

Gedling Borough Council



Housing & Council Tax Benefit Prosecution Policy

Introduction

Gedling Borough Council recognises that the overwhelming majority of people using its Benefits Service do so properly and honestly. However, it acknowledges that there is a minority that commit fraud with the intention of obtaining benefit to which there is no entitlement. The Council is committed to protecting public funds and takes the matter of Housing and Council Tax Benefit fraud very seriously.

The aim of this policy is to deter Housing and Council Tax Benefit fraud by pursuing the range of sanctions available to the Council, including prosecution, in cases where people have intentionally abused the benefit scheme for their own benefit or the benefit of others.

The Council aims to achieve this by effectively investigating allegations of Benefit Fraud and in doing so may take further action against an individual by means of a formal Caution, Administrative Penalty or in more serious cases, instigate Criminal Proceedings. In doing so, the Council will ensure that decisions to apply sanctions are consistent, reasonable and fair.

In reaching a decision whether or not to apply a sanction the Council will take account of all the available evidence and any mitigating circumstances.

The Council will, in each case, assess whether it is in the public interest to apply a sanction by reference to this policy.

The Prosecution Policy forms an integral part of the Council's Housing and Council Tax Benefit Counter-Fraud Strategy and should be read in conjunction with that document.

The Council will only consider applying the sanction under this policy where it is satisfied that there is sufficient evidence, which shows that an offence has been committed beyond reasonable doubt and has a realistic chance of conviction should it be referred for criminal proceedings.

Decision Making

Cases of suspected fraud must be investigated in accordance with the standards detailed in the Council's Housing and Council Tax Benefit Counter-Fraud Strategy and Fraud Business Plan.

On completion of the investigation the Senior Benefit Liaison Officer will consider whether a fraud has been committed and whether there is sufficient admissible evidence to enable a successful prosecution.

The Senior Benefit Liaison Officer, guided by this policy, will make a recommendation to the Housing Benefit Support Officer as to whether a sanction should be applied and, if so, which sanction is applicable.

The Housing Benefit Support Officer will consider each case by reference to the Council's Prosecution Policy and will decide whether to agree with the recommendation.

Equal Opportunities/Human Rights Issues

In all cases, the Senior Benefit Liaison Officer and Housing Benefit Support Officer must satisfy themselves that they have acted with impartiality and applied the Council's Policy equitably and consistently in reaching their decision.

Timescales

It is crucial that the Council acts promptly in its dealings with cases of Benefits Fraud for the following reasons:

- Undue delay in bringing a matter to court may affect the defendant's right to a fair trial leaving the Council vulnerable to challenge under the Human Rights legislation and criticism from the Courts.
- For certain offences the prosecution must be commenced within a statutory time period, failure to do so prohibits prosecution.

On receipt of formal instructions to act and the full prosecution file including the transcript of the Interview Under Caution the Legal Department will consider the file and decide the relevant offence and whether to prosecute. The Legal Department will only prosecute a matter where they are satisfied that there is sufficient evidence to justify prosecution and that there is a realistic chance of obtaining a conviction.

Monitoring and Review

The Senior Benefit Liaison Officer will keep a record of all cases referred to it and will record the reasons for the decisions it makes and retain any relevant material (for example, evidence of a person's medical condition) that supports the decision taken.

The Prosecution Policy will be reviewed periodically to consider its effectiveness and any relevant changes in legislation.

Voluntary Disclosure

Voluntary disclosure is where a customer, of his or her own free will, reveals a fraud of which the Council has been unaware. It does not apply to cases where, for example: -

- The disclosure is prompted by a belief that the fraud would have been discovered
- The claimant has discovered that they were already being investigated
- The disclosure was prompted by, for example, a intervention or welfare visit

Any voluntary disclosure will be taken into consideration when the decision on what the appropriate action to be taken should be.

Any voluntary disclosure does not automatically stop the Council from taking sanction action.

Prosecution

Cases where Prosecution may be appropriate.

The Council, as the administrator of Housing and Council Tax Benefit, is the prosecuting authority in respect of offences relating to benefit fraud including offences under Sections 111A and 112 Social Security Act 1992.

