

Rushcliffe Borough Council

Benefit Fraud Prosecution Policy

Housing Benefit and Council Tax Benefit Fraud Prosecution Policy

1. INTRODUCTION

In carrying out its functions and responsibilities Rushcliffe Borough Council (“the Council”) is firmly committed to dealing with fraud or corruption and will deal equally with attempted and perpetrated fraud or corruption from inside or outside the Council. It is therefore committed to its Anti-Fraud & Corruption Strategy that has been designed to tackle benefit fraud effectively. As part of its commitment to this strategy it is essential that a policy covering the use of prosecutions and other available sanctions for serious benefit fraud is implemented. The consistent application of the policy will provide a means for penalising those who have abused the system and will also act as a meaningful deterrent to those who are contemplating it.

2. BACKGROUND

Local Authorities have a right, inherent in common law (extended by the Social Security Administration Act 1992 and Social Security Administration (Fraud) Act 1997), to prosecute in cases of fraud involving Housing Benefit and Council Tax Benefit. The Department for Work & Pensions (DWP) also has the authority to prosecute cases that involve Housing Benefit and Council Tax Benefit. The Council is a signatory to the DWP/LA Counter Fraud Joint Working Partnership Agreement which facilitates a consistent approach to joint investigations between the two organisations.

3. PROSECUTION

Not every contravention of the law should be prosecuted through the Courts. The Council will weigh the seriousness of the offence (taking into account the harm done or the potential for harm arising from the offence) with other relevant factors, including the financial circumstances of the defendant, mitigating circumstances and other public interest criteria.

The Council will have regard to The Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 in deciding whether to prosecute in any particular case. Thus, before starting proceedings, the Borough Solicitor must be satisfied that there is a realistic prospect of conviction based on the evidence (that is, there must be sufficient admissible, substantial and reliable evidence to secure a conviction). In addition, the Council will balance, carefully and fairly, the public interest criteria as against the seriousness of the offence. The public interest criteria include:-

- (a) The likely sentence (if convicted);
- (b) Previous convictions and conduct of the defendant;
- (c) Whether there are grounds for believing the offence is likely to be repeated;
- (d) The prevalence of the offence in the area;

- (e) Whether the offence was committed as a result of a genuine mistake or misunderstanding;
- (f) Any delay between the offence taking place and the date of the trial;
- (g) The likely effect the prosecution will have on the defendant;
- (h) Whether the defendant has put right the loss or harm caused.

If a number of offences have been committed and prosecution is deemed to be appropriate, then in selecting the offences for prosecution, regard will be had to the need to reflect the seriousness of the matter and to give the Court adequate sentencing powers to deal with the matter appropriately.

Through judicious exercise of discretion, the Council will aim for a consistent and uniform approach to prosecution, having due regard to the deterrent effect of a prosecution and the need to deal with offences in a proportionate way.

Cases investigated jointly with the Department for Work and Pensions are only prosecuted currently by the DWP solicitor. This is because of the DWP's adherence to the "Howell" ruling which states that Local Authorities do not have the power to prosecute DWP offences. The Council will authorise DWP to prosecute on its behalf where Local Authority staff have taken part in the investigation or the interview under caution. The DWP will invite the Council to join them in administering alternative sanctions if this is considered to be more appropriate.

The overpayments of both organisations will be aggregated before deciding upon the appropriate course of action, in line with the DWP's prosecution policy.

4. SANCTIONS

The following sanctions are available to Local Authorities with regards to claimants who have committed benefit fraud offences.

Formal cautions

A formal caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. Instructions were issued by the Home Office in circular 18/1994 regarding the issue of formal cautions. Subject to the financial guidelines outlined in this policy a formal caution will normally be offered in the following circumstances:

- there is sufficient evidence to justify instituting criminal proceedings; and
- the person has admitted the offence; and
- it was a first offence

Usually only in exceptional circumstances will a second caution be delivered for a second or subsequent offence.

Administrative penalties

Section 115A of the Social Security Administration Act 1992 as amended by Section 15 of the Social Security Administration (Fraud) Act 1997, allows Local Authorities to offer an administrative penalty as an alternative to prosecution at a rate of 30% of the total overpayment. Upon accepting an administrative penalty the claimant has 28 days to change their mind.

If an administrative penalty is not accepted or is withdrawn the local authority will usually refer the matter for prosecution.

Subject to the financial guidelines outlined in this policy an administrative penalty will normally be offered in the following circumstances:

- the Council believes that there is sufficient evidence to prosecute; and
- it was a first offence; and
- in the opinion of the Council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution; and
- the total gross overpayment on which to apply a penalty exceeds £50; and
- there is a strong likelihood that the overpayment plus penalty will be repaid

It is important to note that the suspect need not have admitted the offence at an interview under caution for an administrative penalty to be offered.

Prosecutions

In order to prosecute a person for a criminal offence the authority must be satisfied that there is sufficient admissible, substantial and reliable evidence to provide a realistic prospect of conviction. In making the decision whether to prosecute, where a claimant of Housing and/or Council Tax Benefit has been accused of committing a fraud against the Council, the following criteria will be used:-

1. Is there sufficient evidence for a realistic prospect of a conviction?
2. Is a prosecution in the public interest?

It will be generally considered to be in the public interest to prosecute if one or more of the following applies:

- The overpayment is substantial and/or the fraud has continued over a long period;
- The person was in a position of trust;
- Any evidence of the offence being calculated and premeditated;
- Whether the claim was false from inception;
- The case involves a collusive landlord/employer
- Any abuse of position or privilege;
- Any previous incidence of fraud;
- Whether there is evidence that the defendant was a ring leader or an organiser of the offence;
- Any grounds to believe that the alleged offence is likely to be continued or repeated, for example, by a history of bad conduct;
- Whether the alleged offence, although not serious in itself, is widespread in the area where it was committed.

5. *FINANCIAL GUIDELINES*

a. Formal Caution

Subject to the contents of this policy, where the overpayment is under £2000, the fraud is admitted by the perpetrator, and where it was a first offence then the Council will, normally, make the offer of a formal caution.

b. Administrative penalty

Subject to the contents of this policy, where the overpayment is under £2000 but the fraud is not admitted by the perpetrator, and where it was a first offence then the Council will, normally, make the offer of an administrative penalty.

c. Prosecution

If the overpayment is over £2000 and it is considered to be in the public interest, then the file will be referred for prosecution proceedings to be instigated.

Subject to a and b above, the Council will prosecute in most instances, if it is in the public interest and it was not a first offence.

d. Miscellaneous

Where the fraud would normally be referred for prosecution but it is not for reason of ill health, a formal caution or administrative penalty may be issued instead.

Serious attempted fraud that is discovered before benefits have been put into payment (i.e. where there is no overpayment of benefit) will also be considered for prosecution or caution.

It is acknowledged that there will be cases where prosecution may not be considered appropriate, for example where it is not considered to be in the public interest as outlined in The Code for Crown Prosecutors. This will be applied to all claimants based on their individual circumstances. Each case will be considered on its own merits and action will be taken as appropriate.

6. PUBLICITY

Statistics relating to the number and type of sanctions imposed will be reported to the Assistant Treasurer (Revenues) on a monthly basis.

The Council recognises the deterrent value of good publicity and information regarding successful prosecutions and sanctions will be supplied to the Council's Marketing/Public Relations Officer for inclusion in Member's Matters and other local publications.

7. CONCLUSIONS

This policy is to be reviewed and amended as necessary to reflect changes in law and good practice. It will ensure that the Council is both firm but fair in its approach to tackling benefit fraud.