

# Performance Audit

## Addressing Social Benefit Fraud

Report by the Auditor General

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## Addressing Social Benefit Fraud

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## List of Abbreviations

AG	Attorney General
ARMS	Automated Revenue Management Services
BFID	Benefit Fraud and Investigation Department
CA	Children's Allowance
CdB	Common Database
COLA	Cost of Living Adjustment
DG	Director General
DSS	Department of Social Security
ENRG	Energy Benefit
ETC	Employment and Training Corporation
EUR	Euro / €
GBP	Pound Sterling
GDP	Gross Domestic Product
IP	Invalidity Pension
IRD	Inland Revenue Department
IRU	International Relations Unit
L.N.	Legal Notice
LM	<i>Lira Maltija</i> (Maltese Lira)
MCH	Mount Carmel Hospital
MDH	Mater Dei Hospital
MEEF	Ministry for Education, Employment and the Family
MITA	Malta Information Technology Agency
NAO	National Audit Office
S.L.	Subsidiary Legislation
SA	Social Assistance
SABS	<i>Sistema għall-Amministrazzjoni ta' Benefiċċji Soċjali</i> (System for the Administration of Social Benefits)
SHP	Disability Pension
SKA	Sickness Assistance
SPA	Supplementary Allowance
SSA	Social Security Act
SUP	Single Parents' Social Assistance
SVPH	Saint Vincent de Paul Hospital
TCU	Tax Compliance Unit
TM	Transport Malta
UA	Unemployment Assistance
UK	United Kingdom
VAT	Value Added Tax
VIES	VAT Information Exchange System
WSC	Water Services Corporation



## Abstract

The Auditor General has conducted a performance audit addressing Government efforts at curbing social benefit fraud. The National Audit Office (NAO) focused on the operations of the Benefit Fraud and Investigation Department (BFID), which is tasked with gathering evidence key in determining whether benefit fraud is being committed. BFID's reports are then submitted to the Department of Social Security (DSS), whose role is that of adjudicating submitted cases.

The relationship between BFID and DSS is strained by their divergent views with respect to the administration of social policy. DSS prefers to err on the side of caution and only revoke benefits when absolute certainty of irregularity is attained. On the other hand, BFID relies on evidence that is logical and factual, yet not necessarily irrefutable.

This divergence in socio-political alignment is manifested in the disagreement that arises on a number of cases. NAO reviewed all such cases, and expressed concern in this respect. A case that drew NAO's attention was that of a trader caught effecting transactions that ran into millions of Euro while simultaneously in receipt of a disability pension and sickness assistance, among other benefits. Aside from other interesting cases, such as that of the boxer in receipt of a pension for the visually impaired, are multiple cases featuring beneficiaries whose children are registered as having an unknown father while BFID investigations proved otherwise.

NAO's audit report also identified various management issues deemed to be of concern. The level of feedback provided by DSS to BFID in the adjudication of cases was inadequate and undermined the process' expected level of accountability and transparency. A similar source of contention were instances when DSS exercised administrative discretion beyond the parameters established by the Social Security Act. In addition, NAO noted that no system of flagging risk with respect to individuals who had previously committed benefit fraud and reapplied for benefits shortly thereafter existed.

In addition to investigations carried out following BFID's receipt of reports on alleged fraud, the Department also conducts desk-based exercises, which entail the review and analysis of data in order to establish potential cases of fraud. NAO believes that the future of benefit fraud investigations lies in improvements directed at such exercises, as such analysis would more fairly and comprehensively target beneficiaries presenting most risk rather than focusing on those who have 'unfortunately' had a report lodged against them.

Clearly emerging from findings presented in this NAO report is DSS's weak enforcement function in relation to the collection of undue benefits paid. This is largely attributable to the premise that one repays outstanding overpayments only if in receipt of social benefit payments. Further compounding this situation was the fact that repayment rates were at times wrongly applied, with inappropriate documentation supporting these deviations from the legally stipulated parameters.

Deterrents against benefit fraud are, in NAO's opinion, weak and insignificant, and certainly do not aid enforcement efforts. Moreover, NAO established that the magnitude of the overpayment bears no effect on the amount of repayment enforced, and increasing the overpayment due in absolute terms (through successive instances of benefit fraud) simply extends the period of time required to settle such dues.







## Executive Summary

1. Government disbursement with respect to the payment of social security benefits represents one of its major items of expenditure. In 2012, this amounted to €783 million, accounting for 11.6 per cent of Malta's Gross Domestic Product (GDP) and more than 30 per cent of the total recurrent expenditure incurred by Government.
2. Eligibility to social benefits is a fundamentally important element in the proper administration of social security benefit payments. Failure in this respect, represented by the payment of social security benefits to persons who are not in fact eligible for such payments is detrimental to the taxpayer, and possibly, also of ultimate detriment to those persons who are in real need of such benefits.
3. In this respect, this report focused on the various efforts intended at addressing social benefit fraud within the local setting. The audit primarily examined the management and operations of the Benefit Fraud and Investigation Department (BFID) in its numerous endeavours aimed at curbing benefit fraud, yet such an analysis would be incomplete if it did not encompass the integral role played by the Department of Social Security (DSS). In the National Audit Office's (NAO) understanding, DSS provides the contextual backdrop against which BFID operations come into existence. Essentially, all BFID investigations are a result of DSS-awarded social benefits, while the result thereof, that is, arising cases of overpayment, arrive at their ultimate finalisation once DSS intervenes.
4. In light of the above, this audit's overall objective was to analyse whether the measures that address social benefit fraud in Malta are effective. In order to achieve this objective, the audit focused on the following overall subsidiary areas of interest:
  - Investigation reports drawn up by BFID and relating to cases in dispute between this Department and DSS;
  - Cases which, following DSS's acceptance of BFID's recommendation, remained pending further feedback or action from DSS's side;
  - Desk-based investigations carried out on BFID's initiative with respect to a particular cohort of social benefit recipients; and
  - Enforcement measures instigated by DSS in the collection of dues.

## Cases in Dispute

5. NAO presented an overview of all BFID investigations submitted to the DSS Management Committee and subsequently adjudicated in the period 2010 to 2012, outlining their respective outcomes. Although the majority of cases were agreed upon by BFID and DSS, NAO's attention specifically gravitated towards instances when the two Departments failed to reach an agreement, as it is in this context that audit risk is most pronounced.
6. For the purposes of this report, cases were categorised under two broad headings; that is, benefit-specific and management issues. The approach adopted entailed a detailed analysis of all the individual cases deemed to be in dispute, focusing on how BFID executed its investigations, as well as the subsequent response elicited from DSS, through its Management Committee. Finally, NAO also delved into instances where DSS's action possibly extended beyond the provisions contemplated in the Social Security Act (SSA).
7. Hereunder are a number of salient conclusions and recommendations emerging with respect to this analysis.

## Conclusions

8. Notwithstanding the general agreement with respect to casework undertaken by BFID and referred to the Management Committee, this by no means should detract from the importance attributed to cases where BFID and DSS fail to reach agreement. It is such cases where the fundamentally important principles of fairness, equity, transparency, accountability and social justice are put to the test, and it is in this context that NAO's ensuing audit conclusions must be framed.
9. The implications of cases where reports of alleged abuse of social benefits remain inappropriately addressed extend far beyond the persons directly involved. Reputation risk in this context is significant, and failure to appropriately enforce corrective sanctions when such cases have been reported and investigated further compounds this risk. Inaction by the responsible Department, as experienced by the alleged perpetrators of benefit fraud and the person or persons reporting such fraud, clearly sends the wrong message. Weak enforcement mechanisms coupled with an in-existent system of fines or penalties further exacerbates the drain of resources away from those whom it should truly be serving.
10. From a macro perspective of analysis, immediately apparent is the dichotomous divergence of views with respect to the administration of social policy adopted by DSS and BFID. The two are markedly different, with DSS seeking to act as a social safety net for those in need, preferring to err on the side of caution and only revoking social benefits when absolute certainty of irregularity is attained. On the other hand, BFID seeks to ensure that undue benefits are not granted, often relying on the presentation of evidence that is logical and factual, yet not necessarily irrefutable, thereby providing a reasonable level of confidence as to the irregularity of the case, or otherwise. In NAO's opinion, this pivotal difference in socio-political alignment is generally the source of consequent disagreement that persistently featured in the cases reviewed.
11. NAO considers the difficulties arising due to the divergent alignments adopted by DSS and BFID as a situation not subject to any straightforward solution. In effect, this matter is not about establishing which department is right and which department is wrong in terms of its adopted alignment, but more a matter of establishing the ideal

balance. Yet, NAO considers the attainment of such balance as impossible under the present organisational design and structure. This Office has reservations as to the objectivity with which the DSS Management Committee operates, with DSS assuming legal responsibility for the granting of social benefits, and subsequently revoking them too, thereby giving rise to potential conflicts of interest. This set-up undermines the desired system of institutional checks and balances that should instead be a principal characteristic through which fairness in the adjudication of cases may be ascertained.

12. Proceeding to a more case-specific level of analysis, NAO's review of BFID investigations in dispute due to divergent views on beneficiary employment earnings, exemplifies previously made comments relating to flaws in the system of institutional checks and balances through which such cases are regulated. This Office considers the evidence put forward by BFID as thorough, rigorously detailed, executed in a methodologically sound manner and plausible in terms of its logical argumentation. On the other hand, in NAO's view, DSS counter-arguments are limited and overly cautious, relying on the establishment of a level of proof that is unfeasible, impractical, and above all, unnecessary. Moreover, when one factors in the Attorney General's correspondence, specifically with respect to the level of proof required to suspend unemployment or other means tested benefits, NAO is inclined to comment in BFID's favour, and therefore considers the evidence available as sufficient and reasonable proof for the cessation of such benefit payments.
13. Given the final, undoubtedly clear and decisive advice provided by the Attorney General with respect to the cases relating to the unknown father issue, NAO's stance in this regard is axiomatic. This Office considers the message put forward by the Attorney General in relation to this issue (correspondence dated July 2013) as straightforward and unambiguous, and therefore, the matter of accordingly rectifying benefit payments should be agreed upon by DSS, in line with BFID's original recommendations. The only matter that remains subject to an element of discussion is the retrospective applicability of such advice, that is, whether the date of BFID's inspection is to be considered as the date of effect, or the reckoning of these far-reaching changes in circumstances is to be extended to an even earlier date.
14. NAO is concerned about the approach taken by DSS with regard to cases where clear and indisputable evidence was forwarded to it and action recommended by BFID was not heeded. These cases refer to the visually impaired boxer, the trader who was caught effecting transactions that ran into millions of Euro, and the trade fair participant. In these cases, DSS was provided with evidence that put it in a position of strength with regard to the immediate suspension of benefits as well as the creation of overpayments; however, despite the robustness of evidence provided, action taken by DSS in this respect was deemed grossly inadequate by this Office. Moreover, in two of these cases, benefits were only suspended following an examination by DSS's medical panel, which given the obvious nature of evidence presented, raises doubts on the necessity of the said medical panels in such blatant cases. Furthermore, the granting of other means tested benefits to such high risk beneficiaries, with only basic vetting carried out, following rigorously detailed irregularities identified by means of BFID investigations, is in NAO's opinion, not conducive to good governance and certainly does not constitute appropriate risk management.
15. From NAO's overall review of cases in dispute between BFID and DSS, the case raising most concern is that of the beneficiary who was in receipt of a Disability Pension and Sickness Assistance benefits in excess of €76,000, while simultaneously undertaking trade activity in excess of €3,500,000. Of most pressing concern to NAO are the multiple and systematic failures exhibited by DSS in addressing the case at hand, once

again severely exacerbated by the fact that hard evidence indicating the irregularity of the beneficiary's state of affairs was at the Department's disposal, or attention thereto clearly drawn by BFID. Specific reference is hereby made to the beneficiary's undeclared income from bank deposits and the VAT Information Exchange System data. Complementing DSS's above-described systematic failures in detecting irregularities, are its equally inept and ineffective enforcement measures, with benefit suspensions applied on the basis of beneficiary declarations and not on objective evidence, while actual enforcement, that is, the recovery of benefits not due, is limited.

16. Of similarly significant concern to NAO is the case of the beneficiary who was regularly advertising his business' services on a local magazine, as well as participating in the International Fair of Malta, while simultaneously being in receipt of the Invalidity Pension and Sickness Assistance benefits. Here, NAO's specific attention is drawn to the fact that DSS opted to disregard proof acquired by BFID and rely solely on a letter written by the beneficiary's lawyer, which in this Office's opinion, is not at all commendable. In fact, such action reflects DSS's failure to uniformly apply requirements establishing the desired level of proof when deciding upon particular cases. Such action is tantamount to the adoption of double standards, whereby BFID are tasked with providing irrefutable evidence (which at times, may also be deemed insufficient), while the beneficiary must simply have his or her lawyer draft a letter of complaint for all to be rescinded.
17. The cases relating to investigations undertaken by BFID with respect to Invalidity Pension, detailed in clauses 2.3.60 through 2.3.66, illustrate another critical Management Committee shortcoming, that is, its inconsistency. Inconsistency in this context assumes a twofold understanding. First, NAO noted that the Management Committee exhibited inconsistency in adjudicating essentially similar cases, by means of example, deeming evidence insufficient in one case, and the same type of evidence sufficient in another similar case. The Management Committee's failure to appropriately document the rationale employed in its decision-making process may have adversely contributed to the lack of consistency exhibited in this regard.
18. Second, and of greater concern to NAO, are instances of inconsistency manifested within a specific case, and not as a result of cross-case comparisons. Here, specific reference is made to the case of the beneficiary in receipt of an Invalidity Pension found carrying out masonry work. This Office's concerns relating to DSS's management of this case gravitate on its decision to reverse its original ruling. DSS's original decision bore consistency with the evidence made available by BFID, and given that the 'fresh evidence' did not provide DSS with any facts that were previously unknown, NAO must disagree with, and strongly object, to this Department's revised ruling.
19. NAO does not agree with the decisions taken by DSS with respect to the cases whose respective BFID investigations centred on the incongruence of residence-related data. This Office opines that enough evidence was presented to the DSS Management Committee for the suspension of benefits and the creation of corresponding overpayments. Furthermore, feedback forwarded to BFID did not provide a suitably detailed explanation clearly indicating why DSS took certain decisions, and when NAO endeavoured to uncover why this was so, it too was not provided with a satisfactory and congruent response. In truth, the desired and expected further clarifications could never have been forthcoming, as the very poor record-keeping practices employed by the Management Committee render it impossible to establish the decision-making process with any sense of precision. No other case better exemplifies the above-stated than that presented in clause 2.3.75, where the Management Committee's report to BFID rather ambiguously states that, *"No further action is to be taken as*

*instructed by [Director, Benefits].* It is in this context that NAO's concern intensifies, for BFID was not advised as to the reasons why such a decision was taken by DSS, but merely informed that the Director, Benefits had decided that no further action was to be taken, hardly imparting the sense of accountability, transparency and good governance that one would expect from a Committee of such importance.

20. NAO is concerned about cases where DSS accepts, or partially accepts, BFID's recommendation and subsequently cannot deliver on its action due to a social security reapplication by the beneficiary following the investigation, indicating a change in circumstances which brings the beneficiary in line with the SSA, as in the case highlighted in clause 2.3.28. While such cases of reapplication for social benefits may be perfectly in line with established requirements, NAO opines that the level of risk posed by such beneficiaries may be higher than the norm, particularly in view of previously identified irregularities. Therefore, NAO's concern in this respect gravitated towards the fact that no system flagging such claimants as potentially high risk serves to draw DSS's and BFID's attention to such applications.
21. Of concern to NAO is the fact that this level of feedback was observed in most cases and such limited information represents the standard adhered to by DSS in its correspondence with BFID. DSS, of course, bears no legal obligation to provide more detailed feedback to BFID; however, such a practice would certainly contribute to the process' overall level of governance. Of further concern to NAO is the fact that DSS's limited information forwarded to BFID is not manifested solely in the context of the DSS-BFID working relationship, but is pervasive throughout the Management Committee's operations. In fact, NAO found it impossible to understand the basis of certain decisions taken by this Committee given the absolute dearth of information maintained by DSS.
22. It is in this above context that NAO's concerns regarding conflicting feedback provided by DSS in response to similar BFID investigations are best understood. In NAO's opinion, DSS's failure to appropriately document cases reviewed by the Management Committee further increases the possibility of cases bearing notable incongruence. Of greater concern to NAO were cases where DSS's adjudication of BFID investigations was not according to the provisions established by the SSA, or any other internal procedural documents brought to the attention of this Office. The ultra vires nature of certain instances of DSS's interpretation, particularly in view of the inconsistency of application to similar cases, undoubtedly gives rise to concerns about the fairness and equity of such adjudication. Examples to this effect include the provision of a grace period in the case quoted in clause 2.4.11, which is to NAO's knowledge, not a facility contemplated by the SSA provisions.
23. Similarly ultra vires were the deductions carried out with respect to the lift-related expenditure case elaborated upon in clauses 2.4.12 through 2.4.15. Yet, in NAO's view, this case bears more than a subtle element of maladministration, with feedback provided by DSS as to why it could not reverse its decision deemed to be suspect by this Office. NAO is of the considered opinion that the reason afforded to BFID was insufficient and irregular (as quoted from Management Committee feedback, *"decision taken by Assistant Director on 05.06.08 was taken in good faith"*), and that DSS should have provided BFID with the relevant supporting documentation illustrating how BFID had wrongly interpreted the case on the basis of fact and not faith.
24. In addition to the above case, NAO bears notable concern regarding the various other instances where administrative discretion had been exercised by DSS, thereby

acting outside of the parameters established by the SSA. It is not the administrative discretion per se that NAO takes issue with, but the manner by which such discretion is applied, at times bearing clear incongruence with what NAO considers to be the spirit of the law. This Office perceives action taken outside of the confines established by law, particularly in terms of the above clarification, as constituting a risk with respect to the application of the principles of fairness, equity and transparency, thereby undermining the essence of its legitimacy.

25. Moreover, NAO's review of BFID and DSS files relating to this specific case indicated the significant failure in interdepartmental communication and coordination. NAO firmly believes that the onus of informing BFID with respect to action taken following the Management Committee's evaluation rests squarely on DSS, as it is understandably impossible for BFID to keep track of all actions taken by DSS in relation to its investigations, unless otherwise notified. This understanding assumes particular relevance, and it is here that NAO's concern gravitates, in cases where BFID was informed that DSS was to investigate further, yet the outcome of such investigations, if any, were never communicated to BFID by DSS.
26. Aside from the above, the crux of conflicting feedback provided by this Department culminates in the case featuring a written declaration submitted by the beneficiary to the Housing Authority. In this case, the beneficiary naively stated that she could not change her ID card address to reflect her true circumstances due to the resulting inevitability of the suspension of her social security benefit payments. In its attempts at convincing the Management Committee to revise its original decision on the case, BFID referred DSS to another similar case that was adjudicated otherwise, as well as to internal correspondence documenting the manner in which such cases were to be addressed, notably different to what in fact happened in the above-quoted circumstance. Failure to apply the same measure in a uniform and consistent manner is a shortcoming of a certain magnitude when this is attributable to lack of awareness by the Management Committee; however, the severity of this case is far greater, as lack of awareness cannot be claimed under such circumstances, as DSS was, in fact, made fully aware of this case's incongruence. It is in this context that NAO's concern further intensifies, as DSS's action was intentional and therefore, incongruent, with subsequent BFID protestations met with a curt 'Decision is to stand.'

### Recommendations

27. NAO's primary recommendation essentially entails a review of the institutional framework presently in effect and responsible for the assessment of BFID investigations. This Office recommends that the function, presently assigned to the DSS Management Committee, be supplemented with an autonomous body independent of DSS and BFID. Such a board would only be resorted to in cases where BFID and the DSS Management Committee fail to reach agreement on the adjudication of particular cases. All other cases, characterised by agreement between BFID and DSS, would come to their natural conclusion at Management Committee level. Redesigning the BFID investigation report review process in this manner would axiomatically necessitate corresponding legal amendment to the SSA. NAO is of the considered opinion that such a set-up would achieve the desired level of institutional checks and balances that should be a principal characteristic through which fairness in the adjudication of cases may be ascertained.
28. Shifting towards a more case-specific perspective, NAO urges DSS to follow the clear Attorney General's advice with respect to the unknown father and the determination of earnings issues. It is NAO's considered opinion that such advice is reliable and takes



into account the myriad concerns involved with respect to such issues. Furthermore, NAO fully supports the balance of probabilities argument outlined by the Attorney General and urges DSS to adopt such a mindset when adjudicating cases brought to the Management Committee's attention. Indeed, NAO believes that if, on a balance of probabilities, available evidence is sufficient, DSS should take action accordingly. It would then be up to the beneficiary who allegedly defrauded DSS to prove his/her innocence during an Umpire sitting.

29. Aside from the suspension of benefits, the balance of probabilities argument also applies with respect to the date of creation of the relevant overpayments. The establishment of retrospective applicability has been a source of great discord and conflict between DSS and BFID, with the latter attempting to claw back undue benefits on the basis of evidence that is logical and factual, yet not necessarily irrefutable, while the former seeking absolute certainty. Such irreconcilable perspectives serve as the ideal example of the type and nature of cases that should be addressed to the above-referenced autonomous board.
30. NAO recommends that DSS should exercise professional scepticism in deciding what evidence to rely on, particularly in cases where the evidence put forward by BFID, and that put forward by the beneficiary are in clear conflict. Here, specific reference is made to the cases where clear and indisputable evidence was put forward by BFID for the Management Committee's consideration, namely, the case of the visually impaired boxer, the trader who was caught effecting transactions that ran into millions of Euro, and the trade fair participant. Given the magnitude of benefit fraud identified in these three cases, and the particular idiosyncrasies that aggravate circumstances, NAO recommends that DSS spares no effort at establishing enforcement mechanisms and procedures to recover undue benefits.
31. NAO implores the Ministry for the Family and Social Solidarity to implement all recommendations put forward in this audit report in order to ensure that DSS's management of the trade fair participant case is not repeated. This Office is appalled at the Management Committee's decision, readily attending to a letter of complaint drafted by the beneficiary's lawyer without any form of critical assessment, while outrightly disregarding irrefutable evidence provided by BFID. The proposed measure relating to the establishment of an independent board will, in NAO's view, mitigate the reoccurrence of such circumstances, and therefore positively contribute to the overall quality assurance and control with regard to BFID cases adjudicated by the Management Committee. This should ultimately contribute to the much-required amelioration of good governance practices so direly lacking in the above-quoted case.
32. Other cases that elicited similar levels of concern from NAO included that featuring means and capital resources test deductions with respect to lift-related expenditure and the beneficiary who naively declared her irregular state of affairs in a letter submitted to the Housing Authority. Here, NAO reiterates its previous recommendation whereby such cases provide prime examples of the utility that is to be assumed by this Office's proposed board. It is envisaged that the additional layer of review provided by this board should address two principal objectives; that is, aid in curbing instances of maladministration, and facilitate congruence and consistency in the decision-making process.
33. This latter-referred objective should serve to rectify one of the major shortcomings identified during the course of this audit, that is, the DSS Management Committee's highly inadequate level of documentation and record-keeping. NAO strongly recommends that such a situation is attended to with immediate effect. First and foremost in this respect should be the compilation of appropriately detailed minutes

recording the Committee's decision-making process, specifically outlining the reasoning employed in the adjudication process. Other basic details, which have been conspicuously absent include a list of members of the Committee present at that specific meeting, identification of who was chairing the meeting, as well as formal endorsement of the said minutes by the Committee members, thereby signifying agreement thereto.

34. Should this critical lacuna be addressed, NAO is of the considered opinion that the consistency exhibited in terms of decisions taken by the Committee may be further refined. Detailed documentation should aid in the enhancement of DSS's institutional knowledge; however, potential gains in this respect can only be actualised if the Management Committee actively attends to such a matter. It is in this context that NAO considers the importance of appropriate documentation, and therefore recommends corrective action in this respect, critically necessary as a fundamental precursor to the Committee's recourse to 'case law'. Furthermore, and in line with this latter-referred issue of 'case law', NAO recommends that the Management Committee seeks to adopt such an approach in its deliberations.
35. Communication and coordination between DSS and BFID are vitally important aspects of Government's concerted efforts at addressing social benefit fraud. It is against this backdrop, and the numerous cases exhibiting failure to appropriately communicate and coordinate matters, that NAO recommends focused improvements directed at the feedback DSS provides to BFID. Mirroring the already proposed enhancements to the system by which the Management Committee maintains its records, NAO recommends that such progress be capitalised upon and utilised in the provision of feedback to BFID. Such feedback should notionally contribute towards BFID's refinement of its investigative processes; yet more importantly, the provision of adequately detailed responses by DSS to BFID's equally detailed reports should ensure that case-related arguments and facts are contradicted by relevant counter-arguments, thereby ascertaining the desired standard of accountability and transparency that has been erstwhile lacking.
36. Intricately linked to the more structured information flow between DSS and BFID is the establishment of a flagging system that serves to identify high-risk beneficiaries, hereby understood as beneficiaries who were previously identified by BFID or DSS as having defrauded the latter Department. NAO recommends the setting up of such a system, which should conceptually mitigate the risk posed by such beneficiaries. This Office considers the practical application of this risk mitigation strategy to involve DSS informing BFID of any new benefit applications, revisions, or other changes made by beneficiaries that were flagged as a result of earlier instances of detected benefit fraud. Information exchanged in this respect would aid BFID to focus its resources on those beneficiaries deemed as constituting the greatest risk.
37. In NAO's opinion, the revised system of record-keeping that should be instituted by the Management Committee, together with improvements intended in terms of feedback provided by DSS to BFID, should serve in the analysis of commonalities and trends relating to adjudicated cases. Such patterns serve as a valuable tool in the identification of points of contention experienced between BFID and DSS. NAO's recommendation in this respect essentially entails the establishment of guidelines designed to address commonly recurring difficulties, akin to the attempts made by BFID in the case presented in clause 2.4.6. In addition, during the feedback process in relation to this audit, BFID stated that further efforts in this respect had been undertaken and a meeting was held in January 2012. However, BFID indicated to NAO that no further developments had taken place since this meeting.

38. NAO objects to the various instances presented in this audit report where DSS acted in a manner deemed by this Office to be outside the provisions of the SSA, against the spirit of the law, and therefore ultra vires. A two-staged approach is recommended in this respect. First, NAO is of the opinion that DSS ought to review the ultra vires criteria currently being applied and question whether these are consonant with the general objective of social security benefits, that is, the provision of a safety net to persons in need. This Office urges DSS, the Ministry for the Family and Social Solidarity, as well as other key stakeholders (such as BFID), to question and evaluate whether persons who own more than one property should have such additional properties not recognised as capital assets when conducting the capital and means test. Should investments be valued as at date of purchase, or more realistically recognised in terms of current market value? Should expenses incurred with respect to the refurbishment of one's house of residence be deducted from one's capital when carrying out the capital and means test assessment?
39. The need for introspective analysis is clear, and it is in this context that NAO's second recommendation is made. Following the envisioned establishment of consensus as to the conformity, or otherwise, of such deviations from the SSA with the spirit of the law, the next logical step would involve the enactment of legislative amendments. This Office is of the considered opinion that good governance can only be ascertained if the provisions established by the SSA, and amendments thereto, are strictly adhered to, thereby safeguarding the fundamentally important principles of fairness, equity and transparency.

#### Investigations based on BFID's initiative

40. Aside from the onsite inspections, every year, BFID also conducts several desk-based investigation exercises. Another aspect of the extensive fieldwork conducted by NAO in relation to this audit consisted of the examination of all such exercises carried out by BFID. Such desk-based investigation exercises essentially entail the review of population-wide, benefit-specific or occupation-centred data, which is utilised in identifying potential breaches of the provisions of the SSA. This overview encompasses a presentation of some pertinent statistics outlining the status and outcomes of these desk-based investigation exercises while also providing a description of the procedure currently adopted in the selection of exercises that are yet to be undertaken. Pursuant to such issues, NAO also provides a descriptive summary of all the exercises carried out as at October 2013 and delves into matters impinging on their evaluation.

#### Conclusions

41. NAO's principal concern with respect to the BFID desk-based investigations relates to the strategic design and orientation of this function. Although BFID did not consider this function as representing its core business process, NAO is of the considered opinion that such a state of affairs merits significant re-evaluation.
42. In essence, the impact of desk-based investigations is extensive, in terms of both the quantity of identified 'in breach' cases and the importance of findings, with cases hereby identified on the basis of objective risk assessment methodologies, designed at targeting benefit-wide, or sector-wide beneficiaries deemed at risk. NAO believes that the future of benefit fraud investigations lies in improvements directed at desk-based investigation exercises, rather than investigating beneficiaries who have had a report lodged against them. While tip-offs from the public and DSS employees are important to BFID's work and their thorough examination should undoubtedly continue, also focusing on such investigation exercises would enable the identification of persons

engaged in social benefit fraud who may otherwise have not been reported to BFID. In NAO's opinion, allocating more effort at establishing such desk-based investigations represents a more socially just and objective manner at addressing benefit fraud, rendered possible through the utilisation of all intelligence available to BFID.

43. Transitioning from an essentially strategic perspective to the more practical management issues at play, NAO has three main points to put forward in this respect. First, critically important in this regard is the issue of process ownership, with the current set-up indicative of a process that is diffused in terms of responsibility, with neither BFID, nor DSS, assuming actual and complete ownership of the desk-based investigation exercises. The evident result of this set-up is an uncoordinated approach, manifested in BFID's and DSS's failure to meet one another's expectations, with the former questioning the significant delays in assessing the exercises, while the latter criticising the lack of detail entered into when such reports are submitted for its consideration.
44. This last point ties in with NAO's second concern relating to the desk-based investigations process' management, notably, how these exercises simply represent the preliminary stage of a much lengthier process. At a general level of analysis, NAO noted that following receipt of the documentation, DSS would have to conduct further rigorous investigations in view of retrieving additionally required information, as BFID's submissions with respect to these exercises tended to, at times, be indeterminate given their preliminary nature.
45. Third, NAO noted that the above-referred uncoordinated approach was clearly manifested in terms of the information retained by both Departments. Information retained by BFID bore limited details, while DSS, on the other hand, provided information that was clearly incongruent with that provided by BFID. Worse still were instances when DSS was not able to retrieve information relating to particular exercises, with NAO expressing disapproval at the unavailability of such data from DSS, especially when considering that the establishment of such data is within the immediate and sole control of this Department. Such circumstances significantly hindered NAO's analysis of statistics pertaining to the desk-based investigation exercises.
46. Following the above macro-level analysis of strategy and management considerations, the ensuing paragraphs illustrate the relevance of such considerations through their relevant contextualisation to the various desk-based investigation exercises carried out by BFID. Commencing with the unknown fathers desk-based investigation, this exercise clearly indicated the inadequate management structure entrusted with overseeing the process through to completion. A number of factors have contributed to NAO's understanding in this manner. In this Office's view, the cases presented in this exercise are straightforward; however, BFID's records indicate that the absolute majority of cases remain pending. The gravity of such cases is rendered more onerous in view of the fact that these cases have been pending for five years, and the potential overpayment arising therefrom could be considerable when aggregated. Finally, notwithstanding the serious implication of all of the above-stated, DSS failed to provide NAO with any information as regards its management of these cases, resulting in this Office's doubt as to whether DSS intends to follow through with action that has now long been overdue.
47. With respect to the two outsourcing desk-based investigations addressed by DSS, NAO reiterates that this exercise bore remarkable similarities to the onsite investigations featured in clauses 2.3.2 through 2.3.16. However, the feedback provided to BFID in

relation to these cases differed according to the person/s taking the decision. The Management Committee did not deem the employees' attendance sheets, obtained from the employees' working place, as constituting sufficient evidence to reconsider the beneficiary's benefits. However, the DSS Assessor tasked with deciding upon the desk-based investigation exercises concluded that such attendance sheets represented sufficient evidence in determining the beneficiaries' 'in breach' status, with the absolute majority of the cases for which DSS made the requested data available to this Office in fact deemed to be in breach. NAO's concern in this respect quite logically centres on the fact that DSS exhibited an element of inconsistency in its assessment of these two sets of cases, notwithstanding the fact that the circumstances surrounding the investigation were notably similar.

### Recommendations

48. NAO's principal recommendation centres on proposed revisions to BFID's and DSS's strategic functions, particularly with respect to the manner by which desk-based investigation exercises are to be managed. Social benefit fraud-related onsite investigations are certainly one of BFID's core competences, and an area with respect to which they have considerable expertise; so, it is only natural for BFID to assume the investigation component that arises following the preliminary screening addressed through the desk-based investigation exercises. It is in this context that NAO strongly recommends that such a function should be transferred from DSS's responsibility to BFID's responsibility.
49. Having reviewed BFID's overall operations in considerable detail, and having witnessed the exemplary level of efficiency and effectiveness with which the Department operates, NAO recommends that the assumption of additional functions would necessitate the allocation of additional human resource capacity to BFID. NAO is of the opinion that additional capacity allocated to BFID in this respect should serve to further contribute to the mitigation of social benefit fraud, which would ultimately result in additional cost savings.
50. Besides streamlining the process, such a strategic revision serves to address the lack of ownership persistently present with respect to desk-based investigation exercises. With the preliminary screening exercise, followed by further in-depth investigations all under the direct responsibility of BFID, full ownership of the process should naturally and inevitably result.
51. With ownership of the desk-based investigation process assumed in its entirety by BFID, the uncoordinated approach that characterised previous DSS-BFID interfacing in this respect is a matter that should notionally be resolved. In essence, the procedure that is to be employed once BFID see through the entire desk-based investigation process up till its completion (following further in-depth investigations) is similar to that employed with respect to the on-site investigations, that is, where BFID submit a formal investigation report for the Management Committee's consideration. Such a procedure would, in NAO's view, facilitate the consistency of decisions taken by DSS. In cases of disagreement, NAO reiterates its earlier recommendation for the establishment of a review board tasked with ensuring fairness, transparency and accountability throughout the process.
52. In line with preceding recommendations relating to how NAO considers the ownership of the process as one that ought to improve following their respective implementation, this Office recommends that due attention be directed towards good information management practices. NAO is of the considered opinion that such information management practices should be improved once responsibility for the administration

of this task resides within one entity, that is BFID, which is subsequently tasked with reporting directly to the Management Committee in an organised and coherent manner.

53. Further to the above, NAO recommends that such data should be analysed in due depth, as this may serve as an invaluable source of feedback indicating which of the desk-based investigation exercises were the most effective, therefore allowing for comparative analysis of such exercises and aiding in the establishment of social benefit risk profiles.
54. This latter point introduces another issue deemed to be of considerable importance by NAO, that is, the development and implementation of a structured risk analysis system. Such a system would notionally be designed at targeting benefit-wide or sector-wide beneficiaries deemed at risk. Although by no means an exhaustive compilation of criteria to be utilised in the aforementioned risk analysis system, NAO considers the materiality of the social benefit itself, that is, which benefit is allocated more resources than others as a possible variable. Another variable might include the inherent risk associated with specific social benefits, therefore, by means of example, one might evaluate whether means tested benefits are at greater risk than those benefits that are not means tested. Moreover, the feedback loop referred to in the preceding clause, which was intended as a measure of the effectiveness, or otherwise, of particular desk-based investigation exercises might also be a useful source of information in this respect.
55. Further to the above, NAO opines that three components are key in the set-up of such a risk analysis system within the context of BFID, namely:
  - The human resource capacity required for the sustained administration of such a system;
  - The gathering of information from all possible sources, already substantially addressed through the sourcing of Tax Compliance Unit data, yet which can be exploited further through the design of other desk-based investigations; and
  - The establishment of standard practices and procedures governing the manner by which such exercises should be carried out, thereby establishing a programme of scheduled exercises that comprehensively address a spectrum of identified risks.
56. Finally, NAO recommends that the cases presently deemed pending merit immediate attention. This statement is made in view of the exorbitant number of cases still pending after a considerable span of time elapsed following BFID's original submission. Such delays only serve to increase any potential overpayments that are to be incurred by beneficiaries, which is in NAO's opinion, neither fair nor just on the beneficiary, the Department, and the taxpayer in general.

### Pending Cases

57. NAO analysed another category of cases that were deemed to be of notable concern, namely the cases that were categorised as pending by BFID. In such cases, BFID would have forwarded its investigative reports to DSS as per standard modus operandi. Subsequent to such a submission, DSS, through its Management Committee, would then be tasked with accepting, rejecting or requesting further follow-up action with respect to BFID's recommendation. Cases that have been accepted, or require further verifications, remain pending according to BFID, until specific feedback indicating the precise action that has been taken with respect to each of the cases at hand is provided by DSS.

## Conclusions

58. NAO is concerned about the fact that in 27 cases from the sample, DSS accepted BFID's recommendation but feedback on actual action taken was not forthcoming. This concern is especially relevant when one notes that 21 of these cases had, as at August 2013, been pending for over six months, with seven of these cases pending for a period in excess of two years. This is inherently an issue of notable concern, especially when one considers that all of these cases had originally been endorsed by the Management Committee, thereby implying that DSS had accepted BFID's recommendations and simply had to execute already agreed upon action.
59. NAO is also concerned about the 53 cases that remained pending because BFID did not receive feedback on action taken with regard to all of the benefits that were addressed in its reports. In this Office's opinion, the pending status of these cases, attributable to the partial implementation of agreed upon recommendations reflects poorly on DSS's overall level of coordination. Once again, this state of affairs is especially notable in light of the fact that 74 per cent of cases had remained pending for over one year. This issue is of concern to NAO, especially since BFID's recommendation had originally been accepted in its entirety by the Management Committee, and overpayments relating to certain benefits had been raised in SABS (*Sistema għall-Amministrazzjoni ta' Benefiċċji Soċjali*<sup>1</sup>), while other benefits that should have been withheld (in relation to the same cases), remained unaffected for a considerable period of time.
60. NAO maintains serious reservations regarding the case presented in clauses 4.1.15 through 4.1.21, relating to the property development project undertaken by a Social Assistance beneficiary and her partner, also on Social Assistance. This Office is of the firm opinion that the spirit of the SSA is certainly not one that encourages the disbursement of Social Assistance benefit payments as a means of indirectly financing private property developments and investments of this nature and magnitude. Although DSS's decision to grant means tested benefit payments prior to the BFID investigation report are mitigated by the fact that the Department was not aware of the irregularity of the case, the same cannot be said with respect to DSS's action taken following this report.
61. This Office fails to comprehend how a decision taken by the Management Committee following information and evidence presented by BFID was subsequently overruled by DSS without appropriately informing BFID as to why such deviations from originally agreed upon matters were being instituted. In NAO's opinion, clarifications put forward by DSS were generally deemed to be far from satisfactory and can hardly be considered as sufficient information justifying alternative action to that previously agreed upon by the Management Committee and BFID. NAO's concern was also drawn to a particular case where the DSS's Management Committee accepted BFID's investigation report, only for DSS to subsequently state that the material presented did not constitute supporting evidence, without providing any explanation as to why or how this evidence was deemed insufficient.

## Recommendations

62. NAO recommends the establishment of mutually agreed upon timeframes within which DSS is to take the necessary action following the Management Committee's endorsement of recommendations put forward in BFID investigation reports. The processing of such cases should ordinarily not give rise to much difficulty, as these cases would have effectively been agreed upon by both Departments, given BFID's

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<sup>1</sup> System for the Administration of Social Benefits

detailed report and Management Committee's approval. Notwithstanding this, should difficulties arise with respect to the processing of such cases, NAO considers it appropriate for DSS to duly inform BFID of such delays, providing the latter-referred Department with an adequate explanation as to why such difficulties were encountered. Once again, revised timeframes with respect to corrective action in this respect should be agreed to by BFID and DSS on a case-by-case basis.

63. The immediately apparent sense of disagreement between DSS and BFID that emerges in NAO's review of cases deemed pending by the latter Department adds further weight to this Office's earlier recommendation (clause 27 refers) regarding the establishment of a board set up specifically for the adjudication of cases that remain subject to such disagreement. Of immediate concern in this respect are the various cases, which, according to BFID, have been pending for a number of years. Furthermore, the fact that decisions taken by such a board would be considered as final and binding (barring appeals made to the Umpire) should assist both Departments in the overall coordination of pending cases, particularly insofar as the maintenance of a single and synchronised registry of cases deemed pending is involved.

### Enforcement

64. When BFID and DSS agree that a person is in breach of the SSA, the latter is the Department responsible for recovering related financial dues. A timely and effective response in relation to social security benefit overpayments is critical in two respects; first, in conveying the desired message to beneficiaries who are in breach of the SSA, and second, in limiting the extent of overpayments accruing over time.

### Conclusions

65. From a general perspective of analysis, NAO considers DSS's enforcement function to be particularly weak, and at times, outright ineffective. Evidence supporting NAO's conclusion is provided through the various statistics presented in Section 4.2. Most notable in this sense were the 23 instances where the rate of overpayment applied was less than the legally stipulated minimum of 10 per cent. These 23 benefits corresponded to €188,089 out of the total reviewed in this exercise, that is, €1,067,279.
66. Another indicator of DSS's weak enforcement function is established in terms of the estimated time required for full settlement of overpayments due (Table 18 refers). Two major issues emerge in this respect. The first relates to the 40 benefit overpayments (out of a total of 103) where no repayment system or schedule was established, and therefore, the amount of approximately €279,000 remained pending on an indefinite basis, with no structured plan as to how DSS intends to recover such funds. Second, are the 22 benefit overpayments (corresponding to €379,443) whose respective recovery of funds extends to a period of time that this Office considers well beyond what one can term to be a reasonable and acceptable timeframe (in excess of 30 years). Offsetting 11 out of these 22 benefit overpayments (accounting for €203,014) should prove to be a significant challenge, as the repayment period anticipated in this respect extends well beyond 100 years.
67. Whereas the preceding shortcomings have largely reflected system-oriented failures or deficiencies, the ensuing conclusion clearly shifts the onus of responsibility, or rather its lack thereof, squarely upon DSS's management. Reference is here made to the 19 cases that NAO originally classified as bearing inconsistencies in terms of their applied repayment rate or overpayment balance payable. Upon further review, nine out of these 19 cases were deemed to have been regularly and appropriately



administered. On the other hand, the remaining 10 cases drew NAO's gravest concerns and hardly impart the level of confidence in DSS's management, that is, in this Office's opinion, fundamental in ascertaining that the principles of accountability, fairness, transparency, equity, and good governance have been adhered to.

