



Code of Practice

Obtaining Information from Employers, Contractors, and the Self-Employed

A Guide to the Powers of Authorised Officers, and their Limitations

2011

This Code of Practice is also available to members of the public through LA offices and on the LA website [www.s-norfolk.gov.uk], should anyone wish to find out about the scope of our powers to obtain information under the provisions at sections 109A, 109B and 109C of the Social Security Administration Act 1992.

Foreword - Why this Code of Practice is issued to You

Benefit fraud is estimated to cost the taxpayer at least £900 million in 2008-2009. Fraud due to people working whilst claiming a means tested benefit forms a significant part of the overall level of fraud experienced. Obtaining information is necessary if we are to ensure that taxpayers' money goes to those for whom it is intended.

Our powers to obtain information are not intended to place additional burdens on business, but to reduce the overall burden on Society. Everyone, therefore, has an interest in providing information to the DSS and Local Authorities so that we can combat fraud.

This code of practice is binding on the activities of the DSS and LA staff that operate the procedures under sections 109B and C of the Social Security Administration Act 1992. If you are required to provide information to South Norfolk Council under the provisions of sections 109B and 109C of the Social Security Administration Act 1992, this Code has been given to you so that you know what you can expect of the officers making enquiries, and so that you can understand your duties under these powers. It is aimed at encouraging compliance and cooperation. Where the requirements of this Code are not met grounds for complaint may arise. Information about how to complain is contained in this Code of Practice (see paragraphs 35 - 37).

Beating fraud is everyone's business. We must all work together if we are to achieve that aim.

Introduction

1. This Code of Practice explains the powers of Authorised Officers, their limitations and the responsibilities and rights of those from whom we may seek information, as defined in the legislation. Authorised Officers are required to undertake their enquiries in accordance with this Code of Practice at all times.

2. Authorised Officers of South Norfolk Council should issue this Code of Practice to people from whom they require information under sections 109B and 109C of the Social Security Administration Act 1992. It explains the powers of the Council and therefore assists Officers in their enquiries. It should be issued with written enquires, carried by Officers visiting employment premises, and made available in the Benefits Office at South Norfolk to members of the public who wish to consult it. It is also available on South Norfolk Council's Website.

3. The obligation to provide information is now detailed in sections 109A, 109B and 109C of the Social Security Administration Act 1992. These new sections have been introduced under schedule 6 of the Child Support, Pensions and Social Security Act 2000 and replace the previous section 110, 110A, and 110B of the Social Security Administration Act 1992.

4. These powers are only for use in relation to enquiries for the purposes described in section 109A (2) - (paragraph 8 below), from specific people/organisations, as defined in section 109B - (paragraph 10).

Authorised Officers

5. Under section 109A, the Secretary of State may authorise an officer of a Department of Social Security Agency, or of another Government Department or a Local Authority to exercise section 109B and 109C powers. Officers who do not have this authorisation may not make enquiries under these powers.

6. Authorised Officers are required to act reasonably in seeking information from individuals and organisations who hold information necessary to LA enquires. This means that they must act in an appropriate way given the circumstances of the case, and any representations that may be made during their enquiries. The resultant actions taken by Authorised Officers should be ones that would stand up to the scrutiny of a Court, or other independent body.

7. If the course of action undertaken, or proposed, by the Authorised Officer was not considered to be reasonable it should be raised at once with the Authorised Officer. If this does not satisfy the concerns raised the complaints procedure set out in this Code can be applied.

What These Powers Are Used For ?

8. Authorised Officers use section 109 powers to obtain information from certain people, under 109A (2), to:

- Ascertain in relation to any case whether a benefit is or was payable in that case in accordance with any provision of the relevant social security legislation;
- Ascertain whether provisions of the relevant social security legislation are being, have been or are likely to be contravened (whether by particular persons or more generally);
- Prevent, detecting and securing evidence of the commission (whether by particular persons or more generally) of benefit offences.

