Housing Benefit and Council Tax Benefit Prosecution and Sanction Policy

Introduction

St. Helens Council administers Housing Benefit and Council Tax Benefit on behalf of the Department for Work and Pensions. The Council is committed to ensuring that benefit is only paid to those people entitled to it and will act against those people who obtain or attempt to obtain benefit fraudulently. The Council will:

- encourage people to report suspected fraud and investigating such allegations as appropriate, in accordance with the Benefit Fraud Response Plan.
- initiate appropriate cases for sanction or prosecutions where an offence has been deemed to occur, in accordance with this Policy; and
- actively pursuing the recovery of the benefit overpayments in accordance with the Council’s Debt Recovery Policy.

The Council has powers to prosecute where there is evidence that an offence has been committed. In relation to benefit fraud, the Council will generally prosecute under offences contained within the Social Security Administration Act 1992 (see Appendix 1) but may use other legislation if appropriate, e.g. the Theft Act 1968 (and amendments), the Fraud Act 2006 or the Forgery and Counterfeiting Act 1981.

As an alternative, the Council is also able to offer a sanction (a Simple Caution or an Administrative Penalty) where it is satisfied that an offence had taken place but the case is not considered serious enough to warrant prosecution in the first instance.

This Policy:

- defines the officers responsible for applying this policy;
- outlines the factors that will be considered when identifying whether a case is suitable for further action; and
- details the factors that will be considered in determining if the case is recommended for Simple Caution, Administrative Penalty or prosecution.

Cases involving Housing Benefit and Council Tax Benefit can be investigated either, separately or jointly, by the Council’s Benefit Fraud Team and/or investigators working for the Department for Work and Pensions. Whilst the Council has powers to investigate and prosecute other benefit offences the decision on whether to prosecute or sanction individuals in respect of these benefits is made by the Department for Work and Pensions (in accordance with their Prosecution and Sanction Policy). Similarly, the Council must agree, in accordance with this Policy, the correct disposal of cases involving Housing Benefit or Council Tax Benefit regardless of which organisation has conducted the investigation.

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1 Social Security Administration Act 1992 (s110A, s116A) as inserted by the Welfare Reform Act 2007 (s46-47)
Officers responsible for applying this policy

The decision to prosecute or sanction an individual is a serious matter. It is therefore important that this policy is applied in a fair, independent and objective basis with each case being judged on its own merits. In accordance with the Council’s Comprehensive Equality Policy, care will be taken to ensure that no individual receives less favourable treatment on grounds that are not justifiable: e.g. because of their age, race, gender, marital status, disability or any other personal circumstance.

There are three stages in applying this policy, as follows:

- **Stage 1**: An internal management check is undertaken to:
  - ensure that the investigation has been conducted properly;
  - confirm that evidence has been obtained in accordance with legislation; and
  - identify any matters, both favourable or adverse within the investigation, that need to be brought to the attention of the Authorising Officer.

  (Note: This check will normally be undertaken by either the Senior Investigation Officer or the Benefit Fraud Manager unless they have conducted the investigation).

- **Stage 2**: The case will be referred to an Authorising Officer, nominated by the Assistant Chief Executive (Finance), who will apply the evidential and public interest stages (detailed below) to determine the most appropriate disposal of a case. A list of Authorising Officer nominated by the Assistant Chief Executive (Finance) to undertake this task is enclosed at Appendix 2. (Note: Stages 1 and 2 must be conducted by different officers).

- **Stage 3**: Where the Council is the lead investigator, a recommendation to prosecute or apply a sanction will be forwarded to the Assistant Chief Executive (Legal and Administrative) who will review whether there is sufficient evidence to proceed with the case. (Note: This stage will not apply in relation to investigations led by the Department for Work and Pensions that maintains its own quality assurance procedures).

Factors (tests) to be applied when determining whether to recommend a case for Sanction or Prosecution

The Council will take into account factors detailed within The Code for Crown Prosecutors when determining how to proceed with a case. This will include firstly applying the evidential stage and then, if that is satisfied, the public interest stage.

The evidential stage is based on the principle that the Authorising Officer must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction.

