

BENEFIT FRAUD ENFORCEMENT AND SANCTIONS POLCY

1. PURPOSE

This document sets out the Council's policy for authorising enforcement actions, prosecutions and other sanctions in respect of housing & council tax benefit and relevant Department for Work and Pensions administered benefits. The Welfare Reform Act 2007 now explicitly allows local authorities to investigate and prosecute cases involving other social security benefits such as income support; job seeker's allowance etc.

2. OBJECTIVES

The objectives of this policy are to:

- Enable the Council, as a responsible steward of taxpayers' money and public funds, to act fairly and consistently in the interests of justice and the 'protection of the public purse'.
- Reduce the incidence of benefit fraud and irregularities.
- Generate public confidence in and respect for the Council by delivering outcomes which are consistent and proportionate.
- Allow accountability demonstrating action is targeted at cases only where it is necessary.
- Be transparent by outlining the decision-making criteria to be applied.
- Maximise the deterrent effect of successful prosecutions and sanctions.

3. SCOPE OF ACTIONS

Whenever benefit fraud is detected, the Council will consider taking whatever enforcement action is considered to be appropriate.

The Social Security Administration Act 1992 (the 1992 Act) is the main statute dealing specifically with benefit fraud offences and in the overwhelming majority of cases prosecutions will be taken under the 1992 Act or any such legislation current at the time.

If the level of criminality and the circumstances of the case warrant it, however, the Council will also consider taking enforcement action against those who have committed benefit fraud and also committed general offences such as fraud, theft, deception etc.

Although this policy refers specifically to claimants, in appropriate circumstances, the Council will also consider taking enforcement action against others such as partners; landlords; employers etc. whether as principal offenders or for aiding and abetting, or whether for the original offence or for related offences such as providing false information etc. during the course of a formal investigation.

Given that it is not possible to anticipate all the possible forms that benefit fraud could manifest itself, the Council's position is expressly reserved.

4. KEY RESPONSIBILITIES

4.1 RESPONSIBILITY FOR AUTHORISATION

The decision to take enforcement action, including but not limited to the institution of legal proceedings, will be the responsibility of either the Director of Corporate Resources, Head of Internal Audit, The Fraud Manager or the Head of Legal Services.

4.2 RESPONSIBILITY FOR CONDUCTING PROSECUTIONS

The preferred means of prosecution is through the Council's in-house Legal Services.

5. DECISION MAKING CRITERIA FOR PROSECUTIONS

Each case of suspected benefit fraud will be considered on its own merits, taking into account the individual circumstances of each case. In respect of prosecutions, the Council will firstly determine whether there is sufficient evidence, followed by consideration of whether prosecution is in the public interest.

Stage 1 - The Evidential Test

When making the decision whether to prosecute or not, the 'evidential test' will be applied to determine whether there is sufficient evidence to provide a realistic prospect of conviction. In doing so, the following factors will be considered:

- The evidence should be admissible, reliable and sufficient so that a court properly directed in accordance with the law, is more likely to convict than dismiss the case against the defendant.
- Any circumstances and/or evidence available to the defence which could cause a doubt in the prosecution case.
- The reliability of any admission taking into account the defendant's age intelligence, understanding or lack of understanding of all the circumstances.
- The strength of the evidence of witnesses. The case may be weakened if the defence questions their reliability because of their motive, background or previous convictions.
- The evidence of the defendant's identity should be strong enough to withstand any questioning by the defence.

Once the evidential test has been satisfied, a decision will be made as to whether or not it would be in the public interest to prosecute. The public interest factors can increase the need to prosecute or may suggest an alternative course of action. The factors will vary from case to case and not all the factors will apply to every case. The following factors, which are not exhaustive, will be used as a guideline in determining whether or not prosecution is in the public interest:

Stage 2 - The Public Interest Test

The Council must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following factors are not exhaustive.

Prosecution is more likely where one or more of the following applies:

- The level of the overpaid benefit is significant. This factor will usually reflect the seriousness of the offence.
- The period of the overpayment.
- If the fraud was calculated and deliberate.
- If the person was in a position of authority, trust or responsibility.
- A prosecution would have a significantly positive impact on maintaining community confidence in the administration of the benefits system and the public purse.
- The claimant has previous convictions or cautions or administrative penalties which are relevant to the present offence(s).
- A conviction is likely to result in a confiscation or any other order.
- If the claimant has declined the offer of an Administrative Penalty or Caution.
- The level of overpaid benefit is less significant or there has been an attempt to commit benefit fraud and there are other aggravating features, for example, an act of dishonesty.

Prosecution is less likely where one or more of the following applies:

- The claimant is elderly and at the time or now is suffering from significant mental or physical ill health.
- The offence was the result of a genuine mistake or misunderstanding.
- The level of overpaid benefits is less significant.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

6. DIVERSION FROM PROSECUTION

Other sanctions available to the Council as an alternative to prosecution are an administrative penalty or a caution.

These alternatives are nationally recognised and applied. The evidential and public interest tests still apply.

6.1 Administrative Penalty

An administrative penalty is calculated as 30% of the adjudicated overpayment of benefits. It is payable in addition to the overpaid benefits. It is considered an official warning and deterrent to committing benefit fraud.

An administrative penalty may be considered as an alternative to prosecution if:

- The benefit overpayment is considered less significant.
- The claimant is able to pay it.
- There are no previous benefit fraud convictions or sanctions.
- The benefit fraud is relatively minor in terms of duration.

In the event of a person declining a penalty, the option of prosecution will be considered.

The Head of Internal Audit and the Fraud Manager will have the delegated authority to offer an administrative penalty.

6.2 Caution

A caution is an official criminal sanction which once again could act as a formal warning and deterrent to committing benefit fraud. A caution may be considered as an alternative to prosecution if the Council considers the public interest test justifies it and if, in all the circumstances of the case, it is appropriate to deal with the case in this way.

The following factors, which are not intended to be exhaustive, may be taken into consideration when considering if a caution is appropriate:

- The gross overpayment is considered less significant.
- There are no previous convictions or sanctions relating to benefit fraud.
- The benefit fraud is relatively minor in duration.
- The claimant admits the offence.
- The claimant's attitude towards the offence.
- Exceptional mitigating circumstances.

There are no rigid rules about the particular situation in which a caution should be offered. The Head of Internal Audit and the Fraud Manager have the delegated authority to administer a caution.

7. PUBLICITY

Publicity is recognised as an important tool to help counter fraudulent benefit activity and is therefore key to securing the maximum benefit from taking enforcement action.

Thereafter, to maximise the deterrent effect of prosecution, where appropriate any successful outcome will be suitably publicised.

8. POLICY REVIEW

The Head of Internal Audit will undertake a regular review of this policy and whether it is being complied with. Any substantive changes to the policy that are considered necessary will be recommended for formal approval but the Head of Internal Audit has the delegated authority to make minor changes. Information regarding benefit fraud statistics and, where appropriate, details of specific cases will be reported to the Audit Committee on at least an annual basis.

9. References

References in this document to Job titles or posts are current at the time of writing but may be the subject of change and should be construed accordingly.