68. Perhaps the most blatant affront in this respect is the manner by which an overpayment of approximately €50,000 was cancelled by a senior official within DSS (refer to clauses 4.2.15 to 4.2.22 for further details relating to this case). Prior to its outright cancellation, DSS had revised this beneficiary's overpayment down to €6,000. NAO has concerns with respect to the regularity of the decision taken by the senior official within DSS, particularly in terms of his decision to cancel the €6,000 overpayment based on his perceived lack of evidence and the alleged failure to provide the beneficiary with an opportunity to voice her side of the case. These two points raised by the senior official within DSS are strongly contested by this Office, with clear and irrefutable evidence utilised by DSS in computing the €6,000 overpayment revision rebutting the first point made, and the ongoing appeal process evidently providing an opportunity for the beneficiary to state her defence clearly countering the second claim. NAO considers the intervention of the senior official within DSS as irregular.
69. This Office's concern is further heightened with respect to the case of a beneficiary whose overpayments, amounting to approximately €40,000, were not registered on SABS by DSS, notwithstanding the Management Committee's agreement with BFID in this respect. No documentation in relation to these overpayments was found in the beneficiary's DSS files. This case further strengthens NAO's recommendation of clause 33 with respect to the lack of documentation that persists throughout the Department in a number of cases. So poor and incomplete was documentation retained by DSS in this particular case that NAO was unable to trace these overpayments from DSS's end. To date, this €40,000 overpayment remains unaccounted for.
70. DSS's above intimated weaknesses with respect to enforcement are clearly exemplified in the case of the eight beneficiaries whose overpayments bore incorrectly applied repayment rates of less than 10 per cent (clauses 4.2.29 to 4.2.32 refer). Aside from the fact that, as at April 2013, only 1.34 per cent of overpayments due (out of €161,199) were in effect recovered by DSS; NAO's attention in this respect centres on three particular beneficiaries whose accounts had no ongoing overpayment deductions owing to the fact that they were not in receipt of any live benefit payments. This is a situation of notable concern to NAO, as there does not seem to be a systematic way of collecting due overpayments. DSS stated that it does, at times, agree on a repayment scheme with such beneficiaries; however, NAO did not find any such agreements in the examined DSS files with respect to the relevant benefits represented in Table 18, which correspond to a selection of beneficiaries bearing the most substantial overpayments due to the Department. Therefore, the absence of such agreements and DSS's failure to uniformly apply such arrangement across board is certainly a cause for concern to NAO.
71. Similar concerns, in line with the above-discussed conclusion, were drawn from NAO's analysis of cases that bore no inconsistencies in terms of their respective overpayment amounts and recovery rates (Table 16 refers). Overpayments in the case of the seven beneficiaries (who in aggregate had an overpayment amounting to approximately €210,000) were not being recovered due to the fact that these beneficiaries were not in receipt of social benefit payments and therefore deductions from such payments could not be effected. No ad hoc agreement was entered into by DSS with these beneficiaries, thereby implying that funds were to be recovered only if these beneficiaries became eligible to additional benefit payments.

72. Of particular relevance to this aspect of the report is the fact that the SSA does not allow for the imposition of financial penalties to be charged to persons who are in breach of this Act on grounds of false declarations made to DSS, or the omission of information relating thereto. As matters stand, nothing is actively done to deter persons from committing fraud, and with no penalties or fines imposed on those who are identified as having intentionally breached the SSA, such a state of affairs clearly transmits a sense of impotence around the Department's ability to appropriately prevent social benefit fraud. The absence of any form of deterrent with respect to persons committing benefit fraud certainly does not facilitate the Department's enforcement efforts.
73. The situation was further compounded by the fact that repayment, in the cases reviewed in terms of enforcement, was generally not conditioned by the magnitude of the amount due, but was merely established as a percentage of live benefits. In other words, these beneficiaries will, at times, repay benefits that were not due to them only when in receipt of other benefits, at which point a percentage deduction from the benefits payable is applied. It is in this sense that the magnitude of the overpayment bears no effect on the amount of repayment enforced, and increasing the overpayment due in absolute terms (through successive instances of benefit fraud) simply extends the period of time required to settle such dues.
74. Although DSS has entered into repayment agreements with persons at fault who were not in receipt of benefit payments, such agreements had not, at the time of writing, become standard across all overpayments. Notwithstanding this, NAO commends the establishment of the Overpayments Section, which Section has been working towards rendering such agreements a standard *modus operandi* across newly created overpayments. Initial results obtained by the Overpayments Section substantiate NAO's above-made commendation, and depict an encouraging improvement in terms of DSS's enforcement efforts.
75. Since the Overpayments Section is forwarded a list of overpayments created during the respective previous month, this Section does not capture data in relation to previously created overpayments whose defaulters would not be in receipt of social benefit payments, and therefore NAO notes a gap in terms of the Department's enforcement function. The lacuna made reference to in this context refers to the fact that the Overpayments Section directs its focus on newly created overpayments, while omitting the address of overpayments that were created prior to the Section's establishment.

### Recommendations

76. NAO is of the general opinion that it is the relatively newly established Overpayments Section within DSS that is to assume responsibility for the address of the various shortcomings identified in this audit report. This in no way implies that the Office considers such shortcomings to be attributable to this Overpayments Section, but merely identifies it as the Section within DSS that is best placed to implement much needed change in terms of enforcement practices.
77. Further to the above, NAO urges DSS to revise all instances of overpayments arising out of BFID investigation reports where the applied repayment was less than 10 per cent. Here again, the Overpayments Section is ideally placed to institute and execute the relevant 10 per cent minimum rate as established by the SSA, which should invariably be applied to all cases whose overpayment was not the result of a Departmental administrative error or oversight, but arising out of intentional benefit fraud.

78. From an essentially strategic perspective, NAO recommends that DSS's enforcement function be strengthened through the adoption of a risk-based approach. Such an approach should notionally be characterised by a mechanism whereby cases with substantial balances of overpayments due have their respective repayment rate adjusted to reflect the risk posed by such beneficiaries. Risk in this sense, and in NAO's understanding, is based on two factors, that is, the magnitude of the overpayment due, and the timeframe available within which such an overpayment is to be settled.
79. Moreover, NAO urges DSS to adopt a systematic approach towards the formalisation of repayment agreements for beneficiaries with outstanding overpayments, yet not in receipt of social benefit payments. The approach adopted by DSS to date and in this regard has been largely haphazard, with some beneficiaries allowed to settle pending balances only when in receipt of additional benefit payments, while others were requested to enter into agreements, thereby accelerating their respective repayment of dues.
80. Reference is made to the case where a senior official within DSS cancelled an overpayment of €6,000, thereby derailing the corresponding appeal process that was then underway. In view of the unfounded counter-arguments put forward by this senior official within DSS in seeking to justify the Department's course of action, and on the basis of available evidence retained in DSS files, NAO recommends that under no circumstances should such similar interventions be allowed, as it considers the intervention referred to in this context to be irregular.
81. The absence of any form of documentation justifying the failure to register an overpayment of €40,000 on SABS raises NAO's most serious concerns. In the absence of any documentation substantiating and justifying the cancellation of such overpayments, NAO expects the relevant DSS Sections to raise overpayments amounting to approximately €40,000 with respect to the beneficiary's case presented in clause 4.2.23.
82. NAO's recommendation relating to the appropriate maintenance of documentation extends beyond the retention of updated physical files, and also applies to the data inputted on SABS. This Office urges DSS to appropriately record all transactions, including transfers that are effected on SABS. Although administrative errors are an inevitable reality, NAO is of the considered opinion that retaining documentation (be it in hard or soft copy format) in a comprehensive and organised manner facilitates the identification of such errors, and creates an audit trail, thereby mitigating the risk of such errors.
83. As rendered amply evident in this segment of the audit report, NAO urges DSS and the Ministry for the Family and Social Solidarity to consider the introduction of financial penalties applicable to persons identified as engaging in social benefit fraud. The present dearth of any form of punitive deterrent certainly does not aid the Department's efforts at curbing arising overpayments and enforcement in general. NAO considers it extremely important for DSS to address such lacunae in terms of the establishment of punitive measures, which would subsequently contribute to altering the general public's perspective with respect to social benefit fraud.
84. The Office is encouraged by the results obtained by the relatively recently established Overpayments Section, and urges this Section to also direct its attention at overpayments created prior to the Section's establishment. As intimated at earlier, NAO is of the considered opinion that a risk-based approach would represent the most effective way for the Overpayments Section to operate. Risk in this context axiomatically refers to the magnitude of the overpayment due, and a timeframe within which the relevant overpayment is expected to be set off.



# Chapter 1 – Social Benefit Fraud: A Maltese Context

This initial chapter provides a contextual background of the growing relevance of the work carried out by the Benefit Fraud and Investigation Department. More specifically, this chapter details the manner by which this Department operates, its sources of information, the types of investigations it carries out, as well as the function related to the recouping of overpayments. The role of the Department of Social Security is also highlighted in this chapter. Finally, this chapter lists the overall objectives and scope of the audit, together with the employed audit methodology.

## 1.1 Background on Social Benefit Fraud in Malta

1.1.1 Government disbursement with respect to the payment of social security benefits represents one of its major items of expenditure. In 2012, this amounted to €783 million, accounting for 11.6 per cent of Malta's Gross Domestic Product (GDP) and more than 30 per cent of the total recurrent expenditure incurred by Government. Social security benefit expenditure, as a percentage of GDP, remained largely constant throughout the period 2008 up to 2012, and this is in fact rendered evident in Table 1.

**Table 1: Government Expenditure on Social Security Benefits compared to GDP**

Year	Social Security Benefit Expenditure (€)	GDP at Current Market Prices (€)	Social Security Benefit Expenditure as a Percentage of GDP
2008	624,831,000	5,903,768,000	11.0%
2009	661,837,000	5,810,833,000	11.4%
2010	731,351,000	6,316,652,000	11.6%
2011	727,995,000	6,556,327,000	11.1%
2012	782,559,000	6,755,851,000	11.6%

Source: National Statistics Office

1.1.2 Disbursement of such magnitude certainly necessitates the implementation and enforcement of adequate safeguards, intended at ensuring that social security benefit payments are directed at those who are truly in need of such assistance. Primary ownership of such a critically important function resides within the Department of Social Security (DSS). This is aptly captured in the Department's mission statement, which reads as follows, "To provide timely financial assistance and other benefits to eligible recipients."

1.1.3 Focus on the latter part of the DSS's mission statement, that is, on the eligibility of recipients, is a fundamentally important element in the proper administration of social security benefit payments. Failure in this respect, represented by the payment of social security benefits to persons who are not in fact eligible for such payments is detrimental to the taxpayer, and possibly, also of ultimate detriment to those persons who are in real need of such benefits.

1.1.4 In NAO's understanding, the above scenario, whereby social security benefit payments are diverted to persons other than their intended and eligible recipients, may be conceptually traced back to two source causes. The first relates to the beneficiaries themselves, who through intentional action, or otherwise, seek to establish their entitlement to social security benefit payments. On the other hand, the second factor relates to institutional shortcomings, administrative failures as well as inadequate checking and enforcement mechanisms, which eventually lead to leakages in terms of social security benefit expenditure.

1.1.5 Reverting to the first factor made reference to in the preceding paragraph, NAO considers it important to distinguish between the different levels of intent associated with instances when beneficiaries are in receipt of benefit payments that they are in fact not entitled to. At a general level of understanding, NAO considers the following dichotomous categorisation as indicative of the different aspects of intent associated with such actions:

**a. Error**

Reference is here made to instances when a claimant provides information to DSS that is either inaccurate, incomplete, or untimely, yet does so without what could be clearly construed as dishonest intent. Nonetheless, under such circumstances, the social security benefit payment is inaccurate. Besides claimant errors, other inaccurate payments arise due to official errors, which have already been referred to in the preceding text.

**b. Benefit fraud**

Whereas the error category was characterised by lack of intent, the opposite applies to what is here termed as outright benefit fraud. Deliberately providing DSS with false information, or omitting relevant data from an application form for social benefits, with the principal aim of acquiring higher monetary benefits from the Department, constitutes benefit fraud. Abuse may refer to, for instance, the receipt of unemployment benefits by a person who would simultaneously be working in the informal economy.

1.1.6 Despite the significance of social security benefit expenditure, both in absolute terms, and relative to GDP, as well as the real and tangible risk associated with benefit fraud and error, there have been no local studies undertaken in view of quantifying the extent and prevalence of the losses represented by such fraud and error. Given the absence of local data, estimates may be established by drawing parallels with international data on the subject matter.

1.1.7 Here, specific reference is made to a NAO UK report (2008) entitled 'Department for Work and Pensions: Progress in Tackling Benefit Fraud', which estimates total fraud and error at 2.25 per cent of overall benefit expenditure. This same report states that total estimated fraud (thereby excluding claimant and official error) as a percentage of expenditure is 0.6 per cent. An earlier report published by NAO UK (2006) sought to provide a comparative analysis of fraud and error in social security systems. Although

UK figures for fraud and error are largely consistent with the 2008 report, standing at 2.3 per cent, other country statistics report higher rates, with Canada reporting estimates of 3 to 5 per cent, and New Zealand estimates at 2.7 per cent.

- 1.1.8 Given that it was not possible for NAO to determine the intent of any committed irregularities, coupled with the fact that DSS does not distinguish between fraud and error, for the purpose of this audit, reference is consistently made to 'fraud'; however, such reference in effect encompasses both fraud and error.
- 1.1.9 Although NAO could not determine the percentage estimate of fraud and error in relation to social benefits, the Benefit Fraud and Investigation Department (BFID) stated that cost savings resulting from its operations stood at 2.21 per cent for the period 2006-2012. Furthermore, according to BFID, the Department incurred a cost of €7.30 for every €100 saved in social benefits not due. These estimations were based on actual data provided by DSS relating to finalised cases and specifically excludes cases that were deemed to be pending. Savings registered with respect to the finalised cases were subsequently annualised by BFID.
- 1.1.10 It is against this backdrop that the ensuing administrative reforms briefly detailed hereunder must be understood. In response to increased awareness with respect to the potential abuse of social benefits, Government established an Enforcement Section that was subsidiary to DSS. The Enforcement Section's organisational independence was further strengthened in November 2005, when Government established the Benefit Fraud and Investigation Directorate, under the then Ministry for the Family and Social Solidarity. This instituted change was aimed at separating the duties of the Benefit Fraud and Investigation Directorate from those of DSS. To this effect, this Directorate reported directly to the Permanent Secretary of the Ministry under which it fell.
- 1.1.11 The Directorate subsequently became a Department in March 2010, and was thereon referred to as BFID. A Letter Circular issued on 21 April 2010 (Designation of Departments within the Public Service) clarifies what is meant by the term 'department'. This term rests on the following principle, among others: *Departments are subordinate to but organisationally separate from ministries.*
- 1.1.12 BFID is tasked with investigating reports of alleged abuse of social security benefit payments. To this end, amendments were instituted to the Social Security Act (Act X of 1987, Cap 318, as amended by Legal Notice 355 of 2013), which Act sets out the clauses that regulate the payment of contributory and non-contributory benefits. These amendments vested the Director of this Department with the power to appoint public officers and inspectors to investigate persons who were suspected of breaching conditions set out in the Act. This Act will hereon be referred to as SSA. BFID's mission statement captures the afore-stated as follows, "*Fraud in social benefits is anti-social; the Department is committed to combat such abuse.*"
- 1.1.13 When BFID finds a person to be in breach of the SSA, it forwards to DSS the relevant documentation that supports their understanding of the perceived irregularity. The Management Committee within DSS subsequently reviews the forwarded data and deliberates on the consequential action it intends to take with regard to such cases.
- 1.1.14 A recent development in this respect, which BFID and DSS brought to NAO's attention during the audit's concluding stages was the fact that all BFID investigation reports, before being reviewed by the Management Committee, were being evaluated by a lawyer within the Ministry for the Family and Social Solidarity Permanent Secretary's Office for the provision of legal advice on each submitted case.

1.1.15 DSS is the department responsible for the administration of the SSA. Article 106 of the SSA states that the Director of this Department may allow or disallow a claim for benefits. Therefore, the onus of determining whether a person is in breach of the SSA, or otherwise, rests on this Department (Box 1 refers). This also implies that the DSS Director may disregard any recommendations proposed or conclusions arrived at by BFID.

**Box 1: Article 106, Social Security Act**

**Article 106, Social Security Act**  
*Subject to the provisions of article 97, every claim for benefit, pension, allowance or assistance shall be considered by the Director who may –*  
(a) allow the claim; or  
(b) disallow the claim; or  
(c) after giving notice to the claimant, refer the claim to the Umpire appointed under article 107

1.1.16 DSS also collects payments from persons who were receiving benefits that were not in fact due to them. The Department effects this collection by means of a percentage deduction from other benefits received following the suspension of benefits not entitled to them. More specifically, Article 102 of this Act states the following:

*“...any person who has received any sum by way of benefit, pension, allowance or assistance under this Act to which he was not entitled in terms of the provisions of this Act shall be liable to repay to the Director the sum so received by him, and the Director shall, without prejudice to any other right competent to him at law, recover such sum by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled.”*

1.1.17 As has already been stated, benefits may be of a contributory or a non-contributory nature. Contributory benefits refer to social security payments made to persons who pay, or used to pay a weekly contribution as laid down in the SSA, through a ‘pay as you earn’ system. Such benefits are subject to some form of contributory test, depending on the type of benefit claimed. A full list of contributory benefits, featuring a brief explanation on the nature and eligibility criteria associated with such benefits, is presented in Appendix A.

1.1.18 Non-contributory benefits, on the other hand, act as a safeguard for people in need. Unlike contributory benefits, these benefits are not computed according to National Insurance contributions – their calculation is based solely on a financial means test of the person claiming the benefit. In this case, a financial means test is a determination of whether an individual, or family, is eligible for assistance provided by government, based upon whether the individual, or family, possesses the means to do without that help. Further details relating to the various non-contributory benefits administered by DSS are presented in Appendix A.

1.1.19 Table 2 provides a statistical representation of the Contributory and Non-Contributory social benefits paid from 2008 through to 2012. Various points of interest emerge in this respect. Of note is the fact that, although the total expenditure incurred in 2010 and 2011 remained relatively constant, an overall percentage increase of 25.2 was registered between 2008 and 2012. Other trends are also immediately apparent, such as the considerable increase in retirement pension expenditure, up 34.6 per cent, and accounting for an increase of approximately €102 million when comparing 2012 to 2008 figures. Table 2 also illustrates two benefits that have decreased in terms of expenditure from 2008 up to 2012, that is, Invalidity Pension (down by approximately



€10 million) and Children's Allowance (downward trend in expenditure from 2008 to 2011, which was reversed in 2012, resulting in a net reduction of approximately €300,000). The latter assumes particular significance when compared to the substantial increase noted in terms of retirement pension expenditure.

**Table 2: Government Expenditure on Social Security Benefits by Type of Benefit**

Type of Benefit	2008 (€)	2009 (€)	2010 (€)	2011 (€)	2012 (€)	2008 – 2012	
						Absolute Change (€)	Percentage Change
<b>Contributory Benefits</b>							
Retirement	293,990,000	319,507,000	369,892,000	367,721,000	395,765,000	101,775,000	34.6%
Invalidity	34,697,000	31,420,000	29,455,000	26,693,000	25,043,000	-9,654,000	-27.8%
Widowhood	93,854,000	97,508,000	102,277,000	104,661,000	115,166,000	21,312,000	22.7%
Bonus	32,633,000	38,826,000	46,840,000	48,694,000	54,349,000	21,716,000	66.5%
Others	13,707,000	14,671,000	13,974,000	13,392,000	14,617,000	910,000	6.6%
<b>Total CB</b>	<b>468,882,000</b>	<b>501,933,000</b>	<b>562,438,000</b>	<b>561,161,000</b>	<b>604,940,000</b>	<b>136,058,000</b>	<b>29.0%</b>
<b>Non-Contributory Benefits</b>							
CA	40,242,000	39,061,000	38,234,000	36,967,000	39,929,000	-913,000	-0.4%
Age Pension	18,012,000	18,490,000	19,717,000	19,974,000	20,457,000	2,445,000	13.6%
Disability	10,226,000	10,365,000	10,966,000	11,252,000	11,919,000	1,693,000	16.6%
SA	56,270,000	60,546,000	67,194,000	64,834,000	69,214,000	12,944,000	23.0%
MA	16,053,000	16,430,000	17,280,000	17,296,000	19,178,000	3,125,000	19.5%
Supp.	6,339,000	5,977,000	5,770,000	6,715,000	6,621,000	282,000	4.4%
Bonus	8,807,000	9,036,000	9,754,000	9,795,000	10,301,000	1,494,000	17.0%
<b>Total NCB</b>	<b>155,949,000</b>	<b>159,905,000</b>	<b>168,915,000</b>	<b>166,833,000</b>	<b>177,619,000</b>	<b>21,670,000</b>	<b>13.9%</b>
<b>Contributory Benefits &amp; Non-Contributory Benefits</b>							
<b>Total</b>	<b>624,831,000</b>	<b>661,838,000</b>	<b>731,353,000</b>	<b>727,994,000</b>	<b>782,559,000</b>	<b>157,728,000</b>	<b>25.2%</b>

Source: National Statistics Office

**Notes:**

Abbreviations utilised in this table represent the following: CB – Contributory Benefits; CA – Children's Allowance; SA – Social Assistance; MA – Medical Assistance; Supp. – Supplementary Assistance; NCB – Non-Contributory Benefits.

**Assessment of Benefit Claims**

1.1.20 DSS employees carry out the assessment and subsequent checking of social benefit claims, the process of which is presented in the ensuing paragraphs. The first step to claiming a benefit relates to the application stage, where potential beneficiaries normally call at their relevant District Office and fill in an application form/s corresponding to the benefit/s they are applying for. Checking and vetting of the applicant and the information provided on the application form thereof is not carried out at this stage. District Office employees, however, do guide applicants with regard to the filling in of relevant application forms, including the addendum of supplementary documentation to the application form.

1.1.21 The District Offices subsequently forward the duly filled-in application forms to the DSS Head Office, where they are registered and passed on to the relevant benefit section/s. The DSS Head Office has three main benefit sections, namely the Non-Contributory Section, the Contributory Section and the International Relations Unit (IRU).

1.1.22 The Non-Contributory Section is responsible for administering Age Pension, Carer's Pension, Children's Allowance, Disability Pension, Energy Benefit, Medical Assistance, Social and Unemployment Assistance, as well as Supplementary Allowance claims. On the other hand, the granting of contributory benefits depend upon a contribution test

that fall under the remit of the Contributory Section, hence the term. The Contributory Section administers Injury Benefit, Invalidity Pension, Retirement Pension, Sickness Benefit, Unemployment Benefit and Widows Pension.

- 1.1.23 The IRU is responsible for the fulfilment of the EU social security regulations. Since Malta is a member of the European Union, the provisions of Regulation (EC) 883/2004 apply, whereby insurance periods that are locally in force, as well as in effect in any of the Member States of the EU, are considered for pension purposes. Persons who worked in another EU Member State/s apart from Malta, when approaching the applicable retirement age of the country/countries involved, should make arrangements with the Social Security office of their locality of residence to fill in the relative application forms (referred to as E-forms). These are then processed by the IRU and sent to the counterpart institution in the Member State/s involved. Clients are subsequently informed of the outcome of their pension claim directly from the competent institution.
- 1.1.24 At assessment stage, DSS employees ensure that the required supplementary documentation is attached to the claim form and then proceed to determine the rate at which the benefit applied for is to be paid out. Such a rate is generally established by inputting the relevant information into SABS (*Sistema għall-Amministrazzjoni ta' Benefiċċji Soċjali*<sup>2</sup>), which automatically calculates the applicable rate, subject to the assessor's correct keying in of information relating to the respective benefit claim. In cases where necessary supplementary documentation is not available, the assessor contacts the applicant by issuing a letter or by sending the applicant's file to the relevant District Office thereby informing its staff of the missing document/s. The latter may range from bank account statements, Memorandum and Articles of Association, to separation contracts, or even evidence that a property owned by the applicant is being rented out at a certain fixed rate of income.
- 1.1.25 In cases when files are sent to a District Office, the onus of informing the applicant of the additional documentary evidence requested from the DSS Head Office rests with this District Office. Following the acquisition of such documentation, the latter forwards it to the DSS Head Office, where the same assessor revisits the claim in view of the newly acquired documents. Prior to the issuance of the claim payment, an assigned checker verifies that the assessment and the benefit rate are correct.

## 1.2 BFID Organisational and Operational Considerations

- 1.2.1 As has been alluded to earlier, BFID's remit is that of investigating all reports of alleged breach of the provisions of the SSA. A Director, aided by an Assistant Director and a Principal, heads the Department, which is mostly staffed with inspectors. An organisational chart can be found in Appendix B.
- 1.2.2 The establishment of fraud is carried out through various methods, including, data verification, on-site visits, formal interviews held at BFID, the acquisition of financial data, collaboration with other entities, requests for information by emails and the use of social network sites. The method/s chosen depends on the type of fraud allegedly being committed and the information required to determine its occurrence, or otherwise. Indicators of fraud include, for example, a finding that a beneficiary's standard of living does not match the predicament claimed at DSS; that the belongings found at a beneficiary's residence are not consistent with the fact that a single resident is officially registered on the household; or a beneficiary is caught working. By means of example, in BFID's efforts to establish the desired level of proof, a team of the

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<sup>2</sup> System for the Administration of Social Benefits

Department's inspectors would follow and investigate an invalidity benefit claimant while at the workplace; while it would visit the residence of two gainfully employed persons living together and declaring otherwise in order to determine whether the beneficiaries were in breach of the SSA.

- 1.2.3 At a general level of understanding, BFID's operations can be conceptually categorised into three sub-categories, namely, onsite inspections (normally triggered by external reports regarding alleged fraud), desk-based investigation exercises and financial data analysis. The latter two sub-categories are ordinarily the outcome of a focused activity initiated by BFID directed at a specific benefit or population. Further details regarding these three types of operational activities are provided in the ensuing text.
- 1.2.4 The process of investigating alleged abuse is ordinarily initiated when BFID receives a request to carry out an investigation. An internal file is subsequently opened and an Initial Report is drawn up. This template is an official BFID document that details the particulars of the alleged abuse as well as other preliminary information deemed relevant to the case at hand. An investigation, undertaken by two inspectors, is subsequently launched, and an Investigation Report is drawn up when the said inspectors reach a conclusion on the case in concern. The Assistant Director (BFID) vets the Investigation Report, which is then forwarded to DSS for their further action if the beneficiary is found to be in breach. Investigation reports are forwarded to DSS on a weekly basis, and DSS, after reviewing and deliberating on a case, in turn, forwards its feedback to BFID. The latter closes the case in question when feedback received from DSS is deemed as fully addressing all of BFID's concerns.
- 1.2.5 The time taken to conduct an onsite investigation depends on the nature and complexity of the case, the volume of cases BFID has, the number of BFID inspectors employed at any point in time and the urgency of the case. With respect to onsite investigations, two inspectors are simultaneously deployed on each case for both security and transparency purposes.
- 1.2.6 BFID retains records of the cases the Department would be investigating at any point in time. These indicate each inspector's assigned cases and the dates on which onsite inspections have been made. BFID inspectors also draw up onsite visit reports, and BFID management would thus be in possession of data relating to the number of onsite visits carried out daily. BFID also maintains monthly data on the number of cases worked on, classified by inspector.
- 1.2.7 Another role assumed by BFID refers to supporting DSS during Umpire sittings. Such sittings serve to address instances when a beneficiary considers corrective action taken by DSS with respect to benefits received as unfair and appeals such a decision. These appeals are addressed by the Umpire, who is an advocate by profession and appointed to serve in such a capacity by the Minister responsible for DSS.
- 1.2.8 As indicated in the preceding text, aside from investigating reported cases of alleged fraud, BFID carries out other desk-based investigation exercises undertaken on its own initiative, focusing on specific trends and identified loopholes relating to the administrative control exercised with respect to particular benefits, as well as population-wide exercises.

1.2.9 As at 30 June 2013, BFID had conducted and sent to DSS the following BFID-initiative exercises, comprising a total of 2,138 cases:

- a. Unknown Fathers who recognised child (sent to DSS in October 2008);
- b. Mater Dei Hospital (MDH) – outsourced human resources (sent to DSS in April 2009);
- c. Mount Carmel Hospital (MCH) – outsourced human resources (sent to DSS in August 2009);
- d. Unemployment Assistance (Part I Registrants) (sent to DSS in November 2009);
- e. Saint Vincent de Paul Hospital (SVPH) – outsourced human resources (sent to DSS in October 2010);
- f. Carer’s Pension (sent to DSS in November 2010);
- g. Social Assistance Carer’s (sent to DSS in December 2010);
- h. Unknown Fathers who recognised child (sent to DSS in July 2011);
- i. Unemployment Assistance (Part I Registrants) (sent to DSS in August 2011);
- j. Hawkers (sent to DSS in November 2011);
- k. Social Assistance Part 1 (properties) (sent to DSS in December 2011);
- l. Social Assistance Part 2 (shareholders/directors) (sent to DSS in August 2012);  
and
- m. Social Assistance Part 3 (active VAT numbers) (sent to DSS in December 2012).

1.2.10 Further details relating to each of the aforementioned BFID desk-based investigation exercises is provided in Chapter 3, where a detailed analysis of each individual exercise along with DSS’s feedback in response to the forwarded investigations is elaborated upon.

1.2.11 Finally, DSS’s Information Management Unit runs reports related to financial data with regard to beneficiaries whose financial capital exceeds the maximum limits for single or married persons. These limits are €14,600 and €23,900, respectively. These types of data reports are forwarded to both DSS and BFID, the latter’s role entails monitoring whether DSS took the necessary action in connection with the forwarded cases, or otherwise.

1.2.12 In view of the above detailed descriptions of BFID’s operations, Table 3, presented hereunder, provides an overview of all cases forwarded by BFID for further action, corresponding to seven years of operations, that is, from 2006 up to 2012. Data presented in Table 3 is based on records and figures provided by BFID.

**Table 3: Summary of BFID Operations, 2006 - 2012**

	Onsite Inspections	BFID Initiatives	Financial Data	Total
Cases found in breach	1,747	585	2,699	5,031
Cases not found in breach	3,121	967	22	4,110
Cases pending investigation or conclusion	509	0	n/a	509
Total number of investigation cases	5,377	1,552	2,721	9,650

Source: BFID

1.2.13 A quick glance at Table 3 immediately renders evident BFID's focus on onsite inspections, with this particular operation representing the bulk of work undertaken by the Department. Out of the 5,377 cases reported over this seven-year span, 1,747 were found to be in breach, 3,121 were not in breach, while the remaining 509 cases were still pending as at end 2012. Excluding cases still pending as presented in Table 3, the percentage of cases deemed to be in breach stood at 36 per cent, while those not in breach corresponded to the remaining 64 per cent. With respect to investigations carried out on BFID's own initiative, 585 (38 per cent) out of 1,552 cases were found to be in breach. On the other hand, of the 2,721 cases relating to financial data, 2,699 (99 per cent) were found to be in breach of the SSA.

### 1.3 BFID's Sources of Information

1.3.1 BFID mainly receives reports on alleged social benefit fraud from the general public, with such submissions taking place directly or indirectly, depending on the medium being used in conveying such information. In cases when the general public interfaces directly with BFID, communication regarding alleged social benefit fraud is submitted by means of telephone calls, emails, letters and other media. Such reports may at times be submitted under the condition of anonymity, or otherwise. Further to the above, BFID also provides the facility for the submission of online requests for investigation through its corporate website. Moreover, and it is in this sense that submissions are made to BFID in an indirect manner, DSS staff members submit a considerable number of investigation requests on behalf of members of the general public calling at their offices and wishing to report alleged social benefit fraud. As a matter of procedure, BFID normally investigates all such reports. Finally, information arising out of particular BFID investigations may at times be utilised by the Department in initiating and carrying out other investigations.

1.3.2 In addition, BFID takes the initiative to identify other sources or trends where benefit fraud is allegedly taking place. BFID closely monitors all financial data uploaded on SABS, as operated by DSS, on a regular basis. This data, attained from certain local financial institutions, is utilised to investigate and make recommendations to DSS in order to suspend the claims of those beneficiaries of non-contributory means tested benefits shortly after their financial means exceed the relevant financial scales. BFID subsequently carries out further investigations in those cases where the claimants of such benefits register a rapid and large increase in their financial assets.

1.3.3 Article 133 of the SSA grants the following powers to the Director (Benefit Fraud and Investigation) (as well as to the Director General (Social Security), the Commissioner of Inland Revenue and the Director (Department of the Elderly and Community Services)):

- (a) *to administer oaths for the purpose of the proper performance of his functions, as well as for the proper administration and execution of this Act, which power he may also delegate to any other officer of his Department;*
- (b) *to require any person, including any public officer in the service of the Government and any Bank or of any firm, partnership, company or corporation to furnish to him all the information that he may require in order to be able to arrive at any decision or to revise any decision, which he may take under the foregoing provisions of this Act; and notwithstanding the provisions of any other law enjoining secrecy passed before, on or after the commencement of this Act, such officers as are mentioned in this paragraph are hereby authorised to furnish to the Director any such information that he may require...*
- (c) *to require any person to produce his income tax returns and/or assessments for the purpose of establishing his net income, or earnings.*

1.3.4 To this end, BFID coordinates its operations with a number of government departments and entities, as well as with the private sector, so as to acquire information deemed critical for the conduct of its investigations:

- a. The Employment and Training Corporation (ETC), which makes available certain elements of its online system to BFID in order to aid with the identification of fraud based on incorrect employment data;
- b. The Tax Compliance Unit (TCU), in which case BFID asks for specific reports (with respect to individuals and groups) to be generated in an ad hoc manner, thereby aiding in the establishment of beneficiary profiles, particularly relevant in means tested benefits;
- c. The Inland Revenue Department (IRD), which makes available to BFID the necessary data when required, key in determining declared employment income and trade activity;
- d. The Value Added Tax (VAT) Department, which furnishes BFID with the necessary data when required, and serves as an alternative indicator of trade activity;
- e. The Automated Revenue Management Services (ARMS) Limited, which also provides BFID with the necessary data when required, thereby aiding the Department in establishing residency-related evidence;
- f. The Public Registry, in which case BFID asks for the necessary certificates when required, and also has access to the Common Database (CdB) of Information on Citizens/Persons;
- g. The Directorate for Educational Services, in which case BFID asks for the necessary information when required relating to school attendance;
- h. The Transport Malta (TM) Land Transport Directorate, where BFID has access to an online system, through which vehicle ownership can be determined;

- i. Banks/financial institutions, which are able to provide the statements of account of whoever is being investigated; and
- j. Any other entities as required - depending on the nature of the potential fraud concerned, BFID have also made use of, for instance, information provided by Maltapost with respect to any redirections in place at a particular address. Such information aids in establishing a beneficiary's residence or otherwise at the address concerned.

1.3.5 The Director (BFID) and any officer or employee of this Department who becomes aware of information obtained from the above mediums is bound to observe secrecy. Should such duties be breached, the provisions of Article 133 of the Criminal Code (Act IV of 1856, Cap 9, as amended by Act IV of 2013) shall apply.

## 1.4 Overpayments

1.4.1 Further to an investigation, a person found in breach of the conditions stipulated in the SSA may be liable to reimburse DSS for benefits that were not due to him/her, hereon termed an overpayment. More specifically, an overpayment refers to the sum of benefits received by a beneficiary who was not entitled to a certain benefit/s or benefit rate/s. Such an overpayment may result from a mistake made by DSS, from the deliberate misinformation provided by the beneficiary at application stage, or from the beneficiary not informing DSS about any changes in circumstances that may affect their benefit payments. An instance where an error from DSS's end takes place relates to the granting of a higher benefit rate than is due to the beneficiary. In such a case, the beneficiary would have provided the Department with accurate and truthful data, but DSS employees would have made an administrative mistake when the application was processed.

1.4.2 As stated in clause 1.1.14, Article 102 of the SSA stipulates that DSS is the Department responsible for the collection of overpayments. The above scenarios inherently call for different treatments with regard to the amortisation of such overpayments. In fact, the same SSA Article continues to state that when an overpayment is the fault of a beneficiary, the repayment rate should not be lower than 10 per cent of future receivable benefits; on the other hand, when the overpayment is the direct effect of a DSS error, its collection should not exceed five per cent of future receivable benefits:

(i) *where such overpayment occurs as a result of the non-disclosure or misrepresentation of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) the rate of recovery by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled shall be determined by the Director but shall in no case be less than the equivalent of 10% of the rate of benefit, pension, allowance or assistance to which he thereafter becomes entitled; and*

(ii) *where such overpayment occurs as a result of any eventuality other than those mentioned in paragraph (i) of this proviso, the rate of recovery by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled shall also be determined by the Director but shall in no case exceed the equivalent of 5% of the rate of benefit, pension, allowance or assistance to which he thereafter becomes entitled...*

1.4.3 DSS may also enter into an ad hoc agreement for the reimbursement of an overpayment to be made in instalments unrelated to future receivable benefits. In instances where no future benefits are due to the beneficiary and no such agreement would have been made, the overpayment would most likely remain pending until the beneficiary reaches pensionable age. Furthermore, there exists no penalty system with regard to fraudulent activity in the field of social benefits.

## 1.5 Objectives and Scope of the Audit

1.5.1 This report focused on the various efforts intended at addressing social benefit fraud within the local setting. The audit primarily examined the management and operations of BFID in its numerous endeavours aimed at curbing benefit fraud, yet such an analysis would be incomplete if it did not encompass the integral role played by DSS. In NAO's understanding, DSS provides the contextual backdrop against which BFID operations come into existence. Essentially, all BFID investigations are a result of DSS-awarded social benefits, while the result thereof, that is, arising cases of overpayment, arrive at their ultimate finalisation once DSS intervenes.

1.5.2 Despite the intricate relationship that is clearly manifested with respect to DSS and BFID, there were some elements of DSS's operations that were considered out of audit scope. One such element was that relating to the initial receipt of applications for social benefits received by DSS, incorporating the type of checks undertaken in order to establish the veracity of claimant-supplied data, the subsequent processing of these same claims, and possible quality control mechanisms ensuring effective processing.

1.5.3 The audit team adopted a flexible approach with respect to the audit period under review. This was largely determined by the nature of each of the exercises undertaken; however, as a general rule, the period of analysis was that of beginning 2006 up to October 2013, unless indicated otherwise. Scoping was designed in this manner to enable a thorough, yet adaptable method of analysis applied to the various exercises carried out by BFID. Given that BFID has been relatively recently set up as a distinct entity separate from DSS, this allowed the audit team to verify the population of cases at hand, and therefore adjust its audit scope accordingly.

1.5.4 In light of the above, this audit's overall objective was to analyse whether the measures that address social benefit fraud in Malta are effective. In order to achieve this objective, the audit focused on the following overall subsidiary areas of interest:

- Investigation reports drawn up by BFID and relating to cases in dispute between this Department and DSS;
- Cases which, following DSS's acceptance of BFID's recommendation, remained pending further feedback or action from DSS's side;
- Desk-based investigations carried out on BFID's initiative with respect to a particular cohort of social benefit recipients; and
- Enforcement measures instigated by DSS in the collection of dues.

## 1.6 Methodology

1.6.1 A range of information sources and analytical techniques were utilised to evaluate the manner with which social benefit fraud is addressed in Malta. To this effect, an extensive preliminary review of local and international literature on the audit subject



was conducted. Local literature refers to annual reports drawn up by Government, the relevant legislative framework, and newspaper articles. International literature refers to, in the main, similar audits carried out by the United Kingdom's National Audit Office and the Wales Audit Office. A comprehensive bibliography, quoting all sources of information utilised in this audit, is reproduced as the final section of this report.

1.6.2 The above-referred desk research was undertaken in order to:

- Garner the necessary insight into the subject at hand;
- Enable familiarisation with the current situation, both locally and abroad;
- Identify applicable policies and legislation;
- Gain awareness of critical underlying issues and concerns; and
- Collate good practices in the field.

1.6.3 In parallel, prior to the official commencement of this audit, preliminary informative meetings were conducted with senior management at BFID. Such meetings aided NAO in better understanding the responsibilities assumed by BFID, the information management system and operational mechanisms in place, as well as their fraud risk assessment systems and strategies. Supplementary documentary evidence was requested whenever deemed necessary. This included documents such as policies and procedures, internal management reports and emails, and statistical data of relevance to BFID operations. Sample BFID files were also reviewed at this stage to enable the audit team to familiarise itself with fraud reports received at BFID, the types of inspections carried out and BFID reports forwarded to DSS.

1.6.4 As referred to in the preceding section, the analysis of certain aspects of DSS's operations assumed an integral element of understanding Government's overall efforts at curbing social benefit fraud. An initial understanding of the manner by which DSS and BFID governance structures interface was attained by means of semi-structured interviews with key DSS officials, which interviews served as a means to better understand issues relating to the vetting of applications, collection of overpayments and enforcement issues.

1.6.5 Once sufficient preliminary information was collected, the Issue Analysis Drawing Conclusions technique was used to:

- Determine the objectives and scope of the study;
- Develop a comprehensive framework of relevant issues and sub-issues; and
- Define the most appropriate key audit questions and fieldwork methodology corresponding to identified issues and sub-issues.

1.6.6 Fieldwork was mainly carried out between July 2012 and November 2013, and consisted of documentation review, as well as key informant interviews and focus groups. The principal aim of key informant interviews and focus groups was that of eliciting feedback regarding general processes and procedures.

1.6.7 The documentation analysed throughout the fieldwork consisted of:

- DSS Management Committee meeting reports, highlighting the final outcomes of BFID cases addressed;
- Statistics relating to Umpire sittings, effectively focusing on the number of BFID cases deemed to be 'in breach', or 'not in breach';
- All reports featuring cases where DSS and BFID had not reached an agreement;
- A number of reports featuring cases where, following receipt of initial feedback from the DSS Board, such cases remained pending further feedback or action from DSS's side;
- All desk-based investigations carried out by BFID; and
- Evidence pertaining to the DSS's enforcement function.

1.6.8 Semi-structured interviews were utilised to collect further information. The audit team held meetings with two DSS Directors, one responsible for contributory benefits and the other for non-contributory benefits. These meetings generally focused on the initial and final stages of the social benefit administrative process, which centred on the application stage and enforcement of any overpayments. A DSS official responsible for examining BFID-initiative exercises was also present for one of these meetings. Additionally, NAO met with other DSS officials tasked with representing the Department with regard to the legal aspects surrounding arising cases of social benefit fraud. These meetings were followed up by requests for supplementary documentary evidence to corroborate the collected feedback. This methodology allowed for the triangulation and subsequent verification of these initial findings.

1.6.9 NAO also sought further advice from its legal consultant on various issues relating to the subject at hand, mostly with respect to instances of disagreements between BFID and DSS relating to the interpretation of relevant legislation.

1.6.10 Informative visits intended at garnering specific insight on the way SABS is operated and used in submitting and verifying claims for benefits were also conducted. To this effect, the team conducting the audit shadowed DSS employees during their respective utilisation and operation of the SABS programme.

1.6.11 NAO also facilitated two dual moderator focus groups with District Office Regional Coordinators and District Managers in order to gain a more precise understanding of the workings of these Offices. During these focus groups, NAO posed open-ended questions, which the participants proceeded to expand upon, citing informative and practical examples in the process. Information collected during these focus groups was recorded and sent to the interviewees for their verification. The content analysis method was subsequently used to identify and categorise the qualitative findings that emerged from both focus groups.

1.6.12 NAO also carried out an additional in-depth exercise relating to the invalidity pension benefit, in order to determine the proportion of persons whose pension had no specified end date. For this reason, NAO analysed a random sample based on the population of 4,362 persons in receipt of this pension as at April 2013.

1.6.13 During the course of the audit, NAO embarked on a further analytic review with respect to the recovery of overpayments. In order to establish the utility of this exercise, or otherwise, the Office carried out a pilot study with regard to a number of cases, utilising BFID's investigation-related data and subsequent action taken by DSS to this effect. The DSS operating system, SABS, was used to carry out this exercise, while reference was also made to clients' files whenever this was considered necessary. Following completion of this pilot study, NAO decided to extend this enforcement exercise to the 50 beneficiaries who scored highest in terms of aggregate overpayments.

## 1.7 Report Structure

1.7.1 The remainder of the report is structured around the following key areas, with Chapters 2, 3 and 4 subsequently followed by a series of corresponding conclusions and recommendations relating to the content addressed:

### a. Chapter 2 – BFID Cases in Dispute

This Chapter provides an overview of all BFID investigations submitted to the DSS Management Committee and subsequently adjudicated in the period 2010 to 2012, outlining their respective outcomes. Although the majority of cases were agreed upon by BFID and DSS, NAO's attention specifically gravitates towards instances when the two Departments failed to reach an agreement, as it is in this context that audit risk is most pronounced. For the purposes of this report, cases have been categorised under two broad headings; that is, benefit-specific and management issues. The approach adopted entailed a detailed analysis of all the individual cases deemed to be in dispute, focusing on how BFID executed its investigations, as well as the subsequent response elicited from DSS, through its Management Committee. Finally, NAO also delved into instances where DSS's action possibly extended beyond the provisions contemplated in the SSA.

