

LONDON BOROUGH OF ISLINGTON
PROSECUTION & SANCTIONS POLICY
HOUSING & COUNCIL TAX BENEFIT

1. Introduction

- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 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 into consideration the Enforcement Concordat (signed in 1998), the Code for Crown Prosecutors (published 2000) and the Home Office Guidance to Cautioning Offenders (18/1994). This Policy is not intended to supercede these documents or take the place of any legal obligation from legislation such as the Human Rights Act 1998 or the Crime and Disorder Act 1998.
- 1.5 This policy does not relate to the recovery of overpayments of Housing and Council Tax Benefit; this process is subject to separate legal requirements.
- 1.6 To help ensure that this policy is applied consistently, any case where a sanction is being considered should be presented to a panel independent of the investigating officer. The panel will usually consist of the Fraud & Interventions Manager, the Team Leader (Sanctions), and the Policy & Training Officer. A decision will be made as to whether or not the Council will pursue a prosecution or an alternative form of sanction.
- 1.7 Any queries relating to this document should be addressed in the first instance to the Fraud & Interventions Manager.

2. Cases where a prosecution may be pursued

- 2.1 Each case is to be judged on its merits and where appropriate advice will be sought from the Police, the Crown Prosecution Service or the Council's Legal Services Team.
- 2.2 The Council will normally instigate prosecution proceedings against an offender where sufficient evidence exists of an offence and it is in the public interest to pursue a prosecution. However, not every case will be suitable and the following paragraphs describe the circumstances where the Council is either more likely or less likely to prosecute.

3 Circumstances where the Council is more likely to pursue proceedings

- 3.1 Any case meeting one or more of the following criteria is likely to result in the Council pursuing prosecution proceedings:

A substantial amount of benefit has been overpaid as a result of the customer's actions;

The offence was pre-planned (i.e. there has been a calculated and deliberate approach to defraud the benefits system regardless of whether or not benefit has been put into payment);

The offence has continued for some time;

The offence is committed by a person in a position of authority or trust (for example, a local authority employee or someone in elected office, such as a Councillor);

The person has previously offended or has been warned of a similar offence in the past;

The person has been offered and has refused an alternative to prosecution (either an Administrative Penalty or Local Authority Official Caution).

4 Circumstances where the Council is less likely to pursue proceedings

- 4.1 It is probable that the Council will not wish to pursue prosecution proceedings in cases where the customer: -

is physically or mentally infirm;

is a juvenile, or is aged over 75, or;

made a voluntary disclosure of the offence before the Council had any suspicions regarding the validity of the customer's claim, or;

has caused only a small loss to public funds, or;

is affected by social factors deemed by the Council to be relevant to the case.

Although it is unlikely that the Council will pursue a prosecution in the above cases, an alternate sanction may still be considered.

5 Prosecution or the alternatives to prosecution (Paragraph 6 below) will not be pursued in the following circumstances

5.1 An examination of the papers of the case reveals serious procedural errors or omissions;

There have been failures in the investigation (such as unnecessary delays);

Where it is apparent that there has been a lack of understanding of the condition for receipt of benefit, due to language barriers;

For prosecution only, taking proceedings would place a vulnerable person (such as an informant or witness) at risk. In this case the alternatives listed in paragraph 6 below may be considered.

6 Alternatives to Prosecution

6.1 For offences involving Housing and/or Council Tax Benefit, the Council has an option of offering an alternative to prosecution; either a Local Authority Official Caution or an Administrative Penalty.

6.2 The following paragraphs set down the criteria as an indication of when these alternatives would be considered appropriate, although occasionally exceptions may be made to this guidance.

7 Local Authority Caution

7.1 The Council would normally consider it appropriate to administer an Official Caution as an alternative to prosecution in the following circumstances: -

The fraud is stopped before any benefit is paid, or the amount of benefit obtained fraudulently is low, and;

it is known to be a first offence, and;

the offender has admitted the offence, and;

an Official Caution or Administrative Penalty has not been previously accepted or refused.

- 7.2 It is not possible to state exactly what value threshold should be applied in these cases because the amount of benefit obtained can differ widely depending upon an individual's circumstances and the nature of the fraud committed.

8 Administrative Penalty

- 8.1 The Council would normally consider it appropriate to offer an Administrative Penalty as an alternative to prosecution in the following circumstances:

An Official Caution is not considered appropriate, and;

the value of fraudulently obtained benefit is relatively low, and;

it is known to be a first offence, and;

there is a realistic prospect of both the overpayment and penalty being paid, and;

an Official Caution or Administrative Penalty has not been previously accepted or refused.

- 8.2 As with an Official Caution, it is not possible to state exactly what value threshold should be applied in these cases. It is, however, unlikely that the Council would offer an administrative penalty where the value of fraudulently obtained benefit is either extremely low or very high.