The Council, on consideration of all the circumstances of the case, may decide to either prosecute under Section 112, which is a summary offence or Section 111A, an either-way offence for more serious cases. Summary offences are tried in the Magistrates Court and either-way offences may be tried either in the Magistrates or Crown Court. The Legal Department will make the final decision on the relevant offence on prosecution cases.

The Council has the burden of proof and will have to prove all elements of the offence beyond reasonable doubt. Therefore, before the Council starts a prosecution, it must be satisfied that it has sufficient admissible evidence to prove all elements of the offence to the required standard.

Circumstances where criminal prosecution may be considered appropriate are listed below, subject to any mitigating factors discovered during investigation. The list is not exhaustive and each case will be determined on its own merits.

The identified recoverable fraud overpayment of Housing and / or Council Tax Benefit is more than £2,000.00. The Court will take into account when sentencing the amount of overpayment and therefore any underlying entitlement to benefit should be taken into account when considering prosecution. The decision on whether to refer a case for prosecution lies with the Senior Benefit Liaison Officer and Housing Benefit Support Officer. The following tests will be considered:

Is there sufficient evidence for a realistic prospect of a conviction?

In making this decision all circumstances surrounding the case will be considered, with particular emphasis on the following

- Is there sufficient evidence
- Flawed investigation impacting on the integrity of prosecution evidence
- Poor administration which enabled the fraud to succeed
- 6 months has expired from the date on which evidence came into the Councils knowledge.
- Section 112 of the Social Security Administration Act 1992 – Can all evidence be laid at court within 3 months of the last piece of evidence coming to light or within 12 months of the offence date

Is a prosecution in the public interest?

In making this decision all mitigating circumstances surrounding the case will be considered, with particular emphasis on:

- The individual is terminally ill or where it is considered that criminal proceedings would have an adverse affect on their health.
- The individual is suffering from significant mental health problems.
- The individual has social factors that may be relevant
- The amount of the overpayment and duration of the alleged offence
- Any abuse of position or privilege
- Any voluntary disclose (see section on Voluntary Disclosure)
- Any previous incidence of fraud
- Whether a conviction is likely to result in a significant sentence or nominal penalty
- Whether there are grounds for believing that the offence is likely to be continued or repeated, based on any history of recurring conduct
- Whether the claim was false from the outset
- Whether the benefit received was spent on luxury items
- Whether there is evidence that supports that this was an organised group offence
- Whether there was planning in the process
- The possibility of the Council receiving poor publicity or being seen as oppressive
- The person has language or literacy problems
- The person was under the age of 18 at the time the offence was committed

When to consider Prosecution from the outset?

The person has been offered and declined the option of an Administrative Penalty as an alternative to prosecution. The court must be notified that the customer has declined the offer.

Except where there are exceptional circumstances or where the Legal Department advises otherwise, or where an Administrative Penalty is refused or where an agreement is later withdrawn the Council will commence prosecution proceedings irrespective of the amount of the overpayment.

Or where the person has been offered and declined the option of a Formal Caution as an alternative to prosecution. The court must be notified that the customer has declined the offer.

Except where there are exceptional circumstances or where the Legal Department advises otherwise, or where an offer of a Formal Caution is refused the Council will commence prosecution proceeding irrespective of the amount of the overpayment.

Where the fraud overpayment is less than £2,000.00 but the fraud has continued over a long period of time (in excess of 18 months).

The fraud appears to be calculated and deliberate, for example, where evidence submitted in support of a benefit claim appears to have been deliberately falsified or altered or where the claim was false from the outset and had an investigation not taken place, high levels of benefit would have been put into payment.

Where a customer has failed to attend an interview under caution on 3 separate occasions despite them being notified in writing of the date, time and venue.

Where a person has previously accepted an Administrative Penalty or accepted a Formal Caution or been convicted for Social Security or Housing Benefit Fraud the Council will commence prosecution proceedings automatically.

The fraud appears to involve a collusive employer or landlord. Cases involving collusion should be regarded as serious fraud and prosecution may be appropriate irrespective of the amount of overpayment.