### b. Chapter 3 – Benefit Fraud Investigations based on BFID's Initiative

Chapter 3 presents a holistic overview of the numerous desk-based investigation exercises carried out by BFID and includes an explanation of the differences between these exercises and the onsite investigations elaborated upon in further detail in Chapter 2. Desk-based investigation exercises essentially entail the review of population-wide, benefit-specific or occupation-centred data, which is utilised in identifying potential breaches of the provisions of the SSA. This overview encompasses a presentation of some pertinent statistics outlining the status and outcomes of these exercises while also providing a description of the procedure currently adopted in the selection of exercises that are yet to be undertaken. Pursuant to such issues, this Chapter also provides a descriptive summary of all the exercises carried out as at October 2013 and delves into matters impinging on their evaluation.

### c. Chapter 4 – Pending Cases and Enforcement Measures

This final Chapter addresses various issues associated with benefit fraud, yet specifically adopts a strategic and case-level perspective following the submission of BFID reports to the DSS Management Committee. In this context, NAO's analysis centred on two major categories of cases, namely, cases deemed to be pending by BFID, as well as those subjected to further audit review owing to their substantial overpayments due,

which resultantly necessitated DSS enforcement measures. Finally, specific attention was directed at compliance checks being undertaken by DSS with respect to Invalidity Pensions, particularly in view of the provisions stipulated by the SSA.

**d. Appendix A – Social Security Benefits Glossary**

An exhaustive list of all contributory and non-contributory social security benefits is presented in this appendix. Each of the benefits is accompanied by a brief description relating to the nature and eligibility criteria associated with such benefits.

**e. Appendix B – BFID Organisational Structure**

The organisation chart presented in this appendix illustrates the BFID set-up in terms of its management, operations and administrative support functions.

**f. Appendix C – Translation of Letter in Box 15**

This appendix presents the translated version of a letter that was originally submitted in Maltese by a beneficiary, to the Housing Authority, and whose case was eventually selected for further review as part of a comprehensive analysis undertaken by NAO. The corresponding English language version of this letter is reproduced in Appendix C.

**g. Appendix D – Schematic Categorisation of Cases Deemed Pending by BFID**

The schematic categorisation of cases deemed pending by BFID is presented in this appendix. All cases presented in this context formed part of the representative sample selected for the purposes of NAO's analysis of the pendency of cases. The pending status of such cases was determined as being such following NAO's review dated August 2013.

**h. Bibliography**

Finally, a selection of the documents utilised and consulted throughout the various stages of this audit are presented for ease of reference.





## Chapter 2 – BFID Cases in Dispute

This Chapter provides an overview of all BFID investigations submitted to the DSS Management Committee and subsequently adjudicated in the period 2010 to 2012, outlining their respective outcomes. Although the majority of cases were agreed upon by BFID and DSS, NAO's attention specifically gravitated towards instances when the two Departments failed to reach an agreement, as it is in this context that audit risk is most pronounced. For the purposes of this report, cases were categorised under two broad headings; that is, benefit-specific and management issues. The approach adopted entailed a detailed analysis of all the individual cases deemed to be in dispute, focusing on how BFID executed its investigations, as well as the subsequent response elicited from DSS, through its Management Committee. Finally, NAO also delved into instances where DSS's action possibly extended beyond the provisions contemplated in the SSA.

### 2.1 Reports for Investigations

2.1.1 As indicated in the first Chapter of this audit report, BFID receives reports from external sources claiming that certain persons are breaching the SSA and therefore receiving benefits they are not entitled to. BFID, after receiving such reports, undertakes further investigations, and forwards detailed respective reports and recommendations to DSS.

2.1.2 Such reports have assimilated in them the following: background research relating to the person under investigation and any other relevant person; details relating to onsite investigations; and further research carried out following onsite investigations. The Assistant Director (BFID), who, at times, asks for further investigations to be carried out, or challenges the recommendation given by the inspectors in question, endorses all the investigation reports before forwarding them to DSS.

### 2.2 Investigated Cases

2.2.1 According to information acquired from DSS (as presented in Table 4), the number of investigative cases completed by BFID and reviewed by DSS's Management Committee over the period 2010 to 2012 amounted to 1,097. NAO further analysed and categorised the decisions taken during the DSS Management Committee meetings and determined that DSS fully accepted approximately 74 per cent of BFID's recommendations (810 cases) and partially accepted another 25 cases, representing an additional two per cent of cases. In this context, the term 'partially accepted' refers to cases where DSS did not agree with BFID on all of its recommendations.

It is pertinent to state that cases may at times have featured more than once in the statistical overview presented in Table 4. For instance, BFID would have asked DSS to suspend two particular benefits with respect to the person being investigated, and DSS decides that there is only enough evidence to suspend one of the benefits.

2.2.2 NAO’s efforts at sourcing further information with regard to these cases, specifically in relation to the role played by the Management Committee in their respective adjudication, were severely hindered by the absolute dearth of documented information. In essence, the Management Committee’s only record of discussions undertaken were brief one-liners, such as ‘Not enough evidence to suspend benefits’ or ‘Not in breach. Recommendation not accepted.’

2.2.3 The Committee did not provide any detailed reasons as to why it was taking a particular decision. This was, in fact, aptly captured in an internal report prepared by a Ministry for Education, Employment and the Family (MEEF) consultant, submitted to DSS as quoted hereunder:

*“In none of the files which were reviewed during the course of this assessment did the DSS Review in determining its position on an investigation file establish detailed reasons why it was rejecting a particular recommendation: that for example it disagreed with the legal interpretation reached by BFID; that case law shows that the evidence attached is not sufficient to establish a basis for prosecution or to successfully defend a decision in front of the Umpire; or that the social needs of the person are such that a prosecution or sanction would not be the appropriate way forward (p.3).”*

2.2.4 During this period, DSS rejected 112 BFID recommendations (10 per cent), a number of which are further expounded upon below, and deferred 150 cases (14 per cent). Table 4 provides a breakdown of these figures, by year. At times, cases may feature more than once in Table 4, particularly in instances when DSS requests further investigations to be carried out.

**Table 4: Outcomes of BFID Recommendations**

Year	Number of Cases Seen	Outcome of BFID Recommendations			
		Full Acceptance	Partial Acceptance	Rejection	Deferred
2010	499	383	6	47	63
2011	361	260	14	38	49
2012	237	167	5	27	38
<b>Total</b>	<b>1,097</b>	<b>810</b>	<b>25</b>	<b>112</b>	<b>150</b>

2.2.5 Although instances of disagreement (hereby understood as incorporating cases that have been partially accepted and cases that have been rejected) between BFID and DSS constitute a relatively minor percentage of all caseload channelled between the two, this Chapter focuses on these cases. NAO considered cases where agreement was reached regarding the determination of benefit fraud, or otherwise, as representing no audit risk, and therefore focusing audit attention on such cases would have resulted in limited scope for improvement.

2.2.6 Therefore, the ensuing analysis essentially focuses on the cases still categorised as in dispute, which at the time of execution of audit fieldwork on this specific exercise (April 2013), stood at 70 cases in total. NAO, therefore, embarked on an in-depth study where it reviewed the cases in dispute to determine whether BFID’s recommendations were well-founded and constituted enough evidence for the suspension of the relevant benefits.



## 2.3 Cases in Dispute: Benefit-specific Issues

2.3.1 As stated in the preceding section, BFID have kept a record of all the cases where it was not in agreement with the decisions taken by the DSS Management Committee. In this regard, NAO carried out a detailed analysis of all the cases in dispute between DSS and BFID as at end of April 2013. This section of the report addresses these particular disparities, accordingly categorised into two major categories, one addressing specific benefit-related, or case-based issues, while the other addresses issues more in line with the management of cases relating to social benefit fraud. Each of these two categories is subsequently sub-categorised into a number of subsidiary issues, the first of which, corresponding to cases relating to benefit-specific issues, are represented hereunder for ease of reference:

- a. The ambiguous earnings;
- b. The father unknown;
- c. The blind boxer;
- d. The trader;
- e. Levels of proof in flux;
- f. Invalidity and beyond;
- g. The fluidity of residence; and
- h. Resistance is worthwhile.

### The Ambiguous Earnings

2.3.2 One of the issues featuring predominantly in NAO's examination of the cases in dispute between BFID and DSS relates to the question about which evidence to rely on when a beneficiary who is a single parent is employed and the evidence from the beneficiary's payslip and the computation of their official working hours contradict one another. All of the seven cases considered here are similar in nature and involve employees who worked with cleaning companies contracted to work in places that opted to outsource their cleaning requirements. The investigations were carried out in different years, and deal with different outsourcing work places and/or contractors providing such services. Box 2 highlights the relevant SSA Article with respect to this issue.

#### Box 2: Article 30(7), Social Security Act

##### Article 30 (7), Social Security Act

Where the head of household is a single parent who is unable to take up a full time gainful occupation as he has to take care of his own child, he shall be entitled to social assistance in accordance with the provisions of this article even if he is not registered as an unemployed person as aforesaid in sub-article (1); and where such single parent is gainfully occupied, notwithstanding the provisions of sub-article (6), he shall be entitled to such weekly amount by way of social assistance so as to ensure that his total weekly means, calculated in accordance with Part VI of the Second Schedule to this Act, together with the scale rate as applicable to a household of two persons, as determined by Part 1 of the Sixth Schedule to this Act do not exceed the national minimum wage as is applicable to persons of 18 years of age or over established by a national standing order issued under the Employment and Industrial Relations Act during the period in respect of which assistance is due.

- 2.3.3 Simply put, if a claimant (who is a single parent) entitled to social assistance registers earnings through employment, which when combined with the said assistance paid remains below the legally established threshold, such a claimant will remain entitled to the receipt of benefits. If, on the other hand, the claimant exceeds the national minimum wage (which is the legally established threshold), such social assistance will be withdrawn.
- 2.3.4 The receipt by BFID of an anonymous telephone call alleging that a social security beneficiary was working usually instigates the examination of cases relating to this issue. In fact, such a procedure was adopted with respect to cases 1 to 6, as referred to in Table 5. As a first step in the investigation, BFID confirms the place of work of the beneficiary through SABS and generally obtains the date of first entry into the building wherein the beneficiary under investigation worked, through the outsourcing firm's HR manager. Such information is complemented through the sourcing of additional data relating to the recorded entrances and exits from the specific building where cleaning services are being rendered. This enables BFID to determine the employee's total hours worked. This data also allowed BFID to determine whether other social security beneficiaries were working in the same building, and BFID would subsequently also seek to verify their circumstances.
- 2.3.5 A marginally different approach was taken with regard to the data collection process in relation to case seven (as featured in Table 5), which case involved a government organisation acting as the outsourcing company. First, during an unannounced site visit made to this government organisation, BFID interviewed the beneficiary who was allegedly in breach of the SSA, at which point the beneficiary stated that she was employed through a contractor. BFID subsequently managed to obtain, from the contractor, data relating to attendance records corresponding to the cleaning staff stationed at this government establishment. Following receipt of this information, BFID formally established that the abovementioned person was an employee of the contractor and that she had failed to inform DSS about it.
- 2.3.6 With respect to these types of investigations, BFID make their case for the existence of fraud, or otherwise, by applying the current minimum wage for employees in this sector set by the Private Cleaning Services Wages Council Wage Regulation Order (Legal Notice 15 of 2001, S.L. 452.76, as amended by Legal Notice 334 of 2013) to the number of hours the employees spent inside the building. BFID subsequently determined whether this income calculation was within the threshold, arising out of the provisions of the SSA, Article 30(7), that a single parent could earn without affecting their social benefit entitlement. It is important to note that even though these are part-time cleaners, Article 3 of LN 429 of 2007 under the Employment and Industrial Relations Act (Act XXII of 2002, Cap 452, as amended by amended by Act III of 2004), which establishes the National Minimum Wage National Standard Order (Legal Notice 126 of 1992, S.L. 452.71, as amended by Legal Notice 491 of 2012), specifies the following, *"The National Minimum Wage of part-time employees shall be pro rata at an hourly rate not below the National Standard Minimum Wage applicable, as determined in accordance with the preceding article and divided by forty."*
- 2.3.7 Table 5 highlights the hourly minimum wages set by the aforementioned law and the maximum weekly income that can be earned by a beneficiary without their benefits being affected for the years 2008 through 2012. It also includes the total hours worked by the beneficiaries featured in each of the seven cases over the relevant years. The table also presents BFID workings in relation to the weekly average hours

of employment (according to the number of weeks worked over that same year) and their respective weekly earnings for the weeks worked when assuming a wage set at the minimum hourly rate. This assumption made by BFID assumes pivotal importance, yet is considered by NAO to be logical and plausible in terms of content. According to BFID, all the beneficiaries featured in Table 5 exceeded the maximum income referred to above. For this reason, in its recommendations to DSS, BFID outlined that the claimants concerned were in breach of the SSA.

**Table 5: Beneficiaries' Weekly Earnings in Comparison to Single Parents' Earning Thresholds**

Cases	Year	2007	2008	2009	2010	2011	2012
	Minimum wage (p/hr)	LM1.49	€3.56	€3.66	€3.81	€3.84	€3.95
	Income threshold (p/wk)	LM20.66	€49.29	€50.64	€52.58	€52.98	€52.98
Case 1	Actual Hours worked				460.25	1257.50	
	Weeks worked (rounded)				13	38	
	Average hours (p/wk)				35.41	33.09	
	Earnings (p/wk)				€134.91	€127.07	
Case 2	Actual Hours worked		140.5	85.25	961	1447	
	Weeks worked (rounded)		9	5	28	40	
	Average hours (p/wk)		15.61	14.21	33.72	35.73	
	Earnings (p/wk)		€55.57	€52.01	€128.47	€137.20	
Case 3	Actual Hours worked					144	
	Weeks worked (rounded)					8	
	Average hours (p/wk)					19.20	
	Earnings (p/wk)					€73.73	
Case 4	Actual Hours worked						140.45
	Weeks worked (rounded)						4
	Average hours (p/wk)						35.11
	Earnings (p/wk)						€138.69
Case 5	Actual Hours worked					524.25	
	Weeks worked (rounded)					16	
	Average hours (p/wk)					31.77	
	Earnings (p/wk)					€122.00	
Case 6	Actual Hours worked				1044.50	1373.75	
	Weeks worked (rounded)				30	40	
	Average hours (p/wk)				34.25	33.92	
	Earnings (p/wk)				€130.49	€130.25	
Case 7	Actual Hours worked	456.75 <sup>3</sup>	132				
	Weeks worked (rounded)	9	3				
	Average hours (p/wk)	50.75	33				
	Earnings (p/wk)	LM75.62	€117.48				

2.3.8 BFID's recommendations with respect to the above cases revolve around DSS revising/ suspending the Social Assistance entitlement vis-à-vis the beneficiaries' employment within the outsourcing company's premises and recouping any overpayments made based on how far back the records of employment under such circumstances date back. Depending on the beneficiary's granted social benefits, BFID, at times, also recommends a revision of the Children's Allowance and Energy Benefits.

<sup>3</sup> This information is correct as at 8 March 2007, which is the date BFID was forwarded the information. The beneficiary could therefore have worked more hours later on during the same year.

2.3.9 In response to the BFID's recommendations for cases one, two, three, five and six, DSS subsequently requested the attendance sheets and payslips of the claimants from BFID, signed and authenticated by the employer. With respect to case four, DSS replied in greater detail and stated that it could take no action due to the lack of evidence and that the timetable of working hours without any evidence of remuneration would not suffice for an appeal to the Umpire. It therefore requested BFID to investigate further.

2.3.10 BFID duly complied with DSS's request and provided the claimants' attendance sheets and payslips, signed and authenticated by the employer. The payslips showed an amount earned per claimant which was less than the threshold stipulated by the law, and which was, according to BFID, incongruent with the official working hours provided by the employer. To augment its evidence base, BFID provided an email from the outsourcing company, which confirmed that it paid the contracted company according to the number of hours worked by the cleaners. Indeed, the outsourcing company also specified that every cleaner clocks in and out of the place of work, and that the contractor was paid according to the hours registered through this system of recording time and attendance. With respect to these cases, BFID subsequently received feedback stating that the beneficiaries' income was less than the Single Parents' Social Assistance maximum earnings allowed and that therefore, DSS would not be taking any action on these cases. When asked by NAO about the apparent incongruence between the official working hours and the payslip, DSS specified that it could not simply suspend these benefits as the official document regarding what income the beneficiaries had earned was in line with the law. It therefore could not assume that these beneficiaries were earning more income than the amounts indicated in their payslips.

2.3.11 However, a letter signed by the Attorney General, and sent to BFID on the 26 July 2013, reproduced in Box 3 below, clearly supports BFID's argument.

**Box 3: Proof Required to Stop Unemployment Benefits or Other Means Tested Benefits**

**Excerpt from Correspondence between Attorney General and BFID dated 26 July 2013**

I refer to our meeting of the 26<sup>th</sup> July 2013 and to previous legal advice given by this office on the subject in caption.

The level of proof required in order to form the basis of a decision to stop payments of unemployment or other means tested benefits is that level of proof which would convince a reasonable person that, on a balance of probabilities, the person concerned is actually in employment.

There is no requirement that this proof should be absolute for such purposes.

Hence in circumstances where there is proof that a person who receives unemployment or other means tested benefits is actually doing work for which payment is normally made, such evidence may reasonably form the basis of a decision to stop the unemployment or other means tested benefits even in the absence of a financial investigation of the employer.

2.3.12 With respect to case four, BFID forwarded to DSS the beneficiary's April, May and June 2012 payslips, as provided by the beneficiary herself. The April wage slip showed remuneration for 20 hours of work carried out during that month, while the May and June wage slips showed remuneration for 40 hours of work (carried out during each month) at the official rate of €3.95 per hour. BFID maintained, in a letter sent to DSS, that on their own merit, these payslips were indicative of the beneficiary's part-time employment with the cleaning company but that, in reality, they do not reflect the truth of her employment status. As shown in Table 4 above, BFID had worked out that this beneficiary was, in reality, working around 35 hours weekly during the period subject to investigation.

- 2.3.13 Furthermore, in this particular case, the outsourcing company, upon being asked by BFID about how payment is effected to the cleaning company, specified that the contract signed with the cleaning company stipulated a fixed monthly payment of €52,836 (excluding COLA for 2012) to the cleaning company covering the cleaning contract of the site, which includes both labour costs and materials. The contractor was obliged to employ a minimum of 35 full-time employees. In their letter to DSS, BFID specified that this worked out at an average of €1,509 per employee per month for labour and materials, an amount that amply covers a month's salary at minimum wage for a full-time employee plus expenses for the cleaning materials utilised. BFID re-affirmed its original recommendation to DSS and again concluded that the beneficiary was a full-time employee of the company, despite the incongruence with the relevant wage slips. The DSS feedback received for this case once again stated that there was insufficient evidence and that BFID's recommendation was not accepted.
- 2.3.14 Furthermore, the feedback sent by DSS in response to the previously referred to case seven was that the section was to conduct further investigations and that no overpayment was due as the claimant earned less than the maximum earnings referred to above. BFID reacted to this feedback in a letter written to DSS in which it stated that it could not understand how a person could earn less than LM20.66 per week (in 2008) when her employer had written that she worked at least 36 hours per week when specifying her weekly work schedule and hours of work. During the audit period, BFID was still expecting justification with respect to this DSS decision.
- 2.3.15 A year after these events, BFID and the Ministry concerned carried out an exercise wherein it resulted that this particular beneficiary was still working with the same contractor, albeit in a different government establishment. An email from the outsourced company also confirmed that the company paid the minimum established statutory rate. According to BFID's investigation, it resulted that there was a breach in the SSA provisions with respect to the Social Assistance, Children's Allowance and Energy Benefits since the beneficiary earned an income in excess of the threshold amount stipulated by the law. BFID therefore recommended that DSS suspend the beneficiary's Social Assistance and Energy Benefits with immediate effect and revise her Children's Allowance benefit. It also recommended that DSS should recoup any undue benefits that it had paid out to her. The DSS feedback was the following: *"SA to confirm with ETC & request FS3 & payslips; SA to inform CA."* Five months later, additional feedback stated that with respect to Social Assistance, *"no overpayment due as clt. [claimant] earns less than LM20.66 weekly"* and with respect to the Children's Allowance, *"claim live. No BFI report received."*
- 2.3.16 In sum, and following NAO's careful evaluation of all of the above, this Office considers the evidence put forward by BFID as thorough, rigorously detailed, executed in a methodologically sound manner and plausible in terms of its logical argumentation. On the other hand, in NAO's view, DSS counter-arguments are limited and overly-cautious, relying on the establishment of a level of proof that is unfeasible, impractical, and above all, unnecessary. For when one factors in the Attorney General's correspondence captured in Box 3 (albeit such advice having been given at a later date to DSS's original decisions on these seven cases), specifically with respect to the level of proof required, NAO is inclined to comment in BFID's favour, and therefore considers the evidence available as sufficient and reasonable proof for the cessation of such benefit payments.

## The Father Unknown

- 2.3.17 BFID set about investigating the 21 cases disputed over this issue, either following the receipt of anonymous telephone calls alleging that the beneficiary had different household living arrangements and addresses than they had erstwhile declared to DSS, or, BFID had uncovered their case during a separate inspection and investigated it thereafter. All the cases involve children who are listed as having an unknown father who was subsequently identified during the onsite inspections made by BFID, either by the mother, the father or another close relative of the child. DSS and BFID were mostly in agreement on all of the issues involved in the investigations with respect to living arrangements and addresses; however, the cases that have been further elaborated upon in this section of the report represent those where additional disputes did in fact surface and therefore prevent complete settlement. The principal dispute lies with respect to the way forward when, during a BFID investigation, it results that these beneficiaries would have deliberately concealed the identity of their children's father/s from the authorities while knowing about their responsibilities when submitting their social benefit application.
- 2.3.18 The crux of the matter disputed between DSS and BFID in relation to these cases is that each of the Departments held discussions with separate officials from the Attorney General's Office, and each Department was subsequently replied to in a different manner. There are three separate communications from the Attorney General's Office, dated 22 July 2009, 21 December 2012, and 26 July 2013. BFID based all its advice pertaining to this issue upon the first communication, the content of which was once again reconfirmed through the July 2013 correspondence. Indeed, the gist of the advice provided by the Attorney General's Office, by means of the July 2009 correspondence, is captured in Box 4.

### Box 4: Extract of Correspondence with Attorney General's Office dated 22 July 2009

#### Correspondence with Attorney General's Office dated 22 July 2009

In the circumstances, you are advised to insist with [name redacted] that she defends her right to maintenance for her children. I suggest that you give her a month's chance so that she files a case in front of the Family Court whereby [name redacted] is declared as the father of the children, otherwise the benefit should be stopped. Once he is declared as the legal father of the children on their respective Acts of Birth, she can proceed to defend their right to maintenance from their father.

- 2.3.19 Despite these clear instructions from the Attorney General's Office, the essence of feedback received from DSS in relation to these issues was not consistent with such advice. Under such circumstances, DSS would indicate to BFID that it was to either further discuss the implications of the above correspondence (with respect to maintenance) (reproduced in Box 4) with the Director General, or outrightly conclude that BFID's recommendation was not accepted as there was insufficient evidence. Therefore, DSS would not take any action in this regard. In some cases, BFID was referred to an email dated 11 August 2011, sent by DSS. In contrast to the above, this email, written by an official within the DSS Secretariat, outlined that BFID was to note that according to the Attorney General's office, when the father of a child is registered as unknown on the birth certificate, DSS cannot impose on the mother to register him as the father. Legally, the father is required to file a request in order to be recognised as such.
- 2.3.20 During the course of the performance audit, NAO asked DSS why it had provided BFID with the above feedback when a declaration as to the identity of the child's father was made by a close relative of the child. In response to this, DSS stated that such a

verbal statement could be easily defeated during an Umpire sitting if the person in question states that s/he had made that statement in circumstances producing fear and anxiety.

2.3.21 DSS also was, in the meantime, separately discussing this issue with the Attorney General's Office. The result of this interaction was that on the 21 December 2012, DSS received the letter reproduced in Box 5. This second letter from the Attorney General's Office was signed by a different official with respect to the July 2009 correspondence.

**Box 5: Extract of Correspondence with Attorney General's Office dated 21 December 2012**

**Correspondence with Attorney General's Office dated 21 December 2012**

I refer to the general query raised by the Social Security Department as to whether a benefit should be stopped in a case where the beneficiary who is a single mother states that she knows who the father of the child is or even mentions his name during an investigation carried out by the Benefit Fraud and Investigation Department.

It is to be pointed out that such a statement made by the mother is legally not enough to warrant the termination of the benefit. Benefit can only be stopped following a change of the status of the child in his act of birth from 'father unknown' to father known.

It is to be further noted that such a statement made by a single mother gives no guarantee that she is receiving maintenance from the alleged father. Discontinuing the benefit might lead to a situation where the said mother will be receiving no assistance whatsoever.

In terms of articles 86 and 86A of Chapter 16 of the Laws of Malta, acknowledgement of a child can be made by the mother herself or the person claiming to be the father by means of a judicial letter filed in court following which any person interested may, in the event the party does not agree to the acknowledgement, file judicial proceedings asking the court to order the registration of such acknowledgement.

There is at present no case law determining whether a government department falls under 'any person interested' or not. I don't think it will be a good option for the department to institute proceedings itself and in any case the said proceedings must still be preceded by a judicial letter as aforesaid.

What the department can do is to insist with the single mother in question to file the judicial letter as explained above. However if she does not do so, the law grants no right upon the department to stop granting her the benefit.

2.3.22 With reference to this letter, however, it is important to note that BFID was not insisting for benefits to be suspended in each investigated case. In most cases, BFID simply wanted to decrease the higher benefit payment received by beneficiaries who declared their child's father as unknown, to the same amount received by single mothers who declare their child's father.

2.3.23 A letter subsequently received by BFID, dated 26 July 2013 (Box 6 refers), and signed by the Attorney General, superseded the preceding correspondence sent by this same Office and dated 21 December 2012.

**Box 6: Extract of Correspondence with Attorney General's Office dated 26 July 2013**

**Correspondence with Attorney General's Office dated 26 July 2013**

Reference is made to advice given by this office on the 22<sup>nd</sup> July 2009 on the subject of the obligation of a single parent to do his or her best to ensure that the other parent of the child is recognized at law and pays maintenance if he or she has the means.

A different view appears to have been adopted by another lawyer from this office in an advice given on the 21<sup>st</sup> December 2012.

It is my opinion that the Department of Social Security is legally entitled to insist that a single parent claiming benefits in respect of a child should do his or her best to ensure that maintenance obligations are not evaded to the detriment of the Department simply through the inaction of that single parent.

In the circumstances I agree with the advice given on the 22<sup>nd</sup> July 2009 provided that any demands or time limits imposed on the single parent are reasonable.

- 2.3.24 As can be noted, this letter clarifies that BFID's original recommendations, which were based on the advice provided by the Attorney General's Office by virtue of the July 2009 correspondence, should have been heeded. NAO considers the message put forward by the Attorney General (in correspondence dated July 2013) as straightforward and unambiguous, and therefore, the issue of accordingly rectifying benefit payments should be agreed upon by DSS, in line with BFID's original recommendations. The only matter that remains subject to an element of discussion is the retrospective applicability of such advice, that is, whether the date of BFID's inspection is to be considered as the date of effect, or the reckoning of these far-reaching changes in circumstances is to be extended to an even earlier date.
- 2.3.25 As specified in the introduction to this section, certain cases also feature other issues pertaining to the living arrangements of the beneficiaries and their children. For instance, in one case, BFID concluded that, since at the beneficiary's address there were very limited items belonging to the beneficiary's eldest two children, the children did not live with the beneficiary. The feedback received by BFID, on 2 August 2011, pertaining to this case was that DSS was to investigate further. However, NAO noted that, as at mid 2013, BFID had not received any further information detailing progress registered with respect to this case.
- 2.3.26 Furthermore, with respect to another case, BFID carried out three onsite investigations: at the beneficiary's, her alleged partner's and her partner's parents' households. From this investigation, it resulted that there was a breach in the provisions of the SSA in relation to the Single Parents' Social Assistance and Children's Allowance benefit entitlements. This occurred because the beneficiary was receiving benefits based on a household composition of three persons – herself and her two sons, while one of her sons was in fact living with his grandmother. BFID confirmed this through the lack of clothing found for this child in the beneficiary's household, while simultaneously finding a large quantity of belongings and the child at his grandparents' apartment. In these cases, BFID recommended that DSS should consider taking the necessary action to revise this beneficiary's entitlements to the Single Parents' Social Assistance and Children's Allowance benefits as from the date of inspection by excluding the children who were not living with the mother.
- 2.3.27 DSS subsequently replied in the following manner, addressing only the main issue about maintenance, and omitting the living arrangement issue: *"pending ruling from AG's office in connection with maintenance."* After around three years, DSS told BFID that its recommendation regarding maintenance was not accepted, while the identified living arrangement issue also remained unaddressed.
- 2.3.28 In contrast with the preceding array of cases, this final case resulted in DSS's agreement with corrective action proposed by BFID, stating that, *"SA, CA & ENRG to suspend; DSS to discuss with DG [Director General] re AG's note mentioned in BFID inspectors' report icw [in connection with] maintenance."* However, from further checking conducted by NAO on the SABS database, it appears that DSS never suspended the beneficiary's Children's Allowance and Social Assistance benefit payments. On the other hand, DSS suspended the beneficiary's Energy Benefit for over a year and then granted it again. The reason for the above was that the beneficiary had changed her address the day after BFID's inspection, thereby officially regulating her position in line with benefits previously received. Despite the apparent rectification of the claimant's state of affairs, NAO maintains an element of reservation regarding the level of risk posed by this claimant. In summary, the case was found to be in breach but no savings



and overpayments were registered; however, it is still in dispute over the Attorney General's claim.

### The Blind Boxer

2.3.29 NAO carried out a detailed review on a case where the beneficiary in question was in receipt of the Pension for the Visually Impaired, as well as the Social Assistance benefit, the Energy benefit, and the Children's Allowance benefit. The SSA defines a visually impaired person as "...a person whose visual acuity has been certified by an ophthalmologist to be so low as to render such person unable to perform any work for which eyesight is essential." This definition is contextualised under Article 27 of the SSA, reproduced in Box 7 for ease of reference.

#### Box 7: Article 27, Social Security Act

**Article 27, Social Security Act**

Subject to the provisions of this Act, a visually impaired person who -

- (a) has attained the age of fourteen years; and
- (b) produces such certificates regarding his visual impairment, as the Director may, in particular cases, require; and
- (c) shows to the satisfaction of the Director that -
  - (i) he is a citizen of Malta and normally resides in Malta; and
  - (ii) his weekly means calculated in accordance with the provisions of Part V of the Second Schedule to this Act do not exceed the national minimum wage as is applicable to persons of eighteen years of age or over established by a National Standard order issued under the Employment and Industrial Relations Act;

shall be entitled to a Pension for the Visually Impaired under this Act in accordance with the provisions of sub-article (3).

2.3.30 Of concern to NAO was the fact that BFID had found evidence that this beneficiary had been a boxer of considerable local renown since 2007, while simultaneously receiving a total of €21,465 in relation to the Pension for the Visually Impaired. BFID also acquired flyers that advertised the tournaments in which the beneficiary had taken part. Moreover, further to an online investigation, BFID noted that the beneficiary owned a boxing club, which he advertised on the Facebook social networking site. Further data identified by BFID in this respect included photographic evidence of the claimant allegedly providing security-related services at a private establishment.

2.3.31 Documentary evidence supporting the above findings was forwarded to DSS through BFID's official investigative report, dated 19 October 2011. Feedback from DSS, received on 23 January 2012, was scant and inconclusive, simply stating that, "DSS to investigate further." Subsequent to this, BFID never received any other form of communication or feedback detailing DSS's further investigations and developments relating to the final outcome of this particular case.

2.3.32 NAO contacted DSS in this regard and was told that the Management Committee's decision was to refer the case to a medical board. The relevant medical board was convened on 22 May 2012, and stated the following, "...As attached leaflets show [reference is here presumably made to the documentary evidence provided by BFID], he is still actively involved in boxing and related work. Therefore the Board does not find applicant's claim justified."

2.3.33 After having analysed this case, NAO carried out a brief research exercise on SABS in order to establish what benefits this beneficiary was receiving, or otherwise. It transpired that the Pension for the Visually Impaired had been stopped in June 2012, with no overpayment whatsoever created. The Social Assistance and Energy Benefits were also stopped in May and August 2012, respectively. Once again, no overpayment was created in this regard. In light of the above, NAO finds great difficulty

in understanding DSS's enforcement measures, as the level of proof established in this case, could, in this Office's opinion, allow DSS to claw back its recovery of benefits paid to earlier dates than those in fact established. As a bare minimum, NAO opines that DSS could have in fact recovered social benefits paid since October 2011, which is the date of the BFID investigation; however, the evidence provided by BFID, and corroborated by the established medical board, could have sufficed for further recovery of undue benefits.

2.3.34 NAO also noted that the beneficiary applied for the Unemployment Assistance benefit in October 2012. From the review of the claimant's DSS file, it emerged that DSS was in fact aware of the previous breach in SSA. To this end, DSS undertook basic vetting of the claimant's state of affairs, vis-à-vis his request for Unemployment Assistance. These official checks, carried out through the Employment and Training Corporation confirmed his unemployed status, while checks carried out through the Commerce Department confirmed that the claimant was not in possession of any trade licence. It is in this context that DSS rightly awarded the Unemployment Assistance due; however, NAO is of the opinion that, given the evident high risk associated with this beneficiary, DSS should have flagged such developments to BFID, which, in turn, could have undertaken more in-depth vetting of the beneficiary.

### The Trader

2.3.35 A case that drew NAO's attention relates to a beneficiary who, in June 2008, was caught carrying out extensive international trading activity from his home in Gozo. The significance of this case is rendered evident in Table 6, which presents the long-term benefits received by the beneficiary as well as their corresponding amounts and periods, with the 2008 cut-off assuming importance in light of the findings that are to be discussed. From 1995 up to 2012, this beneficiary received a total of €76,671 in social benefit payments, which corresponded to a Disability Pension, Sickness Assistance, the Energy Benefit and the Supplementary Allowance.

**Table 6: Long-term Benefits Received by Beneficiary**

Social Security Benefit	Period from	Period to	Amount Received (€)		
			Pre 2008	Post 2008	Total
Disability Pension	07/01/1995	05/08/2011	47,487	13,663	61,150
Sickness Assistance	26/11/2004	16/07/2011	10,082	3,290	13,372
Energy Benefit	13/06/2007	11/02/2012	252	0	252
Supplementary Allowance	18/04/2011	07/04/2012	1,267	629	1,896
<b>Total</b>			<b>59,088</b>	<b>17,582</b>	<b>76,670</b>

2.3.36 Notwithstanding BFID's eventual investigation, DSS was already aware of the risk posed by this particular beneficiary, for in 2004, DSS obtained evidence indicating that the beneficiary had undeclared income from bank deposits in excess of LM10,000. These interest earnings on bank deposits clearly illustrated that the beneficiary's capital was blatantly in excess of the established means threshold. Upon becoming aware of such an anomalous situation, DSS rightly revoked the beneficiary's means tested Sickness Assistance benefit and created a corresponding overpayment dated 28 May 2004. However, a mere six months later, that is, on 27 November 2004, the beneficiary reapplied for Sickness Assistance, which was subsequently granted by DSS.

2.3.37 Despite DSS's temporary rectification of the Sickness Assistance benefit, the beneficiary was, during the same period, also in receipt of the Disability Pension. However, NAO noted that no suspension or overpayment were effected with respect to this benefit. This is of concern to NAO, given that the same evidence contemplated in assessing the Sickness Assistance case should have been sufficient in rendering the

beneficiary ineligible for the Disability Pension. In fact, Article 27 (c. ii) stipulates that in order to be eligible for such a benefit, the claimant's "...weekly means, calculated in accordance with the provisions of Part V of the Second Schedule, do not exceed the national minimum wage." Clearly, the LM10,000 reported as "undeclared income from bank deposits" by the DSS would have sufficed in establishing the claimant's ineligibility.

2.3.38 As indicated above, the case was eventually brought to BFID's attention through an anonymous report, and the corresponding investigation undertaken by this Department was concluded in July 2008. Following their investigation, BFID noted that this beneficiary was essentially purchasing and selling branded confectionary and beverages over the Internet. In effect, none of these products were intended for local consumption, and the beneficiary would simply arrange for the purchased stock to be shipped from one country to another without passing through Malta.

2.3.39 Evidence linking the person involved in this trading activity with the person claiming the benefits reproduced in Table 6 was established by BFID, clearly proving beyond any doubt that these two persons were one and the same. Personal details provided with respect to this trading activity, including his name, postal address, and other contact details, corresponded to the same details provided to DSS when submitting his social benefit application forms. Further to a site visit at the claimant's registered address, BFID provided DSS with evidence retrieved from the TCU sourced from the VAT Information Exchange System (VIES).

2.3.40 VIES refers to the intra-community acquisitions made from European Union (EU) countries. More specifically, when a foreign supplier sells goods to a supplier set up in another EU country (in this case, Malta), s/he must submit a Recapitulative Statement to his/her respective VAT department. The statement should include the value of the goods supplied and the customer's VAT number. VAT departments subsequently share this information with one another. It was here rendered evident to NAO that this beneficiary was not declaring his trading activity with the local authorities and that the Maltese VAT Department was acquiring data relating to the beneficiary from other EU VAT departments. It is in this context that the TCU gathered such data from the VAT Department, and forwarded the required information to BFID upon request.

2.3.41 The value of imports pegged with this beneficiary's TCU profile for the year 2005 was that of €187,470. BFID forwarded such evidence to DSS together with its customary investigation report on 10 July 2008. DSS, in turn, provided the following feedback to BFID on 15 July 2008, "*Area Office to send for claimant to provide Income Tax Returns and Profit & Loss Account since 2005.*" In light of this request, the claimant presented his VAT returns, which evidently did not tally with the official data provided to BFID through VIES. As a result of this incongruence, DSS decided that the claimant was not at fault, as his VAT declarations indicated no income. NAO fails to comprehend how DSS chose to disregard official data sourced through VIES, and instead rely on information provided directly by the claimant, which information bore the obvious risk of being heavily distorted due to the possibility of undeclared income.

2.3.42 No other feedback relating to this case was forwarded to BFID, except for the occasional status report indicating the case's pending status. During the first quarter of 2012, BFID decided to delve deeper into this case; however, in the interim period, that is, in July 2011, the beneficiary presented himself at a District Office declaring that he had been carrying out work as a Commission Agent since January 2011. Once the beneficiary declared his particular occupation, DSS created a corresponding

overpayment covering the period January 2011 up to July 2011. This, of course, reiterates the point made above, relating to DSS's disregard of VIES data submitted by BFID. Of particular concern to NAO is the fact that DSS only created an overpayment for the period stated by the beneficiary, and once again disregarded available evidence to the contrary, while also stating that this overpayment was created following a BFID investigation, which was clearly not the case. Furthermore, the overpayments created related only to the Sickness Assistance and Disability Pension benefits, which added up to €3,966.28.

2.3.43 As indicated in the preceding paragraph, BFID undertook further investigations with respect to this case during the first quarter of 2012, and to this end, the Department contacted the VAT Department, which provided it with an exhaustive reproduction of purchases made by the beneficiary during 2008, 2009 and 2010. Although the beneficiary had not declared such purchases when originally confronted by DSS, the VAT Department had this information at hand through VIES.

2.3.44 Table 7 presents the cumulative annual amounts related to overseas purchases made by the beneficiary, as forwarded from the VAT Department to BFID. The amounts presented in this table were all verified by NAO through the reconciliation of invoices against a document listing all transactions, with all documentation provided by the VAT Department. As is rendered evident, the level of trading activity engaged in by this beneficiary is more than substantial, with total purchases effected over the three year period, 2008 up to 2010, amounting to approximately €3,544,000.

**Table 7: Cumulative Annual Amounts in Overseas Purchases**

Year	Overseas Purchases (EUR)	Overseas Purchases (GBP)	Total Overseas Purchases (EUR)
2008	67,235	127,181	226,954
2009	672,176	170,536	863,595
2010	1,579,374	749,601	2,453,239
<b>Total</b>	<b>2,318,785</b>	<b>1,047,318</b>	<b>3,543,788</b>

**Notes:**

The conversion from GBP to EUR for the purposes of calculating the 'Total Overseas Purchases' effected in EUR was based on the corresponding annual average exchange rate, namely, 0.79628, 0.8909 and 0.8578 for 2008, 2009 and 2010, respectively.

2.3.45 The beneficiary was clearly unaware of the fact that such trading activity could be traced back to him through VIES, which is why he had stated that he had no idea where the TCU was acquiring such information when confronted by DSS District Office officials. In fact, the beneficiary signed a written declaration together with the DSS District Manager stating that, *"...he has no idea and cannot figure out how the TCU has submitted such information and from where the amount of goods stated came."*

2.3.46 Following this research exercise, BFID sent a letter, dated 28 March 2012, to DSS, which letter detailed and highlighted the sequence of events related to this case, starting from July 2008. This letter is reproduced in its entirety in Box 8. In its response to this letter, DSS sent its feedback to BFID on the same day, stating that, *"No action taken as VAT returns produced showed no income declared."* Therefore, despite the hard evidence provided by BFID indicating that the beneficiary had traded in excess of €3.5 million over a three-year period, DSS considered this to constitute insufficient evidence and instead chose to rely on documentation provided directly by the beneficiary, which essentially entailed his income tax declarations.

2.3.47 Further feedback sent by DSS included the creation of an overpayment for the Supplementary Allowance benefit for the period 2 July 2011 to 6 July 2012, which added up to €242.21. In the same feedback, DSS stated that this overpayment was

**BFID Correspondence to DSS regarding the Case of the Trader**

28<sup>th</sup> March, 2012  
 Director General (Social Security)

Re: [Beneficiary name and ID number redacted]

I would like to refer to the investigation report concerning [beneficiary name redacted], which was submitted to D.G. (Social Security) during week commencing 14<sup>th</sup> July 2008.

The DSS Benefit Fraud Board viewed this case on 15<sup>th</sup> July 2008 and the Board's decision on the day was "A/O [Area Office] to send for claimant to provide Income Tax Returns and Profit & Loss Account since 2005."

Case was seen again by the Board on 6<sup>th</sup> August 2009 with the outcome being; UA to investigate further.

On 6/10/2010 claimant signed a declaration at the [locality redacted] District Office, signed also by the District Manager, in which he stated and I quote; 'he has no idea and cannot figure out how the TCU has submitted such information and from where the amount of goods stated came.' Minute 104 in SHP file refers. Claimant also submitted a copy of VAT returns covering years 2008 to 2010 showing NIL returns. Eventually, in July 2011 [beneficiary name redacted] called at the [locality redacted] District Office to report that he had started work as a Commission Agent as from 1<sup>st</sup> January 2011. Red 105 in SHP file refers. DSS consequently took appropriate action to suspend SHP and SKA payments and recover overpayments in these same benefits from 1<sup>st</sup> January 2011.

BFID continued to investigate this case as it strongly believes that [beneficiary name redacted] has been working as a Commission Agent for several years and that once he felt the heat of an investigation, he decided to regularize his position with DSS and ETC.

From an updated TCU profile we have found that [beneficiary name redacted] has from 2005 to 2011 negotiated in goods, under the Nace Description of 'OTHER WHOLESALE' to the value of €2,857,781. A copy of the VIES Data, taken from the TCU profile, is attached to substantiate this information. (Doc. 1) I am also enclosing a copy of an e-mail correspondence between the undersigned and [official's name redacted] from the TCU, wherein [TCU official's name redacted] explains what the VIES Data signifies. (Doc.2) We have found no evidence from the TCU profile or other sources that he actually conducted business in the years 2006 and 2007.