9. An Authorised Officer can ask for information about individual named persons or, in certain circumstances, the names and other details of the whole workforce. Requests for information can be made in writing or in the course of a visit. The following are examples of the types of information that Authorised Officers might

request, for example from an employer:

- Names of employees
- Wage details
- Period of employment
- Conditioned hours
- Terms of employment (i.e. whether an employee, sub-contractor or self employed
- Bank details (e.g whether wages are paid into a Bank, and its location)
- staff/payroll number
- National Insurance Number
- Home address
- Date of Birth

This list is not exhaustive and there will be circumstances in which Authorised Officers will seek information not specifically listed here, which is relevant to their enquiries, and determined on the circumstances of the investigation.

Written Requests for Information

10. Section 109B(1) allows an Authorised Officer to write to (or e-mail) any of the persons defined in section 109B (2), listed below to obtain information. These people are:

- Any person who is or has been an employer or employee
- Any person who is or has been a self-employed earner
- Any person who, under existing legislation, is treated as an employer, employee, or self-employed earner
- Any person who is carrying on, or has carried on, any business involving the supply of goods for sale to the ultimate consumers by individuals not carrying on retail businesses from retail premises;
- Any person who is carrying on, or has carried on, any business involving

- the supply of goods or services by the use of work done or services performed by persons other than employees of his;
- Any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to others, of persons available to do work or to perform services;
 - Any local authority acting in their capacity as an authority responsible for the granting of any licence;
 - Any person who is or has been a trustee or manager of a personal or occupational pension scheme;
 - Any person who is or has been liable to make a compensation payment or a payment to the Secretary of State under section 6 of the Social Security (Recovery of Benefits) Act 1997 (payments in respect of recoverable benefits); and
 - The servants and agents of any person as described above

11. An Authorised Officer will only write to any of those persons defined above for information if they have reasonable grounds to suspect that benefit fraud is being, or has been, committed. They will provide a written notice that sets out:

- Who they are;
- Their address;
- What information they need;
- The format in which they would like the information provided in; and
- When they would like the information by.

12. They may ask for original documents, photocopies of documents or extracts of documents (e.g. computer printouts etc) to be produced. However, they will only request the information they need and will take account of the burden this would place on the business, as well as their own needs.

The Legal Duty to Provide Information required Under a Written Notice

13. If an Authorised Officer writes to ask for information recipients are legally obliged under section 109B of the Social Security Administration Act 1992, to provide it, in the form it has been requested and within the time specified.

14. If a recipient of such a request has difficulty meeting any part of a request for information, they may contact the Authorised Officer to explain why, and make alternative arrangements for the provision of the information.

15. The legal duty to provide information is not discharged until this has been done.

Verbal Requests for Information by Visit

16. Under section 109C, an Authorised Officer may seek entry to any premises (including a home) where there are reasonable grounds for suspecting that a business or trade is being carried out. They are also allowed to enter any premises (including a home) where there are reasonable grounds for suspecting that documents relating to a trade or business are kept.

17. An Authorised Officer may also seek entry to any premises:

- From which a personal or occupational pension scheme is being administered or where documents relating to the administration of such a scheme are being kept.
- Where a person or someone acting on their behalf, who has paid compensation in relation to an accident, injury or disease is to be found.

18. Requests to enter such premises will only be made where the Authorised Officer has reasonable grounds to believe that benefit fraud is being or has been committed by one or more persons.

19. When visiting premises, the Authorised Officer will state who they are and will show their certificate of authorisation and identity card.

20. The authorisation allows the officer to be accompanied by any other person or persons they think fit to accompany them, for the purpose of their visit. If other persons are accompanying the Authorised Officer, they will be identified, and all visiting officers will carry identification, which will be presented for inspection.

21. Generally, Authorised Officers will give advance notice of their intention to visit. However, in certain circumstances this is not always appropriate, and visits may be made without prior notification.

22. Officers will only enter premises with consent (that is, the owner, the occupier, or their representative). They should never try to force an entry - they have no legal powers to do so. If, after entry has been granted, the officers are asked to leave before they have completed their enquiries, they will do so. However, where an officer(s) considers that such action has been taken to obstruct their enquiries or to conceal evidence, they will consider criminal proceedings.

