

HUNTINGDONSHIRE DISTRICT COUNCIL

Benefits Prosecution Policy

1. Introduction

- 1.1 Huntingdonshire District Council (the council) is committed to the professional delivery of housing and council tax benefit services to its customers and the contribution that this service can make to the corporate objective of having low levels of poverty in the district. Benefit is for those who are most vulnerable in society and the Council therefore has two main aims:
- To deliver the correct amount to the correct person as soon as possible.
 - To ensure that benefits are taken up by those who are entitled to them.
- 1.2 The Council also has a duty to protect the public funds it administers from abuse and is aware of the risks within the benefits system for fraud, error or other irregularity. In carrying out this duty, the authority may use information provided to it for the purpose of the prevention and detection of fraud. It may also share this information with other bodies administering public funds solely for these purposes.
- 1.3 The Council will, wherever possible incorporate effective internal controls to minimise the risk of fraud occurring. However, despite this fraud can be perpetrated and appropriate procedures need to be in place.
- 1.4 The Council understands that some people will attempt to obtain benefit to which they are not entitled and sometimes this is done deliberately. Where an investigation has revealed this is the case, the Council will consider the individual circumstances of the case and where appropriate will consider criminal prosecution, alternatively an Administrative Financial Penalty or a Formal Caution may be applied.
- 1.5 The Social Security Administration Act 1992, as amended, allows authorities to consider offering offenders a financial penalty or a formal caution as an alternative to prosecution. Such sanctions can only be offered if the case could be brought to court. However, should the offender refuse to accept such sanction then the Council must consider instigating proceedings against the individual concerned.
- 1.6 The Council's policy outlines the procedures to be followed with regard to the prosecution of benefit claimants, landlords, employees and members who have committed benefit fraud. It will serve as a policy statement that is

supported by members of the Council who have endorsed the Fraud and Corruption Strategy, and as an operational guide for Investigating Officers.

- 1.7 The council will always have regard to the circumstances of the individual it is dealing with when considering any case following an investigation into alleged benefit fraud. Every case will be treated on its own merits and know distinction will be made due to gender, sexual orientation, religion or race. The council will, however, have regard to any extenuating and relevant circumstances of the individual including age, disability or language difficulties which may have contributed to apparent offending.
- 1.8 The term Sanction refers to any penalty that can be imposed by the council and allowed by legislation where offending contrary to the Social Security Administration Act 1992, Theft Act 1938, or the Fraud Act 2006 appears in the councils opinion to have occurred.

2. The Policy

- 2.1 The Investigation Officers must adhere, at all times, to the requirements of the Police and Criminal Evidence Act 1984, the Social Security Administration Act 1992 (as amended), the Code of Practice for Crown Prosecutors and the Criminal Procedures and Investigations Act 1996, and any other relevant legislation.
- 2.2 All cases that fall into the criteria outlined in 2.4, regardless of the level of the overpaid benefit, will be passed to the Fraud Manager who will decide, unless there are exceptional circumstances, whether a sanction is appropriate and the type. Where criminal proceedings are to be considered in any case a recommendation will be made to the Head of Customer Service on such disposal for that officers agreement. A monthly list of all non-prosecution matters will be provided by the Fraud Manager to be agreed by the Head of Service.
 - That prosecution is referred to the most appropriate organisation, i.e. where the primary fraud appears to have been perpetrated. This could be the Department for Work & Pensions, the Police, the Councils Legal Department, The councils Fraud Team or any other body deemed appropriate.
 - Imposition of an administrative penalty (this can only be offered where there are sufficient grounds to prosecute but the penalty option is preferred).
 - Imposition of a formal caution (this can only be offered where there are sufficient grounds to prosecute and the offence has been admitted at interview).
 - Closure of the case without sanction, as it would not be in the public interest to pursue the particular case. However, the reasons should be fully documented and authorised by the Head of

Customer Services.

- 2.3 **The First Test of Public Interest.** To be considered in all cases regardless of the method of sanction chosen.

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. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. In making a decision to prosecute all available information must be carefully considered.

The points outlined in 2.4 and 2.5 should be taken into consideration when determining whether or not to prosecute.

- 2.4 Common Public Interest Factors in Favour of a prosecution

- a) The defendant is alleged to have committed the offence whilst under an order of the court.
- b) The defendant has previous convictions or cautions that are relevant to the present offence.
- c) A conviction is likely to result in a significant sentence.
- d) The defendant is in a position of trust.
- e) There is evidence that the offence was premeditated.
- f) There are grounds to believe that the defendant was motivated solely by personal gain.
- g) There are grounds for believing that the offences were likely to be continued or repeated e.g. by a history of recurring conduct.
- h) The offence is alleged to have occurred over a long period of time involving more than one period of deception.
- i) The offence, although not serious in itself, is widespread in the area where it is committed.
- j) There is evidence that the offence was carried out by more than one person.
- k) The evidence shows that the suspect was a ringleader or an organiser of the offence.
- l) The overpayment of benefit is in excess of £2,000.00 or the fraud spans a period exceeding 52 weeks.
- m) A good prima facie case has been established and clear reports have been compiled at every stage of the investigation.

2.5 Common Public Interest Factors Against a prosecution

- a) There has been a long delay between the offence taking place and the date of the trial, unless
 - the offence is serious
 - the delay has been caused in part by the defendant
 - the offence has only recently come to light.
- b) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- c) The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- d) It is a first offence and the loss or harm can be considered minor (based on each individual case) particularly if it was caused by misjudgement.
- e) The amount of the overpayment is less than £2,000.00 and the period spans less than 52 weeks.
- f) The court is likely to impose a very small or nominal penalty.
- g) The defendant admitted the offence at the first opportunity and made an offer of repayment. Failure to honour such an agreement will result in the continuance of initiated action.
- h) The defendant (whether it is a landlord or tenant) has put right the loss or harm that was caused. However, simply because the defendant can pay compensation does not mean that s/he can avoid prosecution.
- i) Maladministration or delay of the housing/council tax benefit scheme has occurred at some period during the offence.

3. Alternatives to Prosecution

- 3.1 Only cases that qualify for court on both the strength of evidence and the public interest factors can be considered for an alternative to prosecution. In essence, this means that the collated evidence must be sufficient to enable criminal proceedings to be initiated. If the evidence is insufficient then no alternative should be offered. In addition to strong independent evidence, there must be an admission of guilt at the interview under caution for a formal caution to be considered. Investigations, which fail to meet the above criteria, must be closed without sanction.

- 3.2 The defendant must give his informed consent to the alternative procedure to prosecution being offered. If the offer is declined the Council must always be in a position to instigate criminal proceedings should it wish to do so. This means that an investigation must have been undertaken as if it was the intention to prosecute if the case is proved. It would be a serious misuse of power to offer an alternative to prosecution in any case where a prosecution would be unlikely to succeed in court.
- 3.3 As a general rule the following cases should not normally be considered for an alternative to prosecution:
- a) The defendant is a council member, employee or an employee of another welfare organisation.
 - b) The defendant has declined to accept or has withdrawn from their agreement to accept an administrative penalty.
 - c) The defendant has declined a formal caution.
 - d) The defendant has already received an administrative penalty or formal caution for a previous offence.
 - e) The defendant is subject to a prosecution by another agency for a similar offence.
 - f) The defendant has previous convictions for similar offences.
 - g) Where there is evidence that the defendant has used alias/es to claim benefit.

4. Formal Caution

- 4.1 A formal caution is an oral or written warning given, to a person who has committed an offence, as an alternative to prosecution. In any case selected for caution there must be evidence to prove the offence, an admission at an interview under caution and the person being cautioned must give informed consent. A formal caution is a deterrent, and does not affect the recipient except if by re-offending when it may be cited in court on conviction for future offences. Where a caution has been declined the case must then be considered for criminal proceedings.
- 4.2 The Fraud Manager, or other delegated Fraud Team Member in consultation with the Head of Customer Services will offer a formal caution in appropriate cases. These will include:
- a) A first offence that was disclosed by the defendant at the first opportunity.
 - b) A first offence where the overpayment does not exceed £2,000 unless there are exceptional circumstances. In such circumstances

the agreement of the Head Of Service must be sought before such a sanction is offered.

C) Where a genuine mistake or oversight contributed to the offence.

5. Administrative Penalty

5.1 Section 115a of the Social Security Administration Act 1992, as amended by section 15 of the Social Security Administration (Fraud) Act 1997 introduced financial administrative penalties as an alternative to prosecution. A financial penalty amounting to 30% of the gross adjudicated overpayment can be offered in a fraud case if the following conditions are met:

- a) There is a recoverable overpayment of benefit as defined by the Social Security Administration Act 1992
- b) The cause of the overpayment is attributed to an act or omission on the part of the defendant, and
- c) There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based.
- d) The person to offered such a penalty has the ability to repay it within a reasonable timescale and the imposition of such a penalty will not over-burden them if they have existing priority debts.
- e) Penalties will be only be offered where the overpayment does not exceed £2000 unless there are exceptional circumstances. In such circumstances the agreement of the Head Of Service must be sought before such a penalty is offered.

5.2 If the offender declines the offer of an administrative penalty or the offender withdraws his agreement to pay the penalty the case must be considered for prosecution. Where the person signs the agreement but then defaults on repayment of the Penalty this will also be treated as a withdrawal of the agreement by that person.

5.3 The Fraud Manager or other delegated Fraud Team officer in consultation with the Head of Customer Services will offer an Administrative Penalty in appropriate cases. These will include:

- a) An offence where the overpayment is significant enough to consider that the claimant be prosecuted, but also dependant on the length of time over, which the overpayment arose.
- b) Whether or not there has been an admission at an interview under caution.
- c) What action the Department of Social Security is taking on any part

of the benefit it administers.

6. Recording Sanctions and Prosecutions

- 6.1 For an effective regime of sanctions to be successful it is highly desirable that accurate records of all convictions, administrative penalties and formal cautions are maintained. This will enable the correct decisions to be made taking full account of the defendant's background. Therefore, it is important that an acceptance record of each is maintained.
- 6.2 All sanctions must be recorded by the Council and copies of all documents used to consider and issue the sanction retained. Relevant paperwork must also be sent to the Department for Work and Pensions to update the central database on sanction activity.

7. Publicity

- 7.1 It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

8. Reporting and Review

- 8.1 Summary information on cases and action taken will be reported to the Head of Customer Services and the Executive Councillor for Finance on a quarterly basis.
- 8.2 This policy will be reviewed annually or when changes in legislation require it.