

Cheshire West & Chester Council

Benefit Fraud Prosecution and Sanction Policy

1. Introduction

- 1.1 Cheshire West & Chester Council is committed to protecting public funds by ensuring that the right amount of benefit is paid to the right person, at the right time. Any person(s) found to have claimed or attempted to claim benefits fraudulently will be pursued in line with this Policy.
- 1.2 This Policy will be applied to any third party, which includes landlords and employers engaged in offences against the Council.
- 1.3 This Policy will assist in determining the most appropriate course of action to be taken in each case. However, this Policy is intended for guidance only and each case will be decided upon its own merits.
- 1.4 It is necessary to regularly review the Policy taking into account changes within the Criminal Justice System, new legislation and best practice guidance.
- 1.5 The Benefit Fraud Team will consider investigating all cases concerning allegations of housing benefit and council tax benefit fraudulent abuse.

2. Suitability for sanction

- 2.1 Having concluded an investigation, a full case report will be collated and a recommendation made to the Responsible Officer. This will be a suitably qualified senior officer, who has authority to decide on the appropriate course of action. The Responsible Officer will review the file in line with Policy below and make a recommendation to the appropriate officer or panel as determined by the Senior Manager – revenues and Benefits.
- 2.2 The Responsible Officer must be satisfied that
 - The investigation is not flawed and has been conducted in a timely manner
 - There has not been any failure in benefits administration
 - If a PACE (Police and Criminal Evidence Act 1984) interview has been conducted, guilty action, knowledge and intent have been addressed.
 - The evidential test for Crown Prosecutors is satisfied (is there sufficient admissible and reliable evidence of an offence for there to be a realistic prospect of conviction if prosecuted)
 - The Public Interest test in the Crown Prosecutors code has been applied (is it in the public interest to prosecute/administer a sanction against an offender when such factors as their health, previous convictions, social and domestic circumstances are weighed against the seriousness of the offence)
 - The offence is serious enough to warrant sanction action, taking into consideration the loss to public funds
 - Any previous convictions have been considered

3. The sanction options

- 3.1 Any case being considered for sanction action must be prosecution worthy.
- 3.2 At the conclusion of all investigations and having satisfied the above tests, the options available to the Council are: -

Formal Caution
Administrative Penalty
Criminal Prosecution
Closure/ no further action

- 3.3 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which the Council must approach every case.
- 3.4 The Council must be fair, independent, and objective. It must not let any personal views about ethnic or national origin, disability, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, or witness influence their decisions. It must not be affected by improper or undue pressure from any source.
- 3.5 The Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction or alternative sanction.

4. **Which sanction is appropriate?**

- 4.1 Before considering which sanction is appropriate, all of the previous requirements mentioned in this Policy must be satisfied.

5. **Formal Cautions:**

Any offer of a Formal Caution will follow guidance issued by the Home Office.

- 5.1 Primary consideration of a **Formal Caution** should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:
- The person has admitted the offence and demonstrated remorse for their actions.
 - It is in the public interest to offer a Formal Caution i.e. we must consider the seriousness of the offence and/or the circumstances of the person
 - There is no previous sanction history
 - The extent of the loss to public funds should be low-level
 - The offering of the Caution should reduce the likelihood of re-offending (kept on record for 5 years)
 - The offence is not planned or systematic
 - There is no other person involved in the fraud
- 5.2 If the offender refuses to accept the Formal Caution then consideration will be given to further action, including prosecution.

6. **Administrative Penalty:**

6.1 Primary consideration of an **Administrative Penalty** should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:

- There is no requirement for the person to have admitted the offence
- The period of the overpayment is after 18 December 1997
- It is in the public interest to offer an Administrative Penalty i.e. we must consider the seriousness of the offence and/or the circumstances of the person
- The extent of the loss to public funds should be low-level
- The offering of the Administrative Penalty should reduce the likelihood of re-offending

6.2 If the offender refuses to accept the Administrative Penalty then consideration will be given to further action, including prosecution.

7. **Criminal Prosecution;**

7.1 Primary consideration of a **Criminal Prosecution** should be given to cases that fit any of the following criteria. This list is intended as guidance only and is not intended to be prescriptive:

- The person has refused to accept a Formal Caution or Administrative Penalty
- It is in the public interest to Prosecute i.e. we must consider the seriousness of the offence and/or the circumstances of the person
- The person was in a position of authority or trust e.g. Council Employee, Doctor, Teacher
- There may be a record of previous convictions
- The offence was planned and systematic
- There were other people involved in the fraud

7.2 The above policy provides clear guidelines to Investigators and ensures that the appropriate sanction is applied in accordance with the law.

7.3 Maximum publicity will be sought for cases subject to prosecution to act as an effective deterrent to others.

8. **Joint Cases with Department for Work and Pensions (DWP) and other Enforcement Agencies:**

8.1 Under Sections 46-48 of the Welfare Reform Act the Council has the power to investigate and prosecute offences relating to certain National Social Security Benefits administered by the DWP and will work jointly with the Fraud Investigation Service (FIS) where appropriate.

8.2 In the first instance, cases involving other national social security benefits administered by DWP will be offered to FIS as a joint working case. If joint working is refused then the Council will consider investigation and prosecution of all offences, including all relevant national benefits in payment. Each case will be treated on its own merits and in line with this Policy.

8.3 In joint working cases the decision to sanction or prosecute will be made on the TOTAL overpayment of ALL benefits involved.

8.4 For the purposes of deciding the appropriate sanctioning option, consideration must be given to the fact that there may be some variance between DWP's Prosecution Policy and CW&C's Prosecution Policy. In such cases discretion should be exercised when making the appropriate decision.

8.5 Consideration should be given to any opportunity for joint working with other Agencies/ Organisations such as Police, HMRC and other Local Authorities.

9. **Financial Investigations:**

9.1 Each case identified should be reviewed for any potential financial investigation and suitability for proceedings under the Proceeds of Crime act.

10. **Review and monitoring;**

10.1 This Policy will be reviewed periodically or more frequently if legislation requires.

Relevant Regulations:

Section 115A of the Social Security Administration Act 1992 inserted by the Social Security Administration (Fraud) Act 1997.

Guidance:

The Department for Work and Pensions' Best Practice Guidance.

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Amended: