

## Prosecution Policy & Framework

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Where an allegation of Housing/Council Tax Benefit fraud has been investigated, Officers are satisfied that an offence has been committed and sufficient evidence has been secured to justify this then consideration will be given to undertaking a prosecution. It may, dependant on the severity of the offence and other factors of the case, be considered more appropriate to give the offender the opportunity to either accept a Formal Caution or to pay an Administrative Penalty instead of prosecution.

A prime consideration will be whether it is in the public interest to do this and each case will be considered on its own merits. Any monetary values given below are for guidance only and used as part of the decision making process; all cases will be considered individually on the facts, evidence and information available.

Prosecution may also be considered where a person has intentionally provided supporting information to assist an applicant to secure Housing/Council Tax Benefit to which there is no genuine entitlement.

### Background

Nationally, benefit fraud has been maintained at a high profile for a number of years and Central Government initiatives over a like period have ensured funded training was available to allow Local Authorities to clearly demonstrate their commitment to tackling Housing and/or Council Tax Benefit fraud. To this end, Newark & Sherwood District Council has a team of Officers dedicated to identifying, investigating and preventing benefit fraud.

It is recognised and accepted that the majority of customers who apply for, and receive payment of Housing and/or Council Tax Benefit are genuinely entitled to the benefits they receive; there is a minority however, who wilfully attempt to defraud or abuse the benefits scheme.

The purpose of the Prosecution/Sanctions Policy is to enable the Investigations Team, and Officers responsible for recommending prosecution/sanctions, to apply a clear and even test to all cases considered suitable for such action.

Prosecutions for offences related to Housing and/or Council Tax Benefit only will be passed to the Councils in-house legal team. Where the offence includes state benefits administered by the Department for Work and Pensions, the prosecution will be progressed by the Solicitors Branch of that Department.

The Social Security (Fraud) Act 1997, gave Local Authorities enhanced powers to prosecute for Housing and/or Council Tax Benefit Fraud and the prime legislation that will be used by Local Authorities to take forward their own prosecutions is:

- Social Security Administration Act 1992 Section 111a (as amended by the Social Security Fraud Act 1997).

Dependant on the facts surrounding individual cases, other legislation that may be used is, but not restricted to: -

- Social Security Administration Act 1992 Section 112
- Forgery and Counterfeiting Act 1981
- Theft Act 1968

In all cases, the prosecuting solicitor(s) will decide the legislation most appropriate to each case.

## **Policy Framework**

Where the Council has established that fraud has been committed, and investigators have evidence that will support this, the Council will consider whether it is in the public interest to undertake a prosecution. It is the Councils intention to deter benefit fraud in the most appropriate way and in some cases consider it more appropriate to give the offender the opportunity to accept a Formal Caution or an Administrative Penalty instead of Prosecution. Should this offer be refused the Council will instigate legal proceedings.

## **Test of Public Interest**

In all cases, the following factors will be considered in making a decision on the appropriateness of prosecution or any other form of sanction:

- Mental and physical health of the claimant
- Social factors
- Technical factors

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1. Inadequate evidence
2. Flawed investigation
3. Failures in administration

- Delays

Other factors for consideration would be age, period over which the offence was committed and the amount overpaid.

Whilst the amount of overpaid benefit will be taken into account, it will not, in itself, be a sole deciding factor in determining the appropriateness of prosecution or other sanction. This is considered to be a reasonable approach due to the differing amounts of benefit that are awarded for Housing and/or Council Tax Benefit.

### **No Prosecution/Sanction**

The Council will consider not offering a sanction or prosecution where:-

- the claimant has never previously offended
- the offence was committed over a short period “ e.g. less than one month
- there is no evidence of planning involved in the process
- there is insufficient evidence to justify a prosecution
- there was no other person involved in the process
- the person is in genuine financial hardship
- the person is a single parent
- the person is a pensioner
- the person is under 16 years of age
- the person is in need of Social Services assistance

In such instances, the Council accept that it would not normally be in the public interest to prosecute or offer any other form of sanction. The Council will however, expect full repayment of any benefit that has been deemed overpaid and recoverable.

### **Formal Caution**

The Council may consider giving the offender the opportunity to accept a Formal Caution instead of a prosecution if:-

- the person made a full and frank admission of the offence whilst being Interviewed Under Caution
- the amount overpaid is small
- the period of the offence is considered to be short

- it is a first offence
- there is evidence of some planning involved in the process
- there were other persons involved in the fraud “ or attempted fraud

If the offer to accept a Formal Caution is refused, the case will generally be prepared for prosecution; in all cases the Council will pursue full repayment of any benefit that has been deemed overpaid and recoverable.

### **Administrative Penalty**

The Council may consider giving the offender the opportunity to accept an Administrative Penalty instead of prosecution if:-

- it was a first offence
- the amount overpaid is more substantial
- the period over which the offence was committed is more substantial
- there is evidence of planning involved in the process
- the person is not in genuine financial hardship

The Administrative Penalty is calculated as 30% of the amount overpaid after 16th December 1997. If the offer is not accepted, or is refused after initial acceptance, the case will generally be prepared for prosecution. In all cases the Council will pursue full repayment of any benefit deemed to have been overpaid and recoverable.

### **Prosecution**

The Council will consider prosecuting offenders under such statutory provisions as seem most suitable to the circumstances of the case if:-

- it was not a first offence
- there is evidence of planning in the offence
- there were other persons involved in the fraud
- the overpayment is considered to be substantial
- the offence was committed over a longer period of time
- the offer to accept a Formal Caution has been refused
- the offer to pay an Administrative Penalty was not accepted or was refused after initial acceptance

The aforementioned categories and monetary values are for guidance only as each case will be considered on its own merits.

Prosecution will not normally be undertaken in such cases where, although warranted, it is considered unlikely to be successful.

The Investigations Team Leader will decide which sanction is considered most appropriate to each case and will notify the Principal Benefits Officer accordingly.

In cases involving state benefits administered by the Department for Work and Pensions the decision will be jointly agreed between both parties.

Consideration will be given to publicising successful prosecutions.