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2 The Code for Crown Prosecutors, November 2004 (www.cps.gov.uk)
3 “realistic prospect of conviction” is an objective test – A jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. (Section 5.3, The Code for Crown Prosecutors, November 2004)
taking into account what a defence case might be. It is therefore necessary for the Authorising Officer to be satisfied that evidence can be used and is reliable. The Authorising Officer will need to consider the following matters:

- An interview under caution has been conducted, in accordance with the Police and Criminal Evidence Act 1984 and associated codes of practice, and that an allegation has been put to the person to establish that an offence has been committed and to provide evidence for instituting proceedings.

  or

  The person has failed to attend a planned interview under caution, despite being given ample opportunity, and there is sufficient other evidence to indicate that an offence has taken place.

- Evidence has been obtained in accordance with the law and is therefore likely to be admissible in any court proceedings.

- There are no factors that could detract from a person’s comments during an interview, e.g. age, intelligence or level of understanding.

- The explanation provided by the person is credible based on the evidence as a whole.

- The case is being brought against the right person.

- Witnesses are reliable and are not influenced by other motives.

- There have been no technical failures in the investigation or benefits administration process. This could include:
  - the investigation is flawed; the investigating officer has behaved improperly or the correct procedures have not been followed;
  - benefit has been paid on incomplete or inadequate information; or
  - there has been a failure to act on information received.

Cases that fail to pass the evidential stage will be closed and subject to no further action. However, overpayments will continue to be recovered in accordance with the Council’s Debt Recovery Policy.

Once the Authorising Officer is satisfied that the evidential stage is met then the Authorising Officer will apply the **public interest stage**. It is this test that will ultimately influence whether a case is recommended for Simple Caution, Administrative Penalty or prosecution.

In applying the public interest stage, the Authorising Officer will consider the following factors when determining how serious the matter is and whether a case should be recommended for prosecution in the first instance:

- The value of money obtained (level of overpayment).

- Previous offences. The claimant has been successfully prosecuted for benefit fraud previously or has had a sanction applied by a local authority or an agency of the Department for Work and Pensions.

- The duration of the offence. The offence has been committed over a long period of time.

- The fraud was deliberate and calculated from the outset or has been perpetuated through the continued submission of false application forms.
- The attitude of the person towards the offence, the wilfulness with which it was committed and the person’s subsequent attitude.
- The person is in a position of authority or trust.
- The fraud involves a collusive employer or landlord / agent who have deliberately colluded with a claimant to defraud the benefits system.

In addition, the Council will also take into account any mitigating factors before determining whether it is in the public interest to pursue a prosecution or apply a sanction. The following factors may make prosecution undesirable:

- Physical or mental condition. e.g. A person:
  - is seriously ill;
  - suffers from mental illness;
  - is elderly. (The Council will apply discretion when considering a person’s age, state of mind, ability to attend court); or
  - has a partner whose health condition may suffer as a result of proceedings.

- Social Factors. e.g. A person is driven to an offence by tragic domestic circumstances.

Whilst considering all the above factors, it is essential that the Council treats each case on its own merits. The Council is mindful of the fact that a prosecution or sanction applied to an individual is a serious matter and will ensure that a fair and consistent approach is maintained at all times when considering which course of action to take.

**Factors that will lead to a case being recommended for Prosecution**

Cases will be put forward for prosecution where it is in the public interest so to do. The Authorising Officer will consider the following factors when considering whether to put forward cases for prosecutions:

- The Court, if found guilty, is likely to impose an appropriate sentence. Cases which are only likely to result in nominal sentences will not be considered for prosecution in the first instance.
- The value of the overpayment is large. The Council will consider the financial limits used within the Department for Work and Pensions’ Prosecution and Sanction Policy and advice provided to the Courts from the Sentencing Guidelines Council\(^4\) in determining whether the overpayment is significant in its own right to justify prosecution.
- The person has failed to attend a planned interview under caution, despite being given ample opportunity, and there is sufficient other evidence to indicate that an offence has taken place.

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\(^4\) Sentencing Guidelines Council: Sentencing for Fraud – statutory offences, October 2009
The person has been successfully prosecuted for benefit fraud previously or has had a sanction applied by a Local Authority or the Department for Work and Pensions. (Only in exceptional circumstances [e.g. the current overpayment is very low, there has been a sufficient lapse of time since the previous sanction or there are other mitigating factors] will a further sanction be considered).

The person has been offered but refused a Simple Caution or Administrative Penalty.

The fraud was deliberate and calculated from the outset or has been perpetuated through the continued submission of false application forms.

The fraud involves a collusive employer or landlord / agent who have deliberately colluded with a claimant to defraud the benefits system.

