



South Hams
District Council

**BENEFIT FRAUD
PROSECUTION and SANCTION POLICY**

NOVEMBER 2011

SOUTH HAMS DISTRICT COUNCIL

BENEFIT FRAUD PROSECUTION AND SANCTION POLICY

This Policy relates specifically to benefit fraud but links to the principles set out in the **Council's Anti Fraud, Corruption and Bribery Policy and Strategy**.

Statement of Intent

South Hams District Council Revenue and Benefits Section is committed to protecting the public purse. Local Authorities have been vigorously encouraged by District Audit and the Benefit Fraud Inspectorate to develop prosecution and sanction policies to deal with those who commit fraud against their Housing Benefit and Council Tax Benefit administration. This policy allows the Revenue and Benefits Service to ensure, an equitable and consistent approach to the prosecution and sanction of offenders and that when Fraud is identified it is dealt with effectively and in the public's best interest.

Where sufficient evidence has been gathered to show that a fraud has been committed, then a sanction or prosecution should be the normal outcome.

However, there are instances, where prosecution is not the correct option and the policy must identify those offences which should be cautioned or sanctioned. Conversely, it should also set out those types of cases where these remedies are not applicable. Prosecution and Sanction principles have been drawn up to enable consistent decisions to be made on each case that falls to be considered so that it can be shown that each instance has been treated fairly and reasonably. However comprehensive the policy might appear, it still will not cover every circumstance or series of events and should be regarded as providing the general principles and guidance to make a consistent and fair decision

Where it is decided that the case does not fall within the Council's criteria to prosecute or sanction, the Council is still committed to recovering all overpaid benefit.

When proceedings are considered, there are four basic standards to be borne in mind by the Council.

- Is there sufficient evidence to justify the laying of information before the magistrate?
- Is a prosecution in the public interest?
- Does the prosecution meet the criteria laid down in South Hams District Council's policy (equivalent to that in the Code for Crown Prosecutors)?
- Should an administrative penalty or formal caution be issued as an alternative?

Prosecutions

If any of the factors below are present in a case and the quality of the evidence is such that a successful prosecution could be brought, then prosecution should be seriously considered:

- The amount of money obtained is substantial and in excess of £2,000

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- Whether there is evidence of the offence being pre-meditated.
- The fraud has continued over a long period
- Any previous incidence of fraud
- Whether multiple claims are involved
- Whether the alleged offender is in a position of trust
- Whether there is Landlord/tenant or employer/employee collusion
- Whether the offence, although not serious itself, is widespread in the area it was committed
- Whether there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- Whether there would be positive publicity which would act as a deterrent to others
- An involvement by the perpetrator in other fraudulent benefit or allowance claims.
- A refusal of the perpetrator to accept a caution or an administration penalty when offered

Factors present in a case which might argue against prosecution:

- The alleged offender's physical and mental condition
- Voluntary disclosure and full co-operation with the investigation by the alleged offender
- Mitigating social/domestic factors e.g. if the perpetrator is elderly or infirm
- First offence
- Where a more fitting sanction would be an administration penalty or Local Authority caution
- Offer of restitution [either in full or by instalments]
- Adverse publicity
- Failure in benefits administration, including delay
- Most crucially concerns or doubts about the quality of the evidence obtained.

Whereas the factors laid out above are general guiding principles, each case still needs to be treated on its own merits and a decision then reached as to whether a prosecution would be both in the Council's and the general public interest.

As an alternative to prosecution it may be appropriate to offer either an administrative penalty or a caution

Administrative Penalties

An administrative penalty is a financial penalty amounting to 30% of the gross adjudicated overpayment. It can be offered in any of the following cases:

- Where there is enough evidence to prosecute
- The amount involved is more than £750 and less than £2000, and not so serious as to warrant prosecution at the outset.
- A first time offence where it is considered that the imposition of the financial penalty is sufficient punishment in itself

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- The fraud has not continued over a considerable period [should be less than 6 months]
- The fraud was not planned or premeditated
- There has been no previous agreement by the perpetrator to pay an administration penalty
- There has been no collusion, or
- The person has not been in a position of trust as an officer or member

The administration penalty will be recovered over and above the fraudulent overpayment. Where the administrative penalty is refused by the perpetrator, or where it is not in the public interest to offer such a penalty, the Council will prosecute, unless there are very exceptional circumstances not to do so.

