

SANCTION AND PROSECUTION POLICY HOUSING BENEFIT & COUNCIL TAX BENEFIT

In line with the Council's Anti-Fraud Strategy, Chorley Council is committed to fighting fraud.

In considering prosecution or other sanction under this policy, the Council will take into account all relevant legislation including the Human Rights Act 1998.

General

The Council appreciates that each case is unique and must be considered on its own merits. However the general principles set out below will be applied in all appropriate cases. In reaching a decision as to whether a case is appropriate for prosecution, two important criteria should be borne in mind.

1. That there is sufficient admissible evidence to justify prosecution
2. That the prosecution of that case would be in the public interest.

Every case where the evidence is such that it may be prosecuted must still be tested to see whether it is in the public interest to do so.

The Council will use various means to conduct the prosecution in appropriate cases.

These will include: -

- a) The Council's own Legal Department
- b) Lancashire Police
- c) DWP Solicitors Branch in joint LA/BA cases.
- d) Agency Solicitors

(All the above bodies will make reference to "The Code for Crown Prosecutors" produced by the Crown Prosecution Service)

In line with the policy adopted by the Department for Work and Pensions and to ensure consistency in the prosecution process, the following guidelines will apply.

Local Authority Caution

Providing an offence has been committed, there is no lower overpayment limit for prosecution purposes in caution cases. This means that a caution can be considered where the offence has been an attempted fraud.

In cases where the overpayment is less than £2,000 (including other benefits if the case is a joint LA/DWP case) and where evidence indicates

- The person has not offended before, or
- The person has previously committed benefit fraud, but the offence was minor and not subject to a caution or prosecution and the current offence is minor; or
- The person has previously been cautioned within the last 5 years for a similar offence but the offence was minor and the current offence is minor; and
- There was planning involved in the process, or

- There were other persons involved in the fraud, and
- The person's circumstances and demeanour towards the offence indicates that a caution would be the appropriate action.

Then the Council will, in most circumstances issue an official Local Authority Caution (see Appendix 1 for conditions applicable to Local Authority Cautions) in addition to requiring full repayment of the overpayment.

Administrative Penalties

If the total overpayment (including other benefits if the case is a joint LA/BA case) is more than £50 and less than £2000.00 and where the evidence indicates

- It was a first offence
- There was no planning involved, and
- There was no other person involved, and
- The person's circumstances and demeanour towards the offence indicates that an administrative penalty would be the most appropriate action.

Then the Council will, in most circumstances, make an offer of a 30% Administrative Penalty in addition to requiring full repayment of the overpayment. (See Appendix 2 for conditions applicable to Administrative Penalties.)

Prosecutions

If the total overpayment (including other benefits if the case is a joint LA.BA case) is below £2,000.00 and where the evidence indicates

- It was not a first offence, or
- The fraud had been deliberate and calculated, or
- The fraud had continued over a long period; or
- The person has failed to attend an interview under caution; or
- There were other persons involved in the fraud, or
- The person has declined the offer of an Administrative Penalty or withdrawn agreement to pay and Administrative Penalty; or
- The person has declined the offer of an official caution

Then the Council will, in most circumstances, prosecute.

If the total overpayment (including other benefits if the case is a joint LA/BA case) is over £2,000 prosecution will be considered at the outset.

Other Factors

Other factors will be taken into consideration before *prosecution* is recommended.

1. Duration of the Offence

An offence committed over a long period of time should be a factor towards prosecution. The claimant may have had opportunity to declare the correct information when the claim was renewed.

2. Previous Offences

The Council must make enquiries about any previous offences of a similar nature, committed by the offender. If the offender has already been cautioned for deception, a second caution issued by the Council may not be appropriate.

3. Trust

Was the offender in a position of trust? E.g. a member of staff or a Councillor?

4. Collusion

Has the case arisen through collusion e.g. with landlords, managing agents or employers etc? This type of case is considered to amount to serious fraud and should be recommended for prosecution where possible irrespective of the amount of overpayment involved.