The TCU profile also shows that the VAT number under which [beneficiary name redacted] is registered and actually operates with has been active since 01/01/2001.

BFID also contacted the VAT Department about this case. [official's name redacted], Director Operations (VAT) provided us with hard copies of invoices issued to and by [beneficiary name redacted], which relate back to 2008. I am enclosing some sample copies of these invoices for your perusal, (Docs.3A, 3B, 3C) however, the VAT Department has captured all these invoices on an excel sheet which I am also enclosing for your perusal. (Doc. 4) These invoices are classified into two categories; 'FROM' and 'TO'. The 'FROM' category shows those invoices that were issued by supplier companies to [beneficiary name redacted] while the 'TO' category shows those invoices issued by [beneficiary name redacted] to supplier companies.

This strong and undisputable evidence clearly shows that [beneficiary name redacted] has been regularly conducting business trading in wholesale transactions worldwide since 2008.

In view of the above, BFID recommends that this case be reviewed by the Management Committee and find claimant in breach of his SHP, SKA, SPA and ENRG entitlement as from 2008 and thereafter provide relative feedback to BFID.

DSS may wish to consider referring this case to the Police, Economic Crimes Unit, for necessary action from their end.

Regards,

[Official's name redacted]  
 Assistant Director  
 Benefit Fraud and Investigation Department

[Official's name redacted]  
 Director  
 (Benefit Fraud and Investigation)

being created following the receipt of the beneficiary's Profit and Loss Account, which inherently implied that the data forwarded by BFID was, once again, overlooked.

2.3.48 The Profit and Loss Account referred to in this case was reviewed by NAO. This Office noted that this statement corresponded to the calendar year 2010, whereby, the beneficiary stated that he had a turnover of €2,334,600, while incurring a cost of sales and other administrative expenses amounting to €2,324,697. As is immediately evident, the resultant profit amounts to €9,903, therefore accounting for a 0.42 per cent profit on turnover. The profit declared by the beneficiary exceeded the

established weekly means test equivalent to the National Minimum Weekly Wage, which, in 2010 was €152.29 (equivalent to €7,919.08 per annum).

2.3.49 NAO contacted DSS for its comments on this case, which did not differ from the above and are reproduced in Box 9 for ease of reference.

#### Box 9: Feedback from DSS regarding Declared Income

##### Feedback from DSS dated 12 September 2013

Recommendation of BFID was to suspend and to recover benefits from 2008. However, DSS recovered benefits wef [with effect from] 2010 given that after submission by claimant to [Locality] District Office, DSS requested declared incomes from IRD, which showed profits from trade for years 2010 and 2011.

Therefore, DSS acted accordingly as per official information provided by IRD, the official entity responsible for declarations of income.

2.3.50 NAO, during its review of this case, noted that, apart from receiving social security benefits, which in this Office's opinion, were clearly not due, the beneficiary was also axiomatically not paying his National Insurance contributions. The first clause of Article 10 of the SSA states that, *"Every self-employed or self-occupied person, unless otherwise exempted under the provisions of this Act, shall pay a contribution in accordance with the provisions of this Act."* The exemptions pegged with this article are referred to in the first clause of Article 12 of the same Act, reproduced in Box 10, and clearly do not apply to this beneficiary.

#### Box 10: Article 12, Social Security Act

##### Article 12, Social Security Act

A self-employed person who satisfies the Director that he is not self-occupied and whose yearly means calculated in accordance with the provisions of Part I of the Second Schedule to this Act, do not exceed -

- (i) €1,470 in the case of a married man who is wholly maintaining his wife and who is not herself self-occupied or in insurable employment; or
- (ii) €1,005 in the case of any other person;

shall be entitled, on making an application to the Director, to receive a certificate of low income valid for twelve months and while he holds such a certificate, and as long as there is no relevant change in circumstances, he shall be exempted from the payment of Class Two contributions.

2.3.51 Moreover, NAO noted that a non-compliance penalty was also due to DSS in this regard. The penalty amounts are listed in Article 116 of the SSA, presented in Box 11.

#### Box 11: Article 116, Social Security Act

##### Article 116, Social Security Act

If any employer or a self-employed or self-occupied person or a person in respect of whom the provisions of article 13 apply fails or neglects to pay within the prescribed time any Class One or Class Two contributions, as the case may be, which he is liable under this Act to pay, a further contribution equivalent to -

- (a) 10% of the total value of such unpaid contributions, in respect of contributions due under this Act at any time prior to the 3rd July, 1989; and
- (b) 5% of the total value of such unpaid contributions, being contributions due under this Act in respect of any period after the 2nd July, 1989, but prior to the 3rd January, 2000; and
- (c) 1% per month of the total value of such unpaid contributions being contributions due under this Act in respect of any period after the 2nd January, 2000; and
- (d) 1% per month of the total difference obtaining from the rate at which such contributions were paid and the applicable rate due at the time when such contributions were due in accordance with the provisions of this Act, in respect of any period after the 2nd January, 2000,

shall be due and payable to the Director.

## Levels of Proof in Flux

- 2.3.52 Another BFID case that drew NAO's attention was one that involved a beneficiary who was regularly advertising his business' services on a local magazine, while simultaneously in receipt of an Invalidity Pension and Sickness Assistance benefits. Apart from acquiring advertisement-based evidence highlighting the claimant's level of business activity, BFID also obtained copies of application forms that proved the beneficiary's participation in the annual International Fair of Malta through the Malta Fairs and Conventions Centre Limited in 2006 and 2007. The beneficiary's trade fair participation coincided with when this beneficiary started receiving social benefit payments relating to the Invalidity Pension and the Sickness Assistance benefits, that is, during the last quarter of 2006. Such evidence was forwarded to DSS by BFID on 12 July 2007.
- 2.3.53 When BFID provided DSS with the above evidence, thereby highlighting the irregularity of the claimant's position, the latter referred Department indicated that it would be carrying out further investigations to this effect. BFID subsequently noted that DSS had followed through with BFID's original recommendations, and suspended both benefits as well as having created corresponding overpayments for the period July 2007 to November 2007. However, during January 2008, DSS forwarded new feedback to BFID stating that, "*IP [Invalidity Pension] entitlement to be re-instated icw [in connection with] proof in IP file' and 'SKA [Sickness Assistance] to be re-instated & o/p [overpayment] to be cancelled.*"
- 2.3.54 The proof referred to in the preceding paragraph relates to a letter sent to DSS by the beneficiary's lawyer. This letter stated that the beneficiary was merely testing the market, hence the regular adverts on the popular local magazine. Furthermore, the beneficiary's lawyer stated that her client became unfit for work towards the end of 2005 and his business partner took over the business but continued to use the beneficiary's mobile number in adverts. Relying solely on the above-captured counter-arguments put forward by the claimant's lawyer, DSS reversed all of its decisions taken in this respect through the reinstatement of the earlier suspended benefits and the repayment of overpayments raised.
- 2.3.55 Given the balance of evidence provided to DSS, and the general absence of documentation detailing the basis of the decisions taken by the Department, NAO finds difficulty in understanding how DSS ruled in favour of the beneficiary. In NAO's view, what is immediately apparent are the double standards at play, with BFID expected to provide irrefutable evidence when presenting their case, while the beneficiary proceeds to simply present a letter submitted through his lawyer posing plausible yet far-fetched justifications regarding the case.
- 2.3.56 This case resurfaced following a letter published in *The Sunday Times of Malta* on 27 January 2008 alleging that the beneficiary had, during March 2007, carried out work (related to the above-referred adverts) in a property that the letter's author owned. The letter's contents revolved around the beneficiary's lack of after sales service following a mediocre job he had carried out. Of note is the fact that the person who wrote the letter mentioned the beneficiary by name, which inherently meant that he was actually carrying out the work, and not his 'previous business partner', as had been stated by him through his legal representative. Upon noting this published correspondence, BFID proceed to draw DSS's attention through a detailed letter dated 22 July 2010, making reference to earlier developments that characterised the case, namely, the previous presentation of evidence by BFID, and the subsequent lawyer's correspondence.

2.3.57 Upon assessing the fresh evidence provided by BFID, DSS referred the Invalidity Pension case to the Medical Panel, which found the beneficiary to be fit for work on 22 July 2011. The beneficiary also reapplied for the Sickness Assistance benefit, which application was rejected by DSS. Although NAO commends the fact that this beneficiary is no longer in receipt of such benefits, it is concerned with the fact that no overpayment was created in light of the findings made by BFID. Moreover, the evidence originally provided by BFID in substantiating their case for the creation of an overpayment was further strengthened following the emergence of a number of court cases against the beneficiary, which all provide irrefutable evidence of the said beneficiary's involvement in the aforementioned company whose advertisements were originally forwarded by BFID to DSS.

2.3.58 When NAO raised queries as to why DSS failed to establish any overpayments due with respect to the BFID investigations, it was provided with an unsatisfactory response, which stated as follows, *"Management Committee's decision was based on the fact that where a benefit is in payment due to medical reasons, claimant is referred to a new medical panel and in fact IP was withdrawn."*

2.3.59 In conclusion, NAO's review of the claimant's DSS file indicated that an application for Invalidity Pension had been submitted on 18 April 2013. However, the said application was rejected after due review by a medical panel.

#### Invalidity and Beyond

2.3.60 NAO found that BFID was not of DSS's opinion with regard to decisions taken on investigations that centred on a number of other Invalidity Pension beneficiaries. The ensuing paragraphs detail the work undertaken by BFID and the corresponding feedback obtained from DSS with respect to a number of such cases.

2.3.61 In a particular case, it emanated, from a BFID inspection, that the beneficiary was running a business, which he claimed was not rendering sufficient income. According to the SSA, if in receipt of the Invalidity Pension benefit, one is automatically expected not to carry out any work, irrespective of, and making no reference to, the profitability, or otherwise, of the said work. In fact, Article 26 captures this understanding as follows (Box 12 refers).

#### Box 12: Article 26, Social Security Act

##### Article 26, Social Security Act

(a) such person has been incapable, in accordance with this Act, for suitable full-time or regular part-time employment or self-occupation by reason of a serious disease or bodily or mental impairment (other than mild mental disorder or disturbance)...

2.3.62 DSS, in its feedback to BFID, stated that there was *"...not enough evidence to suspend benefits..."* and that *"...one inspection is not conclusive."* In effect, DSS did eventually stop the beneficiary's Invalidity Pension after 17 months; however, this was completely unrelated to BFID's investigation and merely coincidental, as the beneficiary had, by then, reached retirement age. Furthermore, no overpayment was created with respect to the beneficiary's Invalidity Pension. This beneficiary was, at the time of audit fieldwork, in receipt of the statutory retirement pension. In NAO's opinion, the evidence presented by BFID would have sufficed for the creation of an overpayment from the date of inspection as well as for the suspension of the benefit in question.

2.3.63 During its analysis, NAO found that this was also the case with another beneficiary who was receiving the Invalidity Pension benefit. Although BFID had found sufficient evidence to build a case, essentially witnessing the beneficiary working in his garage,



and dealing with a potential client simultaneous to the onsite inspection, DSS stated in its feedback that there was “...not enough evidence to suspend benefits.” NAO’s review of the corresponding BFID investigation report did not result in any specific shortcomings with respect to the compilation of evidence, particularly when one compares the report presented in this case with other similar reports that were in effect accepted by the Management Committee.

2.3.64 In a separate case, BFID identified a beneficiary in receipt of an Invalidity Pension carrying out masonry work, albeit later claiming that such services were being rendered on a voluntary basis. Although the medical statement submitted to DSS stated that the beneficiary could not walk for more than five minutes, inspectors found him working twice during the same week. The medical statement also declared that the beneficiary was “...not fit for any kind of employment.” A third-party declaration stating that all the works by the beneficiary were being carried out on a voluntary basis was also acquired. This declaration was, however, considered to be irrelevant to the case since the Invalidity Pension benefit was granted on the grounds that the beneficiary was physically unable to carry out any type of work, irrespective of whether the said work was performed against payment, or otherwise. Following a review of this investigation, DSS accepted BFID’s recommendation to suspend benefits with effect from the date of inspection.

2.3.65 However, following two other letters forwarded to DSS, which did not state anything different from the previous declaration, and provided no additional facts over and above that which was already known, DSS decided to revoke its decision and reinstate the suspended benefit payments. BFID reasserted its stance and responded to DSS’s decision to revoke its original decision by submitting correspondence, stating that, “... claimant had been certified as suffering from severe back pain and that he could only walk casually for five minutes or remain standing/sitting for about ten minutes before the onslaught of severe pain hit his back.” Therefore, the evidence at hand (which included photographic evidence of the beneficiary clearly carrying out work) was incongruent with the grounds established as to the claimant’s eligibility for Invalidity Pension.

2.3.66 DSS subsequently replied, stating that the decision to reinstate the benefits was to stand. NAO’s concerns relating to DSS’s management of this case gravitate on its decision to reverse its original ruling. DSS’s original decision bore consistency with the evidence made available by BFID, and given that the ‘fresh evidence’ did not provide DSS with any facts that were previously unknown, NAO must disagree with, and strongly object, to this Department’s revised ruling.

### The Fluidity of Residence

2.3.67 The cases highlighted in this sub-section relate to postal addresses provided on DSS application forms. Abuse of social benefits in this sense relates to the false declaration that the beneficiary is living in a certain residence. When a person declares that s/he lives in a certain address, s/he may be entitled to higher benefits. For instance, if a beneficiary lives with her partner, who is in employment, she would only be entitled to a certain level of social security benefit payments. However, if the beneficiary declares that she lives in another address and on her own, or with her children, she would notionally be entitled to higher financial benefit payments.

2.3.68 During its analysis of these cases, NAO came across one such case where the beneficiary, her partner and their daughter were living under the same roof even though they had declared that they were living in separate apartments within the

same building. An onsite inspection carried out by BFID unveiled the fact that one of these apartments was used for storage purposes only. Of relevance to the case was the fact that the beneficiary under investigation formed part of a popular local band who had also travelled abroad to promote her work. In this regard, BFID recommended that DSS suspend the beneficiary's Social Assistance and Children's Allowance benefits and create overpayments with effect from six months prior to the investigation (that is, when the beneficiary admitted to BFID that her partner was in fact living with her). In this regard, the Social Assistance overpayment was created on 9 August 2012, whereas the Children's Allowance overpayment was created on 22 October 2013. BFID had also, in its investigation report, requested DSS to investigate the level of income earned by the beneficiary so as to determine whether the Social Assistance and means tested Children's Allowance benefits were ever due to her. Upon further analysis of this beneficiary's DSS files, NAO noted that no such investigations were carried out. NAO is somewhat concerned by this outcome, as it is of the opinion that the beneficiary's level of income could have possibly been established had DSS, or BFID, undertaken the necessary checks with respect to the beneficiary's bank statements.

2.3.69 From another BFID case, dated 9 November 2009, it emerged that the beneficiary was not residing at the address declared in her DSS application forms. At the time of investigation, the beneficiary in concern, a then DSS employee out on parental leave, was receiving Children's Allowance, Supplementary Allowance and the Energy Benefit. The relevance of residence in this context relates to the fact that the referred benefits were calculated according to household composition and income, and therefore, the establishment of residence was fundamental in this respect.

2.3.70 BFID's investigation indicated that the property declared as the official residence of the said beneficiary was in fact vacant and up for sale. When confronted by the BFID inspectors, the beneficiary admitted that she was mostly residing at her parents' house instead of at the officially declared address. In fact, such testimony bore congruence with water and electricity meter readings obtained by BFID, which were 87 per cent lower in 2008 and 2009 than in 2006 and 2007, therefore confirming the limited use of the officially declared residence. Following the BFID report, DSS agreed to suspend all benefits, but did not create any overpayment corresponding to evidence provided by BFID with respect to 2008 and 2009. In NAO's view, the level of evidence put forward by BFID is reasonable and grounded in factual data confirmed by the beneficiary's testimony, and it is in this context that this Office considers DSS's failure to raise the relevant overpayment as a notable shortcoming.

2.3.71 In a similar case, following a BFID investigation concluded on 5 April 2011, the beneficiary in concern admitted that she kept her belongings in another apartment, at her partner's residence. Once the BFID inspectors were provided with such a statement by the beneficiary, they logically reasoned out that the beneficiary's residence was that where her belongings were to be found, and not the officially declared address as per DSS records. This, according to NAO, constitutes sufficient evidence to suspend the beneficiary's benefits and create overpayments accordingly. However, DSS disagreed with BFID's recommendation and stated that there was "*... not enough evidence to suspend benefits...*" and that "*...an inspection should have been effected also in the alleged address.*" NAO is of the opinion that since, in this case, the beneficiary admitted to not having any belongings in the declared address, the benefits in question should have been suspended and an overpayment should have been created with effect from the date of inspection, irrespective of the determination and identification of the actual address of residence, or otherwise.

2.3.72 With respect to another case, from the evidence arising out of the inspection at the beneficiary's declared address, BFID concluded, through a report submitted on 7 April 2011, that the beneficiary was living with her partner on a permanent basis. Evidence in relation to this case consisted of items found at the beneficiary's address, which she declared belonged to her partner. She also admitted, during the investigation, that since she had moved to this address around two months earlier, her partner had lived with her regularly. This state of affairs was in effect incongruent with the beneficiary's officially declared living arrangements, and BFID's investigation therefore illustrated that the beneficiary was breaching SSA provisions in relation to the Single Parents' Social Assistance and Children's Allowance entitlements. For this reason, BFID recommended that DSS consider suspending with immediate effect the entitlement for Single Parents' Social Assistance and recoup all payments made in the name of the beneficiary as from the date she and her partner started living in the declared address. From the CdB and SABS data available to BFID, it was concluded that this date was effectively around three months prior to the investigation, and therefore, the recovery of overpayments was to correspond with this period. Simultaneously, with effect from this same date, BFID recommended a revision of the Children's Allowance entitlement to reflect the actual circumstances of the beneficiary. BFID also noted that the beneficiary's partner had recognised the children as his own approximately two and a half years prior to the inspection, and therefore recommended that DSS was to revise the beneficiary's entitlement in light of the maintenance the father was due to provide, bearing in mind the retrospective applicability of declarations made.

2.3.73 BFID received the following feedback from DSS: *"SUP and CA to suspend; BFID recommendation re maintenance not accepted."* In its feedback relating to the Single Parents' Social Assistance, DSS stated that it would recover the overpayment as from the inspection date and not from the date recommended by BFID. The feedback regarding Children's Allowance also included that there was no overpayment as the claim for such a benefit was stopped three days before the BFID inspection, and subsequently restarted two days prior to this same inspection at a higher rate, as the claimant had had a third child. Hence, the means tested Children's Allowance benefit was never suspended and no revisions and overpayments with respect to the living arrangements and maintenance issues that BFID highlighted in its recommendations were made.

2.3.74 NAO analysed another case where it was admitted that the beneficiary was not living at the declared address. In the report presented by BFID on 8 February 2011, it was reported that the father of the beneficiary had stated that the beneficiary herself had moved out (of her officially declared residence) six months prior to the date of inspection. In its feedback to BFID, DSS stated that it accepted the recommendation, with the overpayment created dating back to the inspection date, and not six months prior to that. In essence, NAO is of the opinion that BFID could have strengthened its case had it also sought confirmation from the beneficiary herself. The fact that the beneficiary was not residing at the declared address is not contested in this respect; however, the beneficiary's father's recollection of the specific date of her relocation could have been further confirmed.

2.3.75 From an investigation into another particular case dated 21 April 2010, it emanated that the beneficiary's partner, who was employed on a full-time basis, was living with her and her parents. In its feedback, DSS indicated to BFID that it was going to ask its Social Worker to investigate the household composition of this case, which could have influenced the benefits received. The final outcome of this case is considered by NAO

to be rather ambiguous, as the Management Committee report simply stated that, “No further action is to be taken as instructed by [name redacted – Director, Benefits].” Hence, BFID was not advised as to the reasons why such a decision was taken by DSS, but merely informed that the Director, Benefits had decided that no further action was to be taken. NAO contacted DSS in order to obtain further information on this case, which was provided as follows, “The Management Committee did not endorse BFID recommendation in line with AG’s advice on such cases.” Although the Attorney General’s advice provides guidance to the Department regarding the rectification of situations where the father is unknown, this case is somewhat different. Allegations that the beneficiary’s partner was in fact the father to her child were made in this case too; however, BFID’s investigation also clearly established that the beneficiary’s partner, irrespective of his recognition as the child’s father, or otherwise, was in fact residing at the investigated address. Therefore, in NAO’s opinion, this finding alone should have been sufficient for the Management Committee to revise and suspend the beneficiary’s Social Assistance, Children’s Allowance and Energy Benefits.

2.3.76 During the focus groups facilitated by NAO, participants stated that it was possible for persons to change their Identity Card address to one that was not their parents’. If the persons in question are over eighteen years of age, do not live with their parents, and are unemployed, they become entitled to the Unemployment Assistance, rather than the basic Unemployment Benefit. Against this background, NAO noted that in a particular BFID case dated 8 February 2011, a site inspection unveiled that the beneficiary never lived at the declared address, which was his uncle’s house. As indicated in the preceding text, the beneficiary had simply changed the address declared on his Identity Card six months prior to BFID’s inspection for the purpose of upgrading his Unemployment Benefit to Unemployment Assistance.

#### Resistance is Worthwhile

2.3.77 NAO noted that in a certain case BFID attempted to carry out an onsite inspection on three different occasions. The first two attempts proved futile; however, during the third attempt, officers managed to talk to the beneficiary but were not granted access to the residence as the beneficiary stated that she was unavailable, communicating with the attending inspectors from behind a closed door. In this case, access to the residence was of fundamental importance, as the BFID inspectors were seeking to determine the household composition of the beneficiary, which if determined as different to that officially declared, would have resulted in the possible suspension and/or revision of Social Assistance and Children’s Allowance. To this end, BFID recommended to DSS for this beneficiary’s social benefit entitlements to be suspended due to lack of cooperation from the beneficiary. Finally, the Management Committee decided that BFID’s recommendation was not to be accepted.

2.3.78 Over and above BFID’s recommendation, NAO noted that, according to Article 113(4) of the SSA, denying inspectors access into premises that are subject to ongoing investigations constituted an offence, whereby the offender would be liable to a fine of not less than €232.94. The relevant extract from the SSA is reproduced in Box 13 for ease of reference.

## Article 113(4), Social Security Act

(4) If any person -

- (a) wilfully delays or obstructs an inspector in the exercise of any power under this article; or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this article; or
- (c) conceals or tries to conceal any person or prevents or tries to prevent any person from appearing before or being examined by an inspector,

shall on conviction, without prejudice to any higher punishment to which he may be liable under any other law, be liable to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94).

2.3.79 In view of the above, NAO contacted DSS in an attempt to elicit the manner by which such instances were addressed by this Department. In its reply, DSS stated that for the above-quoted fine to be imposed, a conviction has to be sourced through the Commissioner of Police, and it is only once a conviction has been secured that the Department can proceed with punitive action. DSS stated that no convictions had been effected in this respect.

2.3.80 NAO is therefore concerned about the fact that no action appears to have been taken with respect to the last case presented in this section of the report. Article 113 of the SSA clearly empowers DSS and BFID to invoke the applicable provisions in cases when beneficiaries are non-cooperative during inspection-related exercises, and therefore, failure to initiate necessary action in this respect is somewhat of a shortcoming.

## 2.4 Cases in Dispute: Management Issues

Whereas the review presented in the preceding section adopted a benefit-specific, or case-specific perspective, the ensuing analysis is more oriented towards management issues emerging with respect to BFID investigation reports submitted to the DSS Management Committee. The sub-categories of management issues dealt with in this regard are presented hereunder for ease of reference:

- a. A matter of time;
- b. Scant feedback from DSS;
- c. Conflicting feedback from DSS;
- d. Insufficient evidence from BFID; and
- e. Reapplying for benefits.

### A Matter of Time

2.4.1 A point of contention that featured with a certain element of regularity in the consideration of BFID reports, submitted to DSS for its consideration, related to the establishment of the precise date of suspension of benefits due, which quite logically, also determines the magnitude of possible overpayments arising. Such points of disagreement also emerged in cases where DSS and BFID were in agreement on whether the beneficiary was at fault, or otherwise, but not in agreement with regard to the specific date of reckoning.

- 2.4.2 In a particular case, it was noted that while the beneficiary's partner, and father to her daughter, was employed, she was receiving the Social Assistance benefit in full (between March 2004 and May 2012). Following an onsite investigation, it was determined that the beneficiary's partner was not, in fact, living with her. BFID recommended that DSS recoup the difference in the Social Assistance benefit for the period December 2009 and May 2012 (the period during which the beneficiary's daughter's father was in employment up to the date of suspension of benefits). Upon reviewing the case, DSS instructed the beneficiary to claim maintenance from her daughter's father. Subsequent to the relevant action taken by the beneficiary, DSS created an overpayment for a period of only two months, from the date when the beneficiary started claiming the due maintenance. In NAO's opinion, the action taken by DSS is justified since the beneficiary's partner was not living with her.
- 2.4.3 In a separate but similar case, the beneficiary's mother told BFID inspectors that her daughter had moved out nine months prior to the investigation. Although DSS accepted BFID's recommendation, the overpayment created only dated back to the inspection date and not nine months prior to that. In a similar case, the beneficiary's father had clearly stated that his daughter had moved out of the declared address six months prior to the inspection. Once again, DSS accepted BFID's recommendation, but the overpayment only dated back to the inspection date.
- 2.4.4 Another case examined by NAO relates to a person identified by BFID as not living in his declared address due to the lack of personal belongings found at such address. During the inspection, the beneficiary's sister had declared to two BFID inspectors that the beneficiary was living with his mother in another address and that he would be coming back from abroad on the inspection date. Based on such findings, BFID recommended that the beneficiary's Unemployment Assistance be suspended and also that any benefit payments made since the date his sister specified as him having moved to another place be recouped. DSS accepted the former recommendation but not the latter. It is important to reiterate the sensitivity and importance of this issue, given that the date of revision of the claimant's status determines the extent of overpayment payable to DSS.
- 2.4.5 A further case in dispute reviewed by this Office featured a BFID recommendation for DSS to suspend the concerned beneficiary's Unemployment Assistance, as it had found that the beneficiary was not living at his declared address. This was the outcome of an inspection carried out by BFID following a meeting with the claimant on one of his unemployment registration dates. On being confronted by the BFID inspectors, the claimant decided to lead them to his parents' residence, simultaneously confirming that, on his request, his mail was being redirected to the said residence. Indeed, the address he had declared to DSS was found to be fictitious. BFID advised that all the Unemployment Assistance paid to the claimant concerned within the period in which a mail redirection to his parents' house was in place be recouped. Of note is the fact that this period spanned over five years and the overpayment in concern amounted to approximately €18,000. DSS subsequently stopped the benefits being received by the claimant but provided no feedback regarding the overpayment indicated by BFID. BFID maintained that this case merited such feedback, as the overpayment should have been raised.
- 2.4.6 As is rendered amply evident by the above-described cases, the point of disagreement is easily identifiable and very specific. While DSS insisted that the date of suspension of benefits should tally with the date of actual inspection, BFID argued that evidence gathered during the investigation should be factored in when establishing how far back the Department should go in its enforcement efforts. In this context, BFID had

sent an email to DSS, dated 6 June 2011, specifying that according to it, clear verbal declarations made to two BFID Inspectors by the investigated beneficiary's relative, which declarations were further confirming the evidence found during the onsite inspection, leave no doubt on the authenticity of the declarations made. BFID asked DSS to justify in terms of the SSA provisions as to the reasons why it suspended the benefits in question as from the date of the investigation report rather than from the date recommended by BFID. BFID had, until the time of writing this report, not received a reply to this email.

### Scant Feedback from DSS

- 2.4.7 During the course of this audit, NAO noted that feedback received from DSS was generally lacking in detail and explanations relating to actions taken by DSS. The following case is a clear example of the scant level of feedback that BFID received from DSS following an investigation. From a BFID inspection it emanated that the beneficiary being investigated was not entitled to the Single Parents' Social Assistance benefit in full, as she and her children were living with her sister. BFID therefore recommended that the benefit payments relating to the Single Parents' Social Assistance (for the periods 25 September 2002 to 12 November 2002 and 30 March 2006 to date) be revised. However, DSS did not create any overpayment whatsoever and feedback from its end was lacking. In NAO's opinion, DSS should have provided BFID with more detailed feedback. The following is an audit trail of feedback provided to BFID in connection with this case (Box 14 refers).

#### Box 14: Sample DSS Feedback indicating Limited Information

Feedback received from DSS regarding a Single Parents' Social Assistance Case	
4 <sup>th</sup> July 2012	"Director decision re O/P [overpayment] is to stand." (SA)
26 <sup>th</sup> June 2012	"Director (Benefits) decision re O/P [overpayment] is to stand." (SUP)
9 <sup>th</sup> May 2012	"Case restarted as per instr [instructions] of [name redacted – Director, Benefits]. No o/p [overpayment] to be rec [recovered]." (SUP)
23 <sup>rd</sup> January 2012	"DSS to investigate further." (SUP, CA)

- 2.4.8 Of concern to NAO is the fact that this level of feedback was observed in most cases and such limited information represents the standard adhered to by DSS in its correspondence with BFID. DSS, of course, bears no legal obligation to provide more detailed feedback to BFID; however, such a practice would certainly contribute to the process' overall level of governance. Of further concern to NAO is the fact that DSS's limited information forwarded to BFID is not manifested solely in the context of the DSS-BFID working relationship, but pervasive throughout the Management Committee's operations. In fact, NAO found it impossible to understand the basis of certain decisions taken by this Committee given the absolute dearth of information maintained by DSS.
- 2.4.9 This complete absence in terms of documented records of decisions taken was confirmed in a meeting held with a member of the Management Committee, who confirmed that the only records that were kept by the Committee were brief one-liners, examples of which have already been reproduced at various instances throughout this report, and also captured in Box 14. The absence of any form of comprehensive records seriously undermines the appropriate and precise establishment of facts; however, in order to ensure that no effort was spared by the audit team in establishing

the relevant development of cases, further specific queries were put forward. Given the substantial caseload processed by the Management Committee, coupled with the fact that significant time had elapsed from when such cases were evaluated, feedback from the Committee's representatives was based on their ability to recall case details, which is hardly reliable or desirable, and often deemed to be insufficient by NAO.

- 2.4.10 A case in point was the feedback provided with respect to the case captured in Box 14. When NAO asked DSS to elaborate on why BFID's recommendation with respect to the earlier referenced case was not accepted, it was told that, "*The decision of the Management Committee was not to raise o/p [overpayment].*"

#### Conflicting Feedback from DSS

- 2.4.11 NAO noted that in a particular case, feedback forwarded to BFID from DSS was inconsistent. More specifically, after BFID had determined (by means of an investigation carried out on 3 February 2010) that a beneficiary was living together with her children in a different address from that provided to DSS. It should also be noted that BFID had obtained official evidence that the beneficiary had, five years prior to the investigation, provided the Department of Education with the address where she was alleged to have been living with her partner, that is, not the official address as declared to DSS. This latter referred Department forwarded the case to its Social Worker who carried out an inspection (the date of which could not be established as there was no documented record of such an inspection in the beneficiary's DSS file), who confirmed that the beneficiary was in fact living in a different address than that officially declared, which impacted upon the household composition, as the beneficiary was not living alone with her children, but with her partner too. DSS subsequently granted the beneficiary a six-month grace period to apply for benefits with her then partner, while no overpayment was created. In NAO's considered opinion, DSS should have created an overpayment dating back to the date of BFID's investigation and it should have strictly applied the relevant provisions of law, which to NAO's knowledge do not allow for any form of grace period.
- 2.4.12 Another case where feedback from DSS was inconsistent revolves around a beneficiary who was on parental leave and in receipt of the Social Assistance benefit. BFID undertook an investigation, submitting its report for the Management Committee's consideration on 23 June 2008. In turn, the Management Committee indicated on 24 June 2008, that DSS would be investigating the case in further detail. Similar feedback was once again forwarded to BFID by DSS on 9 January 2009 and 3 March 2009.
- 2.4.13 Of notable interest to NAO in this regard, was the fact that DSS had initially created an overpayment of €11,175.33 on 28 May 2008 (preceding BFID's receipt of an anonymous report detailing the beneficiary's alleged fraud, which was in fact received on 10 June 2008), based on the premise that the beneficiary had exceeded the means tested capital threshold. However, pivotal to this case, was the intervention of a DSS Assistant Director, who issued instructions for the cancellation of the aforementioned overpayment. This overpayment cancellation was based on the fact that receipts, addressed to the beneficiary's father, indicating expenses incurred with respect to the refurbishing of the beneficiary's residence, were in the DSS Assistant Director's opinion, to be considered in the means test. The receipts corresponded to various works undertaken at this particular property, including the installation of a lift. In effect, the overpayment of €11,175.33 previously raised was cancelled after only €30 were settled on this balance.



- 2.4.14 Doubts as to whether the correct course of action was taken by DSS emerged through NAO's review of the relevant DSS file. Minutes noted in the beneficiary's file indicated that the aforementioned DSS Assistant Director acted outside of the Management Committee's recommendations according to the DSS Director, Benefits. Such a claim could not be verified by NAO as no documentation relating to the Management Committee's final decision with respect to this case was retrieved from the DSS and BFID files.
- 2.4.15 BFID strongly objected to the overpayment's cancellation, stating that the receipts presented, as also verified by NAO, were in fact addressed to another person, who happened to be the beneficiary's father. Furthermore, the lift in concern served the entire block of apartments within which the beneficiary resided, and therefore, the lift was not intended for her personal use, but was a communal expense incurred by the father, that is, the alleged owner of the complex. When BFID contested this action, the Management Committee stated that it could not reverse its decision as it believed that the *"decision taken by Assistant Director on 05.06.08 (min 34) was taken in good faith"*. NAO believes that the reason afforded to BFID was insufficient and irregular, and that DSS should have provided BFID with the relevant supporting documentation illustrating how BFID had interpreted the case wrongly on the basis of fact, and not faith. Such evidence was never forthcoming, and it is in this regard that NAO asked DSS to further explain the reasoning behind this decision. DSS's response to NAO's request essentially entailed a reiteration of the above-quoted feedback submitted to BFID, that is, once again stating that the decision was taken in good faith.
- 2.4.16 NAO analysed another case where a decision taken by DSS was conflicting in light of other complementary action it took. BFID had obtained clear and undisputable evidence that a beneficiary under investigation was, at the time, receiving other payments from her ex-husband, the amounts corresponding to which exceeded the threshold stipulated in the SSA for the receipt of Social Assistance and Children's Allowance in full. This evidence consisted of deposited cheques, addressed to the beneficiary, and acquired from a local bank. DSS, at first, accepted BFID's recommendation to suspend the benefits; however, it asked BFID to furnish it with supplementary documentation, which BFID was unable to obtain.
- 2.4.17 Notwithstanding this, when NAO checked the beneficiary's account on SABS it found that an overpayment of €14,627 in relation to the Social Assistance benefit had been created on 6 May 2013, the sum of which was to be recovered at a rate of five per cent of possible future social benefit payments made to the beneficiary. The reason given on SABS was the following, *"Benefiċċju mhux dovut lilek"*.<sup>4</sup> Although NAO considers the general direction of action taken by DSS to have been correct, this Office also noted two shortcomings. First, according to records made available to NAO, DSS did not inform BFID with respect to progress registered, and second, yet more important, the enforcement percentage adopted was clearly erroneous, and should have been that of at least 10 per cent.
- 2.4.18 Furthermore, at the time of writing, there did not seem to be an overpayment created in relation to the Children's Allowance benefit, even though DSS adjusted the rate from the means tested €22.23 per week, to the fixed rate of €6.73 per week. However, after NAO notified DSS about this inaccuracy, the situation was rectified, although the overpayment recovery rate was once again set at a rate of five per cent, which is incorrect. In its communication with NAO, DSS had stated that, *"...In this particular case it seems that claimant did not provide the FS3s as requested and therefore o/p*

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<sup>4</sup> Benefit is not due.

[overpayment] was not raised. Section has now been instructed to proceed with o/p [overpayment] and to proceed in all other cases accordingly”.

- 2.4.19 When subjected to a more detailed review, NAO noted a number of concerning factors related to this case. The first refers to the fact that although the inspection took place in November 2011, and DSS agreed with BFID’s recommendation in January 2012, it only created the overpayment related to the Social Assistance benefit in May 2013, even though it had suspended such benefit payments in February 2012. The fifteen-month delay between the suspension of benefits up to the raising of the relevant overpayment, which could and should have been effected simultaneously, inherently implies that DSS will take unnecessarily longer to recoup the overpayment. Furthermore, and as previously stated, DSS will be recovering this overpayment at an erroneous rate of five per cent of any benefit that the beneficiary is yet to receive; even though the facts of the case clearly indicate that the claimant was at fault, and the overpayment was in no way due to administrative error.
- 2.4.20 Finally, NAO noted that DSS does not seem to have informed BFID on actions taken on its part with regard to this case. The latest documentation found on file (at BFID) related to feedback from DSS dating back to 26 June 2012, and stating, “SA to continue investigating further.” Given the large amount of cases that BFID encounters, it is DSS’s responsibility to advise BFID on any action taken from its end.
- 2.4.21 Another particular case that was investigated by BFID during November 2011 was triggered by a letter sent to the Housing Authority on 20 October 2011. This correspondence is reproduced in Box 15, and essentially served as a declaration regarding the living arrangements of three persons, that is, a man, woman, and their child.<sup>5</sup> The man and woman implicated as a result of this correspondence were in receipt of social security benefit payments, hence the BFID investigation that followed.

**Box 15: Letter sent to the Housing Authority**

Letter sent to the Housing Authority dated 20 October 2011<sup>5</sup>

[Beneficiary’s Address]  
20 ta’ Ottubru 2011

Lic-Chairperson  
Awtorita’ tad-Djar  
Floriana

Sinjur,

**DWAR [Case Reference]**

Nixtieq ngharrfek li jien noqghod fl-indirizz t’hawn fuq, mal-partner tieghi [name redacted], u t-tifel taghna [name redacted].

Il-karta tal-identita’ qeghda fuq l-indirizz ta [address redacted], ghax minn hemm jien niehu r-relief mid-Dipartiment tas-Sigurta’ Socjali. (Bhalissa qed niehu relief ta €405 kull xahar). Jekk inbiddel l-indirizz tal-Karta tal-Identita’ fuq il-flat ta’ [address redacted], dan ir-relief jieqaf kollu.

Jien dan li ghedtilkom hawn fuq, lesta li niehu affidavit fuqu, ghax din hija l-verita’.

Nitolbok tilqa’ din id-dikjarazzjoni tieghi.

Grazzi hafna.

Ghoddni tieghek

[Name redacted – Female Beneficiary]

<sup>5</sup> The reproduction of this letter omits details in relation to names and addresses of the persons concerned.

- 2.4.22 As can be clearly seen in the case of the letter reproduced in Box 15, this letter's author essentially declared that even though her ID card address was different from that of her partner, she lived with the said partner at his place of residence and could not change her ID card address to reflect her true circumstances due to the resulting inevitability of the suspension of her social security benefit payments. She had declared in this letter that she was ready to write an affidavit declaring the above. In light of this evidence, BFID recommended the suspension, with effect from the date of the letter sent to the Housing Authority, of both beneficiaries' benefits, that is, Unemployment Assistance, Supplementary Allowance and Energy Benefit in the case of the male beneficiary, and Social Assistance as well as Children's Allowance in the case of the female beneficiary.
- 2.4.23 The rationale employed by BFID in arriving at the recommendation to suspend benefits in the case of the male beneficiary related to the fact that he was not forming a household of his own, but was living with his partner and son in his declared address. On the other hand, the rationale behind BFID's decision to suspend the female beneficiary's benefits related to the fact that she was not residing at her officially declared address and that the household composition was different to that declared.
- 2.4.24 When DSS received the reports relating to this investigation (two separate reports were submitted respectively corresponding to the male and female beneficiaries involved in this case), it accepted BFID's recommendations with respect to the female beneficiary. In fact, NAO undertook further checks on SABS with respect to this case and confirmed that the female beneficiary had her social assistance benefit suspended immediately following the investigation, and an overpayment with respect to her Social Assistance and Children's Allowance benefits were also created.
- 2.4.25 On the other hand, DSS sent the following feedback to BFID in relation to the case of the male beneficiary, *"Recommendation not accepted; not to suspend, UA to inform claimant to apply with partner."* The beneficiary's Supplementary Allowance was suspended but the overpayment period declared was a month and a half shorter than the one recommended by BFID, which was established as per Housing Authority correspondence.
- 2.4.26 BFID further defended their case by submitting written protestations to DSS declaring that this particular set of circumstances exhibited *"clear evidence of blatant and intentional abuse of the Social Security System"*. BFID referred DSS to another case involving separated spouses bearing similar circumstances to this case. In that situation, DSS had decided to suspend the male beneficiary's entitlement, as he was not residing at his declared address, and proceeded to suspend the woman's benefit entitlement, as she was not forming a household of her own. Furthermore, DSS had created overpayments for both spouses. BFID explained that it had been in agreement with this decision and considered such developments as positively contributing to the fight against benefit fraud.
- 2.4.27 Following this decision, the BFID Director had sent DSS an email in order to establish guidelines for operational procedures between the two entities when similar cases were encountered. Director General DSS emailed a reply to the BFID Director (the salient parts corresponding to which have been reproduced in Box 16), highlighting the *raison d'être* for the decision taken by DSS in this case and stated that such was the current position and guidelines that DSS was adopting in similar cases; BFID had since

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<sup>6</sup> An English language version of the letter reproduced in Box 15 is provided in Appendix C.

then adopted and acted on these guidelines when faced with similar case scenarios. Following the review of case-specific details, NAO is of a similar opinion to BFID, in the sense that two cases bearing near identical circumstances were addressed in conflicting manners, even after DSS's attention was drawn to precedents established by the Department itself and correspondence documenting such procedures.

#### Box 16: DSS Email regarding Cases of Conflicting Decisions

##### DSS Email dated 5 April 2010

The issue you have raised was something which has been extensively discussed in our management meetings. It was decided that in terms of Article 106 of the SS Act, on every claim must essentially be considered and either allowed or disallowed.

In the case you mention in your email below it is pretty evident that both applicants were awarded a benefit on what can be termed 'false pretences'. They had individually declared they were forming a family (living in a household) of their own (i.e. living separately).

Your Directorate's investigations provide evidence to contradict these claims and therefore, legally speaking, both claims should have been disallowed. We had decided that to be legally correct (even in the event of an appeal) we had to stop both claims. However, we had also decided that we should inform these persons to apply as a household. Obviously one question that has come up as a consequence of similar cases is that once the couple apply together should we award the benefit solely from the date of the new date of claim or should we consider that the entitlement accruing from the first Saturday of the new date of claim (or PA 101 if this is submitted)?

In essence when two persons on social assistance decide to live together as a couple and come to report this change in their circumstance the benefit of one is stopped whilst the rate of the other is revised to reflect the change in circumstance. The Benefit Fraud Board of this Division is of the opinion that the couple had ample time to report their change in circumstance and if they failed to do so intentionally then they should not be given the benefit of the doubt and treated as a case where a change in circumstance has been reported (as indicated earlier in this paragraph).

It is also important to underline that we did have an appeal case very similar to the one you mentioned and in fact the Umpire during the submissions and hearing of the case, had expressed his opinion that the Division should strive to help the beneficiary to receive the benefit that would reflect their status as on the date of investigation.