The person is in a position of trust, for example a Local Authority employee or an Elected Member. Disciplinary proceedings may also be initiated for Local Authority employees where they are found to be in breach of the Council's Code of Conduct for Employees.

The above considerations are guidelines only and each case will be looked at individually based upon its own merit. Discretion will be applied with regards to people based on their individual circumstances and the test of public interest.

The Head of Corporate Services will make the decision whether to take sanction action or not on any case where the Senior Benefit Liaison Officer and Housing Benefit Support Officer require guidance as to what should be the appropriate course of action.

Financial considerations

There is no value of fraudulent overpayment below which prosecution should be excluded. However, it may not be economically viable or in the public interest to proceed on monetary grounds alone if the overpayment is low.

Administrative Penalty

Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security (Fraud) Act 1997 allows a Local Authority to offer an Administrative Penalty as an alternative to prosecution.

The offer of an Administrative Penalty may be made where there is sufficient evidence to justify a prosecution of an offence, but the case is not so serious as to merit prosecution from the outset.

If a person enters into an Administrative Penalty Agreement they will be required to pay a 'penalty' to the Council equivalent to 30% of any recoverable overpayment that they have fraudulently received (in addition to recovery of the overpayment on which the penalty is based). This is an alternative to prosecution. Upon accepting the penalty the claimant has 28 days in which to change their decision. Where a penalty is not accepted or subsequently withdrawn with the 28 day cooling off period the authority must consider prosecution. In view of this, all cases are investigated up to prosecution standard.

In the case of an employer, the amount of the penalty is based on the circumstances of the offence.

The Council will not offer an Administrative Penalty: -

- Where the statutory time limits for starting proceedings have expired under Section 116 of the Social Security Administration Act 1992.
- In respect of an overpayment or part of an overpayment that accrued before the date the power to make Administrative Penalties came into force, that is 30th April 2002 in the case of an employer or 18th December 1997 in all other cases.
- The Council will not offer an Administrative Penalty, as an alternative to prosecution where, in accordance with this policy, it has no intention to prosecute the offence or the case was not prepared to prosecution standard should the customer decline the offer.

Except where the Council is satisfied there are exceptional circumstances or where the Legal Department advises otherwise or where an Administrative Penalty Agreement is declined or where an agreement is subsequently withdrawn the Council will seek to prosecute the individual.

The Housing Benefit Support Officer and /or Business Development Manager will administer administrative Penalties at a special interview.

The customer is notified in writing at least 1 week before, confirming the date and time of the interview.

The customer must be told the following during the interview

- That it is not an interview under caution
- In light of the evidence available, Gedling Borough Council believes there are grounds for instigating criminal proceedings for the offence
- In line with this policy, it has been decided to offer them the alternative of agreeing to pay an administrative penalty as an alternative to referring the case for prosecution.
- They will be expected to make a decision on whether to agree to pay the penalty by the end of the interview
- Acceptance of the penalty is not an admission of guilt
- Recovery of the overpayment will occur in the same way as recovery of the overpayment and will not commence until the overpayment is paid in full.

- They have 28 days in which to change their mind should they originally accept the penalty
 - Failure to repay the debt or default on instalments will result in them facing civil proceedings for recovery.

Formal Caution

The Council as a prosecuting authority is not under an obligation to prosecute and may as an alternative issue a Formal Caution when a person admits all elements of an offence. It is a meaningful penalty and deterrent were the offence is less serious or in the circumstances of the case prosecution or an Administrative Penalty does not appear appropriate.

A Formal Caution will only be offered where the person fully admits the offence in an Interview Under Caution. It cannot be issued if the customer refutes or denies the charge.

The Council will not offer a Formal Caution where, in accordance with this policy it has no intention to prosecute.

Additionally the Council will not offer a Formal Caution where:

- The statutory limitation periods for commencing a prosecution under Section 116 of the Social Security Administration Act 1992 have expired.

Except where the Council is satisfied there are exceptional circumstances or where the Legal Department advises otherwise or where a Formal Caution is declined the Council will prosecute.

The Housing Benefit Support Officer and /or Business Development Manger will administer a Formal Caution at a special interview.

The customer is notified in writing at least 1 week before, confirming the date and time of the interview.

