

HOUSING BENEFIT AND COUNCIL TAX BENEFIT PROSECUTION AND SANCTION POLICY

1. Introduction

- 1.1 Central Bedfordshire Council is committed to prevention, deterrence, detection and investigation of benefit fraud.
- 1.2 Benefit fraud occurs because people for various reasons will not be truthful about their circumstances, or deliberately fail to tell the Council about a relevant change.
- 1.3 The aim is to prevent criminal offences occurring by making it clear to our customers that they have a responsibility to provide accurate and timely information about their claims; to punish wrongdoing; and to deter offending.
- 1.4 Prosecution of claimants will be sought in cases that are considered suitable after examining the various factors of the case. As an alternative to prosecution, Administrative Penalties, fixed at 30% of the fraudulent overpayment, and Simple Cautions will be considered.
- 1.5 Whether or not the Council decide to take prosecution action, offer an Administrative Penalty or offer a Simple Caution it will take steps to recover the fraudulent overpayment, including taking action in the civil courts if necessary.
- 1.6 The Welfare Reform Act 2007 provided the Council with powers to investigate and prosecute offences against certain national social security benefits alongside Housing Benefit and Council Tax Benefit.
- 1.7 The Council's Legal Service has the authority to prosecute all offences on behalf of the Council.
- 1.8 The Customer Accounts Manager (responsible for fraud) is responsible for the offering of Administrative Penalties and Simple Cautions.

2 Decision making procedure

- 2.1 Investigations come from a variety of sources. These include:
 - Matching our data with outside organisations
 - Anonymous allegations

- Benefit processing staff

The Investigations Team Leader uses a risk scoring matrix to ensure investigations are only undertaken on the most suitable risk cases. The Team Leader allocates investigations to Investigation Officers.

2.2 The role of the Investigating Officer is as follows:

- Undertake the investigation and gather the evidence
- Putting together a file
- Pass the file to the Team Leader to assess the merits and outcomes of the investigation

2.3 Following completion of an investigation an Investigations Team Leader will write a detailed report of the case, which will include:

- Details of the investigation and evidence obtained
- Details of the Interview Under Caution
- Factors that could prejudice a successful prosecution; such as any failure in the investigation or benefit administration, including delay and contraventions of any criminal legislation the Council's Investigation Officers must adhere to
- The amount of fraudulent overpayment

A recommendation for any sanction/prosecution action; which will include the relevant offences they consider may have been committed.

2.4 A Team Leader cannot write such a report on a case for which they were also the investigating officer. In such circumstances the matter is passed to another Investigations Team Leader or the Customer Accounts Manager (Fraud).

2.5 The report will be submitted to the Customer Accounts Manager (Fraud) for their decision.

3 **Prosecutions**

3.1 The Prosecution Policy in the Council's Constitution provides the framework for the Prosecution and Sanction Policy for Housing Benefit and Council Tax Benefit. The Council will prosecute where fraudulent overpayment is identified and the case passes the evidential test and public interest test; and it is economically

viable.

- 3.2 The Council will always seek to prosecute where they believe there are aggravating factors about a case, which make it suitable for prosecution regardless of the economic viability of the prosecution.
- 3.3 For clarity, each case is reviewed on its own merits. The review of the case would determine whether or not it is suitable for prosecution.
- 3.4 The Council will always seek to prosecute if a customer has already been prosecuted, received a Simple Caution or Administrative Penalty for similar offences or the offer to accept an Administrative Penalty or Simple Caution has been declined.
- 3.5 The Council however must, upon deciding whether to take prosecution action, also consider all the circumstances surrounding the case, with particular emphasis on the following;
 - Whether there is sufficient evidence for a realistic prospect of a conviction
 - Any failure in the investigation or benefit administration, including delay
 - Whether a prosecution is in the *public interest*.

Public Interest

The council is guided by the Code for Crown Prosecutors. A copy of the Code can be obtained on the CPS website www.CPS.gov.uk or from the CPS Communications Branch, 50 Ludgate Hill, London, EC4M 7EX.

The Code details public interest factors such as:

- The amount of the overpayment and duration of the alleged offence
- Any abuse of position or privilege
- Any previous incidence of fraud
- Whether a conviction is likely to result in significant sentence or a nominal penalty
- Whether there is evidence that the suspect was a ring leader or an organiser of the offence
- Whether there was planning in the process

- Whether the claim was false from inception
- 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 alleged offence, irrespective of its seriousness, is widespread in the area where it was committed.
- Whether the claimant is elderly or suffering from either significant mental or physical ill health
- Social factors
- The defendant has put right the loss or harm that was caused; such as *Voluntary Disclosure* (but customers must not avoid prosecution solely because they pay back the fraudulent overpayment).

Voluntary Disclosure

Voluntary Disclosure occurs when customers, of their own free will, reveal 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 verification visit.

4 **Simple Cautions**

- 4.1 A Simple Caution is an administrative sanction that the Council is able to offer as an alternative to prosecution, provided that specific criteria are met, as detailed in 4.3 and the case is one where the Council have sufficient evidence to take prosecution action if the caution was refused.
- 4.2 Simple Cautions are usually aimed at the less serious benefit frauds and those where the overpayment is below economic viability for prosecution. This viability is set at overpayments of less than £2,000 as per the DWP guidance. It can be used where the deterrent effect is considered a sufficient and suitable alternative to prosecution or an Administrative Penalty.
- 4.3 The customer must make a clear and reliable admission of the offence verbally or in writing and there must be a realistic prospect of conviction if the customer were to be prosecuted.

- 4.4 If the customer is subsequently prosecuted for another benefit offence the caution may be cited in court.
- 5 **Administrative Penalties**
- 5.1 An Administrative Penalty is the offer to the customer to agree to pay a financial penalty where the customer has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is stipulated at 30% of the amount of the overpayment.
- 5.2 An Administrative Penalty is offered where the case is deemed to be not so serious and the offer of it is considered a suitable alternative to prosecution and the overpayment is below economic viability for prosecution. This viability is set at overpayments of less than £2,000 as per the DWP guidance. Unlike Simple Cautions no admission of guilt is required from the customer before offering an Administrative Penalty, although there must be grounds for instituting criminal proceedings for an offence relating to the overpayment, should the Administrative Penalty be refused.
- 6 **Proceeds of Crime Act (POCA)**
- 6.1 The Council has an active policy of referring all suitable cases for financial investigation to a Financial Investigator with a view to applying to the courts for restraint and/or confiscation of identified assets. (The legislation governing this is the Proceeds of Crime Act.) A restraint order prevents a person from dealing with specified assets. A confiscation order enables the Council to seek to recover its losses from assets, which are found to be the proceeds of crime.
- 6.2 The underpinning principle of POCA is to demonstrate that crime does not pay, and whereas in the past prosecution alone may have been an insufficient deterrent (due to a perceived laxness in sentencing) POCA will seek redress by confiscating not only what the criminal has received as a direct result of the crime (i.e. the loss to the Council) but also what can be demonstrated to have been obtained as a benefit from the proceeds of the crime (as a basic example, if someone steals funds that allow them to put a deposit on a property, then the whole property becomes forfeit, not just the value of the funds stolen).
- 7 **Recovery of Debt**
- 7.1 Whether or not the Council decide to take prosecution action, offer an Administrative Penalty or offer a Simple Caution it will take steps to recover the fraudulent overpayment, including taking action in the civil courts if necessary.