

BENEFIT INVESTIGATION UNIT

PROSECUTION POLICY



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BENEFIT SERVICE PROSECUTION POLICY

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WEAR VALLEY DISTRICT COUNCIL

BENEFIT SERVICE PROSECUTION POLICY

PART I – INTRODUCTION

Wear Valley District Council demonstrates a commitment to the prevention, deterrence and detection of benefit fraud. It endeavours to ensure that claimants receive the benefit to which they are entitled and recognises the need to safeguard public funds. Persons who intentionally commit fraud may be prosecuted.

The Council regards this policy as an important component of its anti-fraud strategy and believes it to be an effective deterrent against committing benefit fraud.

Not all cases will be suitable for prosecution and the guidelines offered in this document ensure decision making is balanced, consistent and fair.

PART II – SUMMARY OF RESPONSIBILITIES

Investigation Officers have responsibility for every investigation conducted and must ensure that:

- All investigations proceed promptly, efficiently and effectively
- All facts are established
- Adequate and admissible evidence is gathered
- All investigative actions are in accordance with the relevant laws including:
 - Criminal Procedure and Investigation Act 1996
 - Police and Criminal Evidence Act 1984 and subsequent Codes of Practice
 - Social Security Administration Act 1992
 - Regulation of Investigatory Powers Act 2000
 - Social Security Administration (Fraud) Act 1997 and Assoc. Regs
 - Theft Act 1968
 - Data Protection Act 1998 and
 - Human Rights Act 1998
- All relevant procedures, strategies and policies should be adhered to.

The Benefit Investigation Manager will review each case and decide upon appropriate cases considered suitable for prosecution. Each case must then be referred to the Revenues and Benefits Manager to be formally approved, prior to the instigation of any legal proceedings.

- The instigation of any legal proceedings under the Social Security Administration Act 1992 and all other relevant legislation and may ask others to prosecute on this Council's behalf
- Any offer of an administrative penalty, as an alternative to prosecution, in accordance with the guidelines contained within this policy document
- Any offer of a formal caution, as an alternative to prosecution, in accordance with the guidelines contained within this policy document.

The Revenues and Benefits Manager must authorise any case put forward for prosecution action.

PART III – THE LAW

This section details the appropriate legislation which the Council may use in order to bring proceedings before the court.

- The Social Security Administration Act (1992)

Section 111A – Either way offence of dishonestly making false statement/representation or producing a false document.

Section 111A (1A-1E) – Either way offence of dishonestly failing to notify a change in circumstances.

Section 112(1) – Summary offence of knowingly making a false statement/representation or producing a false document.

Section 112(1A-1D) – Summary offence of knowingly failing to report a change in circumstances.

- The Theft Act (1968) (including amendments in 1978)

Section 1(1) – a customer is guilty of theft if they have dishonestly appropriated property belonging to another with the intention of permanently depriving the other of it and “theft” and “steal” shall be construed accordingly (e.g. where the customer has failed to report a change in circumstances and are not entitled to the payments they have received).

Section 2 – dishonesty where the customer fails to meet their liability (e.g. where the customer is a council tenant who has a lawful liability to meet a statutory rent and is not doing so if they are defrauding the benefit system and thus have an unlawful liability).

Section 15 – where the customer obtains property by deception (e.g. making a false claim for benefit in the first instance).

Section 15a – where the claimant obtains money transfer by deception (as in Section 15 above).

Section 17 – where the claimant shows dishonesty with a view to gain for themselves/causes loss to another (e.g. where the claimant makes a false declaration on an application form).

Section 20 – where the claimant has made a procurement of valuable security by deception (e.g. where a customer makes a false claim in the first instance).

Section 24A – where a person retains a wrongful credit.

- The Criminal Law Act (1997)

Section 1 – where the claimant has conspired to commit offences (e.g. this is based on the information the claimant was aware of before they received their first payment).

- The Forgery and Counterfeiting Act (1981)

All sections of this act cover the claimant using false documentation.

- The Criminal Attempts Act (1981)

Section 1 – where the claimant has made a false application (e.g. before a payment has been made).

PART IV – GUIDELINES PRIOR TO PROSECUTION

Officers must ensure that adequate consideration is given to the following criteria:

- Does the evidence appear to be sufficient to obtain a conviction? Is it admissible, substantial and reliable?
- Are there any doubts about the mental capacity of the person that may hinder prosecution proceedings?
- Where appropriate, is there evidence to show intent?
- Are there any doubts about whether the person being interviewed was under the influence of alcohol or drugs?
- Has the investigation complied with the Police and Criminal Evidence Act 1984 Code of Conduct?

PART V – THE OFFENCE

Where fraud has included benefit in excess of £2,000 prosecution should be considered. It will not be cost effective to prosecute in other cases except in exceptional circumstances. Regardless of the amount of the overpayment, officers

will still take account of any aggravating factors about a case which makes prosecution action appropriate. Some of these exceptional circumstances include:

- The offender is employed by the authority
- The offender has declined the offer of an administrative penalty (or has withdrawn their offer to make payments in this respect)
- The offender has declined to accept the offer of a formal caution
- The offender has previously been convicted of a social security or local authority fraud
- The offender has previously made a fraudulent claim with the authority, for which it had proven but taken no further action (other than the recovery of overpaid benefit)
- The offender had abused a position of trust
- The case involves a collusive employer or landlord
- The fraud was calculated and intentional.