The person has been motivated by greed or desire to live beyond their means.

The attitude of the person towards the offence, the wilfulness with which it was committed and the person’s subsequent attitude.

The duration of the offence. The offence has been committed over a long period of time.

The person is in a position of authority or trust.

Factors that may lead to a Local Authority Simple Caution

A Simple Caution is a meaningful penalty and deterrent for those persons were criminal proceedings are not a first option and administrative penalty action is not appropriate. The Council has taken into account Home Office guidance\(^5\) when considering whether a Simple Caution can be issued, as follows:

- There must be evidence of the person’s guilt to give a realistic prospect of conviction, i.e. the evidential stage has been satisfied.
- The person has admitted the offence and this is recorded to a standard that is compliant with the Police and Criminal Evidence Act 1984. A Simple Caution will not be appropriate where a person does not make a clear and reliable admission of the offence (e.g. if intent is denied).
- The person must understand the significance of a caution and give informed consent to be cautioned.
- Simple Cautions will not be administered to offenders in circumstances where there can be no reasonable expectation that this will curb their offending.
- The person is 18 years or over.

A Simple Caution will be recommended in circumstances where the above factors have been met and it is deemed that a prosecution is not appropriate in the first instance.

A person must attend a separate interview in order for the Simple Caution to be administered. During the interview the person must sign a document to show they admit to the offence. The person must also agree to the Simple Caution being

\(^5\) Home Office Circular 16/2008: Simple Cautioning of Adult Offenders
issued and acknowledge that they have been cautioned. If the person refuses to accept a Simple Caution, the Council will consider the case for prosecution. Where criminal proceedings are brought, the Court will be informed that the case has been brought because the person refused to accept a Simple Caution.

A senior officer, designated by the Assistant Chief Executive (Legal and Administrative Services) (see Appendix 2), will administer the Simple Caution. The officer administering the Simple Caution will not be the officer who previously interviewed the person under caution or was present during the interview. In appropriate cases, the Council will also delegate representatives of the Department for Work and Pensions to conduct the Simple Caution interview.

Other issues:

- The Council will conduct a check with the Department for Work and Pensions, to identify whether previous sanctions have been issued.
- If the person is subsequently prosecuted for another benefit offence the Simple Caution may be cited in court.
- The Council will notify the Department for Work and Pensions that a Simple Caution has been accepted to enable the central database to be updated.

Factors that may lead to an offer of a Customer Administrative Penalty (s115A)

The Council has powers, under Section 115A of the Social Security Administration Act 1992, to consider an administrative penalty as an alternative to prosecution. The penalty is set at 30% of the overpayment that has been caused by the fraud that has accrued since 18th December 1997.

Administrative Penalties are intended for cases where prosecution or simple caution is deemed not appropriate in the first instance.

The following conditions will need to apply before a person is offered the choice of agreeing to pay an administration penalty:

- There must be evidence of the person’s guilt to give a realistic prospect of conviction, i.e. the evidential stage has been satisfied.
- The offence has resulted in an overpayment, attributable to an act or omission on the part of that person, and the person has been notified of this decision, including the claimant’s appeal rights on the amount and recoverability of the overpayment.

The person must attend a separate interview in order for the administrative penalty to be administered. During the interview the person will be asked to sign a penalty agreement form. The person will be allowed a 28 day cooling off period should they subsequently wish to withdraw their agreement to accept the penalty, in accordance with s115A(5) of the Social Security Administration Act 1992.

If the person refuses to sign a penalty agreement or withdraws their agreement to

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6 HB/CTB G12/2008 – Issuing of Cautions
pay the penalty within the 28 day cooling off period, the Council will consider the case for prosecution. Where criminal proceedings are brought, the Court will be informed that the case has been brought because an administrative penalty has been offered but was declined by the person.

A senior officer, designated by the Assistant Chief Executive (Finance) (see Appendix 2), will undertake the penalty interview. The officer administering the penalty interview will not be the officer who previously interviewed the person under caution or was present during the interview. In appropriate cases, the Council will also delegate representatives of the Department for Work and Pensions to conduct the penalty interview in accordance with Section 115A (7A)(7B) of the Social Security Administration Act 1992.

Other issues:
- The Council will conduct a check with the Department for Work and Pensions to identify whether previous sanctions have been issued.
- The Council will notify the Department for Work and Pensions that an administrative penalty has been accepted to enable the central database to be updated.

