

NORTH NORFOLK DISTRICT COUNCIL

Benefit Fraud Prosecution Policy

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Introduction

This policy will form the Prosecution Policy of North Norfolk District Council. It provides the guidelines to be applied wherever the Counter-Fraud Section has investigated a case and identified that an offence has been committed.

This Policy has been developed with the aim of providing a framework to ensure a fair and consistent approach to the use of formal sanctions. It refers to criteria relating to the offence, offender, value and duration of the fraud which have to be taken into account before considering whether a sanction is appropriate, and if so, which sanction to apply. However, every case will be considered on its merits and action taken as appropriate.

This document needs to be considered in conjunction with the Council's Counter-Fraud Policy which sets out the commitment to prevent, detect and investigate benefit fraud.

Legislative Framework

This policy takes into account the requirements of the following legislation:

- The Social Security Administration Act 1992
- The Social Security Administration (Fraud) Act 1997
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Data Protection Act 1998
- Local Government Act 2000
- Criminal Procedures Investigation Act 1996
- Criminal Justice Act

This policy has been created in accordance with recommendations by inspectorates, auditors and policy advisors, as well as reflecting government policy in the areas of:

- Best Value
- Active Modern Service
- Modernisation of Local Government
- Crime and Disorder
- Secure Benefits Service

When Fraud Occurs

Customers who claim benefits are informed by the council that it is their responsibility to inform the council of changes in circumstance that could affect their benefit entitlement. Failure to declare a change of circumstance is an offence under the Social Security Administration Act 1992. Where the council considers that changes have not been reported in order to obtain more benefit

than the customer is legally entitled to, sanction action may be taken dependant upon criteria detailed in the Council's Prosecution Policy.

Landlords may also be committing offences if they fail to notify changes which relate to a tenant's occupation of the property or to their liability to pay rent if they know that the change is one likely to affect benefit or be one which could reasonably be expected to affect benefit entitlement.

Partners and appointees of the customer, as well as advisors of the customer or appointees may also commit offences in relation to benefit claims.

Fraud may also occur when customers make false statements when completing claim forms for benefit or by omitting to give the full details of their circumstances as requested on benefit claim forms.

Offences may be committed under legislation contained within the Social Security Administration Act 1992 or the Theft Act 1968.

Staff or members of the Council will be treated under the Council's Prosecution Policy.

Standard of Evidence

The council will use the most appropriate deterrent against future fraudulent activity. This requires each referred case to be looked at on its individual merits making reference to any previous sanctions or convictions, before deciding on any further action.

Prosecution and the alternatives to prosecution are part of the criminal justice system, as opposed to being part of the welfare state, and as such, have to follow the rules of law. Criminal offences have to be proved "beyond reasonable doubt".

Substantive evidence is essential before the council can go on to decide whether a sanction would be justified. The council should be satisfied that evidence is of a quality which would withstand scrutiny in a court of law.

Sanctions Available to the Council

When the council is able to prove beyond reasonable doubt that a criminal offence has been committed, there are a number of options open to the council:

- Administer a Local Council Caution
- Invoke an Administrative Penalty (30% of the overpaid benefit)
- Prosecution

It should be noted that regardless of which option is utilised, the council will actively pursue recovery of the overpaid benefit as a result of fraudulent action.

Factors Taken Into Consideration

Several factors will be taken into consideration when deciding whether to instigate sanction/prosecution action, and, if so, what sanction action to take. The main ones are detailed below:

- The duration of the offence
- The fraud involves a degree of planning and/or premeditation
- Previous instances of fraud
- Whether a claim was false from the outset or became false through changing circumstances
- A section 110A inspector of the Council has been obstructed
- Amount of overpaid benefit
- Whether a perpetrator holds a position of trust
- Evidence of collusion (e.g. with landlord, employer or other family member)

If it is decided that an investigation has identified offences the council will go on to consider whether sufficient factors are present that might render prosecution/sanction action unlikely. These include, but are not limited to:

- The perpetrator's mental or physical condition
- Social factors
- Serious errors in benefit administration or the investigation process
- Unacceptable delay in the investigation
- The case is 'out of time' for sanction action. (Some offences are time limited by statute)
- The person voluntarily disclosed the offence before the investigation uncovered the fraud (See Voluntary Disclosure)

Voluntary Disclosure

This will only occur where a person, of his or her own free will, reveals 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 person has discovered that their case was under investigation
- The disclosure was prompted by action by the council, for example a verification visit or letter requesting further information

Formal Cautions

A Formal Caution is an official warning issued to a person who has admitted to defrauding the council. The caution is held on record for three years and can be used as evidence against the perpetrator if further fraud is committed within this three year period. The council will consider issuing cautions where:

- Fraud has been proven and the claimant has admitted the offence
- The fraudster has genuine regret for their behaviour
- The length of time the offence has been committed is short
- There is no previous criminal record

The offender must agree to a caution being given, otherwise the council may consider prosecution, subject to legal approval. The caution is given by the Revenues & Benefits Services Manager, Benefits Manager or Fraud Manager. It is recorded on the Department for Works and Pensions central database.

Administrative Penalties

This is a “fine” of 30% of the total benefit overpayment, which the claimant must agree to pay over an agreed timescale. The legislation covering Administrative Penalties is contained in section 115A of the Social Security Administration Act 1992 as inserted by section 15 of the Social Security Administration (Fraud) Act 1997 and the Social Security (Penalty Notice) Regulations 1997.

The council will apply the sanction using the same criteria as a Caution, but with the following exceptions:-

- The overpayment is over £50
- The fraudster did not admit the offence during their interview under caution

If the offender does not agree to accept the Administrative Penalty, the council reserves the right to take criminal proceedings.

The decision to issue an administrative penalty will be made by the Benefits Manager, Revenues & Benefits Services Manager and Head of Corporate Finance, authorised by the Council’s legal representatives taking into consideration the public interest test. This will ensure that the process is fair and takes into account all factors when making the decision to issue an administrative penalty.

The issue and acceptance of Administrative Penalties will be logged with the Department for Works and Pensions central database.

Prosecutions

The council will only prosecute offenders when the following criteria applies:

- The person has declined the offer of a formal Caution or Administrative Penalty
- The overpayment is over £2000
- The fraud continued over a long period of time
- The person has previously committed fraud or theft
- The person holds a position of trust in the community (ie member of council staff, policeman, legal representative)
- The fraud involved a degree of planning and preparation
- The customer has previous convictions for similar offences

However, it is also recognised that there may be circumstances behind the offence which, although the above criteria applies, may make a prosecution untenable, namely:

- The claimant was under pressure from a partner to commit the offence
- There is evidence of mental illness or substance abuse
- The age and welfare of the customer and their next-of-kin

The decision to issue to prosecute will be made by the Benefits Manager, Revenues & Benefits Services Manager and Head of Corporate Finance, authorised by the Council's legal representatives taking into consideration the public interest test. This will ensure that the process is fair and takes into account all factors when making the decision to prosecute.

Conclusion

The Benefit Fraud Prosecution Policy outlines the main areas that the council takes into consideration when investigating potentially fraudulent claims for benefits. As well as the above, the council is working towards achieving the performance standards set by the Department for Works and Pensions for its Counter-Fraud work.

Whilst the Council appreciates that the majority of claimants are honest, it will continue to fight abuse of the system by those who falsely claim benefits to which they are not entitled. All investigations will be completed by trained staff who will respect the rights of all customers.