The customer must be told the following during the interview

- That it is not an interview under caution
- In light of the evidence available, Gedling Borough Council believes there are grounds for instigating criminal proceedings for the offence
- If they accept the Caution, they will have to make a written admission of the offence
- The Caution may be cited if they are later convicted by any court of any other offence
- The Caution will be recorded and may influence any future decision about offering a caution
- The Caution is NOT a criminal offence
- They have every right to decline the Caution but this may lead to criminal proceedings being instigated against them

Where a customer offers excuses or mitigation during this interview, the Housing Benefit Support Officer / Business Development Manager will inform the customer that they had an opportunity to put their points over during the Interview Under Caution stage and therefore they are unable to consider their comments now.

When to offer a Formal Caution or an Administrative Penalty

- If the overpayment is less than £2,000.00 and there are no previous sanctions held on record within the last 5 years.
- Where the overpayment is over £2,000.00 but due to public interest factors or the individual's circumstances, a prosecution is not appropriate at that time. However, the Authority may wish to offer a sanction to highlight the seriousness of the offence to the individual and advise them that they may be prosecuted should they commit a further offence within the next 5 years.
- Where a person has attempted to fraudulently obtain benefit but no benefit has been paid i.e. the claim is false from the outset. (These types of cases can only attract a Formal Caution or Prosecution and not Administrative Penalty. The reason being is that no benefit has been paid so you are unable to apply a 30% penalty on an overpayment as no overpayment has actually occurred).

- A Formal Caution maybe a more appropriate method of sanction rather than an Administrative Penalty especially where the person's resources are so limited that they would suffer exceptional financial hardship as a result of repaying the penalty. However for a Formal Caution to be appropriate the customer must have fully admitted the offence.
- Employers may be offered an Administrative Penalty if they have refused to provide information, obstructed an officer or collusively employed individuals. In these cases it is advised to seek solicitor's advice as to whether prosecution may be a more suitable course of action. The Administrative Penalty is calculated at £1,000.00 per employee for whom they have failed to provide information, have given false information or they have collusively employed.

No Sanction

Where in the circumstances of the case in accordance with this policy no sanction appears appropriate, or where the Senior Benefit Liaison Officer and Housing Benefit Support Officer considers it is not in the public interest, no sanction will be applied.

Applying Sanctions and Joint Working

The Department for Works and Pensions (DWP) has also made its Solicitor's Branch available to Local Authorities for the prosecution of cases that only involve Housing or Council Tax Benefit fraud. The Council may use this service if it considers it appropriate, for example, where a case is urgent and the Council's own solicitors would have difficulty in bringing proceedings within the required timescales.

The Council is committed to working closely with other agencies, such as the DWP and will endeavour to carry out joint investigations.

The Council will work closely with other agencies to ensure that cases of joint fraud are dealt with consistently and fairly and that sanctions are applied appropriately.

Where the fraud includes an overpayment of both a social security benefit and Housing Benefit then the aggregate overpayment amount should taken into consideration (for example, the total of the Housing Benefit overpayment and the Income Support overpayment) when considering whether to apply a sanction.

With the pending implementation of the Welfare Reform Act 2006 in 2008, Gedling Borough Council will be empowered to investigate and prosecute Department for Works and Pension (DWP) benefits as well as Housing and Council Tax Benefit cases. This means that where Gedling Borough Council is the lead investigating authority, we will be able to prosecute cases rather than having to refer them to the DWP solicitor's branch.

Publicity

The Council will publicise prosecution cases as a deterrent against fraud in accordance with the approach detailed in the Housing and Council Tax Benefit Counter-Fraud Strategy and Fraud Business Plan 2007/08. We will look to place advertisements in the Nottingham Evening Post and the Council's quarterly free magazine, 'Contacts', which is delivered to all households with the Gedling Borough Council area.

Other press organisations we send press releases to include:

The Arnold and Sherwood North Notts Magazine
The Chad
Hucknall Dispatch
Nottingham Journal
The Topper
BBC Radio Nottingham
Faza Radio
Heart FM
KEMET Radio
Smooth Radio
Trent FM