

## **LONDON BOROUGH OF ISLINGTON**

### **BENEFIT SECURITY PROSECUTIONS AND SANCTIONS POLICY**

#### **1. Introduction**

1.1 Housing Benefit and Council Tax Benefits are administered by the London Borough of Islington as part of its statutory local government function. Part of this function is the prevention and detection of Benefit Fraud.

1.2 The London Borough of Islington has a responsibility to prevent and detect Benefit Fraud as part of its commitment to protecting public funds. The Authority will consider taking sanction action against those suspected of committing benefit fraud where it is felt the evidence will sustain a prosecution and such an action would be in the Public Interest.

1.3 This policy is intended to provide clear guidance on the options available to deal with those who commit benefit fraud and when and how these options should be used. This policy applies both to Council staff and members of the public.

1.4 This document sets out the criteria that help to determine whether or not the Council will pursue criminal prosecution proceedings where there is evidence that an offence has been committed in order to obtain benefit. It also lists the alternatives to prosecution that are available to the authority and provides guidance as to when these would normally be considered appropriate.

1.5 This policy forms part of the Council's Housing and Council Tax Benefit Counter - Fraud Strategy and should be read in conjunction with that document. This policy document is intended to be used for guidance purposes, and as such is not prescriptive. In forming this policy the Council has taken in to consideration the Enforcement Concordat (signed in 1998), the Code for Crown Prosecutors (published in 2000) and guidance from the Home Office (Office of Criminal Justice Reform) relating to the Simple Cautioning of Adult Offenders (circular 016 / 2008).

1.6 This policy does not relate to the recovery of overpayments of Housing and Council Tax Benefit; this process is subject to separate legal requirements.

1.7 The guidelines in this policy must be implemented in a fair and consistent manner. Each case that is subject to criminal investigation is considered on its own merits, having regard to all the facts, before an appropriate sanction is selected.

1.8 Following conclusion of an Investigation, the Fraud Investigations Manager will make a recommendation on whether there is sufficient evidential and public interest justification to support a prosecution, and whether disposal by way of an appropriate sanction can be determined by the Benefit Security and Safeguarding Manager in the role of Sanction Authorising Officer.

1.9 Following receipt of the Fraud Investigations Managers recommendation, the Benefit Security and Safeguarding Manager will make a decision, as Sanction Authorising Officer, whether or not to authorise the initiation of a prosecution or an alternative sanction. Each case is judged on its merits and where appropriate advice will be sought from the Benefit Security Policy and Training Officer, the Police, the Crown Prosecution Service, the Department of Work and Pensions and the Council's Legal Team.

1.10 Any queries relating to this document should be addressed in the first instance to the Benefit Security and Safeguarding Manager.

1.11 In order for sanctions to be considered, the case must meet the requirements for the Code for Crown Prosecutors which lays down the general principles that should be applied when considering whether or not a case is suitable for prosecution or alternative sanction. There are two main tests that must be applied when making this decision, the Evidential Test and the Public Interest Test.

1.12 All cases must be prepared to prosecution standard. This will ensure that the case can be considered for prosecution if the alternative sanction is not successful.

## **2. Options following an Investigation**

The Council is able to consider a number of alternative options in dealing with individuals following the conclusion of an Investigation:

2.1 The Council may consider closing the case without any further action if the Evidential Test and / or Public Interest Test criteria are not fully met

2.2 **Recovery and Redress:** The Council will, wherever applicable, seek to recover from anyone who has committed fraud against the Council, such sum or goods by which it considers it has been deprived. In addition to compensation and civil redress, criminal matters may be suitable for an application under the Proceeds of Crime Act 2002.

2.3 **Administrative Penalty:** Section 115a of the Social Security Act 1992 allows the Council to apply a penalty equal to 30% of the total benefit obtained as a result of the offence, as an alternative to prosecution. Upon accepting the penalty the claimant has 28 days in which to change their decision. There must be sufficient evidence to justify instituting criminal proceedings before an administrative penalty can be considered.

2.4 **Formal Caution:** A Warning given in certain circumstances as an alternative to Prosecution to a person who has committed an offence. A Caution can only be considered when there is sufficient evidence to justify instituting criminal proceedings and the person has given a clear and reliable admission of the offence during an Interview under Caution. If the person is subsequently prosecuted for another benefit offence the formal caution may be cited in Court.

2.5 **Prosecution:** if there is sufficient evidence the Council may consider referring the case to its legal representatives for consideration of criminal prosecution.