23. Under section 111 of the Social Security Administration Act 1992, it is an offence to intentionally delay or obstruct an Authorised Officer in the exercise of their powers under this Act.

24. When visiting premises, an authorised officer and any person accompanying them, may inspect the premises and question, with the consent of the owner, occupier, or their representative, anyone they find there. They do not have the power to detain people.

25. The Authorised Officer may require anyone on the premises to produce documents, make photocopies of documents or extracts of documents or to create computer or other printouts. An Authorised Officer will only seek access to

records that are considered to be connected with payments, and employment details, of employees, sub-contractors, recipients of commission payments, etc.

26. If absolutely necessary (for example because there is not a photocopier available), the officer may lawfully remove documents from the premises visited. The Authorised Officer will explain why this is necessary. Any original documents that are removed will be returned as soon as possible. A receipt will be given for any documents that need to be removed temporarily.

27. Documents will not be seized and removed by force. They will only be removed with consent.

The Statutory Duty to Provide Information

1. No one is required to provide any information (whether documentary or otherwise) that tends to incriminate them, or, if they are married, their spouse.
2. Otherwise, whether a request by an Authorised Officer is made in writing or verbally and in person, there is a statutory duty to provide that information, including any documentation that is requested.
3. Under section 111 of the Social Security Administration Act, it is an offence to intentionally delay or obstruct Authorised Officers in the exercise of their powers or to refuse, or neglect, to
4. Answer any questions
5. Furnish any information
6. Produce any documents

when required to do so by an Authorised Officer. Obstruction includes circumstances where false or inaccurate information is provided in response to enquiries.

31. The Data Protection Act 1998 will not be contravened by providing the information requested by Authorised Officers. Under section 35(1) of the Data

Protection Act 1998 exemption from the non-disclosure provisions exists where a statutory provision, such as section 109 B and C of the Social Security Administration Act 1992, requires the supply of information.

32. Failure to meet in full requests for information could result in criminal proceedings being instigated. The maximum penalty is a maximum fine, fixed at level 3, currently set at £1000, with a continuing penalty of £40 per day (under section 111(2) of the Social Security Administration Act 1992)

33. If information is not provided the Authorised Officer should explain the LA statutory powers, and the potential consequences of non-compliance.

At the end of LA enquiries

34. Where an Authorised Officer has made enquiries, and obtained information notification of any further action, that is being taken, will be made as soon as possible. When the enquiry has been concluded notification of that action will also be made.

Complaints

1. If there are grounds for any complaint about how Authorised Officers have used their section 109 powers, or the reasonableness of their actions, when obtaining information arise please write to the Revenues and Benefits Manager, South Norfolk Council, Swan Lane, Long Stratton, South Norfolk, NR15 2XE.
2. Most complaints can be settled by contact with the local manager in this way.
However if this does not provide a satisfactory outcome the complaint will be passed to the Chief Executive of South Norfolk Council, address as above. At any stage you can contact your local councillor who will be pleased to take up your complaint on your behalf.

3. Independent legal advice may be sought at any time. The local Citizens Advice Bureau can assist in deciding whom to contact. Their locations and telephone numbers can be found in the local telephone directory.
4. This does not affect your right to seek assistance from the Local Government Ombudsman. He/she is an independent investigator who looks into certain complaints made against local authorities. You may contact the Local Government Ombudsman at any time, although he/she would normally expect you to have contacted the council first to allow us to try to resolve the problem for you quickly. The contact address is:-

Local Government Ombudsman
The Oaks No 2 Westwood Way,
Westwood Business Park,
Coventry
CV4 8JB

Tel: 0240 7669 5999

Fax: 024 7669 5902

Disclaimer

Please note this Code of Practice gives general guidance only and should not be regarded as a complete and authoritative statement of the law. If you do not understand any of the contents of the Code you may wish to seek independent advice.

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