We do our best to ensure that persons that are dependent upon social assistance receive their dues (especially where minors are concerned), and if there is no blatant abuse we do effectively try to give more weight to their social position rather than their mistakes! However, having said this, we strongly feel we cannot condone the practice of the blatant non-disclosure of important changes in circumstances (if in essence there was a change in circumstance in the first place) so that persons can benefit from higher benefit rates knowing that there will be no penalties at all if they are caught in the act of trying to abuse the system! This is the basis of our current position on the matter.

2.4.28 The Management Committee's feedback subsequent to this letter was a scant "*Decision is to stand*", without providing any reason as to why this was so. It was also indicated that the male beneficiary subsequently applied for the Unemployment Assistance benefit with his partner. This dry feedback is of concern to this Office, especially when considering that BFID had written a letter specifically requesting an explanation and simultaneously outlining similar cases that had been handled differently by DSS. During its analysis of these cases, NAO noted that DSS had applied the same reasoning to a similar case, discussed in the following paragraph.

2.4.29 BFID investigated the abovementioned case following a report that the beneficiary was receiving the Unemployment Assistance and Supplementary Allowance benefits while living with his ex-wife, also a beneficiary. From BFID's inspections, carried out at the beneficiary's address and at his ex-wife's declared residence wherein they met her father, it was concluded that the ex-wife lived with the beneficiary; this was also verbally declared by her. In this investigation, the ex-wife's father had also verbally

declared this, in congruence with the finding that there were very limited personal belongings potentially belonging to her at her declared residence. BFID recommended the suspension of the beneficiary's Unemployment Assistance and the recovery of the overpayment from the date specified by the wife's father as having been the one on which she had left the address declared to DSS. DSS sent the following curt feedback: "*Recommendation not accepted.*" When asked by BFID why this was the case, DSS replied that the beneficiary was not in breach since he was found at his declared address and it was his partner, who was found at his address, who was in breach. Therefore, all her benefits had been suspended as from the declared date.

#### Insufficient Evidence Presented by BFID

2.4.30 NAO analysed cases where evidence obtained by BFID was in this Office's opinion considered insufficient; however, these occurrences were sparing. In a particular case, it was noted that BFID had contacted a political party's social club in relation to a beneficiary suspected of working within this club. The Department was told that the beneficiary in question was listed as the friend of the owner who runs this social club; the beneficiary acts as a substitute when he is needed. BFID recommended for his Unemployment and Children's Allowance benefits to be revised; however, NAO agrees with DSS, in that it opines that evidence collected in this regard was not deemed to be sufficient to suspend or review the benefits in question. Further data would be required in such a case, such as income receivable.

2.4.31 In a separate case, NAO noted that after BFID officials carried out an investigation at the beneficiary's declared address, they determined that the address provided to DSS was not the one he was actually living in. Although NAO, in principle, concurs with BFID on this matter, it is of the opinion that BFID should have carried out additional investigative work to complement the visit to the declared address. The person actually living in this address stated that the beneficiary lives there and was temporarily staying with his mother as she had fallen down a flight of stairs. As had been done in other cases, the BFID officials should have paid a visit to the residence of the beneficiary's mother, since she was also in receipt of social security benefits and doubts as to the situation of both beneficiaries could have been more fully addressed and verified. This would have added strength to BFID's report to DSS, the latter having rejected the former's recommendation on grounds that there was "*not enough evidence to suspend benefits.*"

2.4.32 In another case, it transpired, from a BFID investigation, that the beneficiary and her children were not living in the declared address. Besides onsite visits carried out by BFID inspectors establishing the beneficiary's place of residence, BFID obtained clear evidence that the children were attending a school in a locality that was different from the residential address declared. The evidence referred to in this context was the contact address provided by the beneficiary to the various schools attended by her children. In this case, the address provided to the schools did not match the officially declared address of the beneficiary. DSS accepted BFID's recommendation and wrote to BFID stating that it intended to stop the three benefits in question (Supplementary Allowance, Children's Allowance and Energy Benefit) and recoup overpayments from the date of investigation. In this case, NAO agrees with DSS since the fact that the children were attending a school in a different locality than that declared in the residential address does not sufficiently prove that the beneficiary was living in a different address to that declared. Hence, the overpayment dating back to the date of inspection is, in NAO's considered opinion, justified.

2.4.33 A further case deemed by NAO to be lacking sufficient evidence related to a former convict who had declared that he was residing at a certain address. The actual owner

of the building in question signed a declaration on 20 March 2012, which stated that the beneficiary in question never lived in the building, which he used solely for storage purposes and was not habitable. Furthermore, BFID acquired data relating to the periods corresponding to the beneficiary's time spent in prison, during which periods he should not have been receiving social benefits. In the interim period between when BFID concluded its investigation (20 March 2012) and the Management Committee's decision on the case (27 April 2012), the proprietor's wife called at a District Office accompanied by the beneficiary, stating that the latter lived in a habitable room in a building she and her husband used for storage purposes. The proprietor's wife somewhat ambiguously stated that she and her husband had been providing food and shelter to the beneficiary since June 2005, which is in clear contradiction to what her husband had declared. Notwithstanding the aforementioned developments, in response to this BFID investigation, DSS created overpayments in relation to the periods of time spent in prison. BFID disputed this case as it had forwarded documentation to DSS that evidenced that the official address provided to DSS by the beneficiary was not correct. However, given the fact that DSS had evidence to the contrary, or at least, had evidence that introduced an element of doubt into BFID's interpretation of facts, NAO is of the opinion that further investigations should have been carried out. Such investigations should have included a thorough inspection of the building, which would therefore have provided irrefutable, first-hand evidence as to whether the beneficiary was in fact residing in what was declared to be a storage area.

### Reapplying for Benefits

2.4.34 BFID alluded to the fact that following an investigation by its Department and subsequent effected overpayments, certain beneficiaries were reapplying for the same benefits that they were previously found in breach of. NAO corroborated and substantiated this finding through its rigorous examination of personal files. In fact, NAO noted that in a particular case, DSS had accepted BFID's recommendation of April 2011 to revoke benefits payable with respect to Social Assistance and Supplementary Allowance, given that the beneficiary's partner had admitted to BFID inspectors that she had been living with the beneficiary for approximately 10 years. However, this beneficiary reapplied for the same benefits a month later, declaring that he was now living alone. This fresh declaration rendered the prospective beneficiary eligible for the Social Assistance and Supplementary Allowance benefits, even though BFID had just investigated this case and found the beneficiary to be in breach of the SSA since he was living with his partner. Feedback provided to BFID by DSS during May 2012 consisted of the following:

*"This case has been reviewed from our end and a fresh PA 101 was duly filled in by claimant on 16/05/11. It seems that claimant is living alone as he always did."*

2.4.35 NAO is concerned that although it emanated from an investigation that this beneficiary was in breach of the SSA, DSS reinstated the benefit payments after this person sent in a new application denoting that his living arrangements were different from those noted when he was investigated. This Office's concern in this respect gravitated towards the fact that all evidence available to DSS should have logically instigated an element of doubt as to the integrity of the details presented in this application.

## 2.5 Legal Issues: Ultra Vires

2.5.1 In the course of its audit work, duly carried out with respect to BFID's desk-based investigation exercises and DSS's wider enforcement efforts (amply elaborated upon in Chapters 3 and 4 of this Report), NAO noted a number of instances when

DSS exercised administrative discretion that was not specifically in line with the provisions of the SSA or established by virtue of any subsidiary legislation or legal notice. Although NAO deemed such an exercise as tangential to the main objectives of this audit, this Office nonetheless sought to establish the ultra vires nature of such administrative discretion, and to review DSS's internal policies in this respect, which while not rendering such discretion legal, would notionally provide a uniform standard applicable to all. In view of the above, it is pertinent to state that the below instances where DSS action was deemed to be ultra vires by NAO do not provide an exhaustive and comprehensive account of such instances, yet are merely indicative of the nature of this Office's concern.

- 2.5.2 The emergence of the aforementioned administrative discretion generally related to the development of additional criteria utilised in the capital and means test, and infringement of the SSA provisions relating to enforcement. Such a state of affairs was also brought to the fore in the review carried out by an MEEF appointed consultant, who emphasised that it is the consistent application of a system of social benefits that ensures equity and fairness within society, and that such principles are safeguarded through relevant legislation.
- 2.5.3 It is this deviation from the safeguards provided by law that has drawn NAO's attention, particularly manifested in terms of administrative discretion derived by DSS from its further interpretation of the SSA, that is, an interpretation that effectively extends beyond the actual provisions specifically contemplated by law. Such ultra vires measures include vehicle-related valuations, the reckoning of summer residences, the establishment of worth of investments, deductions from capital assets as a result of home improvements, as well as the irregular application of overpayment rates.
- 2.5.4 With respect to vehicles, the SSA does not explicitly address the issue of how vehicles are to be valued in terms of the establishment of a person's capital and means. Furthermore, the SSA does not specify the number of vehicles, if any, that are to be excluded from such a calculation. NAO's review of DSS's internal documentation indicates that a vehicle utilised for personal use is not to be factored into such calculations. Furthermore, should a beneficiary be married, then the number of vehicles that are not to be factored into the establishment of capital increases to two, provided that the second vehicle is registered to the respective spouse. In addition to concerns relating to the number of vehicles that are to be reckoned in terms of deductions to capital, another emerging concern in this respect relates to the actual valuation of those vehicles not excluded from the assessment. With respect to the latter aspect, the value of the most recently purchased vehicle was, as a matter of procedure, to be ignored, and an estimate of the value of the other vehicle/s was to be requested. However, NAO was provided with contrasting feedback by DSS in this regard, which is of concern to this Office. Whereas one DSS Director specified that with effect from 2010, the claim for vehicle valuation was to be sourced from an insurance company, a 2010 memo forwarded to this Office as part of the internal documentation mentioned above stated that the valuation of the vehicle was to be requested from a car dealer. In this context, NAO deems the valuation provided by the former source to be a more accurate and transparent mechanism for the establishment of vehicle value.
- 2.5.5 In determining a prospective beneficiary's means for the purpose of determining eligibility to various social benefits, the SSA makes specific reference to the exclusion of one's house of residence. While the SSA contemplates the exclusion of the house of residence, DSS has interpreted this provision as possibly encompassing more than one particular house of residence. Therefore, from a practical perspective, prospective

beneficiaries who are in possession of a house of residence and a second property, deemed to be their summer residence, will not have such assets considered in terms of the capital and means test.

- 2.5.6 When asked by NAO to elaborate on how this possession is considered by DSS, the Department did not forward a document specifically addressing this issue; however a minute indicated as part of an attachment sent to this Office stated the following: *“Red 41A does not pronounce itself on a Summer Residence however for SA [Social Assistance] purposes, I am informed that it is not taken into consideration. The reasoning behind it, is that it is an asset used for the sole benefit of claimants and out of which no income is being derived.”* NAO notes that extending this argument to its logical limit would imply that as a matter of procedure, DSS would not factor in any property owned by prospective beneficiaries as long as such properties were used for the sole benefit of claimants and out of which no income was being derived.
- 2.5.7 The valuation of investments is once again not regulated by the SSA but by DSS internal policy. The above-mentioned memo states that investments are to be valued as at the date of claim for benefits and that such valuation is to be retained for as long as the beneficiary remains entitled to such benefits, irrespective of the current market price at which such investments are actually valued. In addition, new investments purchased while in receipt of benefits are valued at their purchase price, once again not factoring in any possible variations thereto resulting from shifts in their current value. NAO notes that the method of valuing investments bears a direct and fundamental effect on determining their real financial value, which would subsequently provide DSS with a more precise profile of the beneficiaries’ financial status.
- 2.5.8 In relation to the case considered in clauses 2.4.12 to 2.4.15, deductions were made with respect to the beneficiary’s capital in relation to expenses incurred for home improvements. Such deductions are not provided for in the SSA, and this system, whereby a prospective beneficiary’s capital is revised following the presentation of receipts documenting expenses incurred with respect to home improvements, emanates from internally agreed upon DSS decisions. Further to the ultra vires nature of such deductions, NAO’s review of documentation provided by DSS identified an important fact in relation to the above-quoted case. Here, DSS stated that only VAT receipts that were specifically addressed to the person in concern, that is, the prospective beneficiary, were to be accepted in this respect. It is immediately apparent that this criterion was not met with respect to the aforementioned case, and was the source of much subsequent contestation that arose between BFID and DSS.
- 2.5.9 Finally, NAO noted that overpayment rates were, at times, being applied in a manner that was inconsistent with the provisions of the SSA. The SSA clearly states that when a beneficiary is responsible for overpayments arising in his or her regard, then the minimum rate of overpayment that is to be established should not be lower than 10 per cent. This provision was not adhered to in a number of instances; however, a more detailed and elaborate analysis of this specific deviation from the provisions established by the SSA is delved into in Chapter 4.

## 2.6 Conclusions

- 2.6.1 Commencing on a positive note, NAO reckons that the vast majority of BFID investigations referred to the DSS Management Committee from 2010 up to 2012 were in fact agreed upon, with BFID’s proposed corrective action fully accepted by DSS. Undoubtedly, this reflects well on the quality of BFID’s investigative work, which



in the majority of cases submitted to DSS, results in the identification of fraudulent behaviour and error that is eventually directly addressed through DSS.

- 2.6.2 Notwithstanding the above-described general agreement with respect to casework undertaken by BFID and referred to the Management Committee, this by no means should detract from the importance attributed to cases where BFID and DSS fail to reach agreement. It is such cases where the fundamentally important principles of fairness, equity, transparency, accountability and social justice are put to the test, and it is in this context that NAO's ensuing audit conclusions must be framed.
- 2.6.3 The implications of cases where reports of alleged abuse of social benefits remain inappropriately addressed extend far beyond the persons directly involved. Reputation risk in this context is significant, and failure to appropriately enforce corrective sanctions when such cases have been reported and investigated further compounds this risk. Inaction by the responsible Department, as experienced by the alleged perpetrators of benefit fraud and the person or persons reporting such fraud, clearly sends the wrong message. Weak enforcement mechanisms coupled with an inexistent system of fines or penalties further exacerbates the drain of resources away from those whom it should truly be serving; however, more on this aspect is elaborated upon in the final chapter of this report.
- 2.6.4 From a macro perspective of analysis, immediately apparent is the dichotomous divergence of views with respect to the administration of social policy adopted by DSS and BFID. The two are markedly different, with DSS seeking to act as a social safety net for those in need, preferring to err on the side of caution and only revoking social benefits when absolute certainty of irregularity is attained. On the other hand, BFID seeks to ensure that undue benefits are not granted, often relying on the presentation of evidence that is logical and factual, yet not necessarily irrefutable, thereby providing a reasonable level of confidence as to the irregularity of the case, or otherwise. In NAO's opinion, this pivotal difference in socio-political alignment is generally the source of consequent disagreement that persistently featured in the cases reviewed.
- 2.6.5 NAO considers the difficulties arising due to the divergent alignments adopted by DSS and BFID as a situation not subject to any straightforward solution. In effect, this matter is not about establishing which department is right and which department is wrong in terms of its adopted alignment, but more a matter of establishing the ideal balance. Yet, NAO considers the attainment of such balance as impossible under the present organisational design and structure. This Office has reservations as to the objectivity with which the DSS Management Committee operates, with DSS assuming legal responsibility for the granting of social benefits, and subsequently revoking them too, thereby giving rise to potential conflicts of interest. This set-up undermines the desired system of institutional checks and balances that should instead be a principal characteristic through which fairness in the adjudication of cases may be ascertained.
- 2.6.6 Proceeding to a more case-specific level of analysis, NAO's review of BFID investigations in dispute due to divergent views on beneficiary employment earnings, exemplifies previously made comments relating to flaws in the system of institutional checks and balances through which such cases are regulated. This Office considers the evidence put forward by BFID as thorough, rigorously detailed, executed in a methodologically sound manner and plausible in terms of its logical argumentation. On the other hand, in NAO's view, DSS counter-arguments are limited and overly cautious, relying on the establishment of a level of proof that is unfeasible, impractical, and above all, unnecessary. Moreover, when one factors in the Attorney General's correspondence,

specifically with respect to the level of proof required to suspend unemployment or other means tested benefits, NAO is inclined to comment in BFID's favour, and therefore considers the evidence available as sufficient and reasonable proof for the cessation of such benefit payments.

- 2.6.7 Given the final, undoubtedly clear and decisive advice provided by the Attorney General with respect to the cases relating to the unknown father issue, NAO's stance in this regard is axiomatic. This Office considers the message put forward by the Attorney General in relation to this issue (correspondence dated July 2013) as straightforward and unambiguous, and therefore, the matter of accordingly rectifying benefit payments should be agreed upon by DSS, in line with BFID's original recommendations. The only matter that remains subject to an element of discussion is the retrospective applicability of such advice, that is, whether the date of BFID's inspection is to be considered as the date of effect, or the reckoning of these far-reaching changes in circumstances is to be extended to an even earlier date.
- 2.6.8 NAO is concerned about the approach taken by DSS with regard to cases where clear and indisputable evidence was forwarded to it and action recommended by BFID was not heeded. These cases refer to the visually impaired boxer, the trader who was caught effecting transactions that ran into millions of Euro, and the trade fair participant. In these cases, DSS was provided with evidence that put it in a position of strength with regard to the immediate suspension of benefits as well as the creation of overpayments; however, despite the robustness of evidence provided, action taken by DSS in this respect was deemed grossly inadequate by this Office. Moreover, in two of these cases, benefits were only suspended following an examination by DSS's medical panel, which given the obvious nature of evidence presented, raises doubts on the necessity of the said medical panels in such blatant cases. Furthermore, the granting of other means tested benefits to such high risk beneficiaries, with only basic vetting carried out, following rigorously detailed irregularities identified by means of BFID investigations, is in NAO's opinion, not conducive to good governance and certainly does not constitute appropriate risk management.
- 2.6.9 From NAO's overall review of cases in dispute between BFID and DSS, the case raising most concern is that of the beneficiary who was in receipt of a Disability Pension and Sickness Assistance benefits in excess of €76,000, while simultaneously undertaking trade activity in excess of €3,500,000. Of most pressing concern to NAO are the multiple and systematic failures exhibited by DSS in addressing the case at hand, once again severely exacerbated by the fact that hard evidence indicating the irregularity of the beneficiary's state of affairs was at the Department's disposal, or attention thereto clearly drawn by BFID. Specific reference is hereby made to the beneficiary's undeclared income from bank deposits and VIES data. Complementing DSS's above-described systematic failures in detecting irregularities, are its equally inept and ineffective enforcement measures, with benefit suspensions applied on the basis of beneficiary declarations and not on objective evidence, while actual enforcement, that is, the recovery of benefits not due, is limited.
- 2.6.10 Of similarly significant concern to NAO is the case of the beneficiary who was regularly advertising his business' services on a local magazine, as well as participating in the International Fair of Malta, while simultaneously being in receipt of the Invalidity Pension and Sickness Assistance benefits. Here, NAO's specific attention is drawn to the fact that DSS opted to disregard proof acquired by BFID and rely solely on a letter written by the beneficiary's lawyer, which in this Office's opinion, is not at all commendable. In fact, such action reflects DSS's failure to uniformly apply requirements establishing the desired level of proof when deciding upon particular

cases. Such action is tantamount to the adoption of double standards, whereby BFID are tasked with providing irrefutable evidence (which at times, may also be deemed insufficient), while the beneficiary must simply have his or her lawyer draft a letter of complaint for all to be rescinded.

- 2.6.11 The cases relating to investigations undertaken by BFID with respect to Invalidity Pension, detailed in clauses 2.3.60 through 2.3.66, illustrate another critical Management Committee shortcoming, that is, its inconsistency. Inconsistency in this context assumes a twofold understanding. First, NAO noted that the Management Committee exhibited inconsistency in adjudicating essentially similar cases, by means of example, deeming evidence insufficient in one case, and the same type of evidence sufficient in another similar case. The Management Committee's failure to appropriately document the rationale employed in its decision-making process may have adversely contributed to the lack of consistency exhibited in this regard.
- 2.6.12 Second, and of greater concern to NAO, are instances of inconsistency manifested within a specific case, and not as a result of cross-case comparisons. Here, specific reference is made to the case of the beneficiary in receipt of an Invalidity Pension found carrying out masonry work. This Office's concerns relating to DSS's management of this case gravitate on its decision to reverse its original ruling. DSS's original decision bore consistency with the evidence made available by BFID, and given that the 'fresh evidence' did not provide DSS with any facts that were previously unknown, NAO must disagree with, and strongly object, to this Department's revised ruling.
- 2.6.13 NAO does not agree with the decisions taken by DSS with respect to the cases whose respective BFID investigations centred on the incongruence of residence-related data. This Office opines that enough evidence was presented to the DSS Management Committee for the suspension of benefits and the creation of corresponding overpayments. Furthermore, feedback forwarded to BFID did not provide a suitably detailed explanation clearly indicating why DSS took certain decisions, and when NAO endeavoured to uncover why this was so, it too was not provided with a satisfactory and congruent response. In truth, the desired and expected further clarifications could never have been forthcoming, as the very poor record-keeping practices employed by the Management Committee render it impossible to establish the decision-making process with any sense of precision. No other case better exemplifies the above-stated than that presented in clause 2.3.75, where the Management Committee's report to BFID rather ambiguously states that, "*No further action is to be taken as instructed by [Director, Benefits].*" It is in this context that NAO's concern intensifies, for BFID was not advised as to the reasons why such a decision was taken by DSS, but merely informed that the Director, Benefits had decided that no further action was to be taken, hardly imparting the sense of accountability, transparency and good governance that one would expect from a Committee of such importance.
- 2.6.14 NAO is concerned about cases where DSS accepts, or partially accepts, BFID's recommendation and subsequently cannot deliver on its action due to a social security reapplication by the beneficiary following the investigation, indicating a change in circumstances which brings the beneficiary in line with the SSA, as in the case highlighted in clause 2.3.28. While such cases of reapplication for social benefits may be perfectly in line with established requirements, NAO opines that the level of risk posed by such beneficiaries may be higher than the norm, particularly in view of previously identified irregularities. Therefore, NAO's concern in this respect gravitated towards the fact that no system flagging such claimants as potentially high risk serves to draw DSS's and BFID's attention to such applications.

- 2.6.15 Similar concerns emerge with respect to the case elaborated upon in clauses 2.3.77 through 2.3.80. Under the premise that the onus of establishing eligibility to social benefits lies with the beneficiaries, NAO considers failure to cooperate with assigned inspectors as highly unacceptable. In NAO's opinion, the beneficiary's blatant disregard and intentional disruption of BFID's efforts at establishing the facts of the case, followed by the DSS's failure to take the required corrective action, sends the wrong message insofar as DSS enforcement mechanisms are concerned.
- 2.6.16 One source of recurring difficulty and persistent disagreement in the evaluation of BFID investigation cases by the DSS Management Committee is easily identifiable and very specific. Particularly, DSS insisted that the date of suspension of benefits should tally with the date of actual inspection, while BFID argued that evidence gathered during the investigation should be factored in when establishing how far back the Department should go in its enforcement efforts. In this context, BFID had sent an email to DSS, dated 6 June 2011, clearly delineating its position on the matter, while simultaneously asking DSS to explain its understanding of such circumstances in light of the provisions of the SSA. NAO considers attempts at establishing a general framework specifying how such cases are to be commonly understood as the correct way forward in ascertaining consistency in interpretation and evaluation of similar cases. It is unfortunate that until the time of writing this report, BFID had not yet received a reply to this email.
- 2.6.17 Of concern to NAO is the fact that this level of feedback was observed in most cases and such limited information represents the standard adhered to by DSS in its correspondence with BFID. DSS, of course, bears no legal obligation to provide more detailed feedback to BFID; however, such a practice would certainly contribute to the process' overall level of governance. Of further concern to NAO is the fact that DSS's limited information forwarded to BFID is not manifested solely in the context of the DSS-BFID working relationship, but is pervasive throughout the Management Committee's operations. In fact, NAO found it impossible to understand the basis of certain decisions taken by this Committee given the absolute dearth of information maintained by DSS.
- 2.6.18 This issue, regarding DSS's scant level of feedback, was also identified as a matter of key importance in an internal review (MEEF consultant's report, 2011a) carried out prior to this audit. The report aptly captures the essence of difficulties arising in this respect, *"...a primary reason that leads to disagreement is that the DSS Review Board [Management Committee] when providing its feedback to BFID with regard to the conclusion of a particular investigation report is very dry...In none of the files which were reviewed during the course of this assessment did the DSS Review, in determining its position on an investigation file, establish detailed reasons why it was rejecting a particular recommendation...this assessment does not agree with the Director General of the DSS that because the law places responsibility and accountability with regard to benefit and claims-related decisions on the incumbent of the position, this exempts the said incumbent from articulating his decisions and providing the appropriate documentation with regard to a said decision"* (p.3).
- 2.6.19 It is in this above context that NAO's concerns regarding conflicting feedback provided by DSS in response to similar BFID investigations are best understood. In NAO's opinion, DSS's failure to appropriately document cases reviewed by the Management Committee further increases the possibility of cases bearing notable incongruence. Of greater concern to NAO were cases where DSS's adjudication of BFID investigations was not according to the provisions established by the SSA, or any other internal

procedural documents brought to the attention of this Office. The ultra vires nature of certain instances of DSS's interpretation, particularly in view of the inconsistency of application to similar cases, undoubtedly gives rise to concerns about the fairness and equity of such adjudication. Examples to this effect include the provision of a grace period in the case quoted in clause 2.4.11, which is to NAO's knowledge, not a facility contemplated by the SSA provisions.

2.6.20 Similarly ultra vires were the deductions carried out with respect to the lift-related expenditure case elaborated upon in clauses 2.4.12 through 2.4.15. Yet, in NAO's view, this case bears more than a subtle element of maladministration, with feedback provided by DSS as to why it could not reverse its decision deemed to be suspect by this Office. NAO is of the considered opinion that the reason afforded to BFID was insufficient and irregular (as quoted from Management Committee feedback, *"decision taken by Assistant Director on 05.06.08 was taken in good faith"*), and that DSS should have provided BFID with the relevant supporting documentation illustrating how BFID had wrongly interpreted the case on the basis of fact and not faith.

2.6.21 In addition to the above case, NAO bears notable concern regarding the various other instances where administrative discretion had been exercised by DSS, thereby acting outside of the parameters established by the SSA. It is not the administrative discretion per se that NAO takes issue with, but the manner by which such discretion is applied, at times bearing clear incongruence with what NAO considers to be the spirit of the law. This Office perceives action taken outside of the confines established by law, particularly in terms of the above clarification, as constituting a risk with respect to the application of the principles of fairness, equity and transparency, thereby undermining the essence of its legitimacy.

2.6.22 Internal procedures may partially mitigate this lacuna, yet NAO maintains reservations in this respect, as internally agreed upon measures must invariably reflect the spirit of the law. The MEEF consultant's report (2011b, p. 8) aptly captures this disparity when stating that, *"...Government should question the rationale behind such criteria and whether the boundaries they set are such that allow for the dissipation of income that should be channelled towards those persons who truly [are] in dire need and are at the margins of society as against persons and households [that] are free riding on society. The review finds it difficult to consider a person who owns more than one vehicle and/or property beyond his or her residential property to qualify for non contributory social benefits."*

2.6.23 Although bearing indirect relevance to this context, NAO also identified notable shortcomings relating to DSS's enforcement function. Testament to this is the case discussed in clauses 2.4.16 through 2.4.20. Inefficiencies with respect to the establishment of overpayments due are ultimately to DSS's detriment, as it will take the Department longer to recover the undue benefit. Once again, aside from the erroneously applied 5 per cent enforcement rate instead of the legally stipulated 10 per cent, the 15-month delay in raising the relevant overpayment is, in NAO's view, unacceptable, particularly when considering the fact that all necessary information to proceed was at hand.

2.6.24 Moreover, NAO's review of BFID and DSS files relating to this specific case indicated the significant failure in interdepartmental communication and coordination. NAO firmly believes that the onus of informing BFID with respect to action taken following the Management Committee's evaluation rests squarely on DSS, as it is understandably impossible for BFID to keep track of all actions taken by DSS in relation

to its investigations, unless otherwise notified. This understanding assumes particular relevance, and it is here that NAO's concern gravitates, in cases where BFID was informed that DSS was to investigate further, yet the outcome of such investigations, if any, were never communicated to BFID by DSS.

2.6.25 Aside from the above-quoted case, exhibiting DSS's poor enforcement practices, the crux of conflicting feedback provided by this Department culminates in the case featuring a written declaration submitted by the beneficiary to the Housing Authority. In this case, the beneficiary naively stated that she could not change her ID card address to reflect her true circumstances due to the resulting inevitability of the suspension of her social security benefit payments. In its attempts at convincing the Management Committee to revise its original decision on the case, BFID referred DSS to another similar case that was adjudicated otherwise, as well as to internal correspondence documenting the manner in which such cases were to be addressed, notably different to what in fact happened in the above-quoted circumstance. Failure to apply the same measure in a uniform and consistent manner is a shortcoming of a certain magnitude when this is attributable to lack of awareness by the Management Committee; however, the severity of this case is far greater, as lack of awareness cannot be claimed under such circumstances, as DSS was, in fact, made fully aware of this case's incongruence. It is in this context that NAO's concern further intensifies, as DSS's action was intentional and therefore, incongruent, with subsequent BFID protestations met with a curt "*Decision is to stand.*"

2.6.26 Finally, although NAO commends the work carried out by BFID, the Office noted that more investigative work could have been carried out in certain cases in order to establish the required level of evidence. These cases are few and far between, and are duly represented in clauses 2.4.30 through 2.4.33. Carrying out further onsite inspections would have strengthened BFID's case, as well as that of DSS at Umpire sittings.

## 2.7 Recommendations

2.7.1 NAO's primary recommendation essentially entails a review of the institutional framework presently in effect and responsible for the assessment of BFID investigations. This Office recommends that the function, presently assigned to the DSS Management Committee, be supplemented with an autonomous body independent of DSS and BFID. Such a board would only be resorted to in cases where BFID and the DSS Management Committee fail to reach agreement on the adjudication of particular cases, as exemplified by the various cases elaborated upon in this Chapter. All other cases, characterised by agreement between BFID and DSS, would come to their natural conclusion at Management Committee level.

2.7.2 Such a recommendation largely mirrors that put forward by MEEF's appointed consultant (2011b, p.7), who proceeds to state that, "*The constitution of the board could include officials from the Ministry of Finance, the Attorney General's Office and a representative of a social agency.*" Redesigning the BFID investigation report review process in this manner would axiomatically necessitate corresponding legal amendment to the SSA. NAO is of the considered opinion that such a set-up would achieve the desired level of institutional checks and balances that should be a principal characteristic through which fairness in the adjudication of cases may be ascertained.

2.7.3 Shifting towards a more case-specific perspective, NAO urges DSS to follow the clear Attorney General's advice with respect to the unknown father and the determination of earnings issues. It is NAO's considered opinion that such advice is reliable and takes

into account the myriad concerns involved with respect to such issues. Furthermore, NAO fully supports the balance of probabilities argument outlined by the Attorney General and urges DSS to adopt such a mindset when adjudicating cases brought to the Management Committee's attention. Indeed, NAO believes that if, on a balance of probabilities, available evidence is sufficient, DSS should take action accordingly. It would then be up to the beneficiary who allegedly defrauded DSS to prove his/her innocence during an Umpire sitting.

- 2.7.4 During the feedback process related to this audit, DSS stated that such cases have to be mainly seen from a social and legal perspective. DSS further commented that it would be easy for the Management Committee to accept all of BFID's recommendations, but one has to note that decisions can be appealed to the Umpire and finally to the Court of Appeal and it is DSS that has to defend the cases. NAO reiterates its position with regard to its concerns on this issue. This Office believes that DSS's argument, taken to its logical extreme, would imply that hardly any benefits would be suspended as establishing an excessively onerous level of proof, over and above that required by the balance of probabilities argument, would logically result in inaction.
- 2.7.5 Aside from the suspension of benefits, the balance of probabilities argument also applies with respect to the date of creation of the relevant overpayments. The establishment of retrospective applicability has been a source of great discord and conflict between DSS and BFID, with the latter attempting to claw back undue benefits on the basis of evidence that is logical and factual, yet not necessarily irrefutable, while the former seeking absolute certainty. Such irreconcilable perspectives serve as the ideal example of the type and nature of cases that should be addressed to the above-referenced autonomous board.
- 2.7.6 NAO recommends that DSS should exercise professional scepticism in deciding what evidence to rely on, particularly in cases where the evidence put forward by BFID, and that put forward by the beneficiary are in clear conflict. Here, specific reference is made to the cases where clear and indisputable evidence was put forward by BFID for the Management Committee's consideration, namely, the case of the visually impaired boxer, the trader who was caught effecting transactions that ran into millions of Euro, and the trade fair participant. Given the magnitude of benefit fraud identified in these three cases, and the particular idiosyncrasies that aggravate circumstances, NAO recommends that DSS spares no effort at establishing enforcement mechanisms and procedures to recover undue benefits.
- 2.7.7 NAO implores the Ministry for the Family and Social Solidarity to implement all recommendations put forward in this audit report in order to ensure that DSS's management of the trade fair participant case is not repeated. This Office is appalled at the Management Committee's decision, readily attending to a letter of complaint drafted by the beneficiary's lawyer without any form of critical assessment, while outrightly disregarding irrefutable evidence provided by BFID. The proposed measure relating to the establishment of an independent board will, in NAO's view, mitigate the reoccurrence of such circumstances, and therefore positively contribute to the overall quality assurance and control with regard to BFID cases adjudicated by the Management Committee. This should ultimately contribute to the much-required amelioration of good governance practices so direly lacking in the above-quoted case.
- 2.7.8 Other cases that elicited similar levels of concern from NAO included that featuring means and capital resources test deductions with respect to lift-related expenditure and the beneficiary who naively declared her irregular state of affairs in a letter

submitted to the Housing Authority. Here, NAO reiterates its previous recommendation whereby such cases provide prime examples of the utility that is to be assumed by this Office's proposed board. It is envisaged that the additional layer of review provided by this board should address two principal objectives; that is, aid in curbing instances of maladministration, and facilitate congruence and consistency in the decision-making process.

- 2.7.9 This latter-referred objective should serve to rectify one of the major shortcomings identified during the course of this audit, that is, the DSS Management Committee's highly inadequate level of documentation and record-keeping. NAO strongly recommends that such a situation is attended to with immediate effect. First and foremost in this respect should be the compilation of appropriately detailed minutes recording the Committee's decision-making process, specifically outlining the reasoning employed in the adjudication process. Other basic details, which have been conspicuously absent include a list of members of the Committee present at that specific meeting, identification of who was chairing the meeting, as well as formal endorsement of the said minutes by the Committee members, thereby signifying agreement thereto.
- 2.7.10 Should this critical lacuna be addressed, NAO is of the considered opinion that the consistency exhibited in terms of decisions taken by the Committee may be further refined. Detailed documentation should aid in the enhancement of DSS's institutional knowledge; however, potential gains in this respect can only be actualised if the Management Committee actively attends to such a matter. It is in this context that NAO considers the importance of appropriate documentation, and therefore recommends corrective action in this respect, critically necessary as a fundamental precursor to the Committee's recourse to 'case law'. Furthermore, and in line with this latter-referred issue of 'case law', NAO recommends that the Management Committee seeks to adopt such an approach in its deliberations.
- 2.7.11 Communication and coordination between DSS and BFID are vitally important aspects of Government's concerted efforts at addressing social benefit fraud. It is against this backdrop, and the numerous cases presented in this Chapter exhibiting failure to appropriately communicate and coordinate matters, that NAO recommends focused improvements directed at the feedback DSS provides to BFID. Mirroring the already proposed enhancements to the system by which the Management Committee maintains its records, NAO recommends that such progress be capitalised upon and utilised in the provision of feedback to BFID. Such feedback should notionally contribute towards BFID's refinement of its investigative processes; yet more importantly, the provision of adequately detailed responses by DSS to BFID's equally detailed reports should ensure that case-related arguments and facts are contradicted by relevant counter-arguments, thereby ascertaining the desired standard of accountability and transparency that has been erstwhile lacking.
- 2.7.12 Intricately linked to the more structured information flow between DSS and BFID is the establishment of a flagging system that serves to identify high-risk beneficiaries, hereby understood as beneficiaries who were previously identified by BFID or DSS as having defrauded the latter Department. NAO recommends the setting up of such a system, which should conceptually mitigate the risk posed by such beneficiaries. This Office considers the practical application of this risk mitigation strategy to involve DSS informing BFID of any new benefit applications, revisions, or other changes made by beneficiaries that were flagged as a result of earlier instances of detected benefit fraud. Information exchanged in this respect would aid BFID to focus its resources on those beneficiaries deemed as constituting the greatest risk.



- 2.7.13 With respect to cases characterised by an intentional lack of cooperation by beneficiaries, NAO recommends that DSS and BFID should exercise the provisions stipulated by the SSA under Article 113(4), that is, apply fines to individuals who fail to cooperate with inspectors. This Article clearly contemplates that such fines should be applied, “...without prejudice to any higher punishment...”, including possible suspensions and overpayments of social benefits. However, NAO considers it appropriate to establish a more detailed mechanism indicating the magnitude of applicable fines, which could possibly be pegged to the extent of overpayments due, as established by DSS.
- 2.7.14 In NAO’s opinion, the revised system of record-keeping that should be instituted by the Management Committee, together with improvements intended in terms of feedback provided by DSS to BFID, should serve in the analysis of commonalities and trends relating to adjudicated cases. Such patterns serve as a valuable tool in the identification of points of contention experienced between BFID and DSS. NAO’s recommendation in this respect essentially entails the establishment of guidelines designed to address commonly recurring difficulties, akin to the attempts made by BFID in the case presented in clause 2.4.6. In addition, during the feedback process in relation to this audit, BFID stated that further efforts in this respect had been undertaken and a meeting was held in January 2012. However, BFID indicated to NAO that no further developments had taken place since this meeting.
- 2.7.15 NAO objects to the various instances presented in this audit report where DSS acted in a manner deemed by this Office to be outside the provisions of the SSA, against the spirit of the law, and therefore ultra vires. A two-staged approach is recommended in this respect. First, NAO is of the opinion that DSS ought to review the ultra vires criteria currently being applied and question whether these are consonant with the general objective of social security benefits, that is, the provision of a safety net to persons in need. This Office urges DSS, the Ministry for the Family and Social Solidarity, as well as other key stakeholders (such as BFID), to question and evaluate whether persons who own more than one property should have such additional properties not recognised as capital assets when conducting the capital and means test. Should investments be valued as at date of purchase, or more realistically recognised in terms of current market value? Should expenses incurred with respect to the refurbishment of one’s house of residence be deducted from one’s capital when carrying out the capital and means test assessment?
- 2.7.16 The need for introspective analysis is clear, and it is in this context that NAO’s second recommendation is made. Following the envisioned establishment of consensus as to the conformity, or otherwise, of such deviations from the SSA with the spirit of the law, the next logical step would involve the enactment of legislative amendments. This Office is of the considered opinion that good governance can only be ascertained if the provisions established by the SSA, and amendments thereto, are strictly adhered to, thereby safeguarding the fundamentally important principles of fairness, equity and transparency.



## Chapter 3 – Benefit Fraud Investigations based on BFID’s Initiative

**Chapter 3 presents a holistic overview of the numerous desk-based investigation exercises carried out by BFID and includes an explanation of the differences between these exercises and the onsite investigations elaborated upon in Chapter 2. Such desk-based investigation exercises essentially entail the review of population-wide, benefit-specific or occupation-centred data, which is utilised in identifying potential breaches of the provisions of the SSA. This overview encompasses a presentation of some pertinent statistics outlining the status and outcomes of these desk-based investigation exercises while also providing a description of the procedure currently adopted in the selection of exercises that are yet to be undertaken. Pursuant to such issues, this Chapter also provides a descriptive summary of all the exercises carried out as at October 2013 and delves into matters impinging on their evaluation.**

### **3.1 Contextualising the Desk-Based Investigation Exercises**

- 3.1.1** Aside from the onsite inspections dealt with extensively in the preceding chapters, every year, BFID also conducts several desk-based investigation exercises. Another aspect of the extensive fieldwork conducted by NAO in relation to this audit consisted of the examination of all such exercises carried out by BFID.
- 3.1.2** Notwithstanding the above, NAO’s analysis was undertaken bearing in mind two principal objectives, that is, the establishment of the validity of such exercises in contributing to the address of benefit fraud, as well as the management issues arising therefrom. Contrary to the approach adopted in the preceding Chapter, whereby the audit focus adopted was one based on a case-level analysis, the depth of review mentioned with respect to these BFID desk-based exercises was kept at a strategic-level. In light of the above, NAO did not review the case-level determination of ‘in breach’ or ‘not in breach’ status by DSS, deeming this level of analysis outside of audit scope with respect to these particular exercises.
- 3.1.3** From the onset, in order to contextualise the findings and recommendations in this chapter, it is important to make clear that such exercises do not represent BFID’s core function, which is in fact the undertaking of in-depth investigations in relation to reports of alleged social benefit irregularities.

- 3.1.4 These exercises are, in essence, ones that BFID undertook on its own initiative in order to identify and further control abuse by groups of beneficiaries who were in receipt of social security benefits when these might have not been due, or were due at a lower payment rate. With respect to these exercises, BFID collates currently available and relevant information from several sources, mostly from SABS, CdB as well as TCU, and submits to DSS those cases with respect to which there appears to be a doubt on the veracity of their claim to social security benefits. As opposed to the onsite investigations, no new information is collected in a firsthand manner by BFID in relation to these exercises. However, the essence of such exercises entails comparing beneficiary data sourced from the above-quoted government information systems to information provided to DSS by beneficiaries.
- 3.1.5 Furthermore, once again in contrast to the onsite investigations, these types of exercises were not assessed by DSS during a Management Committee meeting. Rather, upon the completion of a desk-based investigation exercise, BFID passed on to DSS a cover email summarising their arguments and findings in relation to the exercise concerned, a sheet providing the workings conducted for the exercise, and any other documents, such as TCU reports, CdB and SABS data, utilised by BFID to conduct the study. Thereafter, a DSS Assessor, tasked with surveying and deciding upon these desk-based investigation exercises, determined any required proceedings in order to conclude the investigation and instigated corresponding action.
- 3.1.6 Should the forwarded cases be in breach, BFID expected DSS to take action to suspend or reconsider the entitlement to each benefit paid to these beneficiaries and collect any ensuing overpayments. It is important to clarify that NAO has not reviewed the actual enforcement of the overpayments pertaining to these individual exercises. Rather, the enforcement issue is addressed in Chapter 4 in terms of the largest 50 overpayment amounts encountered overall on the basis of information made available to NAO by BFID.
- 3.1.7 As at October 2013, BFID had carried out several different types of desk-based investigation exercises. Table 8 features data provided to this Office by BFID in relation to these various investigations. Such investigation exercises comprised the population of persons falling under the relevant category or all who were in receipt of the particular benefit. The table also includes data with respect to the different investigation exercises' conclusion dates (according to the date when such desk-based investigation exercises were submitted to DSS), the number of cases submitted to DSS per desk-based investigation exercise and the amount of cases still pending feedback as at October 2013, also categorised according to the relevant investigation exercise. As can be seen in Table 8, BFID had been submitting desk-based investigation exercises to DSS since 2008 and had submitted multiple exercises in all subsequent years, bar 2013. In consequence, as at October 2013, BFID had submitted to DSS 2,138 cases, which according to the former Department were, or could potentially be, in breach of the SSA provisions.