## **3 The Evidential Test**

In order for any Sanctions to be considered the first stage is consideration of the evidence. The case must meet the evidential criteria in that there must be sufficient evidence for a realistic prospect of a conviction. If the case does not pass the evidential stage it is not prosecutable and a sanction cannot be considered. If the case does pass the evidential stage then the next stage to be considered is that of the Public Interest test. Factors that will be considered are as follows:

### 3.1 General Evidential Factors

- There must be enough evidence to provide a realistic prospect of conviction on each charge.
- A realistic prospect of conviction is an objective test. It means that a jury, bench of magistrates or judge, hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- The evidence must be usable and reliable.

### 3.2 Usability of Evidence

- The evidence must be usable – is there a possibility that the evidence could be excluded in Court
- The evidence must have been gathered correctly and be unlikely to be excluded because of the way it was gathered.
- If it is likely to be excluded is there sufficient other evidence to support a realistic prospect of conviction

### 3.3 Reliability of Evidence

- Is there evidence which might support or detract from the reliability of a confession
- What explanation has the defendant given – is a Court likely to find it credible in the light of the evidence as a whole?
- Is the witness's background likely to weaken the prosecution case – for example does the witness have any motive that may affect his or her attitude to the case or a relevant previous conviction.
- The Investigation process should be examined for breach of process, for example delay. This may impact on a realistic prospect of conviction.
- The Benefit Administration process should be examined for breach of process for example delay. This may impact on a realistic prospect of conviction.

## 4. The Public Interest Test

Having examined the Evidential Test and established that there is sufficient evidence of a realistic prospect of conviction, the Public Interest Test is then applied to determine whether a prosecution should take place or whether an alternative Sanction may be suitable. As a result the following factors need to be considered. The factors for and against prosecution should be balanced carefully. It is a matter of common sense that if there are additional factors that should be taken in to account then these factors should be considered.

- **Sentence:** whether the conviction is likely to result in a significant sentence or a nominal penalty
- **Benefit Overpayment:** the amount of the Overpayment should be taken in to account but should not be the main factor. If the total overpayment of Housing Benefit and Council Tax Benefit is below £2500 then the Council should seriously consider whether an alternative sanction to prosecution might be more appropriate.
- **Offence Duration:** the duration of the alleged offence-was it over a lengthy period of time or was it an isolated single incident?
- **Position:** has there been an abuse of position or privilege.
- **Elderly / Health:** Is the defendant elderly or suffering from significant mental or physical ill health and would a prosecution have a severe adverse impact on their health.
- **Voluntary Disclosure:** did the claimant voluntarily disclose any information prior to the commencement of the Investigation.

- **Admission:** did the claimant admit the offence at the earliest opportunity and make an offer of repayment.
- **Repayment of Benefit?:** has there been any repayment of the Overpaid benefit?
- **Previous Offences?** has the Council identified any previous incidences of fraud occurring – has there been any previous sanctions applied to the person for a benefit fraud offence within five years recorded on the Department of Works & Pensions database?
- **Social Factors:** are there any social factors that would indicate a prosecution as not being the best course of action?
- **Organisation:** Is there evidence that the suspect was a ring leader or an organiser of the offence or is it clear that no other person was involved in the offence.
- **Planning:** Whether there was any planning in the process.
- **Commencement of Benefit Claim:** whether the claim was false from inception.
- **Repeat Offences:** whether there are grounds for believing that the alleged offence is likely to be continued or repeated, based on any history or recurring conduct.
- **Offence Prevalence:** whether the alleged offence, irrespective of its seriousness, is widespread in the area where it was committed.
- **Deterrence:** is the Formal Caution or Administrative Penalty likely to be effective and have a deterrent effect.

## 5. Formal Cautions and Administrative Penalties

Having reviewed the case taking in to account the Evidential Test and the Public Interest Test, the Council may consider offering Formal Cautions or Administrative Penalties as an alternative to Prosecution.

### Local Authority Caution

A *simple caution*, known as a *formal caution* before Home Office Circular 30/2005, was renamed to distinguish it from a Conditional Caution. It is a non-statutory disposal for adult offenders and is effectively a warning given as an alternative to prosecution to a person who has committed an offence. It may be used for disposing of offences following the evidential test being applied and the public interest test having established an alternative to prosecution is appropriate.

As it is a simple caution and not a formal caution it is not recorded on the Police National Computer but is recorded on the Department of Works and Pensions Computer. If a person is subsequently prosecuted for another benefit offence the simple caution may be cited in Court.

