by agreement in writing between the Parties.

Signed

**For the Secretary of State for
Work & Pensions**

**For the Fraud Investigation
Service**

**For the Crown Prosecution
Service, the Director of Public
Prosecutions**



Dave White
Head of Fraud Investigation
Service

Date:

Date: 23/08/2012

Date:

13 / 9 / 2012

Annex A

RESPECTIVE ROLES OF FIS AND CPS PROSECUTORS IN CRIMINAL INVESTIGATIONS

Guidance for Investigators and Lawyers

Introduction

1. Criminal investigations in relation to FIS matters are the responsibility of FIS Head of Division. The CPS has an important part to play by providing guidance and advice in determining the evidence required to support a prosecution or to decide if a case can proceed to charge. The Parties share a common goal of ensuring that investigations are conducted effectively, fairly and lawfully.
2. This guidance note also sets out the casework standards to be met by FIS and the CPS in the discharge of their functions in relation to criminal investigations prosecutions and linked proceedings. A separate National Standards Operational Interface Agreement may be entered into by the Head of FIS and the Head of the WRHD to set out agreed casework processes and to facilitate effective joint performance management.
3. Responsibilities in a case do not end until such time as all legal proceedings (whether commenced by CPS or by others) have been concluded and all legal obligations discharged, including appropriate time limits for the retention of case papers.

The FRAUD INVESTIGATION SERVICE – status and role

4. FIS decide which cases fall within the ambit of the criminal investigation policy taking into account, where applicable, advice received from the CPS.
5. FIS make decisions on the scope and ambit of individual investigations and carry out those investigations taking into account, where applicable, advice received from the CPS. The FIS will:
 - i. furnish prosecution files of the required standard to enable the prosecutor to apply the tests under the Code for Crown Prosecutors, to comply with all legislative

- requirements, codes of practice and guidance and to comply with the Criminal Procedure Rules;
- ii. to comply with any requests made by the CPS for further information within the required timescales;
 - iii. consult with the CPS at an early stage in any major investigation which may lead to a prosecution and in particular, where it appears that the case may be particularly complex, serious, sensitive, or resource intensive, or where a case may attract significant media or ministerial interest;
 - iv. consult with the CPS prior to adopting joint operations with other investigating agencies where it is anticipated that CPS may conduct, be engaged or have an interest in any resulting prosecution;
 - v. inform the CPS if legal advice has been sought and/or received from any other source;
 - vi. Notify the CPS immediately when they are contacted by any other Government Department, the defence or any third party in connection with an investigation or prosecution and convey the content of that contact.
 - vii. provide the CPS with the material necessary to draft any letter of request to obtain evidence from abroad, including a concise and clear summary of the case, the material sought, and the reason for seeking the material;
 - viii. in every case where the CPS has been engaged or where restraint proceedings are in contemplation.
 - ix. undertake financial investigations in accordance with the advice of the CPS;
 - x. provide the prosecutor with all necessary information, evidence and documents in support of any application or proceedings relating to restraint and confiscation;
 - xi. advise the prosecutor of any civil action, benefit appeal or proceedings contemplated or commenced in relation to a case and of any subsequent developments on the civil aspects of a case, for example tribunal hearings; and
 - xii. provide appropriate court attendance in support of a prosecutor for hearings including any subsequent confiscation proceedings, as agreed by the CPS.
 - xiii. ensure that a fraud investigator is readily available in every case for consultation (at court, conference, by phone, or electronically) in the event that the CPS proposes to terminate proceedings, or review case progression.

CPS – status and role

6. The CPS is responsible for the prosecution of FIS Casework, and its prosecutors may give advice to FIS officers. The CPS will decide, in accordance with the Code for Crown Prosecutors, whether criminal proceedings should be instituted in relation to a FIS investigation.
7. FIS Casework will be handled by prosecutors based within a Central Casework Division at CPS Rose Court, London, and also at the CPS offices in Birmingham, Liverpool, Cardiff and Leeds.
8. The CPS will undertake all relevant functions relating to the role of the Prosecutor, including:
 - i. advice to the FIS throughout the course of the investigation including on alternative methods of disposal;
 - ii. instituting and conducting criminal proceedings;
 - iii. Providing advice to FIS on charge, the merits and conduct of prosecutions and all ancillary matters, including confiscation and restraint;
 - iv. ensure that the CPS is appropriately represented at every court hearing.
 - v. all matters relating to the selection and instruction of counsel;
 - vi. act as a contact point with the defence and the court, including serving all documents within the time let set by law or by order of the court;
 - vii. advise FIS of the first Hearing date;
 - viii. advise the FIS of the final outcome of the case;
 - ix. decide whether to apply for restraint or confiscation orders, and conduct any related proceedings.

