

**Prosecution Policy**  
**For Housing Benefit and Council Tax**  
**Benefit Fraud**

## **General Enforcement Policy**

The Council supports the judicious use of its statutory enforcement, including the prosecution of offenders as an effective means of ensuring that claimants of Housing and Council Tax Benefit comply with statutory requirements.

The Borough Solicitor to the Council is appointed as the Proper Officer of the Council who is authorised to prosecute and appear on the Council's behalf in proceedings to the Magistrates' Court against claimants to Housing Benefit, Council Tax Benefit and other benefits, where there is sufficient evidence of fraudulent claims.

## **Decision to Prosecute**

### **1. The Council is likely to prosecute offence in the following circumstances:-**

- a. Where the alleged offence involves a flagrant breach of the law.
- b. Where the overpayment exceeds £2,000
- c. Where there is a history of similar offences
- d. Where the offender refuses to accept a penalty or caution.

### **2. The Evidential Test**

When circumstances have been identified which may warrant a prosecution all relevant evidence and information must be considered, to enable a consistent, fair and objection decision to be made.

Before a prosecution proceeds, the officer responsible for deciding on enforcement action must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person. There must be a realistic prospect of conviction; a prima facie case is not enough. Where there is insufficient evidence to prosecute other types of formal action such as the administrative penalty or cautioning are not alternatives.

If the case does not pass the evidential test it must not go ahead.

### **3. The Public Interest Test**

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will only commence once the case has passed both the evidential and public interest tests. The Council must balance factors for and against prosecution carefully and fairly. The following public interest criteria may be taken into account:-

- a. The relative seriousness of the offence.
- b. The offenders' previous history, including convictions and cautions.
- c. Any mitigating circumstance surrounding the alleged offence and any explanation offered by the offender.
- d. Whether there are grounds for believing the offence is likely to be continued or repeated.

e. Whether the court is likely to impose a very small or nominal penalty i.e. If the offender is likely to receive an absolute or conditional discharge it is not normally in the public interest to prosecute.

f. The probable public benefit of a prosecution and the importance of the case.

#### 4. The Decision To Prosecute

The decision to prosecute will be made subject to the Borough Solicitor being satisfied as to the evidence, and in conjunction with the Revenues & Benefits Manager who will decide whether to proceed.

#### **Alternatives to Prosecution**

The Borough Solicitor and the Revenues & Benefits Manager will consider other alternatives to prosecution which may be more appropriate or effective. Verbal or written warnings, administrative penalties or formal are all examples of alternatives to prosecution. Each case will be determined on its own facts taking into account all the relevant factors.

#### **Informal Action**

Informal action may be adopted where:-

- (a) The act or omission is not serious enough to warrant formal action.
- (b) Normally the overpayment should be less than £500.
- (c) Confidence in the offender is high.
- (d) Even where some of the above criteria are not met informal action may be more effective.

## **Formal Cautions**

The use of formal cautions will be given consideration where informal action is not appropriate or there has been a serious breach of legislation and it would be appropriate to:-

- (a) deal quickly and simply with a less serious offence,
- (b) avoid unnecessary appearance in the Court,
- (c) reduce the chances of re-offending.

No conditions will be applied where a formal caution is administered.

A formal caution is a serious matter, it will be recorded, it will influence any decision whether or not to prosecute should there be a further offence and it may be cited in subsequent court proceedings.

Before a formal caution is given the following conditions must be met:-

- (a) There must be sufficient evidence of guilt in order to provide a realistic prospect of conviction.
- (b) The offender must admit the offence.
- (c) The offender must understand the significance of a caution and consent to such action.
- (d) A caution must be in the public interest.

The administration of any formal caution will be carried out strictly in accordance with procedures laid down by the Home Office.

## **Administrative Penalties**

Offers of a penalty can be made where the overpayment is recoverable from a person under S75 or S76 of the Social Security Administration Act 1992.

There must be grounds to instituting criminal proceedings against the person for an offence relating to the overpayment upon which a payment is based.

Before an administrative penalty is offered the following conditions must be met:

- (a) The case is not so serious that it should be considered for prosecution at the outset.
- (b) The recoverable overpayment is not substantial. Normally the amount of overpayment should not exceed £2,000.
- (c) There is sufficient evidence to proceed with criminal proceedings against the person if they decline the penalty.
- (d) There are grounds to institute legal proceedings and the case should, in the opinion of the local authority, be suitable for recommendation of criminal proceedings.
- (e) A penalty interview must take place and the person agrees to pay the penalty.

The penalty is 30 per cent of the amount of the recoverable overpayment and is payable in addition to repayment of the overpayment and is recoverable by the same methods as those by which the overpayment is recoverable.