Factors that may lead to an offer of an Employer Administrative Penalty (s115B)

The Council has powers, under Section 115B of the Social Security Administration Act 1992 inserted by the Social Security Fraud Act 2001, to offer an administrative penalty to an employer as an alternative to prosecution. This power came into force on 30th April 2002.

An administration penalty may be offered to an employer (responsible person) where:
- there are grounds for instituting proceedings for an offence (whether or not under this Act) in respect of any conduct, i.e. acts, omissions or statements; and
- the offence is in respect of an inquiry relating to the employment of relevant employee(s)*1; or
- to facilitate the commission of a benefit offence by a relevant employee (whether or not such an offence was in fact committed)*2.

The penalty is set at:
- *1 - £1,000
- *2 - £1,000 per employee involved up to £5,000.

The responsible person must receive a written notice specifying the reason. The person will be required to attend a separate interview in order for the administrative penalty to be administered. During the interview the responsible person will be asked to sign a penalty agreement form. The person will be allowed a 28 day cooling off period should they subsequently wish to withdraw their agreement to accept the penalty, in accordance with s115B(6) of the Social Security Administration Act.

If the person refuses to sign a penalty agreement or withdraws their agreement to pay the penalty within the 28 day cooling off period, the Council will consider the case for prosecution. Where criminal proceedings are brought, the Court will be informed that the case has been brought because an administrative penalty has been offered but was declined.

A senior officer, designated by the Assistant Chief Executive (Finance) (see Appendix 2), will undertake the penalty interview. The officer administering the penalty interview will not be the officer who previously conducted the investigation and was not present during any interview.

Review of Policy

This policy will be reviewed upon subsequent changes in legislation or guidance issued.

Approved by Delegated Executive Decision: 0136 2009/10
17/03/2010

Background Papers

– Social Security Administration Act 1992 (and amendments)
– The Code for Crown Prosecutors, November 2004
– Home Office Circular 16/2008: Simple Cautioning of Adult Offenders, 10th July 2008
Relevant legislation under the
Social Security Administration Act 1992

Offences:

s111A Dishonestly makes a false statement or furnishes documents containing false information; whether for himself or for some other person.

s111A(1A)-(1F) Dishonestly fails to promptly report a change in circumstance;

(1A) The claimant;
(1B) Another person other than the claimant;
(1D) The recipient (i.e. has the right to receive payments in respect of a claimant), e.g. landlords, appointed Officials or other people;
(1E) Person other than the recipient;
(1F) Specifically relating to Landlords in direct receipt of Housing Benefits.

s112 Makes a false statement or furnishes documents containing false information; whether for himself or for some other person.

s112(1A)-(1F) Fails to promptly report a change in circumstance (sub sections similar to s111A)

s115 Offences by corporate bodies.

Penalties as an alternative to prosecution:

s115A Customer Administrative Penalties
s115B Employer Administrative Penalties
Delegation to Apply this Policy

The Assistant Chief Executive (Finance) authorises the following officers to recommend cases for prosecution or applying other sanctions in accordance with the requirements of the Prosecution and Sanction Policy:

- Benefit Fraud Manager; or
- Benefits Manager; or
- Revenues and Benefits Manager; or
- Assistant Treasurer (Revenues and Benefits)

All recommendations will be reviewed by the Legal Division to confirm that there is sufficient evidence to proceed with a prosecution or an alternative sanction.

Delegation to issue Simple Cautions:

The Assistant Chief Executive (Legal and Administrative Services) authorises the following officers to issue Simple Cautions:

- Benefit Fraud Manager; or
- Benefits Manager; or
- Revenues and Benefits Manager; or
- Assistant Treasurer (Revenues and Benefits)
- Officers working for the Department for Work and Pensions who have authority to conduct Simple Cautions.

* The approval to delegate Simple Cautions is included within the Council’s Scheme of Delegation.

Delegation to conduct Administrative Penalty Interviews:

The Assistant Chief Executive (Finance) authorises the following officers to conduct Administrative Penalty interviews:

Under s115A and s115B of the Social Security Administration Act 1992:
- Benefit Fraud Manager; or
- Benefits Manager; or
- Revenues and Benefits Manager; or
- Assistant Treasurer (Revenues and Benefits);

Under s115A of the Social Security Administration Act 1992 (only):