**Table 8: Overview of BFID Desk-based Investigation Exercises as per BFID Records**

Investigation	Conclusion Date	Number of Cases	Pending Cases as at October 2013
Unknown Fathers who Recognised Child	October 2008	418	381
MDH (Outsourcing)	April 2009	83	36
MCH (Outsourcing)	August 2009	15	11
Unemployment Assistance (Part I Registrants)	November 2009	983	140
SVPH (Outsourcing)	October 2010	40	10
Carer's Pension	November 2010	46	46
Social Assistance Carer's	December 2010	78	78
Unknown Fathers who Recognised Child	July 2011	60	60
Unemployment Assistance (Part I Registrants)	August 2011	89	32
Hawkers	November 2011	6	6
Social Assistance Part 1 (Properties)	December 2011	144	116
Social Assistance Part 2 (Shareholders/Directors)	August 2012	104	104
Social Assistance Part 3 (Active VAT Numbers)	December 2012	72	72
<b>Total</b>		<b>2,138</b>	<b>1,092</b>

3.1.8 BFID expressed concern at DSS's poor response timeliness with respect to the desk-based investigation exercises. As illustrated in Table 8, according to BFID, DSS had been failing to cope with the significant caseload sent to it by BFID and, by October 2013, had amassed a significant backlog of cases to review. According to BFID's records, the two departments had agreed on the outcomes of less than half of the cases submitted (1,046), with 1,092 cases still pending feedback as at October 2013. Moreover, as at this date, DSS had not fully concluded any of BFID's exercises. Further exacerbating matters is the fact that the absolute majority of the cases have been pending DSS's feedback for a significant number of years. However, it is important to note that such pending cases may include a number of cases that DSS would have replied to, but which reply was deemed unsatisfactory according to BFID. After having asked for clarifications, the latter department would still be awaiting such information from DSS and would therefore not categorise the relevant case as one that had been duly and thoroughly settled.

3.1.9 Furthermore, according to data provided by BFID in relation to these desk-based investigation exercises, until October 2013, 591 cases, for which DSS had provided full or partial feedback to BFID, had been found to be in breach. Therefore, according to the data provided by BFID, the percentage of cases found in breach in relation to the total settled cases was 57 per cent. BFID was unable to provide NAO with the number of cases found in breach categorised according to the relevant desk-based investigation exercise.

3.1.10 Based on the number of cases found to be in breach, BFID estimated the total savings made with respect to the desk-based investigation exercises to be €2,814,692. This amount comprises the estimated savings made in the same year following a reduction or suspension of a benefit of €1,200,434, and an estimate of overpayments created of €1,614,258.

3.1.11 In order to corroborate BFID's data, NAO sought to triangulate such data by sourcing the same information from DSS. Therefore, NAO requested DSS to provide it with information on how many of the desk-based investigation cases BFID had submitted to DSS remained pending DSS feedback, and out of the completed ones, how many were considered to be 'in breach' and 'not in breach' by DSS. This data is represented in Table 9.

**Table 9: Overview of BFID Desk-based Investigation Exercises as per DSS Records**

Investigation	Number of Cases	Cases in Breach	Cases Not in Breach	Other	Pending
Unknown Fathers who Recognised Child	[Note 1]	-	-	-	-
MDH (Outsourcing)	83	51	32	-	0
MCH (Outsourcing)	[Note 1]	-	-	-	-
Unemployment Assistance (Part I Registrants)	[Note 2]	-	-	-	-
SVPH (Outsourcing)	40	30	10	-	0
Carer's Pension	46	13	33	-	0
Social Assistance Carer's	78	31	47	-	0
Unknown Fathers who Recognised Child	[Note 1]	-	-	-	-
Unemployment Assistance (Part I Registrants)	983	262	671	38	12
Hawkers	[Note 1]	-	-	-	-
Social Assistance Part 1 (Properties)	126	33	78	7	8
Social Assistance Part 2 (Shareholders/Directors)	[Note 3]	-	-	-	-
Social Assistance Part 3 (Active VAT Numbers)	[Note 3]	-	-	-	-

**Notes:**

1. No data was forthcoming from DSS in relation to this desk-based exercise.
2. Data in respect of the Unemployment Assistance (Part I Registrants) investigation dated November 2009 was incorporated under the Unemployment Assistance (Part I Registrants) investigation dated August 2011.
3. DSS outlined that this exercise had not yet been processed due to reported staff shortages.
4. The 38 cases classified as 'Other' under the Unemployment Assistance (Part I Registrants) investigation exercise, were categorised as such due to them being termed inconclusive by DSS.
5. The seven cases classified as 'Other' under the Social Assistance Part 1 (Properties), were categorised as such due to them being termed as not related to the Social Assistance benefit (one case) and for failing to cooperate with DSS (six cases).

3.1.12 As can be seen in Table 9, DSS was unable to provide this Office with all of the requested data. For this reason, NAO was unable to comprehensively contrast the total number of settled cases found to be in breach according to BFID with the relevant DSS statistic establishing the 'in breach' or 'not in breach' status of cases reviewed. The Office expresses disapproval at the unavailability of such data from DSS, especially when considering that the establishment of the aforementioned case status is one within the immediate and sole control of this Department.

3.1.13 Furthermore, the Office found the data provided by DSS to be incongruent to the one provided by BFID. However, NAO did not deem it practical to reconcile the data provided by the two different entities, as this would have necessitated the onerous task of examining each investigated beneficiary's potentially multiple files relating to the different benefits being received.

3.1.14 In certain instances, the total number of cases pertaining to the individual desk-based investigation exercises BFID had submitted to DSS according to the latter department was different to the data featured in Table 8, submitted to this Office by BFID. In instances when the total number of cases addressed by a particular exercise did not correspond, NAO undertook further verifications in order to establish the actual total number of cases submitted by BFID. In such instances, NAO confirmed BFID's data to be correct. With respect to the Social Assistance Part 1 (Properties) desk-based investigation exercise, DSS's total number of cases is less than the actual total components provided by BFID to this Office. Moreover, with respect to certain exercises, DSS claimed that it had provided feedback on more of the cases than the ones considered settled by BFID. This can theoretically occur due to the fact that, as specified previously, should BFID have submitted a query on DSS's feedback pertaining to a particular case, which query was not yet replied to, such case would still be deemed pending by BFID, yet simultaneously considered as concluded by DSS.

3.1.15 In addition, according to DSS, the percentage of cases found in breach in relation to the total settled cases was 31 per cent. This is significantly lower than the relevant BFID statistic (57 per cent), although the most likely explanation for this could be that BFID do not consider many of the cases that DSS deems not to be in breach as ones that have been settled, thereby inflating their statistic. Another possible reason explaining the divergence between the two statistics could be that BFID and DSS were in agreement as to the cases' 'in breach' status, yet in disagreement with respect to the particular social benefit to which the 'in breach' status applies or the type of action to be taken. BFID not marking these types of cases as settled, would once again inflate its statistic.

## 3.2 Investigation Planning

3.2.1 Upon being asked by NAO as to whether there was a systematic structure to identify the beneficiaries to be investigated within the scope of BFID's desk-based investigation exercises, on the basis of their being more prone than others to be defrauding DSS, BFID replied that there was no such structure utilised in the strategic analysis of risk. Rather, BFID conducted its selection of exercises informally, on the basis of trends and loopholes in the social security system that it identified. Moreover, as indicated previously, such desk-based investigation exercises comprised the population of persons falling under the relevant category or all who were in receipt of the particular benefit being investigated, without any preliminary assessment of the level of risk constituted by the different beneficiaries.

3.2.2 The Principal Officer/Assessor tasked with reviewing and deciding upon the BFID desk-based investigation exercises stated that the selection of cases by BFID could improve, as a lot of the submitted cases yielded no results when investigated further by DSS, while for many others, DSS would have already established beforehand that an overpayment was due. As indicated previously, according to the data provided by DSS only 31 per cent of the completed cases submitted by BFID were found to be in breach by it. However, also as specified above, DSS did not agree with BFID on this issue and according to the latter Department, the percentage of cases found in breach by DSS in relation to the completed cases was that of 57 per cent.

## 3.3 The Unknown Fathers who Recognised Child Desk-based Investigation Exercises

3.3.1 In 2008, BFID carried out a desk-based investigation exercise in relation to the identification of those children listed on SABS as having an 'unknown father', while simultaneously linked to live benefits. To carry out this exercise, BFID coordinated its work with the Information Management Unit within its Ministry and with the CdB Team. By means of the information acquired from these sources, the Department identified 418 children listed on SABS with a surname that did not match the child's official surname as listed on CdB, after removing those whose surname mismatches were due to keying in errors or to variations in the writing of such surnames. Subsequently, BFID vetted each child's details wherein it emerged that in most cases the children were listed on SABS with the mother's surname, implying that they were originally registered at the Public Registry with an 'unknown father' status but subsequently had their original birth certificate modified to incorporate the father's details.

3.3.2 According to BFID's cover letter to DSS on the submission of this desk-based investigation exercise, the fact that the substantial majority of the children listed lived in households in receipt of means tested benefits meant that such households could potentially be in receipt of benefits at a higher rate than in fact due as per the SSA

provisions. A number of these households had been in receipt of such benefit rates for years, thereby increasing the magnitude of benefit payments deemed at risk.

3.3.3 BFID recommended that DSS review each household within which each of these children was officially registered as resident, in order to determine whether their social benefit claims should be re-assessed or otherwise. According to BFID, DSS needed to carry out further investigations in order to establish:

- The residential address/es of the parents subsequent to the recognition of the child/children;
- Whether the father was employed at any time following the Court Sentence, or otherwise; and
- Whether the parent in receipt of social benefits was being paid, or claiming any maintenance, or otherwise.

3.3.4 Taking into consideration the formal legal procedure followed when a person requests to legally recognise a child, BFID suggested that DSS should ask the parent in receipt of social benefits to produce a copy of the Petition submitted to the Law Courts to instigate the procedure and a copy of the Court Sentence authorising the change in surname. Such documentation would provide DSS with irrefutable evidence with respect to the date of legal recognition of the child by the person submitting such request.

3.3.5 BFID noted that if such an exercise was carried out, it would rebuild a timeline of the main events following the child's official recognition. Such a timeline could be utilised by DSS to ascertain whether the benefits paid by the Department were due or not, or were due at a different payment rate according to the developments registered with respect to prevailing household circumstances. It would also present DSS with the opportunity to amend the SABS data in order to reflect official changes in circumstances, including household composition.

3.3.6 In 2011, BFID carried out another desk-based investigation exercise on this issue in order to cover the period following that of the previous exercise. It submitted to DSS two separate spreadsheets, incorporating each case's details. While the first spreadsheet featured the details of 60 cases identified in a similar manner to the 2008 exercise and also necessitating similar further investigations by DSS, the second spreadsheet, covering another 46 children, was referred to DSS in order for it to amend SABS data to reflect the official details of each child. With respect to these 46 children, the surname change did not influence the benefits paid. The recognition of the lack of tangible benefits being gained by BFID with respect to the modification of the details of the 46 children involved leads this Office to commend even more highly BFID's initiative to update DSS's data.

3.3.7 According to BFID, out of the 418 cases submitted to DSS by BFID in the first exercise, 381 were pending as at October 2013, while for the second exercise, all of the 60 cases submitted remained pending as at this date. With respect to both these exercises, DSS did not send to this Office any statistics regarding the number of completed, 'in breach' and 'not in breach' cases.

3.3.8 In NAO's opinion, the unknown fathers' exercises appear straightforward to assess, albeit possibly time consuming on DSS's end. Notwithstanding the above, the fact that DSS had, until years later, not fully completed these exercises' assessment was of



concern to NAO. Moreover, and of greater concern to this Office, was the fact that DSS failed to provide NAO with data relating to these cases, indicating weak management control mechanisms. Failure to take corrective action with respect to the 441 cases deemed pending according to BFID (which was the only data made available to NAO), undoubtedly aggravates the situation, with DSS's lack of prompt action resulting in an ever-increasing potential overpayment, certainly material when one factors in the circa 400 beneficiaries possibly accruing undue payments.

### **3.4 The Outsourcing Desk-based Investigation Exercises**

**3.4.1** During 2009 and 2010, BFID submitted three desk-based investigation exercises aimed at identifying persons carrying out outsourced employment who could possibly be in breach of the SSA provisions in terms of their adherence, or otherwise, to the maximum income allowed for social benefits not to be affected, as outlined in Table 5 of this report. These desk-based investigation exercises relate to employees outsourced to work at MDH, MCH and SVPH. To conduct such exercises, BFID coordinated their work with the respective administration sections of these three hospitals. It is important to note that, in the BFID exercise, the attendance records held by the relevant hospitals were used to compile the information relating to the number of hours worked by the relevant employees.

**3.4.2** As depicted in Table 8, when conducting the MDH, MCH and SVPH exercises, BFID identified 83, 15 and 40 persons, respectively, who appeared to be in breach of the SSA provisions. Some of these social security beneficiaries were in receipt of more than one benefit. According to BFID, until October 2013, BFID and DSS had settled 47 MDH and four MCH cases while with respect to the SVPH exercise, 10 cases remained pending as at this same date. However, according to the statistics DSS provided to this Office, all the cases relating to the MDH and SVPH were completed, with 51 and 30 cases having been found to be in breach, respectively. DSS did not provide this Office with data pertaining to the MCH exercise.

**3.4.3** Through the desk-based investigation exercises, BFID concluded that these beneficiaries were working longer hours than those generally associated with employees registered with ETC as part-timers.

**3.4.4** NAO noted that these desk-based investigation exercises bear remarkable similarity to the onsite investigations featured in Chapter 2 (clauses 2.3.2 through 2.3.16). However, the feedback provided to BFID for these two groups of cases is inconsistent. The Management Committee did not deem the employees' attendance sheets, obtained from the place wherein such employees provided their services, as constituting sufficient evidence in reconsidering the beneficiary's benefits for the Chapter 2 cases. However, the DSS Assessor tasked with deciding upon the desk-based investigation exercises deemed such attendance sheets as representing sufficient evidence to determine a beneficiary's 'in breach' status, with the absolute majority of the cases for which DSS made the requested data available to NAO deemed to be in breach. The above statement notably applies to the MDH and SVPH desk-based outsourcing-related investigations addressed by DSS. The MCH desk-based investigation has not yet been reviewed by DSS.

**3.4.5** Notwithstanding the above issue, NAO observed that the data recorded in the contractor's timesheets was, in one particular instance, inconsistent. Indeed, this data showed that in the case of two cleaners, each was assigned to work in different

wards at the same time, that is, the same cleaner was assigned to multiple locations at the same time. This is of notable concern to NAO, as the reliability of such data could have been undermined. Indeed, NAO opines that such conflicting data merited further in-depth verification by the BFID or DSS Assessors entrusted with establishing whether the employees were working more hours than allowed by the SSA or not, and therefore should not be used as a basis to determine whether a person was availing of benefits that s/he was not entitled to. Should the above-referred verifications have been carried out, such feedback should have been rerouted back to BFID in order to more comprehensively conclude the process.

### **3.5 The Unemployment Assistance (Part 1 Registrants) Desk-based Investigation Exercises**

- 3.5.1 As explained in Chapter 2, heads of household, who are registering under Part 1 of the Unemployment Register and are thus actively seeking employment, may be entitled to the Unemployment Assistance benefit if they satisfy the means and capital resources test.
- 3.5.2 BFID conducted two desk-based investigation exercises, similar in substance, on those beneficiaries registering for work under Part I of the ETC Employment Register and in receipt of the Unemployment Assistance, apart from any other benefits issued by DSS. To conduct these exercises, the Department coordinated its efforts with the ETC and with TCU. BFID's desk-based investigation exercise focused on Unemployment Assistance beneficiaries having more than four vehicles, and/or owning more than one commercial vehicle, and/or having sold more than three properties in recent years. BFID based these criteria on the fact that such persons were more likely to have not notified DSS of these possessions/transactions as such a disclosure could render them ineligible for means tested social benefits.
- 3.5.3 BFID submitted the desk-based investigation exercises to DSS in 2009 and 2011. According to BFID, out of the 983 cases submitted for review to DSS in 2009, 140 remain pending as at October 2013; with respect to the 89 cases submitted to DSS in 2011, BFID still awaited feedback with respect to 32 as at this date. NAO is concerned with respect to the DSS data provided to this Office in relation to these two desk-based investigation exercises. While DSS acknowledged that the two exercises on this issue were submitted to it, this Department only provided data for a total of 983 cases pertaining to both exercises, which was clearly 89 cases short of the total number of cases submitted to DSS by BFID. Out of these, DSS outlined that only 12 cases remained pending their feedback (in stark contrast with the 172 cases declared as pending by BFID). Slightly more than a fourth (262) of the 983 cases were found to be 'in breach'.

### 3.6 The Carer's Pension and Social Assistance Carer's Desk-based Investigation Exercises

3.6.1 The Carer's Pension is one of the non-contributory benefits granted by DSS. In relation to this benefit, the SSA specifies that:

#### Box 17: Article 68(1), Social Security Act

**Article 68 (1), Social Security Act**

Subject to the provisions of this Act, a single or widowed person who proves to the satisfaction of the Director that:

- (a) he is a citizen of Malta and is regularly residing in Malta; and
- (b) his yearly means, calculated in accordance with the provisions of Part IV of the Second Schedule to this Act, do not exceed the highest rate of Carer's Pension equivalent to 60% of the national minimum wage as is applicable to persons of eighteen years of age or over established by a National Standard Order issued under the Employment and Industrial Relations Act, during the period in respect of which such pension is due and as is specified in Part IV of the Sixth Schedule to this Act, shall be entitled to a Carer's Pension in accordance with sub-article (2) if such person proves to the satisfaction of the Director that he is taking care, all by himself, on a full-time basis and regularly of his parent or brother, sister, grandparent, uncle, aunt, father or mother-in-law, or brother or sister-in-law who -
  - (i) is living in the same household as that of such person; and
  - (ii) because of infirmity is bedridden or confined to a wheel-chair.

3.6.2 As specified above, persons who are either single or widowed, and who all by themselves, and on a full-time basis, care for a sick relative who is bedridden or confined to a wheel-chair in the same household, are entitled to receive the Carer's Pension. The relatives referred to can be the parents, grandparents, brothers, sisters, uncles, aunts, brothers-in-law, sisters-in-law, father-in-law, or mother-in-law of the prospective beneficiary. In order to be eligible, the applicant must satisfy the means and capital resources test.

3.6.3 Furthermore, the SSA also specifies that the Social Assistance Carer's benefit must be granted according to the provisions reproduced in Box 18:

#### Box 18: Article 30(8), Social Security Act

**Article 30(8), Social Security Act**

(8) Where in any household there is a person who is single or widowed, and who is also unemployed, who proves to the satisfaction of the Director that she is taking care, all by herself, on a full-time basis and regularly, of her parent or brother, sister, grandparent, uncle, aunt, father or mother-in-law or brother or sister-in-law who is living in the same household as that of such person and who is suffering from a severe physical or mental infirmity, as certified by a medical practitioner specialising in the field of the infirmity denoted, or who is aged sixty years or over and is physically or mentally unable to take care of himself and of his day to day needs, then whether such person is registered or not as an unemployed person as aforesaid in subarticle (1), she shall nonetheless be entitled to Social Assistance as a separate household in accordance with the provisions of this article but such assistance shall not exceed 75% of the full rate applicable to a household consisting of one person:

Provided that this sub-article shall not apply where the person who is being taken care of has his parent or spouse living with him in the same household and such parent or spouse is mentally and physically capable of taking care of such person himself.

3.6.4 Therefore, single or widowed persons, whether registered or not as unemployed, and who take care of relatives living in the same household may become eligible for the Social Assistance Carer's benefit. In order for such a benefit to be awarded, the prospective applicant must provide such care all by themselves and on a full-time basis. The relative requiring care must be either suffering from physical or mental infirmity, or is aged 60 years or over and is physically or mentally unable to take care of himself/herself and his/her daily needs. Furthermore, for the relevant person to be

eligible for this social benefit, no parent or spouse of their relative lives in the same household and is mentally and physically capable to take care of such a relative.

3.6.5 BFID examined all the persons receiving these two benefits in two separate exercises submitted to DSS in 2010. These exercises involved investigating the capital/income and household composition or any other reason that could mean that the beneficiary did not fully comply with all the eligibility requirements. To conduct these exercises, BFID utilised CdB, SABS and TCU reports.

3.6.6 According to BFID, all of the cases sent to DSS pertaining to these exercises were still pending DSS feedback as at October 2013. However, according to DSS all these exercises had been concluded and 13 (out of 46) and 31 (out of 78) cases had been found to be in breach of the SSA provisions in relation to the Carer's Pension and Social Assistance Carer's, respectively.

### 3.7 The Hawkers' Desk-based Investigation Exercise

3.7.1 Another desk-based investigation exercise conducted by BFID related to a number of hawkers who were also in receipt of means tested social benefits. BFID submitted six cases to DSS whose information, obtained from the VAT Department, indicated that they did not declare all of their income for social security purposes.

3.7.2 NAO established that the hawkers' income in any one year never exceeded the relevant thresholds. However, BFID are relying on the fact that in certain years, the hawkers did not declare their income. All cases were still pending feedback as at October 2013. DSS did not provide data on their completed and 'in breach' cases to this Office with respect to this investigation exercise.

### 3.8 The Social Assistance Desk-based Investigation Exercise

3.8.1 The Social Assistance benefit is payable to heads of households who are unemployed and seeking employment or who due to a medical reason are unable to work and/or seek employment. Persons on Part 1 of the register must not be in possession of any current business, trade permits or be VAT registered. Moreover, in order for DSS to grant this benefit, such persons' financial means must fall below that established by the SSA. BFID, with the assistance of MITA and TCU, carried out an investigation on all Social Assistance beneficiaries. As at October 2013, BFID had completed three parts of this exercise.

3.8.2 The first part of the exercise focused on property transfers effected by Social Assistance beneficiaries. BFID investigated only those beneficiaries listed as having sold more than three properties. From this exercise, BFID considered 144 of the 183 cases investigated to be in breach of the SSA provisions as their share in the property transaction/s exceeded the relative capital means test applicable to them. As at October 2013, 116 of these cases were still pending DSS feedback, according to BFID. However, according to DSS, only eight cases remain pending, with 33 cases having been found in breach.

3.8.3 The second part of this exercise focused on Social Assistance beneficiaries listed as Shareholders and/or Directors. BFID investigated 167 cases of which BFID identified 104 cases as possibly in breach of the SSA provisions given that they were Shareholders and/or Directors during the period in which they were in receipt of means tested social benefits. All 104 cases were still pending DSS feedback as at October 2013, with

DSS stating to this Office that it had not yet investigated this exercise due to shortage of staff at DSS.

- 3.8.4 Finally, the third part of this exercise focused on beneficiaries having an active VAT number during the period during which they were in receipt of means tested social benefits. Here, BFID investigated 149 cases and identified 72 of these as possibly in breach of the SSA provisions. Furthermore, during this part of the exercise, BFID identified a number of cases as in breach not because of their respective VAT numbers, but because of other identified circumstances that may impinge on the entitlement to means tested social benefits, such as employment. All 72 cases were still pending DSS feedback as at October 2013, with DSS stating to this Office that it had not yet investigated this exercise due to shortage of staff at DSS.
- 3.8.5 While NAO commends BFID on its sustained initiative with respect to the undertaking of such desk-based investigative exercises, the Office is of the considered opinion that the management of the process undoubtedly requires significant fine-tuning.

### 3.9 Conclusions

- 3.9.1 NAO's principal concern with respect to the above-referenced BFID desk-based investigations relates to the strategic design and orientation of this function. Although BFID did not consider this function as representing its core business process, NAO is of the considered opinion that such a state of affairs merits significant re-evaluation.
- 3.9.2 In essence, the impact of desk-based investigations is extensive, in terms of both the quantity of identified 'in breach' cases and the importance of findings, with cases hereby identified on the basis of objective risk assessment methodologies, designed at targeting benefit-wide, or sector-wide beneficiaries deemed at risk. NAO believes that the future of benefit fraud investigations lies in improvements directed at desk-based investigation exercises, rather than investigating beneficiaries who have had a report lodged against them. While tip-offs from the public and DSS employees are important to BFID's work and their thorough examination should undoubtedly continue, also focusing on such investigation exercises would enable the identification of persons engaged in social benefit fraud who may otherwise have not been reported to BFID. In NAO's opinion, allocating more effort at establishing such desk-based investigations represents a more socially just and objective manner at addressing benefit fraud, rendered possible through the utilisation of all intelligence available to BFID.
- 3.9.3 Transitioning from an essentially strategic perspective to the more practical management issues at play, NAO has three main points to put forward in this respect. First, critically important in this regard is the issue of process ownership, with the current set-up indicative of a process that is diffused in terms of responsibility, with neither BFID, nor DSS, assuming actual and complete ownership of the desk-based investigation exercises. The evident result of this set-up is an uncoordinated approach, manifested in BFID's and DSS's failure to meet one another's expectations, with the former questioning the significant delays in assessing the exercises, while the latter criticising the lack of detail entered into when such reports are submitted for its consideration.
- 3.9.4 This last point ties in with NAO's second concern relating to the desk-based investigations process' management, notably, how these exercises simply represent the preliminary stage of a much lengthier process. At a general level of analysis, NAO noted that following receipt of the documentation, DSS would have to conduct further

rigorous investigations in view of retrieving additionally required information, as BFID's submissions with respect to these exercises tended to, at times, be indeterminate given their preliminary nature.

- 3.9.5 Third, NAO noted that the above-referred uncoordinated approach was clearly manifested in terms of the information retained by both Departments. Information retained by BFID bore limited details, while DSS, on the other hand, provided information that was clearly incongruent with that provided by BFID. Worse still were instances when DSS was not able to retrieve information relating to particular exercises, with NAO expressing disapproval at the unavailability of such data from DSS, especially when considering that the establishment of such data is within the immediate and sole control of this Department. Such circumstances significantly hindered NAO's analysis of statistics pertaining to the desk-based investigation exercises.
- 3.9.6 Following the above macro-level analysis of strategy and management considerations, the ensuing paragraphs illustrate the relevance of such considerations through their relevant contextualisation to the various desk-based investigation exercises carried out by BFID. Commencing with the unknown fathers desk-based investigation, this exercise clearly indicated the inadequate management structure entrusted with overseeing the process through to completion. A number of factors have contributed to NAO's understanding in this manner. In this Office's view, the cases presented in this exercise are straightforward; however, BFID's records indicate that the absolute majority of cases remain pending. The gravity of such cases is rendered more onerous in view of the fact that these cases have been pending for five years, and the potential overpayment arising therefrom could be considerable when aggregated. Finally, notwithstanding the serious implication of all of the above-stated, DSS failed to provide NAO with any information as regards its management of these cases, resulting in this Office's doubt as to whether DSS intends to follow through with action that has now long been overdue.
- 3.9.7 Moreover, particularly with respect to the second unknown fathers' exercise, NAO opines that this type of action reflects positively on BFID on two counts. First, the systematic repetition of effective and successful exercises such as this, is in NAO's opinion, the manner by which the Department's operations should be designed and structured. Second, while BFID's efforts at 'cleaning' the Department's (and to a certain extent, central government's) data do not result in a directly tangible benefit to BFID, such efforts are nonetheless commended by NAO as contributing to good information management practices.
- 3.9.8 With respect to the two outsourcing desk-based investigations addressed by DSS, NAO reiterates that this exercise bore remarkable similarities to the onsite investigations featured in Chapter 2 (clauses 2.3.2 through 2.3.16). However, the feedback provided to BFID in relation to these cases differed according to the person/s taking the decision. The Management Committee did not deem the employees' attendance sheets, obtained from the employees' working place, as constituting sufficient evidence to reconsider the beneficiary's benefits with respect to the cases presented in Chapter 2. However, the DSS Assessor tasked with deciding upon the desk-based investigation exercises concluded that such attendance sheets represented sufficient evidence in determining the beneficiaries' 'in breach' status, with the absolute majority of the cases for which DSS made the requested data available to this Office in fact deemed to be in breach. NAO's concern in this respect quite logically centres on the fact that

DSS exhibited an element of inconsistency in its assessment of these two sets of cases, notwithstanding the fact that the circumstances surrounding the investigation were notably similar.

### **3.10 Recommendations**

- 3.10.1** NAO's principal recommendation centres on proposed revisions to BFID's and DSS's strategic functions, particularly with respect to the manner by which desk-based investigation exercises are to be managed. As amply exemplified throughout Chapter 2, social benefit fraud-related onsite investigations are certainly one of BFID's core competences, and an area with respect to which they have considerable expertise. So, it is only natural for BFID to assume the investigation component that arises following the preliminary screening addressed through the desk-based investigation exercises. It is in this context that NAO strongly recommends that such a function should be transferred from DSS's responsibility to BFID's responsibility.
- 3.10.2** Having reviewed BFID's overall operations in considerable detail, and having witnessed the exemplary level of efficiency and effectiveness with which the Department operates, NAO recommends that the assumption of additional functions would necessitate the allocation of additional human resource capacity to BFID. NAO is of the opinion that additional capacity allocated to BFID in this respect should serve to further contribute to the mitigation of social benefit fraud, which would ultimately result in additional cost savings.
- 3.10.3** Besides streamlining the process, such a strategic revision serves to address the lack of ownership persistently present with respect to desk-based investigation exercises. With the preliminary screening exercise, followed by further in-depth investigations all under the direct responsibility of BFID, full ownership of the process should naturally and inevitably result.
- 3.10.4** With ownership of the desk-based investigation process assumed in its entirety by BFID, the uncoordinated approach that characterised previous DSS-BFID interfacing in this respect is a matter that should notionally be resolved. In essence, the procedure that is to be employed once BFID see through the entire desk-based investigation process up till its completion (following further in-depth investigations) is similar to that employed with respect to the cases put forward in Chapter 2, that is, where BFID submit a formal investigation report for the Management Committee's consideration. Such a procedure would, in NAO's view, facilitate the consistency of decisions taken by DSS. In cases of disagreement, NAO reiterates its earlier recommendation for the establishment of a review board tasked with ensuring fairness, transparency and accountability throughout the process.
- 3.10.5** In line with preceding recommendations relating to how NAO considers the ownership of the process as one that ought to improve following their respective implementation, this Office recommends that due attention be directed towards good information management practices. NAO is of the considered opinion that such information management practices should be improved once responsibility for the administration of this task resides within one entity, that is BFID, which is subsequently tasked with reporting directly to the Management Committee in an organised and coherent manner.

3.10.6 Further to the above, NAO recommends that such data should be analysed in due depth, as this may serve as an invaluable source of feedback indicating which of the desk-based investigation exercises were the most effective, therefore allowing for comparative analysis of such exercises and aiding in the establishment of social benefit risk profiles.

3.10.7 This latter point introduces another issue deemed to be of considerable importance by NAO, that is, the development and implementation of a structured risk analysis system. Such a system would notionally be designed at targeting benefit-wide or sector-wide beneficiaries deemed at risk. Although by no means an exhaustive compilation of criteria to be utilised in the aforementioned risk analysis system, NAO considers the materiality of the social benefit itself, that is, which benefit is allocated more resources than others as a possible variable. Another variable might include the inherent risk associated with specific social benefits, therefore, by means of example, one might evaluate whether means tested benefits are at greater risk than those benefits that are not means tested. Moreover, the feedback loop referred to in the preceding clause, which was intended as a measure of the effectiveness, or otherwise, of particular desk-based investigation exercises might also be a useful source of information in this respect.

3.10.8 Further to the above, NAO opines that three components are key in the set-up of such a risk analysis system within the context of BFID, namely:

- The human resource capacity required for the sustained administration of such a system;
- The gathering of information from all possible sources, already substantially addressed through the sourcing of TCU data, yet which can be exploited further through the design of other desk-based investigations; and
- The establishment of standard practices and procedures governing the manner by which such exercises should be carried out, thereby establishing a programme of scheduled exercises that comprehensively address a spectrum of identified risks.

3.10.9 Finally, NAO recommends that the cases presently deemed pending merit immediate attention. This statement is made in view of the exorbitant number of cases still pending after a considerable span of time elapsed following BFID's original submission. Such delays only serve to increase any potential overpayments that are to be incurred by beneficiaries, which is in NAO's opinion, neither fair nor just on the beneficiary, the Department, and the taxpayer in general.







## Chapter 4 – Pending Cases and Enforcement Measures

**This final Chapter addresses various issues associated with benefit fraud, yet specifically adopts a strategic and case-level perspective following the submission of BFID reports to the DSS Management Committee. In this context, NAO's analysis centred on two major categories of cases, namely, cases deemed to be pending by BFID, as well as those subjected to further audit review owing to their substantial overpayments due, which resultantly necessitated DSS enforcement measures. Finally, specific attention was directed at compliance checks being undertaken by DSS with respect to Invalidity Pensions, particularly in view of the provisions stipulated by the SSA.**

### 4.1 Pending Cases

- 4.1.1 NAO analysed another category of cases that were deemed to be of notable concern, namely the cases that were categorised as pending by BFID. In such cases, BFID would have forwarded its investigative reports to DSS as per standard *modus operandi*. Subsequent to such a submission, DSS, through its Management Committee, would then be tasked with accepting, rejecting or requesting further follow-up action with respect to BFID's recommendation. Such follow-up action is at times entrusted to DSS, while at times it is BFID that is to carry out additional verifications. Cases that have been accepted, or require further verifications, remain pending according to BFID, until specific feedback indicating the precise action that has been taken with respect to each of the cases at hand is provided by DSS. Such feedback would ordinarily constitute a copy of instructions of specific action/s administered by the DSS Sections that manage the corresponding benefits. The related document for this type of feedback will hereafter be referred to as the 'Suspended/Rejected' document. If BFID does not receive this latter feedback, the case in question would still be considered to be pending.
- 4.1.2 Further to the above, NAO carried out an analytical exercise to determine why such cases remained pending and for how long. To this end, it established the number of pending cases as at 5 June 2013 and revisited the situation two months after this date. NAO purposely designed its fieldwork in such a manner, allowing for this lapse in time to better determine the effectiveness of DSS's role with regard to these pending cases.

- 4.1.3 As at 5 June 2013, BFID recorded a total of 414 pending cases, a representative sample of which was calculated at 196. A 95 per cent confidence level with a five per cent confidence interval were used as a basis for the calculation. The actual sample was selected through the use of the systematic sampling technique with a random start, resulting in a total sample size of 209.
- 4.1.4 NAO’s review of information in this regard was limited to the analysis of BFID files and corresponding verifications undertaken on SABS with respect to each of the beneficiaries involved. It is important to emphasise that all benefit-related action taken on the basis of BFID investigation reports should be reflected in SABS; therefore, it was logical for NAO to focus its analysis on data available as per SABS records. Changes registered on SABS in relation to BFID investigations would notionally indicate that pending cases are in effect no longer pending, given that the required action would have, in concept, been taken. It is only when pending cases are deemed no longer in breach of the SSA (therefore BFID’s investigation report recommendation would effectively be rejected by DSS) that changes through SABS would not be registered. However, under such circumstances, the onus of informing BFID of such an outcome falls squarely upon DSS’s responsibility, as it is neither practical, nor efficient, for BFID, or NAO for that matter, to have to go through each beneficiary’s DSS files, benefit by benefit, to establish the trail of action taken by the latter Department.
- 4.1.5 Upon analysing the 209 cases, NAO noted that during the two-month lapse, 64 (31 per cent) were in a ‘put away’ status. A case categorised under this status denotes that BFID considers this case to be closed, which therefore implied that such cases were of no further interest in this respect. The other 145 cases, which account for 69 per cent of the sample, remained unresolved for a number of reasons, which reasons are presented in this section. Table 10 represents a summary of these 145 cases, categorised according to the year during which their respective BFID report was completed.

**Table 10: Age Profile of Pending Cases**

Year	Age Profile of Cases Still Pending as at August 2013
2007	5
2008	7
2009	13
2010	24
2011	37
2012	41
2013	18
<b>Total</b>	<b>145</b>

- 4.1.6 A graphical categorisation corresponding to all of the above-indicated 145 pending cases based on the nature of feedback provided by DSS to BFID is reproduced in Appendix D for ease of reference. Further details regarding these cases ensue.

### The Sampled Pending Cases

- 4.1.7 The case with the most dated pending BFID investigation had been forwarded to DSS on 23 February 2007. In this case, DSS had informed BFID, on 9 January 2009, that it intended to suspend the benefits and subsequently request the beneficiary to provide further details. DSS also stated that it intended to communicate with the DSS’s International Relations Unit in order to establish whether the beneficiary was simultaneously receiving benefits from the United Kingdom. However, BFID received no further feedback in this regard and overpayments created in SABS did

not correspond to the dates investigated by BFID. Furthermore, the benefits in question were only suspended during September 2012 and because the beneficiary got married, not because of the investigation conducted by BFID. Hence, this case remained pending.

4.1.8 The level of detail entered into with respect to this case was intended to set the context, key in understanding the nature of other cases addressed in this part of the report. Although the specifics of such cases vary from one to another, it is the general principles that characterise such cases that NAO seeks to impart.

4.1.9 Out of the 145 cases that remained pending and therefore unresolved, 93 corresponded to BFID recommendations that were originally accepted by DSS. Of note is the fact that BFID had not received the 'Suspended/Rejected' document in relation to 27 of these cases. Although the latter document was missing in these 27 cases, it transpired that DSS actually raised overpayments in connection with seven of these cases. Of these latter cases, three had overpayments raised with respect to all benefits, while the remaining four did not have overpayments raised for all the benefits in question, even though DSS had initially accepted BFID's recommendation. With regard to the remaining 20 cases, no overpayments were raised whatsoever. In one particular case, the beneficiary passed away three months following DSS's acceptance of BFID's recommendation and no further feedback was received by BFID. Therefore, in essence, these 27 cases represent two main points; that is, instances when DSS took action on BFID's recommendation (in part or in full) without informing BFID of such developments, as well as instances where no follow-up action whatsoever was instigated by DSS, leaving such cases pending.

4.1.10 Table 11 presents the length of time for which the 24 cases with no overpayment or partial overpayment raised had been pending. Measurement of the duration of pendency was calculated commencing from the date of finalisation of the relevant BFID investigation, to the arbitrary cut-off date established by NAO, which in this case was August 2013.

**Table 11: Pendency of Cases in relation to Non-Receipt of the 'Suspended/Rejected' Documents**

Duration	Number of Cases
$x \leq 6$ months	3
6 months $< x \leq 8$ months	3
8 months $< x \leq 1$ year	5
1 year $< x \leq 1.5$ years	4
1.5 years $< x \leq 2$ years	2
2 years $< x \leq 2.5$ years	4
2.5 years $< x \leq 3$ years	0
3 years $< x \leq 3.5$ years	2
3.5 years $< x \leq 4$ years	0
4 years $< x \leq 4.5$ years	0
4.5 years $< x \leq 5$ years	1

**Note:**

All of the above 24 cases correspond to BFID investigation reports that had been favourably adjudicated by the DSS Management Committee.

4.1.11 Of note is the fact that, as at August 2013, the 'Suspended/Rejected' documents had been pending for a period in excess of six months with respect to 21 cases (representing 88 per cent), of which seven cases (accounting for approximately 29

per cent) had been pending for longer than two years. This is inherently an issue of notable concern, especially when one considers that all of these cases had originally been endorsed by the Management Committee, thereby implying that DSS had accepted BFID's recommendations and simply had to execute already agreed upon decisions.

4.1.12 Of the 93 cases whose recommendation was accepted by DSS, BFID had received the 'Suspended/Rejected' document of 66 cases. 61 of these cases remained pending due to the fact that the 'Suspended/Rejected' document was not received for all benefits in question, or the overpayment dates were not those recommended by BFID. NAO's analysis of these 61 cases through SABS, established that overpayments had not been raised with respect to 14 cases, while in another 39 of these cases, the relevant overpayments raised partially addressed BFID's recommendations, as endorsed by the Management Committee. It is only with respect to eight cases out of these 61 that DSS took necessary action for the recovery of all overpayments due. In these eight cases, BFID had not received all 'Suspended/Rejected' documents from the respective DSS Sections despite corrective action taken.

4.1.13 Table 12 presents the length of time for which the 53 cases with no overpayment or partial overpayment raised for which the 'Suspended/Rejected' document had been sent and were still pending. Measurement of the duration of pendency was calculated commencing from the date of finalisation of the relevant BFID investigation, to the arbitrary cut-off date established by NAO, which in this case was August 2013.

**Table 12: Pendency of Cases in relation to Non-Receipt of All the 'Suspended/Rejected' Documents**

Duration	Number of Cases
$x \leq 6$ months	0
6 months $< x \leq 8$ months	8
8 months $< x \leq 1$ year	6
1 year $< x \leq 1.5$ years	3
1.5 years $< x \leq 2$ years	6
2 years $< x \leq 2.5$ years	9
2.5 years $< x \leq 3$ years	4
3 years $< x \leq 3.5$ years	6
3.5 years $< x \leq 4$ years	5
4 years $< x \leq 4.5$ years	5
$x < 4.5$ years	1

**Note:**

All of the above 53 cases correspond to BFID investigation reports that had been favourably adjudicated by the DSS Management Committee.

4.1.14 From Table 12, it is immediately apparent that all cases had, as at August 2013, been pending for longer than six months, with 74 per cent of cases remaining in a pending status for over one year. This issue is of concern to NAO, especially since BFID's recommendation had originally been accepted in its entirety by the Management Committee, and overpayments relating to certain benefits had been raised in SABS, while other benefits that should have been withheld (in relation to the same cases), remained unaffected for a considerable period of time.

4.1.15 With regard to the remaining five cases, the 'Suspended/Rejected' document received by BFID proved to be inconclusive, details pertaining to which are presented hereunder. The first of these cases was deemed to constitute a social case by DSS, and therefore, no overpayment was raised. A BFID investigation report, submitted on 3 April 2012 indicated that the beneficiary formed part of a household composition

different from that declared on official DSS records, which therefore bears impact on the applicable benefit rates notionally due. The declared address transpired to be a construction site, as the official residence registered on DSS records had, in fact, been demolished for development purposes. In relation to this development, an application had been submitted to the Malta Environment and Planning Authority for the demolition of two adjacent buildings (both of which belonged to the beneficiary and her partner), and the subsequent construction of apartments, garages and a swimming pool.

4.1.16 BFID’s investigation report indicated that the beneficiary, and her partner, had an outstanding loan of €233,519, issued in 2006, which related to the aforementioned property development. This Department rightly questioned the basis upon which the beneficiary and her partner were afforded a bank loan of this magnitude; particularly, given the fact that, in the interim period, the beneficiary was in receipt of Social Assistance and Sickness Assistance. The beneficiary’s partner was also in receipt of such benefit payments, that is, Social Assistance and Sickness Assistance. NAO bears serious reservations as to how a person may on the one hand require social assistance, while simultaneously financing a private investment of this nature.

4.1.17 Furthermore, BFID’s investigation report also highlighted the fact that the beneficiary and her partner were residing at the same address from October 2005, according to information obtained from ARMS Ltd. This was incongruent with information that the beneficiary had provided to DSS, and therefore implied that the rates payable had to be revised downwards. From October 2005 to August 2012, the beneficiary and her partner received benefit payments of €40,522 and €37,347, respectively (Table 13).

**Table 13: Beneficiary’s and Partner’s Receipt of Payments, October 2005 to August 2012**

Benefit	Beneficiary’s Receipt of Payments (€)	Partner’s Receipt of Payments (€)	Total
Social Assistance	33,041	29,866	62,907
Sickness Assistance	7,481	7,481	14,962
<b>Total</b>	<b>40,522</b>	<b>37,347</b>	<b>77,869</b>

4.1.18 In view of all of the above, the DSS Management Committee accepted BFID’s recommendation on 27 April 2012, stating the following, “SA & SKA to suspend, o/p [overpayment] date & reason to be decided after case is investigated by SA [Social Assistance Section within DSS]; DSS request TCU profile from BFID.” A TCU profile was eventually made available to DSS, indicating that the property development made reference to in the preceding clauses had been transferred to the beneficiary’s son, with the beneficiary and her partner registered as sellers. This property transfer was effected by means of a donation and the declared notice value was established at €465,000.

