



Benefit Prosecution Guidelines (PROPOSED)

Eden District Council has a duty to administer Housing and Council Tax Benefit claims, including the responsibility to prevent and detect Benefit fraud. The Council will consider applying a sanction against persons suspected of committing Housing and/or Council Tax Benefit Fraud. The evidence will be of a sufficient standard to sustain a sanction. Any sanction applied should be in the public interest.

The Investigations Manager will recommend to the Sanctions Panel what in his view is the appropriate sanction to be considered. However, the final decision will be determined by the Sanctions Panel. The Sanctions Panel will take into account additional factors outlined in this policy.

The Sanction Panel consists of the Director of Finance, the Revenues and Benefits Manager and the Local Taxation Manager. A minimum of two signatures are required to sign the document which details their decision.

Formal Cautions / Administrative Penalties

Formal Cautions or Administrative Penalties will be offered to persons who fit the following criteria:

- the overpayment is between £0 and £1,999 or the overpayment is £2,000 or over but the claimant has significant ill health where a Prosecution would have a severe impact on their health
- the person has committed an offence, which has a realistic prospect of conviction
- the person has admitted their guilt (caution only)
- the evidence is sufficient for a prosecution
- the person is aware of the terms of the Formal Caution or Administrative Penalty
- the case meets the Public Interest Test
- there has been no previous sanction applied to the person for a benefit fraud offence within five years recorded on the Department of Works & Pensions database.
- where the case is a Joint working case with the Department of Work & Pensions, where it is their intention to offer a Formal Caution or Administrative Penalty
- where there has been an attempt to claim benefit fraudulently but no payment has been made (caution only)
- the Formal Caution or Administrative Penalty is likely to be effective and have a deterrent effect
- there was no other person involved in the offence
- the offence is minor and any court sentence is likely to be small (caution only)
- the claimant has limited income or capital and the imposition of an administrative penalty is likely to cause hardship (caution only)
- the claimant has a level of capital or income that would enable them to pay a penalty without significant hardship (administration penalty only)

The Investigations Manager will recommend either an Administrative Penalty or Formal Caution to the Sanctions Panel. Whether a penalty or caution will depend on the individual circumstances of the case.

The Performance Manager will administer the Administrative Penalty or Formal Caution if this is deemed the appropriate sanction by the Sanction Panel.

If the person declines the offer of a Formal Caution or Administrative Penalty then the case will be passed for prosecution. The court will be informed in such a case that the defendant has been offered a Formal Caution or Administrative Penalty but declined to accept it.

Employer Administrative Penalty

An Administrative 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, ie 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) (ie 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.

Prosecution of Offenders

Overpayment of £2,000 or more

The case will be prepared for proceedings if the following criteria are met:

- the case meets the Public Interest Test
- the person has committed an offence which has a realistic prospect of conviction
- the evidence is sufficient for a prosecution
- joint working cases with the Department of Work & Pensions where it is their intention to prosecute.
- where a claim has been false from the inception of the claim
- there are no substantial delays or administrative weaknesses that would have a detrimental effect upon proceedings.
- joint working cases where the Department of Work & Pensions have rejected the investigation, but for Housing and Council Tax Benefit the proceedings will continue as our prosecution policy criteria are still met.

Overpayments of less than £2,000

The case will be prepared for proceedings if the following criteria is met:

- the person has failed to attend four opportunities to attend for an Interview under Caution, without reasonable excuse: or
- the person has failed to attend the interview for the offer of an Administrative Penalty or Formal Caution, or at the interview declines the sanction offered: or
- the person has had a previous benefit fraud sanction applied within five years or has had a similar offence recorded against them on the Police National Computer: or
- in joint cases with the Department of Work & Pensions where it is their intention to prosecute: or
- where a claim has been false from the inception: or
- where forged or fraudulent documents have been produced.

Supporting Information

Formal Caution

This can only be issued to the claimant when they have admitted the offence in an Interview under Caution. This can not be offered if the claimant declines to attend the Interview under Caution or if the claimant does attend but disputes or denies the allegation that is put to them during the interview. The evidence obtained must be of the standard required for the case to proceed for prosecution. A formal caution remains on the Department of Work & Pensions for a period of five years and can be cited in court if any like offences are committed within the period of five years. This is offered as an alternative to Prosecution. If the formal caution is declined then the case should be considered for prosecution.

