

Colchester Borough Council

Memorandum

Date 7th April 2008

From [REDACTED] To Tamara Moreau, Welfare Rights

My ref. Your ref.

Tel ext. [REDACTED] Copies to [REDACTED]

Subject **Attendance at interviews conducted by Benefit Fraud Officers under the provisions of Police and Criminal Evidence Act 1984**

I am asked to advise as to whether Officers from Colchester Borough Council's Welfare Rights Department should attend at interviews which are being conducted under Caution by Benefit Fraud Officers of the Borough Council.

The conduct of any interview with an individual who is suspected of being involved in an offence under Criminal Legislation is governed by the Police and Criminal Evidence Act 1984 (PACE) Codes of Practise. Part C deals with all aspects of detention, treatment and questioning of suspects. Any breach of those Codes may render any evidence gained during the course of an investigation inadmissible under S78 of PACE. A person suspected of having committed an offence must also be cautioned.

Although the Act is known as the Police and Criminal Evidence Act, its provisions apply equally to all bodies and authorities who have a duty to carry out investigations. Colchester Borough Council comes under the mantle of that Act, particularly where benefit fraud is concerned, as those offences are provided for under the Criminal Code by the provisions of the Social Security Administration Act 1992, the Social Security (Fraud) Act 2001 and the Theft Acts 1968 and 1978.

Whilst the Codes of Practise relate principally to the treatment and questioning of suspects who have been detained, persons who have not been detained, but are to be interviewed on a voluntary basis, are to be treated in exactly the same way, save being told that they are not under arrest and are free to leave if they wish. These of course, are the circumstances, under which the Benefit Fraud Officers conduct their interviews.

Every person who is to be interviewed on suspicion of having committed an offence has a right to have free and independent legal advice both before and during an interview