4.1.19 In this context, NAO considered it to be fit and proper to review the contract entered into by the beneficiary’s son with a third party who purchased one of the apartments forming part of this property development. Upon further scrutiny of the contract, NAO established that the development comprised of 19 apartments, two maisonettes and 18 garages (of various sizes). The contract of sale provided for NAO’s review corresponded to one apartment and a garage, which were sold at €128,000. This Office’s estimation of the total value of the 19 apartments and two maisonettes totals an approximate €2.7 million.

4.1.20 Going back to the Management Committee’s above-quoted decision, NAO’s analysis indicated that no overpayment was raised with respect to this case. Seeking to establish the facts of the case, NAO noted that on 14 August 2012, a senior official within DSS wrote a letter-minute stating what was discussed with the beneficiary’s

son, who was accompanied by his lawyer, a then Opposition Member of Parliament. It was stated that the beneficiary and her partner encountered financial difficulties with respect to loan repayment, and therefore, their son had taken over the property development project. The letter-minute presents a bleak financial situation, precisely stating that the beneficiary's son, *"is even selling each finished flat in the project to service the interests on the loan."* The senior official within DSS continued by stating that, *"If there are any overpayments then action needs to be taken. However, I do feel that given the dire circumstances of this family we are to consider seriously how we can help financially for their day to day living."*

- 4.1.21 Six months later, that is, during May 2013, BFID received feedback from DSS indicating that the beneficiary's Social Assistance had been reinstated following the intervention of a senior official within DSS as referred to in the preceding clauses. Furthermore, as at the time of writing of this report, no overpayment had been raised with respect to the beneficiary, or her partner.
- 4.1.22 NAO's qualms in this respect are self-evident, essentially revolving around whether DSS's benefit payment system should make good for private investments that have gone wrong, particularly when the circumstances surrounding which (given that the beneficiary and her partner were on Social Assistance and Sickness Assistance benefits) are suspect in the first place.
- 4.1.23 Other cases deemed similarly pending included one that featured documentation deemed still pending from DSS's side, while another was characterised by a disagreement that BFID and DSS had over attendance sheets and payslips. This disagreement was discussed in detail from clause 2.3.2 through 2.3.16. With respect to a particular case in this category of cases, an overpayment was created in SABS and subsequently cancelled; the benefit in question was also reinstated. When NAO enquired about this case with DSS, this Office was informed that a senior official within DSS had written to the Director (Non-Contributory Benefits) stating that, *"... given the particular circumstances of case as explained in BFI report, SA should not be suspended and therefore any o/p [overpayments] created has to be cancelled."* As amply stated in Chapter 2, NAO is of the opinion that if an overpayment is cancelled, further details should be provided to justify such an action.
- 4.1.24 In another one of these remaining five cases, NAO requested BFID to provide clarifications. According to BFID, DSS had, at first, accepted BFID's recommendation on 16 March 2010 to recoup overpayments due, and the latter-referred Department established the date of effect of such enforcement measures as at 15 February 2009. However, BFID was told that the date established as per DSS acceptance was a mistake from the latter-referred Department, and that instructions forwarded to the relevant DSS Section were to suspend the benefit and create an overpayment from 15 February 2010. BFID was told, during April 2013, that further feedback would be provided in due time; however, no feedback had been received as at September 2013. NAO subsequently contacted DSS in order to obtain additional clarifications in this regard. DSS confirmed that the initial overpayment date was erroneously established as 15 February 2009. In fact, as stated by DSS and verified by NAO, BFID had proposed for the overpayment to start from 30 June 2009. The Department also stated that the overpayment date was set to 15 February 2010 due to a lack of evidence corresponding to the period preceding the actual date of inspection.
- 4.1.25 From the 145 investigated cases that were not in a 'put away' status, DSS had indicated to BFID that it intended to carry out further investigations on 43 cases. On average, this initial feedback was sent to BFID within 67 days from DSS's receipt of the original respective BFID investigation. However, at the time of writing, these cases



had been pending for approximately two and a half years from the date of BFID's original investigation. From these 43 cases, 'Suspended/Rejected' documentation was received in 16 cases; however, in 14 cases (out of these 16), this feedback either did not relate to all benefits in question or the corresponding overpayment dates were not those recommended in the BFID investigation report, or was unrelated to the BFID investigation. With reference to the two other cases (out of these 16), although the 'Suspended/Rejected' documentation was received by BFID, the feedback was inconclusive. More specifically, this feedback either was not related to the BFID investigation in question, or no actual feedback was given.

- 4.1.26 With reference to the remaining 27 cases, no 'Suspended/Rejected' documentation was received; however, four of these cases had an overpayment created in SABS, even though not for all the benefits in question. NAO noted that, on average, these 27 cases had been pending for nearly two years. From these 27 cases, one case remained pending because of a disagreement that BFID and DSS had over attendance sheets and payslips, as was highlighted previously.
- 4.1.27 In one particular case, the documentation related to DSS's acceptance of BFID's recommendation was never received; however, the 'Suspended/Rejected' documentation was nevertheless received, albeit with a difference in dates to that recommended by BFID.
- 4.1.28 NAO noted eight anomalous cases, wherein BFID was in total disagreement with DSS's final decision, but is still expecting further feedback on such cases with respect to seven of these cases. For instance, in a particular case, the beneficiary was declaring that she lived in Flat 4A, instead of Flat 4. Of note is the fact that Flat 4A does not actually exist and the beneficiary stated that it was the landlord who had told her to declare such an address. Furthermore, when the landlord claimed a sickness benefit he listed Flat 4 as his place of residence. In its analysis of this case, DSS acquired an affidavit wherein the beneficiary declared under oath that she was living alone with her son at Flat 4A.
- 4.1.29 Box 19 presents a copy of a letter that BFID sent to DSS at this stage of the case's analysis, in response to DSS's opinion on there not being enough evidence to suspend benefits. A visit by DSS's Social Worker resulted in the beneficiary admitting that she actually lived in Flat 4, and not Flat 4A – a signed declaration stating so was provided to DSS. Despite this declaration, no corrective action was instigated by DSS in this regard. BFID was concerned with the fact that even though factual data proved that the beneficiary was being dishonest in the information she had provided in her social benefit application forms, DSS still considered the beneficiary not to be at fault and, therefore, did not find her to be in breach. NAO verified whether any overpayments had been raised with respect to this case, and established that no such enforcement action had been taken by DSS as at August 2013.
- 4.1.30 In another case, DSS rejected BFID's recommendation "...as per AG's instructions." Updates on the issue referred to here were, at the time of writing, available to both BFID and DSS, which updates effectively revise the Attorney General's original instructions, aligning such views with BFID's original position. Despite this, no action was taken by DSS and this case, therefore, remains pending.

### Box 19: Correspondence related to Beneficiary's False Declaration of Address

#### BFID Correspondence with DSS regarding Beneficiary's False Declaration of Address

29<sup>th</sup> September, 2010

Director General (Social Security)

Re: [Beneficiary name, ID number and address redacted]

The investigation report attached to this letter is being re-submitted to be viewed again by the Benefit Fraud & Investigation Board (BFIB) [referred to as the Management Committee throughout this audit report].

The Board viewed this case on 29<sup>th</sup> April 2010 and the Board's decision on the day was, "Not enough evidence to suspend but SA [Social Assistance] to ask clt [claimant] to produce WSC [Water Services Corporation] bill & review case, SA to inform SKA & ENRG of feedback".

The investigation report clearly established that Flat 4A DOES NOT EXIST. In fact, claimant herself admitted this and she also stated that it was the landlord himself, [landlord name redacted] who told her to quote the said Flat 4A in her official address. (Vide pg.3 para. 2)

The official residence of [beneficiary name redacted] is that of claimant without the letter A after Flat N°4.

On 8<sup>th</sup> July 2010 claimant took an affidavit wherein she declared under oath that she is living alone together with her son at [beneficiary address redacted], Flat 4A [beneficiary address redacted] (Red 64 in SA file).

This should be considered as a false declaration under oath as Flat 4A does not exist.

WSC bill produced by claimant is of [beneficiary address redacted], Flat 4 [beneficiary address redacted], showing [Beneficiary Name] as the tenant at this address. Vide attachment to Red 58 in SA file.

[Landlord name redacted] recently claimed Sickness Benefit from DSS for period between 30/8/2010 to 13/9/2010 by submitting two medical certificates. The address that he quoted on these two certificates is that of [beneficiary address redacted], Flat 4 [beneficiary address redacted]. SABS shows that the address quoted on the certificates matches the address details on SABS. *Address Match* box is marked YES. So here DSS has a signed declaration by [landlord name redacted] - i.e. the medical certificates - that he is residing at, [beneficiary address redacted], Flat 4 [beneficiary address redacted].

**Since Flat 4A does not exist this effectively means that he is residing with claimant!**

What about the locked room in claimant's residence where the landlord, [landlord name redacted], keeps his belongings! Vide page 4 para.2 of the investigation report. It beggars belief. The above facts show that [landlord name redacted] is a resident rather than the landlord at claimant's residence.

It is BFID's opinion that the above facts render strong doubts about the veracity of claimant's affidavit referred to above. BFID recommends that the BFI Board should consider claimant as not satisfying the Director General (Social Security) that she is forming a household on her own.

Yours sincerely,

Assistant Director  
Benefit Fraud and Investigation Department

#### Time Lapse from BFID Investigation Date to the Corresponding Receipt of DSS Feedback

4.1.31 NAO carried out an analysis of the length of time taken by DSS's Management Committee to forward its initial feedback to BFID on the above-referred 145 pending cases. In most cases (83, representing 57 per cent) BFID received feedback within one month of the finalisation of the corresponding BFID investigations. Feedback on a

further 39 cases (27 per cent) was received by BFID in between one and two months, while feedback on nine cases was received within a two to three month timeframe. In seven cases, it took DSS approximately three to four months to forward its comments to BFID, while in another three cases, feedback was received after a year but before the lapse of the second year. In two exceptional cases, initial feedback was received after approximately four and five years, respectively. NAO noted that in the latter two cases, BFID investigations forwarded to DSS were misplaced; BFID subsequently resubmitted its investigative reports for DSS's perusal, and feedback was received accordingly. No initial feedback was received with respect to two cases, the BFID investigation reports corresponding to which had been forwarded to DSS during April 2010 and March 2013. In the former case, the 'Suspended/Rejected' document was received after a few months; whereas in the latter case, the BFID investigation was finalised during March 2013, thereby closely coinciding with the cut-off date established for the purposes of this exercise. Table 14 presents the above-referred data.

**Table 14: Time Taken for Management Committee to Submit Feedback to BFID**

Time Taken in Calendar Days	Number of Cases	Percentage of Cases
$x \leq 1$ month	83	57.2%
1 month $> x \leq 2$ months	39	26.9%
2 months $> x \leq 3$ months	9	6.2%
3 months $> x \leq 4$ months	7	4.8%
4 months $> x \leq 1$ year	0	0.0%
1 year $> x \leq 2$ years	3	2.1%
2 years $> x \leq 5$ years	2	1.4%
Never Received	2	1.4%
<b>Total</b>	<b>145</b>	<b>100%</b>

4.1.32 Although DSS forwards feedback on most cases within a reasonable timeframe, NAO is concerned with the remaining 23 cases, where feedback was received after more than two months from the finalisation of the BFID investigation. The main risk associated with a lengthy response time is the accumulation of overpayments related to the benefits that would not in fact be due to the beneficiaries concerned. Apart from the accumulation of overpayments, NAO is concerned with the fact that such overpayments will take unnecessarily longer to be recovered.

## 4.2 Enforcement

4.2.1 When BFID and DSS agree that a person is in breach of the SSA, the latter is the Department responsible for recovering related financial dues. A timely and effective response in relation to social security benefit overpayments is critical in two respects; first, in conveying the desired message to beneficiaries who are in breach of the SSA, and second, in limiting the extent of overpayments accruing over time.

4.2.2 In this regard, the SSA establishes the functions and powers of DSS in recovering social security benefit overpayments. Of specific relevance to this section of the report is Article 102 of the SSA, an extract of which is presented in Box 20 hereunder.

**Box 20: Extract from Article 102, Social Security Act**

Repayment of Benefit, Pension, Allowance or Assistance Improperly Received
Save as provided for in article 98(3), with effect from the 1 <sup>st</sup> of April 1978, any person who has received any sum by way of benefit, pension, allowance or assistance under this Act to which he was not entitled in terms of the provisions of this Act shall be liable to repay to the Director the sum so received by him, and the Director shall, without prejudice to any other right competent to him at law, recover such sum by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled.

- 4.2.3 The same Article continues to stipulate that “...where such overpayment occurs as a result of the non-disclosure or misrepresentation of a material fact (whether the non-disclosure or misrepresentation was or was not fraudulent) the rate of recovery by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled shall be determined by the Director but shall in no case be less than the equivalent of 10% of the rate of benefit, pension, allowance or assistance to which he thereafter becomes entitled.”
- 4.2.4 On the other hand, “...where such overpayment occurs as a result of any eventuality other than those mentioned in paragraph (i) of this proviso [as reproduced in clause 4.2.3], the rate of recovery by means of deductions from any benefit, pension, allowance or assistance to which he thereafter becomes entitled shall also be determined by the Director but shall in no case exceed the equivalent of 5% of the rate of benefit, pension, allowance or assistance to which he thereafter becomes entitled unless the beneficiary or pensioner concerned, as the case may be, requests that a higher rate of such deduction be effected.”
- 4.2.5 Hence, when the Department is at fault for an overpayment (because of negligence or inattention to details provided on the benefit application form), the beneficiary in question repays arising overpayments at a rate that does not exceed five per cent of subsequent benefits; however, if the beneficiary is at fault, repayment must be made at a rate of ten per cent or higher. Axiomatically, this distinction assumes fundamental importance in NAO’s review of the efficiency and effectiveness of DSS’s enforcement measures.
- 4.2.6 In light of the above, NAO carried out an analytical review of the fifty beneficiaries bearing the highest aggregated overpayments created by DSS since the establishment of BFID and arising from investigations undertaken by this latter-referred Department. BFID administers a spreadsheet whereby it keys in feedback received from DSS, which feedback includes DSS’s intention to create overpayments following the Management Committee’s adjudication of submitted investigation reports. NAO used this spreadsheet as the basis for its case study selection. NAO subsequently, during March 2013, verified whether such overpayments were in fact created in SABS and proceeded to view the DSS physical files when overpayments were not found in SABS, or when the repayment rate was not in line with the provisions stipulated by the SSA.
- 4.2.7 The 50 beneficiaries analysed in this exercise each had multiple overpayments; however, for the purposes of this verification, analysis was structured at the beneficiary-level and not at the individual benefit overpayment transaction level. This methodological design was intended, as NAO considered it more appropriate to understand each case in a comprehensive manner, while a transaction-level analysis would not have provided the wider context key in establishing the corresponding facts of the case.
- 4.2.8 In view of the above, the beneficiaries’ aggregated overpayments ranged from approximately €19,300 to €54,600, and when considered in their entirety, the case studies under review accounted for a total overpayment equivalent to €1,454,900. However, when NAO verified these cases against SABS, it found that actual overpayments keyed into the system, and not cancelled, amounted to €1,182,649. It should be noted that not all overpayments found on SABS specifically related to corresponding BFID investigations under review; such overpayments, which totalled €115,370, were generally the result of other internal investigations carried out by DSS (and formed part of the above-quoted €1,182,649). Hence, the amount quoted in relation to overpayments registered in SABS, which were directly related to BFID investigations should have read €1,067,279 and not the previously stated €1,182,649.

Nonetheless, for the purposes of this study, NAO considered it appropriate to analyse the €1,182,649 in its entirety. This decision was taken in light of the fact that this exercise was related to enforcement; hence, any overpayment created in SABS with respect to the case studies was, in fact, relevant to the study.

- 4.2.9 NAO noted that, out of the €1,182,649, DSS had recovered €234,142 as at March 2013, which is equivalent to 20 per cent of overpayments due. As is rendered evident in Table 15, the annual percentage amount recovered, gradually and generally increases as the overpayment due ages.

**Table 15: Aggregated Annual Recovery of Overpayments Corresponding to the Selected Cases**

Year	Overpayment in SABS (€)	Amount Repaid (€)	Percentage Repaid
2013	1,986	181	9%
2012	148,573	5,117	3%
2011	172,852	9,819	6%
2010	171,104	18,991	11%
2009	262,684	40,177	15%
2008	92,161	17,837	19%
2007	203,378	52,493	26%
2006	113,884	73,500	65%
1996 – 2005	16,027	16,027	100%
<b>Total</b>	<b>1,182,649</b>	<b>234,142</b>	<b>20%</b>

- 4.2.10 In addition to the above analysis, NAO also reviewed the percentage rates applied to all overpayments raised in SABS following BFID investigations with respect to the 50 cases reviewed in this section of the audit report. Table 16 presents an overview of such findings.

**Table 16: Percentage Rates Applied to BFID Investigation Overpayments Raised in SABS**

Rate	Number of Benefits	Value of Overpayments (€)
0% < x < 10%	23	188,089
10% ≤ x < 20%	21	247,223
20% ≤ x < 30%	4	96,711
30% ≤ x < 40%	37	408,396
40% ≤ x ≤ 99%	2	22,372
100%	7	104,488
<b>Total</b>	<b>94</b>	<b>1,067,279</b>

- 4.2.11 Immediately apparent from the data presented in Table 16 is the fact that in the case of 23 benefits, a rate of less than 10 per cent was applied. This is of concern to NAO given that such overpayments raised emanated from BFID investigations, which clearly established that the various beneficiaries involved were at fault in each of the cases. Under such circumstances, and as precisely stipulated by the relevant provisions of the SSA, the minimum rate applicable to such cases should have been that of 10 per cent.

- 4.2.12 Shifting back to the beneficiary-level analysis made reference to in clause 4.2.7, NAO found no inconsistencies in 31 of the cases reviewed, whose cumulative overpayments, from BFID records, amounted to €873,648. Although no inconsistencies (relating to the manner by which they were inputted in SABS) were found in these 31 cases, NAO noted that, in seven of these cases, no repayments were active as at April 2013. Table 17 presents overpayment amounts relating to these seven cases, clearly indicating their respective unsettled balances. The issue relating to such unsettled balances is expanded upon in paragraph 4.2.36 and 4.2.37; however a common trend that emerged with respect to the cases presented in Table 17 was the fact that all beneficiaries concerned were not in receipt of social benefit payments, and it is in this sense that subsequent overpayment recovery came to a halt. In the absence of live benefit payments, and given the fact that these seven beneficiaries had no ad hoc agreement with DSS as to the repayment of such funds, the Department's

enforcement efforts only recovered an approximate €5,000 out of a possible €210,000 aggregate amount.

**Table 17: Analysis of Cases bearing No Inconsistencies yet with No Active Repayment**

Enforcement Case Bearing No Inconsistencies	Benefit Type	Overpayment (€)	Date Inputted in SABS	Paid as at April 2013 (€)	Balance as at April 2013 (€)
1a	Supplementary Allowance	1,317	26 June 2007	-	1,317
1b	Social Assistance	33,151	15 June 2007	1,463	31,688
1c	Sickness Assistance	2,552	15 June 2007	2,552	-
2a	Social Assistance	29,496	25 March 2009	-	29,496
2b	Children's Allowance	7,485	5 March 2010	334	7,151
2c	Social Assistance	88	23 November 2001	88	-
3a	Supplementary Allowance	1,203	21 January 2008	-	1,203
3b	Unemployment Assistance	29,969	2 January 2008	820	29,149
4	Social Assistance	30,290	22 February 2012	-	30,290
5	Carer's Pension	27,887	5 February 2010	-	27,887
6	Unemployment Assistance	24,101	6 March 2006	-	24,101
7a	Social Assistance	20,405	1 June 2012	-	20,405
7b	Social Assistance	1,967	11 January 2010	52	1,915
<b>Total</b>		<b>209,911</b>		<b>5,309</b>	<b>204,602</b>

4.2.13 In the remaining 19 cases, NAO identified notable shortcomings. Inconsistencies in this respect refer to incorrectly applied repayment rates as well as instances when BFID's recommendations for overpayments were accepted by DSS but not subsequently entered in SABS. These 19 cases corresponded to a total overpayment of €581,252 according to BFID records. At a more detailed level of analysis, these 19 cases had specific benefit overpayments that bore no inconsistency, while others were deemed inconsistent. It is this latter category that was subject to further review by NAO, the total of which accounted for an overpayment equivalent to €485,616. To this end, NAO carried out a more in-depth analysis in order to establish factors influencing such inconsistencies. Hence, NAO reviewed DSS files corresponding to the cases where such shortcomings were noted.

4.2.14 NAO noted that discrepancies where BFID's recommendations for overpayments were accepted by DSS but not visible in SABS amounted to approximately €324,417, which discrepancies related to 11 cases. This large discrepancy was of heightened concern to NAO, which led to the Office's further examination into these cases and is elaborated upon in further detail hereunder.

4.2.15 A case of significant concern identified by NAO in the course of this audit related to a beneficiary who was reported to have been living with her daughter's father (with the establishment of paternity featuring as a key issue in this case, NAO has opted to refer to this person as 'father' for ease of understanding), who was not registered on her daughter's birth certificate, for approximately ten years (between the first quarter of 2000 and the last quarter of 2009). During this period of time, the beneficiary was in receipt of the means tested Social Assistance and Children's Allowance benefits, which amounted to approximately €59,000 in benefit payments. Although the beneficiary had declared (in DSS application forms) that her household composition was that of mother (beneficiary) and daughter, it was noted by BFID that the property belonged to her daughter's father. It should also be noted that, during October 2009, the father of the beneficiary's daughter commenced legal proceedings in order to establish legal recognition of his daughter, as his own, on her birth certificate.

4.2.16 Shortly after these developments, an anonymous report was submitted to BFID, which Department duly investigated and concluded in November 2009. In its report

to the Management Committee, BFID stated that the beneficiary was not residing at her officially declared address, and therefore recommended the suspension of benefit payments and the creation of an overpayment corresponding to one month's dues. Coinciding with the submission of this BFID report, was a letter submitted by the beneficiary's former partner, through his lawyer, stating that the beneficiary had in fact been residing with him, therefore shedding doubt on the factual accuracy of the beneficiary's declared household composition with respect to a much lengthier period of time, notably, from earlier than March 2000, up to October 2009. Further to this BFID investigation, and on the basis of this additional information obtained, DSS had, during March 2010, accepted the recommendation made and duly created two overpayments of €47,280 and €2,761 in relation to the Social Assistance and Children's Allowance benefits, respectively.

4.2.17 The beneficiary appealed this decision on 29 March 2010, and an appeals hearing was subsequently scheduled to take place a year later, that is, during March 2011. A number of appeal hearings took place, where the beneficiary's testimony was put forward, notably on 11 May 2011 and 5 October 2011. With the appeal process still underway, DSS sent a letter to the beneficiary on 12 October 2011, stating that the overpayment of €47,280 was to be retracted. In response to this letter, the beneficiary, through her lawyer, submitted a response dated 21 October 2011, indicating that she would be retracting her appeal. Subsequent to this correspondence, the appeal process quite logically came to a premature end, as it was eventually cancelled on 24 November 2011 without ever arriving at a final decision.

4.2.18 NAO, however, noted that a series of other events took place prior to the cancellation of the appeal. First, on 22 September 2011, DSS drastically decreased the overpayment of €47,280 to €6,199. As a result, the Children's Allowance overpayment was also decreased to €558, from the previous €2,761. Upon an analysis of the corresponding DSS file, NAO noted that DSS had referred to its records (that is, data provided by DSS applicants themselves) and noted that the beneficiary's partner had declared that he was living in the same address as the beneficiary during the period 16 July 2003 and 3 October 2004. Hence, the overpayment amount was only applied to this period of time, thereby decreasing it by €41,080.

4.2.19 Further to this decrease, NAO noted that a letter-minute written by a senior official within DSS on 11 October 2011 instructed the cancellation of this overpayment altogether. The argument made in this regard was that, *"Unfortunately it is pretty obvious that [beneficiary] was not at the time allowed to, or asked to give her evidence on the matter. This is a breach of a fundamental legal right and therefore our claim for an overpayment of over €47,000 is in breach of a fundamental legal right for the other party to give their views on the matter."* The letter-minute goes on to state that, *"Further to this, I realise that in the meantime further investigations proved that the father of the child had himself claimed social benefits and stated that he was living at the address of claimant. On the basis of this information it appears that you were going to revise the overpayment amount to around €6,000. With due respect, even here, there is no evidence that [beneficiary] was given the opportunity to voice her side of the case."* The senior official within DSS also stated that, *"There is no conclusive evidence to prove that [beneficiary] was fraudulently receiving social benefits from 2000 and unless there is conclusive evidence we are to retract our claim."*

4.2.20 NAO has serious concerns with respect to the regularity of the decision taken by the senior official within DSS, with the decision to cancel the €6,000 overpayment

based on his perceived lack of evidence and failure to provide the beneficiary with an opportunity to voice her side of the case. These two points raised by the senior official within DSS are strongly contested by this Office, with clear and irrefutable evidence utilised by DSS in computing the €6,000 overpayment revision rebutting the first point made, and the ongoing appeal process clearly providing an opportunity for the beneficiary to state her defence clearly countering his second claim.

- 4.2.21 Of notable concern to NAO is the fact that the events that led up to the total cancellation of the €47,280 overpayment came after an email, dated 26 July 2011, from the then Minister responsible for the Department of Social Security. This email, which was sent to a senior official within DSS, referred him to the case in question. This email's contents included a complaint, sent directly to the then Minister, by the beneficiary's husband, expressing his concern at the overpayment raised. NAO's concern was heightened in light of a statement made in this email, whereby the beneficiary's husband stated that his wife, "*kienet single mother mill partner li kellha qabel.*"<sup>7</sup> This statement should have served to strengthen DSS's efforts at addressing this case as one of benefit fraud, and certainly does not justify the manner in which the case was ultimately concluded.
- 4.2.22 After analysing the above case, NAO is of the considered opinion that the overpayment amount should have, as a bare minimum, been charged at €6,199 for the period (July 2003 through October 2004) when the daughter's father and the beneficiary were residing at the same address, and both in receipt of social benefits. Furthermore, should the beneficiary's former partner be legally recognised as her daughter's father, then NAO considers it necessary for DSS to institute relevant revisions to the benefits paid with respect to the wider periods of time. Under such circumstances, revisions refer to the fact that the beneficiary was not entitled to the Social Assistance and Children's Allowance benefits in full from 2000 up to July 2003, and from October 2004 up to October 2009, given that maintenance payments should have been notionally due during these aforementioned periods of time.
- 4.2.23 In another particular case, DSS accepted BFID's recommendation and stated that it intended to create three overpayments totalling €41,099. However, only €1,152, relating to the Supplementary Allowance benefit was created in this regard. The other two overpayments related to the Sickness Assistance and Social Assistance benefits, and amounted to €4,361 and €35,586, respectively. Upon review of the DSS files corresponding to this beneficiary, NAO found no documentation whatsoever in relation to these two overpayments. Although NAO is more concerned about the fact that these overpayments were not inputted in SABS, it is also concerned about the fact that no documentation relating to the overpayments was found in this beneficiary's DSS files, with this Office resultantly struggling to establish why an overpayment of approximately €40,000 was not raised in SABS.
- 4.2.24 Another case that drew NAO's attention related to a beneficiary whose SABS account should have indicated a total of €45,103 in overpayments dating back to 2007. A breakdown of these overpayments is presented in Table 18. However, overpayments showing on the beneficiary's account amounted to €24,258, leaving a balance of €20,845 not accounted for.

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<sup>7</sup> Was a single mother from her previous partner.



**Table 18: Case-specific Breakdown of Overpayments**

Benefit	Approved Overpayments (€)	Overpayments in SABS (€)	Difference (€)
Sickness Assistance	3,383	3,383	-
Social Assistance	41,720	20,875	20,845
<b>Total</b>	<b>45,103</b>	<b>24,258</b>	<b>20,845</b>

- 4.2.25 From further investigations carried out by NAO, it was noted that the beneficiary had passed away during March 2009 and the overpayment of €41,720 was transferred to the beneficiary's three heirs (his wife and two children). The incongruence that arose in relation to the Social Assistance benefit was traced back to an administrative oversight by DSS. In this case, although all of the necessary overpayments in relation to this benefit were transferred to the relevant heirs, not all transfers were duly recorded on the various accounts involved, therefore creating an element of difficulty with respect to their traceability.
- 4.2.26 NAO also noted that the Sickness Assistance overpayment of €3,383 was never transferred to the beneficiary's heirs. The relevant DSS Section was notified of this anomaly and corrective action was taken accordingly.
- 4.2.27 With reference to another of the cases under review, NAO noted that outstanding overpayments were transferred to the beneficiary's partner, who was in receipt of the Unemployment Assistance benefit. This overpayment was being deducted at 30 per cent. Hence, no inconsistencies were noted in this case when NAO analysed the DSS files in connection with this case.
- 4.2.28 In seven cases, NAO noted that the beneficiaries in concern had filed appeals in contestation of the overpayment decisions taken by DSS, and subsequently won them. Hence, through the analysis of DSS files, NAO established that no inconsistencies in relation to these overpayments existed.
- 4.2.29 The remaining eight cases referred to those that had an incorrectly applied repayment rate (less than 10 per cent) in relation to overpayments. Such overpayments were the result of a BFID investigation and all beneficiaries in question were at fault. Hence, a repayment rate of at least ten per cent should have been applied to all such cases. NAO, therefore, reviewed all the DSS files in relation to these overpayments in order to determine whether such rates were in fact justified.
- 4.2.30 Upon rigorous review of the DSS files corresponding to these eight beneficiaries, it was noted that no explanations were available with regard to the overpayments' incorrectly applied repayment rates (that is, less than the legally stipulated minimum of 10 per cent). The cumulative amount of these inconsistencies stood at €161,199, the details of which are presented in Table 19. Of note is the fact that, as at April 2013, only 1.34 per cent of the total overpayments due (in relation to these cases) were in effect collected by DSS.
- 4.2.31 NAO also noted that, out of these eight cases, overpayments dating back to between October 2009 and May 2010 amounted to €63,711, while their respective settled dues corresponding to this amount totalled €1,485. However, it should also be noted that the beneficiaries related to the cases highlighted in Table 19 had other overpayments, which do not feature here, as the repayment rate applied was correct. With respect to five of these beneficiaries, DSS was, as at April 2013, deducting a percentage of benefit payments offset against these other overpayments. The remaining three (Cases 1, 4 and 8) beneficiaries' accounts had no ongoing overpayment deductions

during the same month and were not in receipt of any benefit payments. This is a situation of notable concern to NAO, as there does not seem to be a systematic way of collecting due overpayments. DSS stated that it does, at times, agree on a repayment scheme with such beneficiaries; however, NAO did not find any such agreements in these examined DSS files with respect to the nine benefits represented in Table 19.

**Table 19: Analysis of Cases Bearing Incorrectly Applied Repayment Rates**

Enforcement Case	Overpayment (€)	Date Inputted in SABS	Paid as at April 2013 (€)	Balance as at April 2013 (€)
1	34,757	16 May 2011	6	34,751
2a	3,221	15 May 2012	-	3,221
2b	16,918	26 March 2012	189	16,729
3	17,940	30 January 2012	-	17,940
4	20,585	5 December 2009	-	20,585
5	22,839	17 October 2009	780	22,059
6	3,647	24 March 2011	-	3,647
7	21,005	21 February 2011	481	20,524
8	20,287	21 May 2010	705	19,582
<b>Total</b>	<b>161,199</b>		<b>2,161</b>	<b>159,038</b>

- 4.2.32 During its analysis of these eight beneficiaries, NAO came across one particular case where action taken by DSS was deemed, by this Office, to be commendable and well-coordinated with that of BFID. More specifically, Case 3, as represented in Table 19, refers to a beneficiary who reapplied for the same benefit she was found in breach of a year earlier. In light of the fact that this beneficiary was found in breach of the SSA, DSS duly carried out investigations in relation to the prospective beneficiary's declared address. From these investigations, it transpired that the beneficiary was not living at the declared address. DSS subsequently took a decision during April 2013, which decision constituted a rejection of the applied benefit. This is, according to NAO, an exemplary case of BFID and DSS working in a unified manner.
- 4.2.33 During its evaluation of overpayment rates, BFID brought to NAO's attention a case where a beneficiary was at fault but the overpayment rate applied stood at one per cent. BFID also stated that it had in fact advised DSS of this inconsistency. In this regard, NAO noted that, during the course of the performance audit, this rate was effectively revised upwards to 30 per cent.
- 4.2.34 Of particular relevance to this aspect of the report is the fact that the SSA does not allow for the imposition of financial penalties to be charged to persons who are in breach of this Act on grounds of false declarations made to DSS, or the omission of information relating thereto. As matters stand, nothing is actively done to deter persons from committing fraud, and with no penalties or fines imposed on those who are identified as having intentionally breached the SSA, such a state of affairs clearly transmits a sense of impotence around the Department's ability to appropriately prevent social benefit fraud. The absence of any form of deterrent with respect to persons committing benefit fraud certainly does not facilitate the Department's enforcement efforts.
- 4.2.35 The situation was further compounded by the fact that repayment, in the cases reviewed in terms of enforcement, was generally not conditioned by the magnitude of the amount due, but was merely established as a percentage of live benefits. In other words, these beneficiaries will, at times, repay benefits that were not due to them only when in receipt of other benefits, at which point a percentage deduction from the benefits payable is applied. It is in this sense that the magnitude of the overpayment bears no effect on the amount of repayment enforced, and increasing the overpayment due in absolute terms (through successive instances of benefit fraud) simply extends the period of time required to settle such dues.

4.2.36 The final aspect of NAO's enforcement-based analysis centred on the anticipated period of time required for DSS to collect overpayments due with respect to the 50 cases reviewed in this section of the report. Key figures corresponding to this analysis are presented in Table 20.

**Table 20: Estimated Time Required for Full Settlement of Overpayments Due**

Estimated Number of Years Remaining to Pay Off Overpayment	Instances of Overpayments	Overpayment Amount (€)	Paid as at April 2013 (€)	Balance as at April 2013 (€)
$0 < x \leq 5$	14	44,530	23,986	20,544
$5 < x \leq 10$	9	100,015	35,762	64,253
$10 < x \leq 15$	7	86,512	24,062	62,450
$15 < x \leq 20$	2	39,721	6,482	33,239
$20 < x \leq 30$	9	141,019	19,705	121,314
$30 < x \leq 50$	2	36,252	3,092	33,160
$50 < x \leq 70$	3	36,708	943	35,765
$70 < x \leq 100$	6	103,469	3,121	100,348
$x > 100$	11	203,014	4,702	198,312
No Repayment Presently Active	40	279,123	-	279,123
<b>Total</b>	<b>103</b>	<b>1,070,363</b>	<b>121,855</b>	<b>948,508</b>

**Notes:**

1. It is assumed that the overpayment rate applied in the case of these 103 benefits will remain unchanged throughout the lifetime of the overpayment.
2. Estimates are based on an averaged annual rate of overpayment from the creation of an overpayment up to April 2013.

4.2.37 The picture portrayed in Table 20 is in NAO's view, cause for concern. From the 50 cases reviewed, which in the context of this exercise correspond to a total of 103 benefits that had not yet been settled as at April 2013, two major issues emerge.

4.2.38 The first relates to the 40 overpayments where no repayment on the original amount due had been effected. The 40 benefits accounted for €279,123, which when seen in context with the overall amount due with respect to these 50 cases, corresponded to 26 per cent of all overpayments due in this respect. NAO noted that these 40 benefits could have corresponded to beneficiaries who were in fact settling other overpayments, and therefore, this Office endeavoured to establish the veracity of this assertion, or otherwise. Upon further analysis of these 40 benefits, which corresponded to 29 beneficiaries, NAO noted that eight of these beneficiaries were not paying other overpayments since they were not in receipt of social benefit payments. These eight beneficiaries had a total of 11 overpayments with no effected repayments on account, which overpayments accounted for €135,550. Table 21 provides a breakdown of these 11 overpayments.

4.2.39 The second issue emerging in this regard relates to the full settlement of overpayments whose duration extends well beyond what one could consider to be a reasonable and acceptable timeframe. Assuming that all facts relating to these cases remain unchanged, out of the 103 cases, 11 are expected to be fully set off within a period of 30 to 100 years. These 11 cases accounted for aggregated overpayments of €176,429. In another 11 cases out of these 103, accounting for €203,014, offsetting this amount will prove to be more of a challenge, as the repayment period anticipated in this respect extends well beyond 100 years.

4.2.40 NAO reiterates that the above estimations are based on the assumption that all facts relating to these cases remain unchanged. In truth, these beneficiaries may, in time, become eligible to other social benefits and therefore their rate of repayment may increase, effectively shortening the time required for full settlement. On the other

**Table 21: Cases with No Effected Repayments**

Case Relating to Overpayments with no Effected Repayment	Overpayment Amount (€)	Date Inputted in SABS	Balance as at April 2013 (€)
1	107	25 October 2012	107
2	29,496	25 March 2009	29,496
3	1,457	3 August 2011	1,457
4a	42	4 September 2008	42
4b	1,203	21 January 2008	1,203
5	30,290	22 February 2012	30,290
6	27,887	5 February 2010	27,887
7	24,101	6 March 2006	24,101
8a	60	5 June 2010	60
8b	322	2 June 2010	322
8c	20,585	5 December 2009	20,585
<b>Total</b>	<b>135,550</b>		<b>135,550</b>

hand, current beneficiaries who are settling their overpayment dues may become ineligible for social benefits, which therefore prolongs the repayment period.

### The Overpayments Section

- 4.2.41 The Overpayments Section within DSS was set up during June 2012 with the principal aim of recouping overpayments created in SABS, whether these emanated from a BFID investigation or directly from an internal DSS exercise. This Section initially limited its focus to efforts intended towards the recovery of overpayments arising from pensions paid in connection with deceased beneficiaries. Verifications in this respect consisted of the acquisition of data from the Public Registry in order to determine the identity of the heirs or next of kin of the deceased beneficiary. This function was eventually rolled out to all other benefits with effect from January 2013.
- 4.2.42 NAO's analysis in this respect was limited and merely informative in purpose, as the Overpayments Section was effectively established midway through the audit. It was therefore not entirely possible for the audit team to verify progress registered in much detail, particularly given the brief period of time within which this Section had been fully operational. Nonetheless, NAO considered it appropriate to reflect such a notable change in terms of DSS's enforcement structure in its report.
- 4.2.43 As a matter of procedure, the recovery of overpayments takes place in a predefined and systematic manner. First, the Overpayments Section receives a monthly report from the Malta Information Technology Agency (MITA) listing overpayments created during the respective month. Overpayment lists are checked for 'non-performing overpayments'. This term refers to overpayments created in SABS that correspond to persons who would not be, at the time, in receipt of any social benefit. Overpayments Section employees would then send an 'Intimation Letter', whereby the beneficiary is asked to call at a DSS District Office so as to agree on a repayment schedule (establishing a fixed amount that is to be periodically paid) in connection with the balance on their SABS account. The Overpayments Section keeps track of these due payments by administering a database of such agreements and carrying out the necessary checks that monthly payments have actually been effected.
- 4.2.44 When the person in connection with the overpayment does not reply to the 'Intimation Letter', after approximately a fortnight, the Overpayments Section sends a second 'Intimation Letter'. If this second 'Intimation Letter' is also not responded

to, the Section sends a third and final 'Intimation Letter' after, approximately, another fortnight. This final letter is sent via registered mail in order to enable the Section to determine whether the letter actually reached the intended address. If this letter is once again ignored, the Overpayments Section initiates the appropriate legal proceedings by, firstly, sending a judicial letter to the person concerned. Unless at some point of the judicial process, the person concerned responds and subsequently enters into an agreement with DSS, the Overpayments Section would no longer be responsible for the recovery of the overpayment.

4.2.45 Data gathered from the Directorate Corporate Services within DSS indicated that, as from the month in which the Overpayments Section was established, an increase was registered in payments made directly to DSS by persons who had pending overpayments. Data available in this regard corresponded to the period May 2009 up to October 2013. NAO further categorised this period into four distinct sub-periods; namely, May 2009 up to May 2012, June 2012 up to December 2012, June 2012 up to October 2013, and January 2013 up to October 2013. These periods will hereon be referred to as Period 1, Period 2, Period 3, and Period 4, respectively. Table 22 explains the categorisation of these periods, whereas Table 23 presents the average monthly payment receipts corresponding to each Period.

**Table 22: Categorisation of Periods**

Period Reference	Explanation of Categorisation
Period 1 (May 2009 – May 2012)	Date of available financial data up to the date of introduction of the Overpayments Section
Period 2 (June 2012 – Dec 2012)	Date of introduction of the Overpayments Section up to the date when it was rolled out to all benefits
Period 3 (June 2012 – Oct 2013)	Date of introduction of the Overpayments Section up to October 2013
Period 4 (Jan 2013 – Oct 2013)	Period during which Overpayments Section duties were rolled out to all benefits

**Table 23: Average Monthly Overpayment Receipts**

Period	Average Monthly Receipts (€)
Period 1 (May 2009 – May 2012)	82,915
Period 2 (June 2012 – December 2012)	88,802
Period 3 (June 2012 – October 2013)	94,795
Period 4 (January 2013 – October 2013)	98,991

4.2.46 From Table 23 it is immediately apparent that DSS registered a gradual increase of 19 per cent with regard to average monthly receipts over the span of four and a half years. Of note is the fact that right after the rolling out of the Overpayments Section's duties to all benefits (Period 4), this Section registered an increase of approximately €10,000 over the corresponding monthly average registered during the first six months of the introduction of the Overpayments Section in 2012 (Period 2). This refers to an increase of 11.46 per cent, which percentage illustrates that the work carried out by the relatively newly established Overpayments Section is commendable.

4.2.47 During its review of the process undertaken by the Overpayments Section with respect to the recovery of outstanding dues, NAO noted that this Section was not addressing overpayments that were created prior to its establishment. This was due to the fact that this Section limited its focus solely on overpayments created during the respective previous month, following the corresponding submission of data by MITA. Given this modus operandi, it is immediately apparent that overpayments created prior to the Section's establishment, and whose corresponding beneficiary was not in receipt of social benefit payments, were not being addressed by this Section.

### 4.3 Invalidity Pensions

- 4.3.1 NAO noted that prior to 2007, persons who applied for the Invalidity Pension had to be physically examined by one of the Department's Medical Boards (ordinarily composed of three medical professionals), apart from submitting an application form that included the prospective beneficiary's medical diagnosis duly compiled by his/her doctor. This procedure was subsequently revised and the procedure adopted at the time of writing entailed the submission of an application form (which would include a doctor's diagnosis of the condition that reportedly prevented the claimant from carrying out work). A Medical Board would subsequently be tasked with reviewing the claimant's file and entrusted with deciding whether the claimant was in fact fit for work or otherwise, without directly examining the prospective beneficiary. The medical board is guided by the Impairment Tables as established by L.N. 170 of 2007.
- 4.3.2 In drawing comparisons between the manner by which prospective beneficiaries applying for the Invalidity Pension benefit were assessed, it is NAO's opinion that the fraud risk does in fact persist with respect to the current procedure, and is substantially more pronounced in the case of the revised current system. Affording the prospective beneficiary the option of selecting the medical doctor that is to certify his/her fitness for work, or otherwise, is, in this Office's view, seriously undermining the objectivity and impartiality that should characterise such a sensitive process. The overall procedure of certification is devoid of any actual independent physical examination, key in verifying original claims made. Once a medical doctor has duly compiled the relevant forms, it is difficult to understand what value added may be derived from having such forms, and not the actual prospective beneficiary, examined by the Medical Board.
- 4.3.3 During the feedback process related to this audit's findings, DSS stated that since the date of introduction of the current system it noted a decrease of 27.8 per cent in the amount of invalidity pensions paid, from approximately €34,697,000 in 2008, to €25,043,000 in 2012. However, it is in NAO's opinion that correlation does not infer causality, and various factors could have influenced this decrease, with one such possible explanation being the introduction of a medical review scheduled at least every three years.

