

Appendix B

Benefit Prosecution Policy



1. Introduction

- 1.1 South Cambridgeshire District Council is committed to the professional delivery of housing and council tax benefit services (“the Service”) to its customers and the contribution that it can make to the corporate objective of providing quality, accessible, value for money services. Benefit is for those who are most vulnerable in society and the service objective is:-
- To provide an efficient and modern service to those in need, taking measures to increase awareness of and access to the service,
- 1.2 South Cambridgeshire District Council has a duty to protect public funds from abuse and is aware of the risks within the benefits system for fraud, error or other irregularity. In carrying out this duty, the authority may use information provided to it for the purpose of preventing and detecting of fraud. It may also share this information with other bodies administering public funds solely for these purposes.
- 1.3 South Cambridgeshire District Council will, wherever possible incorporate effective internal controls to minimise the risk of fraud occurring. Nevertheless it is a fact fraud can be perpetrated and therefore appropriate procedures need to be in place.
- 1.4 South Cambridgeshire District Council understands that some people will attempt to obtain benefit to which they are not entitled and sometimes this is done dishonestly. Where an investigation has revealed this is the case, then the Council will consider the individual circumstances of the case and where appropriate will consider criminal prosecution, alternatively an Administrative Financial Penalty or a Formal Caution may be applied.
- 1.5 The Social Security Administration Act 1992 allows authorities to consider offering offenders a financial penalty or a formal caution as an alternative to prosecution. Such sanctions can only be offered if the case could be brought to prosecution. However, should the offender refuse to accept such sanction then the Council may consider instigating proceedings against the individual.
- 1.6 The Council’s Prosecution Policy outlines the procedures to be followed with regard to the prosecution of benefit claimants, landlords, employees and members who have committed benefit fraud. The policy has been approved by Members of the Council as part of their overall endorsement of the Council’s Fraud Strategy and is to be observed by Fraud Officers.

2. The Policy

- 2.1 The Investigation Officers must adhere at all times to the requirements of the following legislation and Codes (as amended or superceded):

- Police and Criminal Evidence Act 1984(PACE)
- Social Security Administration Act 1992 (as amended)
- Social Security (Fraud) Act 1997
- Fraud Act 2001
- Code of Practice for Crown Prosecutors
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Data protection Act 1998
- Child Support Pensions and Social Security Act
- And other relevant legislation

2.2 All cases where fraud has been proved, regardless of the level of the overpaid benefit, will be passed to the Fraud Manager who will recommend to the Chief Finance Officer (or other Officer authorised by him for this purpose), which course of action as listed below should be taken:

- Recommendation to the Principal Solicitor that the case is suitable for prosecution. In appropriate case the case will be referred for prosecution to another organisation such as the Police or Benefits Agency, depending on where the primary fraud appears to have perpetrated.-.
- Imposition of an administrative penalty (this can only be offered where there are sufficient grounds to prosecute but the penalty option is preferred).
- Imposition of a formal caution (this can only be offered where there are sufficient grounds to prosecute and the offence has been admitted at an interview).
- Closure of the case without sanction, as it would not be in the public interest to pursue the particular case.

2.3 Test of Public Interest

The public interest factors can increase the need to prosecute or may suggest an alternative course of action. The factors will vary from case to case. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. In making a decision to prosecute all available information must be carefully considered.

The factors outlined below should be taken into consideration when determining whether or not to prosecute.

Public Interest Factors in Favour of a prosecution

- a) The defendant is alleged to have committed the offence whilst under an order of the court.
- b) The defendant's previous convictions or cautions are relevant to the present offence.
- c) A conviction is likely to result in a significant sentence.
- d) The defendant is in a position of trust.

- e) There is evidence that the offence was premeditated.
- f) There are grounds to believe that the defendant was motivated solely by personal gain.
- g) There are grounds for believing that the offences were likely to be continued or repeated e.g. by a history of recurring conduct.
- h) The offence is alleged to have occurred over a long period of time involving more than one period of deception.
- i) The offence, although not serious in itself, is widespread in the area where it is committed.
- j) There is evidence that the offence was carried out by more than one person.
- k) The evidence shows that the suspect was a ringleader or an organiser of the offence.
- l) The overpayment of benefit is over £1,500 or the fraud spans a period exceeding 52 weeks.
- m) A good case has been established and clear reports have been compiled at every stage of the investigation.

Public Interest Factors Against a prosecution

- a) There has been a long delay between the offence taking place and the date of the trial, unless
 - the offence is serious
 - the delay has been caused in part by the defendant
 - the offence has only recently come to light.
- b) The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- c) The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- d) It is a first offence and the loss or harm can be considered minor (based on each individual case) particularly if it was caused by misjudgement.
- e) The amount of the overpayment is less than £1,500 and the period spans less than 52 weeks.
- f) The court is likely to award a very small or nominal penalty.
- g) The defendant admitted the offence at the first opportunity and made an offer of repayment. Failure to honour such an agreement will result in the continuance of initiated action.