Legal advice – general

9. The general circumstances in which advice may and should be sought from the CPS prosecutor are set out in paragraphs 10 to 13 below.
10. Where consideration is being given to adopting a case for criminal investigation, the CPS may be consulted as part of the decision-making process, and should be consulted at an early stage where it is thought that the case will be particularly complex, serious,

sensitive or resource intensive for the prosecution, or where a case may attract significant media or ministerial interest.

11. Once a case is adopted for criminal investigation, requests for advice in relation to the case should be addressed to the prosecutor. In cases of any complexity, FIS officers should seek the allocation of a CPS prosecutor to the case at an early stage.
12. CPS prosecutors will provide advice and guidance to FIS officers throughout the investigative and prosecution process. This may include advising on reasonable lines of enquiry, evidential requirements, the legal or evidential effect of operational procedures, restraint and confiscation, and disclosure issues. The CPS will not advise on the appropriateness or the efficacy of any operational matter or advise on/arrange representation at court where investigative measures are sought.
13. CPS prosecutors will be proactive in identifying and advising on evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further investigation.

Legal Professional Privilege

14. Legal Professional Privilege (LPP) does not normally apply to communications between the FIS and the CPS.
15. Where material seized in the course of an investigation may contain items subject to legal professional privilege within the meaning of section 10 of the Police and Criminal Evidence Act 1984, the identification of such material remains the responsibility of the investigating officer.
16. The CPS, if asked, will advise on the appropriateness of FIS instructing independent counsel on whether or not seized material may be subject to legal professional privilege.

Operational Matters

17. The CPS will not advise on the appropriateness or the efficacy of any operational matter or advise on/arrange representation at court where investigative measures are sought.

The CPS will advise on the legal or evidential effect of any particular operational procedure, whether the activity has taken place or is proposed.

18. The issuing of disclosure notices or warrants under Part 2 of the Serious Organised Crime and Police Act 2005 are a prosecutorial function, and all enquiries in relation to these matters should be addressed to the CPS Prosecutor.

Overseas enquiries

19. The CPS will deal with all overseas enquiries in accordance with its guidance.
20. Where evidence is required from a foreign jurisdiction, FIS should always consider the possibility of obtaining it by Mutual Administrative Assistance (MAA) or other informal means. Even if the conclusion is that it will be necessary to proceed by way of Mutual Legal Assistance (MLA), an initial approach by MAA can be useful in establishing what assistance can be given and how the Letter of Request can best be phrased in order to obtain it.
21. It is the responsibility of the CPS to give timely advice on outgoing MLA requests, decide what evidence is required and to draft, issue and secure the transmission of Letters of Request. It is also the CPS's responsibility to liaise with overseas authorities and, where appropriate, a CPS Liaison Magistrate, Eurojust or the European Judicial Network, in order to facilitate and monitor the execution of requests.

Financial enquiries

22. Where it is contemplated that a restraint order will be required, advice should be sought from the CPS prosecutor.

Witnesses and witness costs

23. FIS will be responsible for providing witness availability dates, arranging witness liaison, arranging the court attendance of witnesses and the payment of witness costs which arise from a FIS case.

24. FIS will be responsible for alerting the CPS to cases where a witness may require special measures.

25. The CPS will make application for such special measures as shall be felt necessary and appropriate to allow vulnerable or intimidated witnesses to give their best evidence

Annex B

DISCLOSURE ARRANGEMENTS

Legal Framework

1. All investigating officers, disclosure officers and CPS prosecutors will comply with their legal obligations as set out in:
 - The Criminal Procedure and Investigations Act 1996 (CPIA), the CPIA Code of Practice and the Attorney General's Guidelines on Disclosure (for cases where the investigation began on or after 1 April 1997); and
 - The CPIA as amended by the Criminal Justice Act 2003, the CPIA Code of Practice and the Attorney General's Guidelines on Disclosure 2005 (for cases where the investigation began on or after 4 April 2005).

Guidance

2. The CPS Disclosure Manual and FIS FPI set out approved procedures for ensuring compliance with legal duties relating to disclosure. The CPS, DWP and FIS will follow the procedures set out therein.

Resources and training

3. FIS will:
 - Ensure that appropriate resources are allocated to allow the proper discharge of disclosure officers' duties;
 - Provide appropriate guidance training and supervision of disclosure officers to ensure the quality and timeliness of all disclosure related functions;
 - Ensure that the prosecutor is made aware of the existence of all relevant material, from whatever source, at the earliest opportunity;
 - Ensure that unused material is correctly listed on the appropriate unused material schedule;
 - Comply with requests for revelation of material from the CPS; and
 - Where it is likely that a disclosure exercise is likely to involve extensive unused material, including electronic material, notify the CPS at the earliest opportunity so that the resource implications can be considered and phases of disclosure planned out.

4. The CPS will:

- Provide appropriate training to prosecutors and ensure that they are updated where necessary as to the law; and
- Ensure that CPS prosecutors are fully engaged in the disclosure process and ensure that advocates meet their responsibilities in relation to disclosure.