



BOROUGH OF POOLE

Housing and Council Tax Benefit

Anti-Fraud Strategy Statement

And

Prosecution Policy

HOUSING AND COUNCIL TAX BENEFIT

ANTI-FRAUD STRATEGY STATEMENT

- **The Council will not tolerate any form of benefit fraud from within the council, external organisations, benefit claimants, landlords or employers.**
- **The Council is committed to the prevention, deterrence, detection and investigation of benefit fraud, and will seek to prosecute or apply other appropriate sanctions to perpetrators of benefit fraud.**
- **The Council will seek repayment in full, within the constraints of the legislation, of all benefit a customer obtains to which they are not entitled.**
- **The Council continues to support the Governments Strategy for reducing fraud and error by:**
 - ✓ **Getting it right first time**
 - ✓ **Keeping it right by reviewing customers circumstances**
 - ✓ **Putting it right when changes occur**

PROSECUTION POLICY

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1.0 Introduction

- 1.1 The Council is committed to protecting public funds, including those used in the payment of Housing and Council Tax Benefit.
- 1.2 The Councils Benefits Investigations Section will endeavour to investigate all cases of alleged fraud as quickly and effectively as possible and by conforming to the legislation that governs the investigation of offences. This will include the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000, Social Security Administration Act 1992, Data Protection Act 1998 and the Human Rights Act 1998.
- 1.3 This Policy will serve as a policy statement, agreed by Members and will ensure that offences are dealt with consistently and in line with best practice. It will support the Councils procedures guide for investigating officers and will be annually reviewed to take account of any legislative changes and to provide assurance that it is being correctly followed.
- 1.4 If the Council considers that it can be proved beyond reasonable doubt that an alleged offence has been committed, the Council has the authority to instigate prosecution proceedings or offer alternative administration sanctions to the offender.
- 1.5 We will only offer sanctions to alleged offenders in cases conducted to the standards required by criminal courts and we will only instigate prosecution action on cases where there is a realistic prospect of a successful conviction.
- 1.6 The decision to prosecute or offer a sanction is fundamentally determined by the severity of the offence, which is measured by a number of factors including the financial losses that have been incurred as a result of a fraud.
- 1.7 The three sanctions available to the Council are;
 - Prosecution through Magistrates or Crown Courts
 - Formal Caution
 - Administrative Penalty
- 1.8 We will consider each case on its own merits and discretion will be applied to all people based on their individual circumstances.
- 1.9 When considering the suitability of a case for prosecution or sanction we will apply two tests as stated in paragraphs 2 and 3 below.

2.0 Evidential Test

- 2.1 This test considers whether:
 - there is enough evidence to provide a realistic prospect of conviction, and
 - the evidence can be used and is reliable.

Where this test is satisfied, we will consider the public interest.

3.0 Public Interest Test

3.1 We will consider public interest factors to determine whether to prosecute an alleged offender or consider whether an alternative course of action may be more suitable. It is unlikely to be in the public interest to pursue a prosecution if the chances of securing a conviction are low or where it is likely that in the circumstances the court would be unlikely to impose and sanction other than an absolute or conditional discharge.

4.0 Circumstances where the council is MORE likely to pursue a prosecution

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

- The alleged offence was committed whilst the alleged offender was under a relevant order of the Court (i.e. Probation / Community Service order)
- Previous convictions or cautions are relevant to the present alleged offence
- The alleged offender is in a position of trust
- There is evidence that the alleged offence was premeditated
- The alleged offence occurred for a period in excess of 4 months and may have involved more than one period of deception
- There is evidence that the alleged offence was carried out by more than one person
- The overpayment of benefit is over £2,000.

5.0 Circumstances where the Council is LESS likely to pursue a prosecution

5.1 It is probable that the Council will not wish to pursue prosecution proceedings in cases where, although there is sufficient evidence to prosecute, the claimant has one or more of the following criteria:

- is physically or mentally infirm; or,
- has made a voluntary disclosure of the alleged offence before the Council had any suspicions regarding the validity of the claimant's Housing Benefit and or Council Tax Benefit application; or,
- has caused only a small loss to public funds, or
- other social factors apply.

5.2 Where it is decided that the alleged offence(s) involved are considered to be minor or there are other public interest factors against a prosecution, it is likely that the Council will consider the offer of a **Formal Caution** or **Administrative Penalty** as an alternative to proceedings. These can only be offered if the evidential test is satisfied.

6.0 Formal Caution

6.1 A Formal Caution is a sanction that local authorities are able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one the Council could take to court if the caution was refused. Such a caution would not give the

claimant a criminal record, but would be held by the Department for Works and Pensions for 5 years and may be cited in Court should the claimant re-offend.

6.2 We consider it will be appropriate to administer a Formal Caution as an alternative to prosecution, where all the following criteria are met:

- Where the person has admitted committing an offence, and;
- 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;
- A Formal Caution or Administrative Penalty has not been previously accepted or refused.

6.3 We adhere to Home Office guidance on the use cautions that specifies that the alleged offence must have been admitted at an interview under caution and informed consent from the person being cautioned must be obtained.

6.4 When a Formal Caution is offered but refused, we will instigate prosecution proceedings.

7.0 Administrative Penalty

7.1 Section 115A of the Social Security Administration Act 1992 allows a Local Authority to administer a penalty as an alternative to prosecution. The penalty is 30% of the total fraudulent overpayment.

7.2 Unlike a Formal Caution no admission of guilt is required from the claimant before offering an Administrative Penalty, although there is a statutory requirement to ensure that there are grounds for instituting criminal proceedings for an alleged offence relating to the overpayment.

7.3 Where there has been an overpayment of Housing Benefit and or Council Tax Benefit the Council will normally consider it appropriate to offer an Administrative Penalty as an alternative to prosecution in the following circumstances:

- A Formal Caution is not considered appropriate, and;
- The value of fraudulently obtained benefit is below £2000, and;
- It is known to be a first offence, and;
- There is a realistic prospect of both the overpayment and penalty being paid, and;
- A Formal Caution or Administrative Penalty has not been previously accepted or refused.

7.4 Where an Administrative Penalty has been offered but not accepted or if the acceptance is withdrawn within 28 days, legal proceedings will be instigated.

7.5 Any decision to offer a sanction or to prosecute will be made by the Benefit Fraud Manager following consideration of the **evidential** and **public interest tests** and being satisfied that the investigation has been undertaken in an appropriate manner.

7.6 Where sanction or prosecution action is recommended by the Benefit Fraud Manager, the file will be passed to the Benefits Manager for authorisation.

7.7 Advice may be sought from the Head of Legal and Democratic Services before any decisions are made.

8.0 Records

8.1 For an effective regime of sanctions to be successful it is essential that accurate records of all convictions, administrative penalties and formal cautions are maintained. We will continue to provide resources to ensure this action is carried out effectively. This will enable us to make correct decisions about possible sanction action in future, taking full account of any previous offences against the council.

9.0 Publicity

9.1 We will positively promote this policy by publicising the outcomes of any prosecutions and other sanctions, which should deter others from fraudulent activity. We will also make this policy available both internally across the Council and externally to stakeholders, third parties and members of the public.

Steve Arnold
Benefit Fraud Manager
1 November 2006