5. Offenders Physical and Mental Condition

It would be *inadvisable* to prosecute in the following cases: -

- a) Where the offender is seriously ill
- b) Where the offender is mentally ill
- c) Where the offender is a heavily pregnant (within 3 months of confinement)
- d) Where the offender is over 75 years of age or bedridden
- e) Where the offender is deaf or visually impaired
- f) Where the health of the offender's partner may suffer. This will only apply where the partner suffers from a condition that would be made worse if proceedings were taken.

6. Social Factors

Consideration must be given to social factors when deciding whether or not to recommend prosecution. Instances in which prosecution may be considered inappropriate include cases where: -

- a) The Court would set against the offence such personal or mitigating factors that would make prosecution inappropriate e.g. the person was driven to the offence by a tragedy or domestic situation such as bereavement or sickness.
- b) The offender has already served a prison sentence for benefit fraud and an earlier offence has subsequently been discovered (it is the Court's view that people come out of prison with a 'clean sheet')
- c) The claimant is young (under 21), immature and would appear to the Court as someone who could have been dealt with effectively without proceeding. Youth does not automatically exclude the possibility of prosecution. Prosecution may be desirable where the offender already has a criminal record.
- d) It is known that a prosecution would have a damaging effect upon the defendant's career or employment i.e. the offender would not only lose their job but would not be able to get similar employment if prosecuted successfully by the Local Authority.

7. Voluntary Disclosure

Voluntary disclosure is where a claimant of his or her own free will reveals a fraud. In this case prosecution would not be appropriate. However, a disclosure is not voluntary if: -

- a) the admission is not a complete disclosure of the fraud
- b) It was apparently prompted by the expectation that the fraud would be discovered e.g. they knew the Council was making enquiries of their employer etc
- c) The claimant admits all the facts as soon as they are challenged
- d) The claimant discloses the fraud as a result of being required to complete a review form.

In all the above cases prosecution should be considered in the normal way.

8. Procedural Difficulties/Delays/Failures in the Investigation/Administrative Process

Closure of the case, without prosecution will be the only course of action where: -

- a) The investigation has been deficient and has failed to obtain all the evidence available
- b) Internal checks which should have revealed the offence did not do so e.g. benefit paid on incomplete or inadequate information, failure to observe flaws in a statement or document.

Decision-Making Process Under This Policy

Where Chorley Council are the 'lead' in the investigation

The recommendation to apply any sanction, including prosecution will be made, in the first instance, by the Compliance Manager, or in his/her absence the Investigator after consultation with the Revenues and Benefits Manager.

Where the case involves offences concerning benefits other than Housing and Council Tax Benefits, agreement will be sought from the DWP Sector Fraud Manager to the proposed action before submitting the recommendation.

All recommendations will be in the form of a written report and will include the following:

- Amount overpaid
- Period of overpayment
- Summary of the investigation and its findings
- Details of previous convictions, penalties or cautions
- Reasons for recommendation
- Recommended action

Any report will be accompanied by sufficient evidence and information obtained during the investigation including the investigator's report and either a transcript of the interview under caution or contemporaneous notes taken during the interview under caution.

Where the recommendation is that a Local Authority Caution or Administrative Penalty be offered, authorisation will be sought and given by the Revenues and Benefits Manager.

Where the recommendation is that criminal proceedings should be commenced, authorisation will be sought and given by the Assistant Chief Executive (Business Improvement).

Where Department for Work and Pensions is the 'lead' in the investigation

On receipt of the DWP Sector Fraud Manager's recommendation (FPA5) the Compliance Manager shall decide to whether the Council should participate in the action proposed.

All cases

Legal advice or opinion must be obtained where there is any doubt or uncertainty of a course of action to be taken under this policy.

Conclusion

It is essential that each case is treated on its own merit and any decision taken under this policy is fair and consistent.