Cautions

There are cases where it may be appropriate to issue a formal Local Authority caution. This is a written warning issued by the Local Authority for a benefit offence and is intended to act as a deterrent or warning against future conduct. The written warning is to be signed by the perpetrator clearly stating that the offence is admitted and the caution accepted. A copy of the caution will be given to the person receiving it and will state that should that person be reported for another offence then the original caution may be taken into consideration. In adopting this procedure we are following the Department of Work and Pensions, who regularly invoke a similar procedure.

A caution is an alternative to prosecution and can only be considered in cases where enough evidence exists to prosecute. Refusal to accept a caution should generally result in a prosecution being instituted.

Cautions may be appropriate in the following instances:

- The fraud is a first time offence
- The amount involved is more than £750 but less than £2,000
- The perpetrator voluntarily disclosed the fraud or admits it
- There are mitigating social or domestic or personal factors
- An offer of restitution has been made

The formal Local Authority caution will be issued by the Investigations Manager and should be recorded in a register. These cautions will also be recorded by the CFIS team at Plymouth Department of Work and Pensions who record sanctions which have been imposed as a result of Department of Work and Pensions and Local Authority investigations.

It may not be appropriate to consider a caution where the perpetrator has already been involved in other offences involving Housing/Council Tax Benefit or has been previously cautioned or convicted of benefit fraud.

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General Policy

- The general policy is that prosecution is not likely to be considered in those cases where the fraud overpayment is less than £750.
- An administrative penalty or caution will not normally be offered if the fraud overpayment is less than £750 or more than £2,000.
- Prosecution will be strongly considered for all cases where the fraud overpayment is greater than £2,000 or where the suspect has a history of fraudulently claiming benefit.
- The decision as to whether to prosecute, issue a caution or offer an administrative penalty will be made by the Investigations Manager after consideration of all relevant details and the prosecution criteria detailed above.
- Legal Services will undertake a scrutiny role of a percentage of those cases processed for administration penalties and cautions to ensure that the correct standards are being applied.

Implementing and Using This Policy

To implement an active sanctions policy as envisaged by the Benefit Fraud Inspectorate and the External Auditor requires an investment of time and manpower.

There will be regular consultations between the Investigation staff and the Council's Solicitor concerning prosecution cases in order to ensure that:

- Evidence is gathered in the appropriate manner and that the evidence will be of the quality necessary to secure judgement in favour of South Hams District Council.
- Interviews are conducted in accordance with approved practices
- There is agreement over the final course of action in respect of the file.

Investigations and prosecutions will be carried out in accordance with the recommendations laid down in the Attorney General's guidelines on criteria for prosecution, the Code for Crown Prosecutors, the Criminal Procedures and Investigation Act, Police and Criminal Evidence Act, the Regulation of Investigatory Powers Act, and the Social Security Fraud Act and any other relevant legislation.

In the event of the decision being made to prosecute a case, in the vast majority of cases the prosecution will be conducted through the Council's Solicitor, though in certain circumstances it may be more appropriate to prosecute through the Police or the Department of Work and Pensions, especially in the light of the closer working arrangements with the Department of Work and Pensions.

Fraudsters involved in Housing Benefit and or Council Tax Benefit Fraud are likely at the same time to be perpetrating other benefit or allowance fraud. So it will be imperative to liaise with Department of Work and Pensions and other agencies regarding these policy proposals and to be receptive to valid concerns and requests in order to incorporate them into this policy.

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There is a warning on the Council application forms that in the event of customer giving incorrect information on the form they may be prosecuted. This statement will always be a separate paragraph within the declaration, to emphasise that the Council has a strong commitment to deter fraud and to prosecute those who ignore the warning.

The Council will attempt to seek appropriate publicity whenever it is believed that the outcome of the prosecution sends a strong message of deterrence to fraudsters.