#### Invalidity Pensions for Life

- 4.3.4 According to Article 26(10) of the SSA, Invalidity Pensions should be, *"...reviewed on the medical aspect every three years or earlier as the Director may determine."* More specifically, the SSA stipulates that beneficiaries who are in receipt of the Invalidity Pension should be subject to a medical review that is to be scheduled at least every three years, as opposed to previous legal clauses that allowed for the indefinite receipt of social security payments in respect of Invalidity Pensions. In this regard, NAO carried out an analysis on a random sample based on the 4,362 persons who were in receipt of this Pension as at April 2013. The aim of this analysis was to determine the proportion of persons whose pension had no specified end date. The absence of an end date denotes DSS's omission with respect to the scheduling of a medical review as specified in the SSA. The results obtained from a sample of 373 beneficiaries in receipt of an invalidity pension showed that 124 had no specified end date corresponding to their relevant account. Of these, 10 had reached pensionable age, which meant that no end date would be required in such cases. This latter situation may arise when a person who is in receipt of an Invalidity Pension becomes eligible for an age pension, but the Invalidity Pension is of higher monetary value. Article 61 of the SSA provides an explanation in this regard:

**Article 61, Social Security Act**

The pensionable income of a person who becomes entitled to a Two-Thirds Pension under this Part and who immediately before becoming so entitled was in receipt of a pension under article 26, shall be that specified in the Thirteenth Schedule to this Act or, where the person concerned is entitled to a Service Pension, the current wage or salary of the post on which his Service Pension was awarded, whichever is the higher.

- 4.3.5 On the basis of such an argument, the number of cases where end dates were omitted was revised downwards to 114, which essentially represents 31 per cent of the sample taken. NAO also noted that all Invalidity Pension recipients who applied from 2008 onwards had an end date pegged with their relevant account. Table 24 presents a clear picture of the (sampled) number of cases that did not have an end date, categorised by year.
- 4.3.6 NAO considers adherence to the provisions stipulated under Article 26(10) of the SSA as an essential aspect in identifying and addressing possible irregularities arising in the granting of the Invalidity Pension benefit. This, coupled with possible revisions to the manner by which the appointed Medical Boards carry out their functions should undoubtedly contribute to the curtailment of possible benefit fraud in this respect.

**Table 24: Age Profile of Invalidity Pensions Sample without a Specified End Date**

Year	Number of Cases	Cases with Specified End Dates	Percentage of Cases without Specified End Dates
2012	30	30	0
2011	22	22	0
2010	18	18	0
2009	18	18	0
2008	20	20	0
2007	20	16	20
2006	19	18	5
2005	32	18	44
2004	27	16	41
2003	24	14	42
2002	33	13	61
2001	25	12	52
2000	15	8	47
1999	12	9	25
1998	13	9	31
1997	3	2	33
1996	8	0	100
1995	9	1	1
1994	4	3	25
1993	3	1	66
1992	3	0	100
1991	1	0	100
1989	1	1	0
1987	2	0	100
1976	1	0	100
<b>Total</b>	<b>363</b>	<b>249</b>	<b>31</b>

## 4.4 Conclusions

### Pending

- 4.4.1 NAO commends the fact that, over the span of two months and from the sample relating to pending cases (which amounted to 209), DSS and BFID finalised 64 cases. These cases do not include new investigations that BFID submitted to DSS during the course of these two months. The agreement by BFID and DSS on approximately 31 per cent of the sample pending cases reflects very well on DSS with regard to its efforts at addressing pending BFID cases.
- 4.4.2 Notwithstanding the above commendable actions taken by DSS with respect to the 30 per cent of the sample relating to pending cases, attention should be directed at the 70 per cent relating to cases that remained pending following these two months. Here, specific reference is directed towards those cases where BFID investigations were carried out a number of years prior to the established cut-off audit exercise date.
- 4.4.3 With regard to the most dated pending case, incidentally utilised as an example in clause 4.1.7, NAO is concerned about the fact that DSS did not send any feedback to BFID following its original intention to suspend benefits. Furthermore, the benefits in question were only suspended five and a half years subsequent to the BFID investigation, and corresponded to events that were not at all in relation to the investigation undertaken.
- 4.4.4 NAO is concerned about the fact that in 27 cases from the sample, DSS accepted BFID's recommendation but feedback on actual action taken was not forthcoming. This concern is especially relevant when one notes that 21 of these cases had, as at August 2013, been pending for over six months, with seven of these cases pending for a period in excess of two years. This is inherently an issue of notable concern, especially when one considers that all of these cases had originally been endorsed by the Management Committee, thereby implying that DSS had accepted BFID's recommendations and simply had to execute already agreed upon action.
- 4.4.5 NAO is also concerned about the 53 cases that remained pending because BFID did not receive feedback on action taken with regard to all of the benefits that were addressed in its reports. In this Office's opinion, the pending status of these cases, attributable to the partial implementation of agreed upon recommendations reflects poorly on DSS's overall level of coordination. Once again, this state of affairs is especially notable in light of the fact that 74 per cent of cases had remained pending for over one year. This issue is of concern to NAO, especially since BFID's recommendation had originally been accepted in its entirety by the Management Committee, and overpayments relating to certain benefits had been raised in SABS, while other benefits that should have been withheld (in relation to the same cases), remained unaffected for a considerable period of time.
- 4.4.6 Of note is the fact that DSS did not notify BFID about certain cases where overpayments were actually created, thereby implying that corrective action had been taken without BFID being notified. This Office appreciates the fact that it is neither efficient nor effective for BFID to have to go through each beneficiary's SABS account on a regular basis in order to establish action taken by DSS, when a basic level of coordination and communication would adequately address such a state of affairs.



- 4.4.7 NAO maintains serious reservations regarding the case presented in clauses 4.1.15 through 4.1.21, relating to the property development project undertaken by a Social Assistance beneficiary and her partner, also on Social Assistance. This Office is of the firm opinion that the spirit of the SSA is certainly not one that encourages the disbursement of Social Assistance benefit payments as a means of indirectly financing private property developments and investments of this nature and magnitude. Although DSS's decision to grant means tested benefit payments prior to the BFID investigation report are mitigated by the fact that the Department was not aware of the irregularity of the case, the same cannot be said with respect to DSS's action taken following this report.
- 4.4.8 This Office fails to comprehend how a decision taken by the Management Committee following information and evidence presented by BFID was subsequently overruled by DSS without appropriately informing BFID as to why such deviations from originally agreed upon matters were being instituted. In NAO's opinion, clarifications put forward by DSS were generally deemed to be far from satisfactory and can hardly be considered as sufficient information justifying alternative action to that previously agreed upon by the Management Committee and BFID. NAO's concern was also drawn to a particular case where the DSS's Management Committee accepted BFID's investigation report, only for DSS to subsequently state that the material presented did not constitute supporting evidence, without providing any explanation as to why or how this evidence was deemed insufficient.
- 4.4.9 With reference to the 43 cases where DSS had advised BFID on its intention to carry out further investigations, NAO is of the considered opinion that such investigations should not take as long as they did. Taking two and a half years to finalise an investigation into a case is, in NAO's opinion, unacceptable.
- 4.4.10 With reference to the time lapses between the BFID investigation date and the time taken for DSS to forward its feedback, NAO is of the opinion that the time taken in most cases, corresponding to 57 per cent of all cases reviewed, was acceptable (less than 31 calendar days). However, with respect to the rest of the cases, which constituted approximately 43 per cent of the pending cases that were not at a 'put away' stage, taking longer than 31 calendar days to respond to a BFID investigation may be indicative of possible scope for improvement in terms of efficiency and effectiveness. More specifically, the passage of time further compounds matters in cases of identified irregularities with respect to social benefits due, as delays in this sense inherently imply that any overpayments created thereafter would be greater in terms of materiality and resultantly take longer to be recouped.

#### Enforcement

- 4.4.11 From a general perspective of analysis, NAO considers DSS's enforcement function to be particularly weak, and at times, outright ineffective. Evidence supporting NAO's conclusion is provided through the various statistics presented in Section 4.2. Most notable in this sense were the 23 instances where the rate of overpayment applied was less than the legally stipulated minimum of 10 per cent. These 23 benefits corresponded to €188,089 out of the total reviewed in this exercise, that is, €1,067,279.
- 4.4.12 Another indicator of DSS's weak enforcement function is established in terms of the estimated time required for full settlement of overpayments due (Table 18 refers). Two major issues emerge in this respect. The first relates to the 40 benefit overpayments

(out of a total of 103) where no repayment system or schedule was established, and therefore, the amount of approximately €279,000 remained pending on an indefinite basis, with no structured plan as to how DSS intends to recover such funds. Second, are the 22 benefit overpayments (corresponding to €379,443) whose respective recovery of funds extends to a period of time that this Office considers well beyond what one can term to be a reasonable and acceptable timeframe (in excess of 30 years). Offsetting 11 out of these 22 benefit overpayments (accounting for €203,014) should prove to be a significant challenge, as the repayment period anticipated in this respect extends well beyond 100 years.

4.4.13 Whereas the preceding shortcomings have largely reflected system-oriented failures or deficiencies, the ensuing conclusion clearly shifts the onus of responsibility, or rather its lack thereof, squarely upon DSS's management. Reference is here made to the 19 cases that NAO originally classified as bearing inconsistencies in terms of their applied repayment rate or overpayment balance payable. Upon further review, nine out of these 19 cases were deemed to have been regularly and appropriately administered. On the other hand, the remaining 10 cases drew NAO's gravest concerns and hardly impart the level of confidence in DSS's management, that is, in this Office's opinion, fundamental in ascertaining that the principles of accountability, fairness, transparency, equity, and good governance have been adhered to.

4.4.14 Perhaps the most blatant affront in this respect is the manner by which an overpayment of approximately €50,000 was cancelled by a senior official within DSS (refer to clauses 4.2.15 to 4.2.22 for further details relating to this case). Prior to its outright cancellation, DSS had revised this beneficiary's overpayment down to €6,000. NAO has concerns with respect to the regularity of the decision taken by the senior official within DSS, particularly in terms of his decision to cancel the €6,000 overpayment based on his perceived lack of evidence and the alleged failure to provide the beneficiary with an opportunity to voice her side of the case. These two points raised by the senior official within DSS are strongly contested by this Office, with clear and irrefutable evidence utilised by DSS in computing the €6,000 overpayment revision rebutting the first point made, and the ongoing appeal process evidently providing an opportunity for the beneficiary to state her defence clearly countering the second claim. NAO considers the intervention of the senior official within DSS as irregular.

4.4.15 This Office's concern is further heightened with respect to the case of a beneficiary whose overpayments, amounting to approximately €40,000, were not registered on SABS by DSS, notwithstanding the Management Committee's agreement with BFID in this respect. No documentation in relation to these overpayments was found in the beneficiary's DSS files. This case further strengthens NAO's recommendation of clause 2.7.9 with respect to the lack of documentation that persists throughout the Department in a number of cases. So poor and incomplete was documentation retained by DSS in this particular case that NAO was unable to trace these overpayments from DSS's end. To date, this €40,000 overpayment remains unaccounted for.

4.4.16 Another concern, albeit not as severe as those expressed in the preceding text, emerged with respect to the case of the deceased beneficiary whose account indicated an overpayment of €20,875 instead of €41,720. The incongruence that arose in relation to the Social Assistance benefit was traced back to an administrative oversight by DSS. In this case, although all of the necessary overpayments in relation to this benefit were transferred to the relevant heirs, not all transfers were duly recorded on the various accounts involved, therefore creating an element of difficulty

with respect to traceability. Needless to say, traceability in terms of the creation, transfer and cancellation of overpayments is a fundamentally important aspect in ensuring accountability, and completeness of records retained in this regard ensures that clear audit trails are maintained.

- 4.4.17 The importance of such audit trails is rendered immediately evident in this same case, as the late beneficiary did in fact have another overpayment of €3,384 that had never been transferred to his respective heirs. NAO acknowledges that an element of error is an inevitable reality, yet emphasises that no effort must be spared in ensuring that the rate of error is reduced to a bare minimum. In effect, DSS took prompt action in relation to this overpayment when advised of such a shortcoming by this Office.
- 4.4.18 DSS's above intimated weaknesses with respect to enforcement are clearly exemplified in the case of the eight beneficiaries whose overpayments bore incorrectly applied repayment rates of less than 10 per cent (clauses 4.2.29 to 4.2.32 refer). Aside from the fact that, as at April 2013, only 1.34 per cent of overpayments due (out of €161,199) were in effect recovered by DSS; NAO's attention in this respect centres on three particular beneficiaries whose accounts had no ongoing overpayment deductions owing to the fact that they were not in receipt of any live benefit payments. This is a situation of notable concern to NAO, as there does not seem to be a systematic way of collecting due overpayments. DSS stated that it does, at times, agree on a repayment scheme with such beneficiaries; however, NAO did not find any such agreements in the examined DSS files with respect to the relevant benefits represented in Table 19, which correspond to a selection of beneficiaries bearing the most substantial overpayments due to the Department. Therefore, the absence of such agreements and DSS's failure to uniformly apply such arrangement across board is certainly a cause for concern to NAO.
- 4.4.19 Similar concerns, in line with the above-discussed conclusion, were drawn from NAO's analysis of cases that bore no inconsistencies in terms of their respective overpayment amounts and recovery rates. Information presented in Table 17 clearly illustrated and supported NAO's views on DSS's weak enforcement function. Overpayments in the case of the seven beneficiaries (who in aggregate had an overpayment amounting to approximately €210,000) were not being recovered due to the fact that these beneficiaries were not in receipt of social benefit payments and therefore deductions from such payments could not be effected. No ad hoc agreement was entered into by DSS with these beneficiaries, thereby implying that funds were to be recovered only if these beneficiaries became eligible to additional benefit payments.
- 4.4.20 On a positive note, NAO recognises the manner by which DSS addressed the reapplication for benefits of a beneficiary who had already been found in breach of the SSA. Carrying out investigative work prior to granting benefits to persons who had previously breached the SSA is exemplary and NAO encourages DSS to address all such cases in this manner. Such action may possibly foster better working relationships between DSS and BFID.
- 4.4.21 Of particular relevance to this aspect of the report is the fact that the SSA does not allow for the imposition of financial penalties to be charged to persons who are in breach of this Act on grounds of false declarations made to DSS, or the omission of information relating thereto. As matters stand, nothing is actively done to deter persons from committing fraud, and with no penalties or fines imposed on those who are identified as having intentionally breached the SSA, such a state of affairs clearly transmits a sense of impotence around the Department's ability to appropriately prevent social benefit fraud. The absence of any form of deterrent with respect to

persons committing benefit fraud certainly does not facilitate the Department's enforcement efforts.

- 4.4.22 The situation was further compounded by the fact that repayment, in the cases reviewed in terms of enforcement, was generally not conditioned by the magnitude of the amount due, but was merely established as a percentage of live benefits. In other words, these beneficiaries will, at times, repay benefits that were not due to them only when in receipt of other benefits, at which point a percentage deduction from the benefits payable is applied. It is in this sense that the magnitude of the overpayment bears no effect on the amount of repayment enforced, and increasing the overpayment due in absolute terms (through successive instances of benefit fraud) simply extends the period of time required to settle such dues.
- 4.4.23 Although DSS has entered into repayment agreements with persons at fault who were not in receipt of benefit payments, such agreements had not, at the time of writing, become standard across all overpayments. Notwithstanding this, NAO commends the establishment of the Overpayments Section, which Section has been working towards rendering such agreements a standard *modus operandi* across newly created overpayments. Initial results obtained by the Overpayments Section substantiate NAO's above-made commendation, and depict an encouraging improvement in terms of DSS's enforcement efforts.
- 4.4.24 Since the Overpayments Section is forwarded a list of overpayments created during the respective previous month, this Section does not capture data in relation to previously created overpayments whose defaulters would not be in receipt of social benefit payments, and therefore NAO notes a gap in terms of the Department's enforcement function. The lacuna made reference to in this context refers to the fact that the Overpayments Section directs its focus on newly created overpayments, while omitting the address of overpayments that were created prior to the Section's establishment.

#### Invalidity Pensions

- 4.4.25 NAO's concerns with respect to the Invalidity Pensions exercise carried out gravitate towards two main issues. First, NAO expresses notable concern at the procedural revisions undertaken with respect to the process whereby prospective beneficiaries are medically examined in order to ascertain whether they are fit for work, or otherwise. Affording the prospective beneficiary the option of selecting the medical doctor that is to certify his/her fitness for work, or otherwise, is, in this Office's view, seriously undermining the objectivity and impartiality that should characterise such a sensitive process. The overall procedure of certification is devoid of any actual independent physical examination, key in verifying original claims made. Once a medical doctor, chosen by the beneficiary, has duly compiled the relevant forms, NAO finds difficulty in understanding what value added may be derived from having such forms, and not the actual prospective beneficiary, examined by the Medical Board.
- 4.4.26 Second, NAO is especially concerned about the fact that, although changes to the SSA instituted in 2007 stipulated that Invalidity Pensions should be subject to review at least every three years, NAO found, from a representative sample, that nearly one third of Invalidity Pension beneficiaries were not due for the medical review pegged with this benefit. In fact, in 114 out of the total of 373 cases reviewed, the Invalidity Pension was still reckoned on an indefinite basis. Such a statistic reflects negatively upon the performance of DSS in adhering to the provisions established by the SSA (Article 26(10)) in this respect.

## 4.5 Recommendations

### Pending

- 4.5.1 NAO recommends the establishment of mutually agreed upon timeframes within which DSS is to take the necessary action following the Management Committee's endorsement of recommendations put forward in BFID investigation reports. The processing of such cases should ordinarily not give rise to much difficulty, as these cases would have effectively been agreed upon by both Departments, given BFID's detailed report and Management Committee's approval. Notwithstanding this, should difficulties arise with respect to the processing of such cases, NAO considers it appropriate for DSS to duly inform BFID of such delays, providing the latter-referred Department with an adequate explanation as to why such difficulties were encountered. Once again, revised timeframes with respect to corrective action in this respect should be agreed to by BFID and DSS on a case-by-case basis.
- 4.5.2 The entry of an overpayment in SABS should be communicated to BFID at all instances when related to its investigations. The timing of such feedback should be as consistent and uniform as possible across all DSS Sections, again, ideally benchmarked against mutually agreed upon timeframes. This would enable BFID to keep appropriate track of ongoing developments related to investigated cases. The same principle inherently also applies to any cancellation raised on SABS in relation to BFID investigations, including a clear explanation as to the factors and evidence that have conditioned such a cancellation.
- 4.5.3 Further to the above, in instances when DSS states that it intends to carry out additional investigations over and above those carried out by BFID, NAO recommends that due attention must be attributed to the timely completion of such endeavours. It is in this Office's opinion, unacceptable for the cases referred to in clause 4.1.24 to remain pending for an average of two and a half years following BFID's original investigation. NAO is of the considered opinion that DSS should periodically update BFID with progress registered in the interim period prior to finalisation.
- 4.5.4 The immediately apparent sense of disagreement between DSS and BFID that emerges in NAO's review of cases deemed pending by the latter Department adds further weight to this Office's earlier recommendation (clause 2.7.1 refers) regarding the establishment of a board set up specifically for the adjudication of cases that remain subject to such disagreement. Of immediate concern in this respect are the various cases, which, according to BFID, have been pending for a number of years. Furthermore, the fact that decisions taken by such a board would be considered as final and binding (barring appeals made to the Umpire) should assist both Departments in the overall coordination of pending cases, particularly insofar as the maintenance of a single and synchronised registry of cases deemed pending is involved.
- 4.5.5 NAO's review of pending cases bore various methodology-related limitations, essentially of a practical nature given the voluminous number of cases and corresponding benefits analysed from a BFID perspective. Nonetheless, the above-referred findings, conclusions and recommendations bear relevance to what should be preliminary efforts at ameliorating the address of pendency-related concerns. It is in this context that NAO recommends the further in-depth review of pending cases, particularly from the DSS perspective, which should conceptually complement the audit review undertaken by this Office.

## Enforcement

- 4.5.6 NAO is of the general opinion that it is the relatively newly established Overpayments Section within DSS that is to assume responsibility for the address of the various shortcomings identified in this audit report. This in no way implies that the Office considers such shortcomings to be attributable to this Overpayments Section, but merely identifies it as the Section within DSS that is best placed to implement much needed change in terms of enforcement practices.
- 4.5.7 Further to the above, NAO urges DSS to revise all instances of overpayments arising out of BFID investigation reports where the applied repayment was less than 10 per cent. Here again, the Overpayments Section is ideally placed to institute and execute the relevant 10 per cent minimum rate as established by the SSA, which should invariably be applied to all cases whose overpayment was not the result of a Departmental administrative error or oversight, but arising out of intentional benefit fraud.
- 4.5.8 From an essentially strategic perspective, NAO recommends that DSS's enforcement function be strengthened through the adoption of a risk-based approach. Such an approach should notionally be characterised by a mechanism whereby cases with substantial balances of overpayments due have their respective repayment rate adjusted to reflect the risk posed by such beneficiaries. Risk in this sense, and in NAO's understanding, is based on two factors, that is, the magnitude of the overpayment due, and the timeframe available within which such an overpayment is to be settled.
- 4.5.9 Moreover, NAO urges DSS to adopt a systematic approach towards the formalisation of repayment agreements for beneficiaries with outstanding overpayments, yet not in receipt of social benefit payments. The approach adopted by DSS to date and in this regard has been largely haphazard, with some beneficiaries allowed to settle pending balances only when in receipt of additional benefit payments, while others were requested to enter into agreements, thereby accelerating their respective repayment of dues.
- 4.5.10 Reference is made to the case where a senior official within DSS cancelled an overpayment of €6,000, thereby derailing the corresponding appeal process that was then underway. In view of the unfounded counter-arguments put forward by this senior official within DSS in seeking to justify the Department's course of action, and on the basis of available evidence retained in DSS files, NAO recommends that under no circumstances should such similar interventions be allowed, as it considers the intervention referred to in this context to be irregular.
- 4.5.11 General shortcomings in terms of inappropriately maintained or outright missing documentation are amply elaborated upon in Chapter 2 of this report. However, the absence of any form of documentation justifying the failure to register an overpayment of €40,000 on SABS raises NAO's most serious concerns. In the absence of any documentation substantiating and justifying the cancellation of such overpayments, NAO expects the relevant DSS Sections to raise overpayments amounting to approximately €40,000 with respect to the beneficiary's case presented in clause 4.2.23.
- 4.5.12 NAO's recommendation relating to the appropriate maintenance of documentation extends beyond the retention of updated physical files, and also applies to the data inputted on SABS. This Office urges DSS to appropriately record all transactions, including transfers that are effected on SABS. Although administrative errors are an inevitable reality, NAO is of the considered opinion that retaining documentation (be it in hard or soft copy format) in a comprehensive and organised manner facilitates

the identification of such errors, and creates an audit trail, thereby mitigating the risk of such errors.

- 4.5.13 NAO notes the positive manner by which DSS addressed the reapplication for benefits by a beneficiary who had already been found to be in breach of the SSA. This Office urges DSS and BFID to identify and establish a more coordinated approach towards addressing social benefit fraud, particularly in cases where beneficiaries submitting applications for the granting of social benefits would have already been identified as having committed benefit fraud at an earlier date.
- 4.5.14 As rendered amply evident in this segment of the audit report, NAO urges DSS and the Ministry for the Family and Social Solidarity to consider the introduction of financial penalties applicable to persons identified as engaging in social benefit fraud. The present dearth of any form of punitive deterrent certainly does not aid the Department's efforts at curbing arising overpayments and enforcement in general. NAO considers it extremely important for DSS to address such lacunae in terms of the establishment of punitive measures, which would subsequently contribute to altering the general public's perspective with respect to social benefit fraud.
- 4.5.15 The Office is encouraged by the results obtained by the relatively recently established Overpayments Section, and urges this Section to also direct its attention at overpayments created prior to the Section's establishment. As intimated at earlier, NAO is of the considered opinion that a risk-based approach would represent the most effective way for the Overpayments Section to operate. Risk in this context axiomatically refers to the magnitude of the overpayment due, and a timeframe within which the relevant overpayment is expected to be set off.

#### Invalidity Pensions

- 4.5.16 NAO recommends that DSS reinstates the previous system of medical examinations utilised in determining whether prospective beneficiaries were fit for work, or otherwise, thereby establishing the veracity of claims for the granting of an Invalidity Pension. This Office, however, is cognisant of the limitations and concerns expressed by DSS with respect to the previous set-up, whereby familiarity with the limited pool of board members posed a notable risk to the process. It is in this context that NAO recommends the widening of the pool of medical professionals attached to such Boards, which measure should notionally mitigate risks in this regard.
- 4.5.17 NAO urges DSS to carry out an exhaustive exercise with regard to the Invalidity Pensions that have no set end date. This exercise would essentially entail the medical examination of all beneficiaries in receipt of the Invalidity Pension on an indefinite basis. Such an examination would ideally be carried out by a medical panel as proposed in the preceding clause.





## Appendix A – Social Security Benefits Glossary

The contents of this appendix have been sourced from the National Statistics Office, with subsequent amendments being made in this respect.

### CONTRIBUTORY BENEFITS

The local contributory scheme is a system where an employee, self-occupied or self-employed person pays a weekly contribution as laid down in the Social Security Act, through a 'pay as you earn' system. All the pensions and other allowances payable under this scheme are subject to some form of contribution test depending on the type of benefit claimed.

The following is a list of benefits under the Contributory Benefits scheme:

**Contributory Bonus** is payable to persons receiving a pension for services rendered in Malta, or ex-British Service pensioners, or persons over 75 years of age who receive a service pension from any other source, or persons who were born before 1902.

**Decreased National Minimum Pension** is payable to a person who receives a Service Pension and a Retirement Pension or Increased Retirement Pension. If both pensions are less than the National Minimum Pension, such a person will be entitled to a National Minimum Pension reduced by the same Service Pension.

**Increased Retirement Pension** applies to cases where the sum total of a person's Service Pension, together with the rate of Retirement Pension applicable, are lower than two-thirds of the person's pensionable income.

**Injury Benefit** is payable for injury at work or contraction of industrial disease. Maximum entitlement is limited to 12 months.

**Injury Gratuity** is a lump sum payment payable to a person following injury at work. It is applicable when the degree of disability is estimated between 1 per cent and 19 per cent.

**Injury Pension** is payable if injury or disease caused or contracted whilst at work is considered to have caused a loss of physical or mental faculty calculated between 20 per cent and 89 per cent. Rates awarded vary according to the degree of disability. Where the degree of disablement is assessed at 90 per cent and over, the person concerned is automatically awarded an Invalidity Pension at the full rate.

**Invalidity Pension** is payable to persons deemed permanently incapable for suitable full-time or regular part-time employment. There are various rates according to different conditions.

**Marriage Grant** is a one-time payment payable upon marriage to persons ordinarily resident in Malta. To be eligible a person must be employed, self-employed or self-occupied for at least six months at any time prior to his/her marriage.

**Maternity Benefit** is payable to locally resident pregnant citizens of Malta in respect of the last 8 weeks of pregnancy and the first 5 weeks after childbirth. This benefit is only payable if the female is not entitled to maternity leave from her employer, if employed.

**National Minimum Pension / Increased National Minimum Pension** is payable to a person who is not in receipt of a Service Pension from an employer. The rates applicable are four-fifths of the National Minimum Wage in the case of a married man maintaining his wife and two-thirds of the National Minimum Wage in the case of any other person.

**Re-marriage Grant** is payable to a widow who remarries and hence forfeits her right to a Widow's Pension. The payment is equivalent to one year's Widows' Pension.

**Retirement Pension** is payable on reaching pension age (61 in the case of males and 60 for females). The rates and types of categories vary according to a range of statutory conditions.

**Sickness Benefit:** entitlement of 156 days but these may in certain cases be extended to 312 days. The first three days of each new claim for this benefit are not paid.

**Special Unemployment Benefit:** entitlement is also for a maximum of 156 days but at a higher rate than unemployment benefit. This benefit is applicable to persons who would qualify for non-contributory Social Assistance.

**Survivors' Pension** is payable to a widow whose husband was entitled to a Two-Thirds Pension or whose husband would have been entitled to a pension had he reached retiring age at the time of his death.

**Two-Thirds Pension** is a pension related to earnings, payable to persons who have retired after January 1979. This scheme provides for a pension equivalent to two-thirds of the insured person's pensionable income. Maximum and minimum rates are applicable.

**Unemployment Benefit** is payable to unemployed persons for a maximum period of 156 days. This benefit is considered as a short-term benefit. Subsequently unemployed persons may qualify for long-term benefits under 'Social Assistance'.

**Widows' Pension** is payable to widows, irrespective of age, who are not gainfully occupied, who are occupied but earning less than the national minimum wage, or who are carrying out gainful activities but have the care and custody of children under 16 years of age. Rates may vary according to conditions outlined in the Social Security Act (Social Security Act, Part IV, and subsequent amendments). Any reference to a widow also means a widower.

## **NON-CONTRIBUTORY BENEFITS**

The non-contributory scheme was set up to act as a safety net by catering for those below the 'poverty line'. Unlike the contributory scheme, the benefits within the non-contributory scheme are not based on the contributions, but on a financial means test of the person claiming the benefit.

The following is a list of benefits under the Non-Contributory Benefits scheme:

**Children's Allowance** is payable to locally resident female citizens of Malta who have the care of children under 16 years of age.

**Medical Assistance** is a benefit payable to persons suffering from a chronic disease or condition that requires a special diet.

**Non-Contributory Bonus** is payable to all persons receiving a pension, orphans' allowance / supplementary allowance, Social Assistance and Leprosy Assistance under the Social Security Act.

**Old Age Pension** is payable to citizens of Malta over 60 years of age, provided that their income does not exceed an established level.

**Orphans' Allowance** is a weekly allowance paid to a guardian of a child or children who are under 16 years of age.

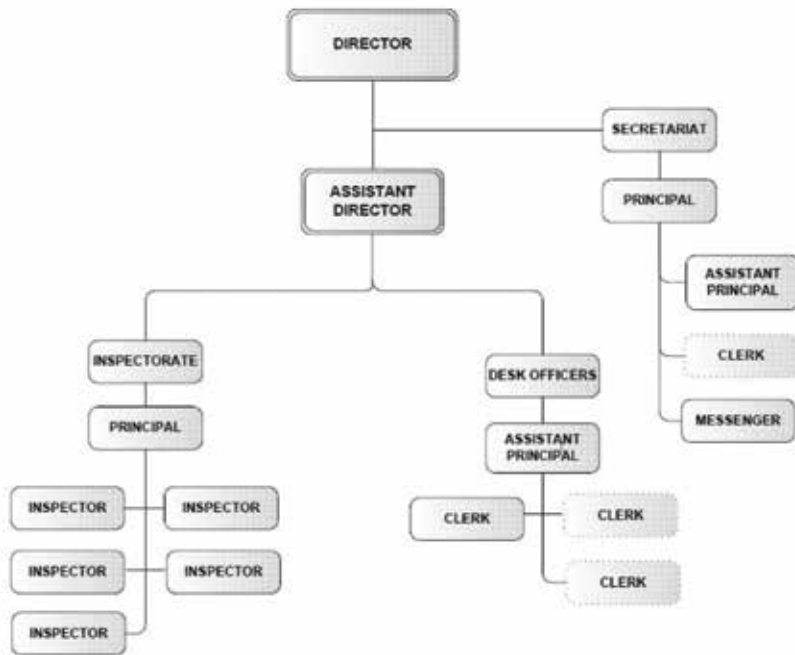
**Orphans' Supplementary Allowance** is a further weekly allowance paid to a guardian of a child or children aged between 16 and 21 who are not following any gainful occupation and the gross earnings of which do not exceed the national income wage.

**Pensions in respect of Disability** are payable to citizens of Malta over 16 years of age.

**Social Assistance** is payable to heads of households who are either unemployed or seeking employment and whose relative financial means falls below that established by the Social Security Act. This benefit is also payable to single or widowed females who lack financial resources and who are caring for an elderly or physically/mentally handicapped relative on a full-time basis. Social Assistance includes also the payment made to people who prove to the satisfaction of DSS that due to a physical or mental condition, they are no longer capable of employment but do not have sufficient means to support their family. Also included under the social assistance category is the payments made to 'single parents'.

**Supplementary Assistance** is payable to households where the total income of the members falls below the limits established by the Social Security Act.

## Appendix B – BFID Organisational Structure



## Appendix C – Translation of letter in Box 15

20th October 2011

Chairperson  
Housing Authority  
Floriana

Sir,

Re [Case Reference]

I wish to disclose that I live at the above address with my partner [name redacted], and our son [name redacted].

The identity card is registered on the address [address redacted], so as to receive the social benefit granted by the Department of Social Security. (I am currently in receipt of €405 per month). If I amend my identity card address to the flat [address redacted], this social benefit will be discontinued.

I am ready to take an affidavit on what I stated above, as it is the truth.

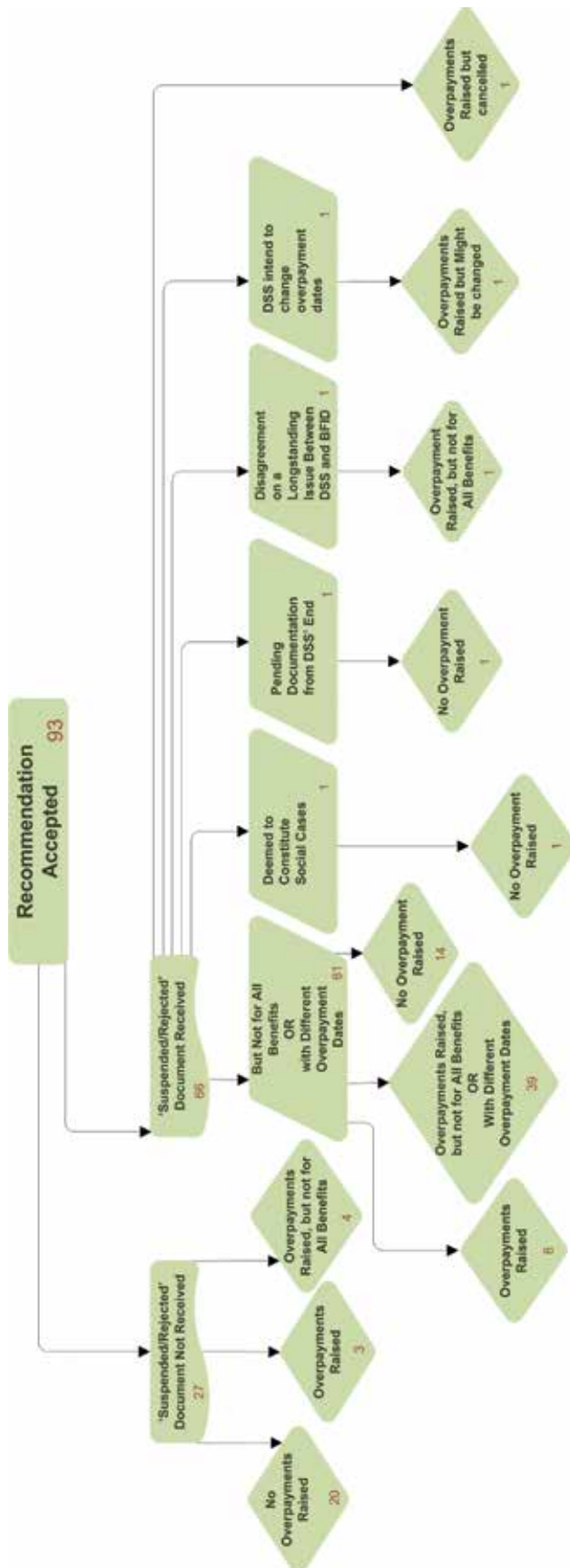
Kindly accept my declaration.

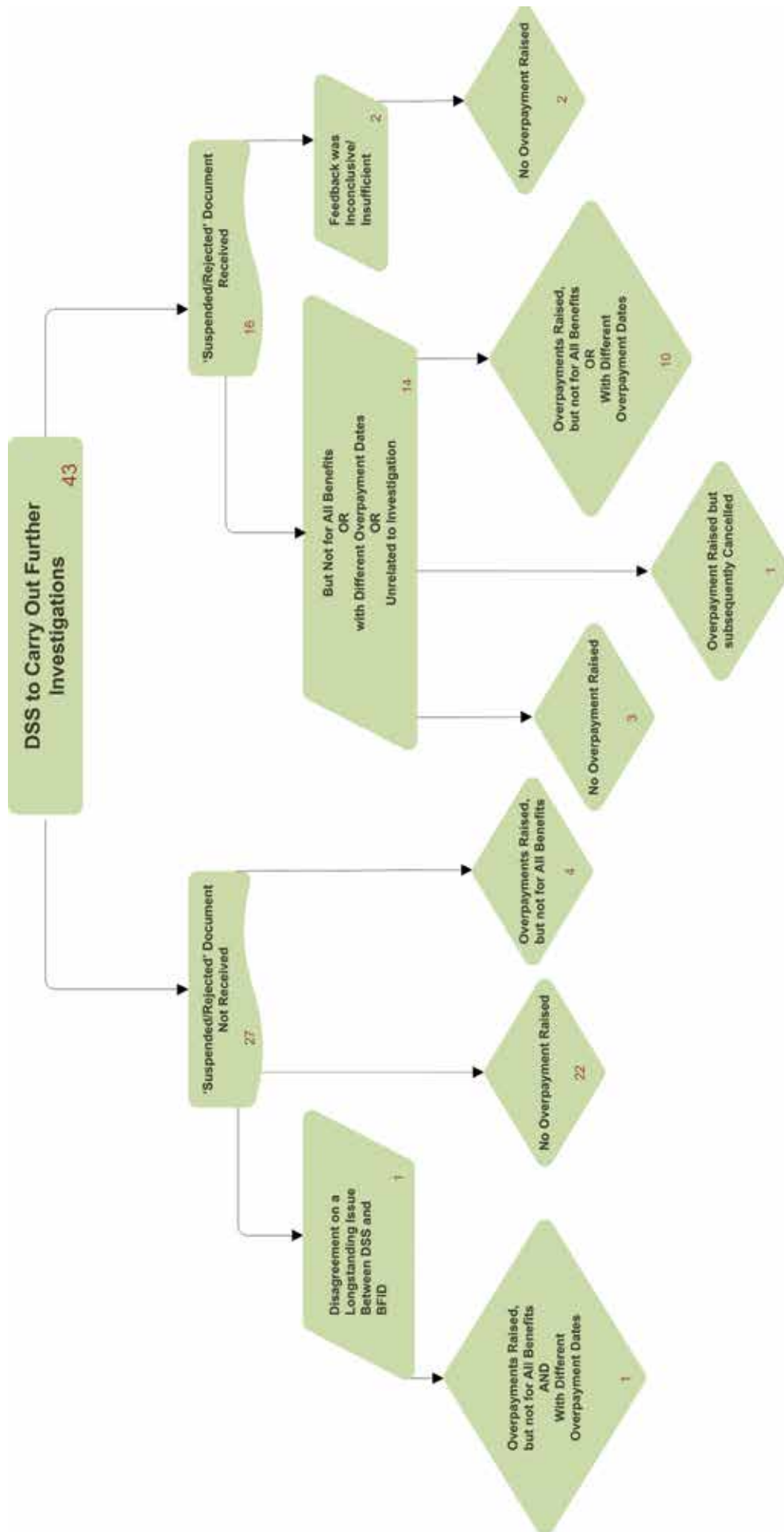
Thank you very much.

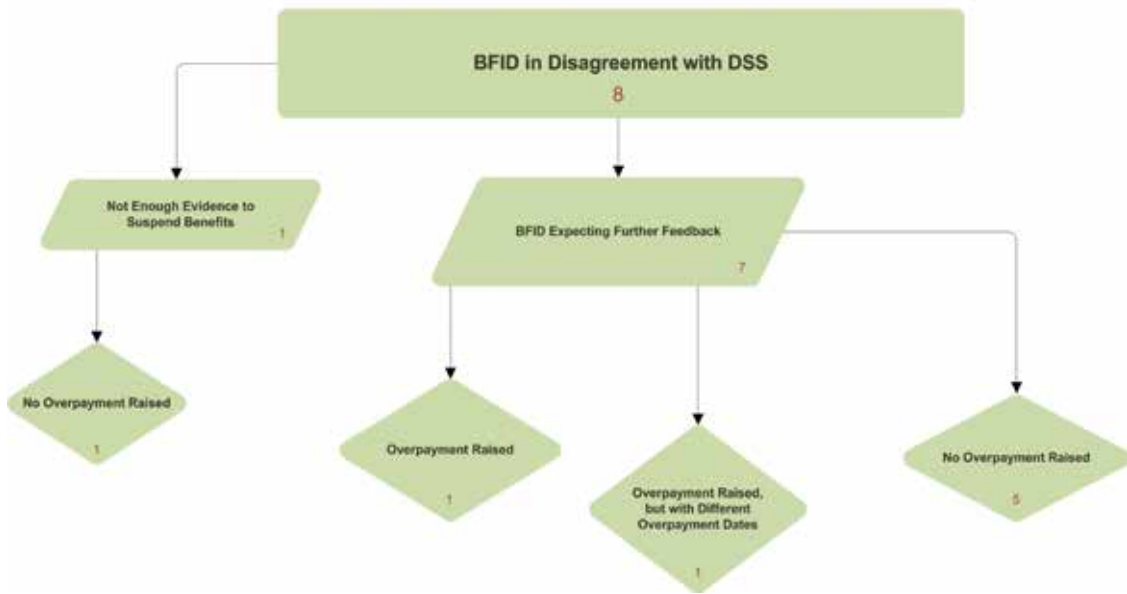
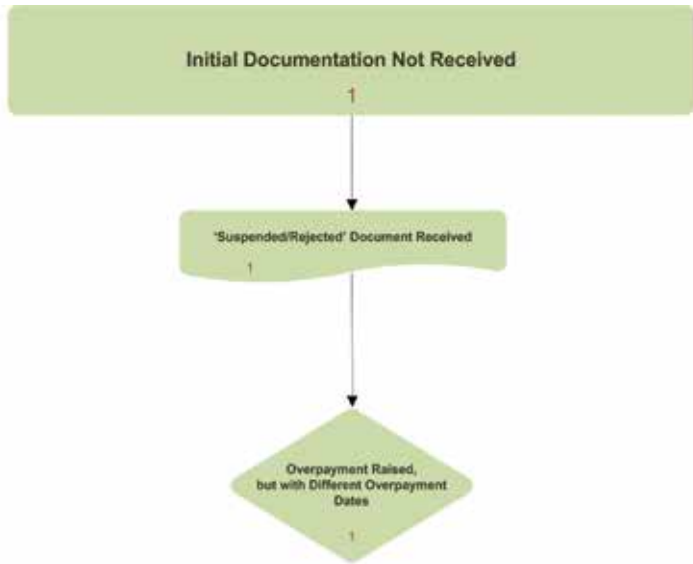
Yours faithfully,

[Name redacted – Female Beneficiary]

## Appendix D – Schematic Categorisation of Cases Deemed Pending by BFID













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July 2013      Performance Audit: An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement

September 2013      Performance Audit: Enforcement Action by MEPA within the Outside Development Zone

November 2013      An Analysis of the National Lotteries Good Causes Fund

December 2013      Performance Audit: Road Surface Repair Works on the Arterial and Distributor Road Network Follow-up

December 2013      Report by the Auditor General 2012