The decision to prosecute an individual is a serious step. Fair and effective use of the sanction and prosecution policy is essential to the maintenance of law and order and in the deterrence of benefit fraud. However even in a minor case, a prosecution have serious implications for all involved.

In exceptional circumstances, an alternative to prosecution (caution or administrative penalty) may be considered without regard to the amount of the overpayment. The reasons for the recommendation to deviate from the policy must be explained in full to the Director of Finance.

All sanctions and prosecutions will be subject to a monitoring process.

LOCAL AUTHORITY FORMAL CAUTIONS

A formal caution is an oral warning given in certain circumstances (as described in the Sanction and Prosecution Policy) to a person who has committed an offence.

In any case selected for the issue of a caution, there must be evidence to prove the offence, an admission at an Interview Under Caution and the person being cautioned must give his/her informed consent for the procedure.

Where a person declines a caution, the case should then be recommended for prosecution in the normal way. It is expected that most people who are offered a caution will accept it in preference to being prosecuted.

A formal Caution is a deterrent and does not affect the recipient, unless by re-offending, he/she is prosecuted for a subsequent offence.

It is important to ensure that Cautions are administered and seen to be administered by Senior Officers to prevent their use being devalued in the eyes of the public when compared with Cautions issued by other prosecuting authorities, including the Police.

A Certificate of Caution must be completed detailing the offences committed and the following points made clear to the person at the outset:-

- a) The significance of the Caution itself
- b) That a record will be kept of the Caution for 5 years
- c) That the existence of a previous Caution may influence the decision whether or not to prosecute if the person should offend again
- d) That the Caution may be cited if the person should subsequently be found guilty of a different offence by a Court
- e) That the Caution is being issued instead of their case being passed to the prosecution authorities to consider instituting criminal proceedings
- f) That the Caution is not a criminal conviction

The person agreeing to this course of action must sign a Certificate of Caution. The Cautioning Officer will endorse the certificate and issue a copy. A further copy will be issued to the Professional Standards Unit of DWP. The certificate will contain a reminder that the fact that they have been Cautioned will count against them and the Caution may be cited if they are convicted by a court in future for a different offence.

ADMINISTRATIVE PENALTIES

An administrative penalty is a financial penalty which can be offered to a person who, the Authority believes, has caused benefit to be overpaid to them by a deliberate act or omission on their part and there are grounds for instituting proceedings against them for a criminal offence relating to the overpayment.

Legislation lays down the circumstances in which a penalty can be offered and how the penalty is calculated. The legislation:-

1. Is contained in Section 115A of the Social Security Administration Act 1992
2. Was introduced under the Social Security Administration (Fraud) Act 1997; and
3. Came into force on the 18th December 1997.

The following requirements are mandatory :-

- Offer of a penalty can only be made where the overpayment is recoverable from a person under, or by virtue of Section 75 or 76 of the Social Security Administration Act 1992, and the making of the overpayment was attributable to an act or omission on the part of the person; there must be grounds for instituting criminal proceedings against the person for an offence relating to the overpayment upon which the penalty is based.
- A penalty can only be offered to a person in respect of an overpayment or any part of thereof that has accrued after the commencement date of 18th December 1997.
- If a person agrees to pay a penalty, criminal proceedings cannot be instituted against them in respect of the overpayment on which the penalty is based.
- The amount of the penalty must be calculated at 30% of the amount of the recoverable overpayment (rounded down to the whole penny)
- Once a penalty offer has been accepted, the person may withdraw from the agreement at any time during the period of 28 calendar days beginning with the day on which the agreement was reached
- Where a person agrees to pay a penalty, and the overpayment on which the penalty is based is subsequently revised, then the agreement to pay a penalty no longer applies. Any penalty that has already been recovered must be repaid. However, if a new agreement is made based on the revised overpayment, the amount already recovered by way of a penalty may be treated as recovered under the terms of the new agreement instead of being repaid.
- Where a person declines a penalty, the case should then be recommended for prosecution in the normal way.