If a Caution is not accepted, prosecution must be considered. The Court will be informed in any particular case, that the defendant has been offered a Simple Caution but declined to accept it.

There are certain eligibility criteria that need to be met before a Local Authority Caution can be offered:

- **Admission:** A clear and reliable admission of the offence (and all points relating to that offence) must have occurred in line with guidance issued by the Home Office in circular 16 / 2008.
- **Acceptance:** The individual has to accept the Caution (and thus that they committed the offence detailed)

- The details of previous sanctions that have been obtained from the appropriate agencies have been taken into account.

### **Administrative Penalty: (Customer)**

An Administrative Penalty is a financial penalty levied at 30% of the total fraudulent overpayment that can be offered (by either the Local Authority or the Department of Work and Pensions) as an alternative to prosecution, where there has been no previous sanction of any form.

It may be used for disposing of offences following the evidential test being applied and the public interest test having established an alternative to prosecution is appropriate.

The legislation covering the use of customer administrative penalties is contained within Section 115A of the Social Security Administration Act 1992 inserted by the Social Security Administration (Fraud) Act 1997 which came in to force on the 18<sup>th</sup> December 1997.

Where overpayments of benefits have been issued by the Local Authority and the Department of Work and Pensions, one organisation can delegate the responsibility for the decision and issuing of the Administrative Penalty to the other.

If an Administrative Penalty is not agreed to, prosecution must be considered. The court will be informed in any particular case, that the defendant has been offered an Administrative Penalty but declined to accept it.

There are certain eligibility criteria that need to be met before an Administrative Penalty can be offered:

- There must be an accurate fraudulent overpayment of Benefit created as a result of specific offences being committed that accrued after 18<sup>th</sup> December 1997.
- The offence must relate to the overpayment on which the Administrative Penalty is based.
- The Local Authority (or Department of Work and Pensions) must agree not to institute criminal proceedings against the individual if the individual agrees to pay the Administrative Penalty.
- Details of the person's history of previous sanctions, obtained from the appropriate agencies, has been taken into account

### **Administration Penalty: (Employer)**

The legislation governing the use of employer Administration Penalties is contained in section 115B of the Social Security Administration Act 1992 inserted by the Social Security Fraud Act 2001 which came into force on the 30<sup>th</sup> April 2002. An Administrative Penalty is a financial penalty may be offered to an employer who has committed an offence of:

- making a false statement or
- obstructing an Authorised Officer or
- failing to provide the required information or
- committing false accounting

When dealing with an enquiry concerning their employees, under section 109B (2) or 109C of the Social Security Administration Act 1992. If it is established that an offence has been committed, there must be grounds for recommending proceedings

and prosecution must not be a first option. In these cases the amount of the Administrative Penalty is £1,000.

If the penalty is being offered to an employer and the grounds for instigating proceedings against them is because of incitement, conspiracy or aiding and abetting (England and Wales) (i.e. conduct that facilitates the commission of a benefit offence by an employee) and the employer's conduct involved more than five employees the amount of the Administrative Penalty is £5,000.

In all other cases where the employer has less than five employees the amount of the Administrative Penalty is £1,000 multiplied by the number of employees involved in the employer's conduct.

Repeat offences only should be considered for prosecution. This is because for sanction action to be effective subsequent offences should be dealt with more severely than previous ones.

If the employer declines the offer of an Administrative Penalty then the case will be passed for prosecution. The court will be informed in any particular case that the employer has been offered a penalty but declined to accept it.

## **7. Joint Working**

On occasion the Council will investigate cases jointly with the Department of Work and Pensions. As a result there may be occasion when the Department of Work and Pensions policy on Sanctions and Prosecutions takes precedence over this policy.

## **8. Publicity**

Since a principal objective of this policy is to deter fraud, the Council will seek to publicise successful prosecutions for benefit fraud offences through local press and Council-produced publications, in conjunction with the Council's Press Office.

While any successful prosecution will be considered for publicity, particular attention will be given to cases that involve a high value of fraudulently obtained benefits and/or a newsworthy method of committing fraud and/or where the offender has received a significant sentence.

Following a successful prosecution the Benefit Security and Safeguarding Manager, Fraud Investigations Manager and the Benefit Fraud Policy & Training Officer shall arrange with the Council's Press Officer for a suitably worded press release to be prepared.

Other press releases may be considered from time to time, regardless of particular recent cases, such as reports of sanctions applied over a period.

Use shall also be made of Council-produced publications and council intranet and internet websites to report results both to the public and to staff.