Formal Cautions are generally offered for overpayments between £0 and £1,999. The officer responsible for the Formal Caution interview is not involved in the investigation process.

Administrative Penalty

Section 15 of the Social Security (Fraud) Act 1997 allows the Authority to apply a penalty equal to 30% of the total overpayment of benefit. This is offered as an alternative to prosecution. The standard of evidence must be of the standard required for the case to proceed for prosecution. If the offer of an administrative penalty is declined then the case should be passed for prosecution. An Administrative Penalty cannot be cited in court if there are any future proceedings taken against the claimant. The claimant must have attended the Interview under Caution if an Administrative Penalty is to be offered.

Administrative Penalties are generally offered for overpayments between £0 and £1,999. The officer responsible for the Administrative Penalty interview is not involved in the investigation process.

The claimant is informed of the following at the Administrative Penalty Interview:

- they will be asked no further questions relating to the offence that has been alleged as these would have been asked in the Interview under Caution
- that there is sufficient evidence for instituting criminal proceedings
- that it has been decided to offer them the alternative of an Administrative Penalty, rather than referring the case for prosecution
- they will be expected to make a decision within a fixed period of time on whether to agree to pay a penalty
- recovery of the penalty will occur in the same way as the recovery of the overpayment
- failure to repay the debt or default on instalments will result in civil proceedings for recovery

The Decision to Prosecute

Prior to the Sanction Panel deciding if a Prosecution is appropriate, the following will have to be considered.

Sufficient Evidence

In making this decision, the following must be considered;

- is the evidence clear and concise?
- have there been any failings in the Investigation that may have an adverse effect on the case?
- have there been any failings in the administration of benefit by Eden District Council that may have an adverse effect on the case, including delay?

The Public Interest Test

The following factors will be considered in making the decision to prosecute:

- the amount of the Overpayment and the duration of the alleged offence
- an abuse of position or privilege
- does the claimant suffer from significant mental or physical ill health and would a prosecution have an severe adverse impact on their health?
- did the claimant voluntarily disclose any information prior to the commencement of the Investigation?
- any previous incidence of fraud
- social factors
- whether there is evidence that the suspect was a ring leader or an organiser of the offence
- whether there was any planning in the process
- whether the claim was false from inception
- whether there are grounds for believing that the alleged offence is likely to be continued or repeated, based on any history or recurring conduct
- whether the alleged offence, irrespective of its seriousness, is widespread in the area where it was committed

The above policy is for guidance and some flexibility is allowed so that all relevant circumstances of each case can be taken into consideration. Any decision taken in relation to the most appropriate form of sanction will be clearly documented. This will detail the reasoning for the decision and will be countersigned by the Director of Finance, the Revenues and Benefits Manager and the Benefits and Local Taxation Manager.

Prosecution – Instructing Solicitors

Eden District Council has the use of In House Legal Services and has signed a Service Level Agreement with the Department of Work & Pensions Solicitors Practice (SOLP). The Investigator of the case will liaise with the legal section regarding the appropriate prosecutor to use on a case to case basis. SOLP have recently confirmed that this service will be at no cost to any local authorities that have signed the Service Level Agreement.

A Service Level Agreement between the Benefits Investigation Team and Legal Services has recently been signed. An agreed option is to use external solicitors to act on Eden District Council's behalf when Legal Services would be unable to present the case.

It will be the intention of the Investigations Team to apply for full costs at Court Hearings and not a contribution of the costs as normally requested by SOLP and the Crown Prosecution Service.

Publicity

Eden District Council, following discussion with the Director of Finance, or the Revenues and Benefit Manager, may wish to publicise a positive prosecution result if it is thought to be in the public interest:

- if a conviction will generate positive publicity
- if the release may help to deter others from fraud
- to promote the Eden District Council fraud hotline
- to promote Eden District Council anti fraud work

It is important that this document is continually reviewed in response to procedural and/or legal changes, or where working discrepancies have been identified.