PART VI – VOLUNTARY DISCLOSURE

A voluntary disclosure occurs where a person voluntarily reveals a fraud which was previously unsuspected. A disclosure is not voluntary if:

- It does not constitute a complete admission of the fraud
- Admission is made only because the discovery of the fraud is likely
- The person admits the facts when questioned

A prosecution would not normally be pursued in cases where full voluntary disclosure is made providing that there is a willingness to prevent re-occurrence and to repay any monies claimed fraudulently.

PART VII – MENTAL OR PHYSICAL CONDITION

The mental or physical condition of the offender, their partner, children or other household members may mean that prosecution is not desirable in some cases. In particular it may not be appropriate if:

- The strain of proceedings may lead to a considerable worsening of pre-existing or psychiatric illness
- A person suffers from serious hearing, speech or sight difficulties

- The person is elderly or infirm and the courts would be likely to be more sympathetic to the person than the authority
- The person is pregnant and confinement is due within three months.

PART VIII – SOCIAL FACTORS

Certain social factors may make prosecution undesirable and these instances could include:

- The court/public perception of the case is likely to be favourable to the claimant
- Possibility of trauma to an innocent third party
- The person is young and immature and may appear to the court as someone who could be dealt with effectively without proceedings.

The stigma of a conviction can cause irreparable harm to the future prospects of a young adult, however, the age of a person would not automatically prevent proceedings particularly if the offence shows an adult degree of sophistication or the person has already been involved with the police.

PART IX – TECHNICAL FACTORS

Technical reasons may prevent a case from being considered for prosecution. These factors may apply where:

- The investigation is flawed e.g. where the correct procedures have not been followed and are likely to jeopardise the success of any prosecution.
- Failure in benefit administration has allowed the offence to take place or remain undisclosed
- There has been an unjustifiable delay in bringing the case to a conclusion.

PART X – ADMINISTRATION PENALTY

The administrative penalty amounts to 30% of the total overpayment and may be offered to the claimant as an alternative to prosecution. This offer will be made at the discretion of the Revenues and Benefits manager after a case conference has been held. An offer of a penalty will be made by a member of staff other than the original interviewer. If accepted, the claimant will have 28 days to reconsider their decision. Administrative penalties have no standing in court.

Cases where an administrative penalty may be considered are:

- Where the overpayment is recoverable under or by virtue of Section 75 or 76 of the Social Security Administration Act 1992, and attributable to an act or omission on the part of the person, and grounds exist for instituting proceedings for an offence relating to the overpayment
- The overpayment is over £50 and less than £2,000
- Any case where prosecution is a possibility but not the preferred option at the outset.

There is no requirement for the person to admit to the offence before an administrative penalty can be offered. However, this local authority must be satisfied that there are grounds for instituting criminal proceedings.

In the event of the person declining to agree to pay a penalty, criminal proceedings against the person must always be considered unless exceptional circumstances apply (e.g. the persons health deteriorates dramatically before proceedings can be instigated).

An investigation must have been undertaken as if it was the intention to prosecute. It would be a serious misuse of this power to offer an administrative penalty in cases where a prosecution would be unlikely to succeed in court.

PART XI - FORMAL CAUTION

A formal caution is a meaningful penalty and deterrent for those persons at the lower end of the range of benefit fraud, where the overpayment is less than £2,000 and an administrative penalty is not appropriate. A formal caution is an oral warning given to a person who has committed an offence and made at the discretion of the Revenues & Benefits Manager after a case conference has been held. Cases where formal caution may be considered are if:

- There is sufficient evidence to justify instituting criminal proceedings
- It is a first offence and the overpayment is over £50 and less than £2,000
- The person has admitted the offence during an interview under caution
- The person's history of previous convictions/cautions has been taken into account
- The person must sign a document to show they admit to the offence
- The person agrees to the caution and they acknowledge they have been cautioned.

If the person is prosecuted for another benefit offence in the future, the caution may be cited in court. If the person decides to refuse to accept a caution, the alternative course of action should be criminal proceedings, where the refusal of a caution can

be stated to the court. Therefore, the quality of the evidence available to issue a formal caution must be of the same standard as that required to prosecute.

Cautions should not be administered to an offender where there can be no reasonable expectation that this will curb his/her offending or if the person is under 18 years of age.

The officer who interviewed the person under caution cannot be the same officer who administers the caution.

All case papers in respect of benefit offenders, approved for prosecution will be given to the Council's Prosecutor. Supporting evidence/documents relevant to the investigation will be recorded and included in the prosecution file in such a way that it is accessible and convenient to the Advocate.

PART XII - PUBLICITY

Consideration will be given to whether the outcome of a case should be reported to the community to maximise the effectiveness of publicising the results of investigation. Such action, where appropriate, may support the key objectives to deter fraud and to promote the prevention and detection of irregularities.