- h) The defendant (whether it is a landlord or tenant) has put right the loss or harm that was caused. However, simply because the defendant can pay compensation does not mean that s/he can avoid prosecution.
- i) Maladministration or delay of the housing/council tax benefit scheme has occurred at some period during the offence.

3. Alternatives to Prosecution

- 3.1 Only cases where there is sufficient evidence to prosecute will consideration be made to alternative sanctions. In essence, this means that the evidence must be sufficient to enable prosecution proceedings to be initiated otherwise the investigation is closed. If the evidence is insufficient then no alternative should be offered. In addition to reliable independent evidence, there must be an admission of guilt at the interview under caution for a formal caution to be considered. Investigations, which fail to meet the above criteria, will be closed.
- 3.2.1 The defendant must give his informed consent to the alternative procedure to prosecution being offered. If the offer is declined the Council must always be in a position to instigate criminal proceedings should it wish to do so. This means that an investigation must have been undertaken as if it was the intention to prosecute. An alternative to prosecution should only be considered where the evidence is such that a conviction is more likely than not in the event of a trial.
- 3.3 As a general rule the following cases should not normally be considered for an alternative to prosecution:
 - a) The defendant is a council member or employee.
 - b) The defendant has declined to accept or has withdrawn from their agreement to accept an administrative penalty.
 - c) The defendant has declined a formal caution.
 - d) The defendant has already received an administrative penalty or formal caution.
 - e) The defendant is subject to a prosecution by another agency for a similar offence.
 - f) The defendant has previous convictions for similar offences.
 - g) Where there is evidence that the defendant has used alias/es to claim benefit.

4. Formal Caution

- 4.1 A formal caution is an oral or written warning given to a person who has committed an offence as an alternative to prosecution. In any case selected for caution there must be evidence to prove the offence, an admission at an interview under caution, and the person being cautioned must give informed consent to this procedure. A formal caution is a deterrent, and does not affect the recipient except by re-offending when it may be cited in court on conviction. Where a caution has been declined the case must then be considered for criminal proceedings.
- 4.2 The Chief Finance Officer or other Officer authorised by him for this purpose, in

consultation with Fraud Manager will offer a formal caution in appropriate cases. These will include:

- a) A first offence that was disclosed by the defendant at the first opportunity.
- b) A first offence where the overpayment is normally less than £500.

5. Administrative Penalty

5.1 Section 115a of the Social Security Administration Act 1992, as amended by section 15 of the Social Security Administration (Fraud) Act 1997 introduced financial administrative penalties as an alternative to prosecution. A financial penalty amounting to 30% of the gross adjudicated overpayment can be offered in a fraud case if the following conditions are met:

- a) There is a recoverable overpayment of benefit under, or by virtue of, section 75 or 76 of the Social Security Administration Act 1992
- b) The cause of the overpayment is attributed to an act or omission on the part of the defendant, and
- c) There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based.

Other considerations to be taken into account before offering an administrative penalty are

- a) What action the Department of Social Security is taking on any part of the benefit it administers.
- b) All public interest criteria.

5.2 If the offender declines the offer of an administrative penalty or the offender withdraws his agreement to pay the penalty the case must be considered for prosecution.

The Chief Finance Officer or other Officer authorised by him for this purpose, in consultation with Fraud Manager will offer an administrative penalty in appropriate cases. These will include:

- a) An offence where the overpayment is significant enough to consider that the claimant be prosecuted, but also dependant on the length of time over, which the overpayment arose.
- b) Whether or not there has been an admission at an interview under caution.

6. Recording Sanctions and Prosecutions

6.1 For an effective regime of sanctions to be successful it is highly desirable that accurate records of all convictions, administrative penalties and formal cautions are maintained. This will enable the correct decisions to be made taking full account of the defendant's background. Therefore, it is important that a record of each is maintained.

6.1.1 All sanctions must be recorded by the Council and copies of all documents used to

consider and issue the sanction retained. Relevant paperwork must also be sent to the Department for Work and Pensions to update the central database on sanction activity.

7 Management Assurance

- 7.1 The Chief Finance Officer or other Officer authorised by him for this purpose, will provide assurance that the policy is being followed by checking each case at the point when the Fraud Manager has completed the Benefit Investigation closure form.

8 Publicity

- 8.1 It is the Council's intention to promote this policy as well as the outcome of any prosecutions, which should deter others from fraudulent activity. We will issue press releases for each case where prosecution is successful, which will appear on the Council's Website, 'SouthCambs' Magazine and be released to local papers.

9 Reporting and Review

- 9.1 Summary information on cases and action taken will be reported by the Chief Finance Officer to the Portfolio Holder for Resources on a quarterly basis.
- 9.2 This policy will be reviewed annually or when changes in legislation require it.