



CRAVEN

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D I S T R I C T

**PROSECUTION
&
SANCTION POLICY**

REVENUES & BENEFITS SERVICES

CRAVEN DISTRICT COUNCIL

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Contents

	Page
Introduction and Background	3
Sanctions:	4
Interview Under Caution	4
Prosecutions	4
Administrative Penalty	6
Council Tax Reduction - Penalties	7
Caution	8
Proceeds of Crime Act	9
No further action	9

Introduction and Background

Under the Local Government Act 1972 Craven District Council (the Council) has a duty to administer Housing Benefit for the Department for Work and Pensions (DWP). The Local Government Finance Act 2012 creates a duty upon local authorities to administer their own council tax reduction schemes. We also retain a duty under the 1972 Act to take action against fraud committed in respect of council tax benefit. We therefore have a duty to protect public funds.

The Council has shown its commitment to the protection of public funds by the creation of an Investigation Team dedicated to identifying, investigating and preventing fraud. The team work closely with the DWP, and, if claimants are found to have been claiming a local authority and a DWP benefit, we will confer with our DWP colleagues in order to determine the most appropriate course of action.

Cases will be investigated by PINS trained, authorised officers. All actions undertaken during the course of the investigation will be in accordance with the Police and Criminal Evidence Act and other relevant legislation.

Benefit fraud offences include knowingly or dishonestly making false statements, or failing to promptly report changes in circumstances in order to gain benefit entitlement.

All investigations undertaken that are suitable for sanction action will be referred to the Revenues and Benefits Manager (or a deputy with the appropriate delegated authority) for a decision.

In all cases, the Council will consider if a case is suitable for prosecution, and if there are options in the form of other sanctions as an alternative to prosecution, taking into account the factors of the case and the loss to the public purse.

Recommendations to instigate criminal proceedings will be passed to the Council's Legal Services.

In a case of a joint investigation undertaken with the DWP, the DWP may refer the case to the CPS for prosecution. If required, the Council will authorise the delegation of further action.

The Welfare Reform Act 2007 sections 46 to 48, gives Local Authorities the power to investigate and prosecute offences relating to benefits administered by the Department of Work and Pensions, where there is also fraud against Housing and Council Tax Benefit.

The Sanctions

Where there is sufficient evidence to believe that an offence has been committed the person under suspicion will be invited to an Interview Under Caution (IUC).

Interview Under Caution

An interview under caution is a formal interview, which is usually recorded to ensure that an accurate record is taken. It is conducted under The Police & Criminal Evidence Act 1984.

The IUC is to enable the council to establish the facts and is also an opportunity for the person under suspicion of fraud to offer his or her side of the story.

The allegation cannot be discussed before the interview either in person or by telephone. This is because there is a duty upon the Council to inform the individual being interviewed of their legal rights before he or she is questioned and also to ensure that everything that is said is recorded.

Prosecution – Housing Benefit and Council Tax Benefit

Section 222 of the Local Government Act 1972 gives Local Authorities the power to investigate and prosecute “where a Local Authority considers it expedient for the promotion or protection of the inhabitants in the local area”.

Criminal proceedings may be brought against alleged offenders and the case heard in the Magistrates’ or Crown Court. A person found guilty will be sentenced by the Court and will receive a criminal record.

The Code for Crown Prosecutors will be taken into account when a decision to prosecute is made.

There is a two stage test to be considered under the Code:

- i. the evidential test
- ii. the public interest test.

The Evidential Test

There should be sufficient evidence to provide a ‘realistic prospect of conviction’ on each charge. The evidence should be admissible and reliable.

A realistic prospect of conviction is an objective test and means that a jury or bench of magistrates, acting in accordance with the law, is more likely than not to convict the defendant of the alleged charge. This is a different test from the one that the criminal courts must apply when deciding whether a person is guilty or not guilty.

The Public Interest Test

If there is a realistic prospect of conviction the second test to consider is whether a prosecution required in the public interest.

Not every case which is capable of prosecution will be prosecuted. The public interest test means that the factors tending in favour of prosecution must be weighed against the public interest factors against prosecution. The public interest factors that can affect the decision to prosecute vary from case to case. The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest.

For example, the following factors may be taken in account in relation to a decision to prosecute:

- The amount of the overpaid benefit
- The length of time the fraud continued
- Whether the fraud was calculated and/or premeditated
- Any previous benefit fraud or related offences
- Whether there is evidence of collusion – e.g. with a landlord or employer
- Whether there has been a failure to attend an Interview Under Caution
- Whether there is any significant mental or physical ill health
- Whether a prosecution is a proportionate response

The Council will consider if it is in the public interest to institute criminal proceedings if the person is suffering (or has previously suffered) from significant mental or physical ill health or other factors that the Council might feel it appropriate to take into account.

Where there is sufficient evidence of fraud held against persons in a position of trust prosecution will normally be initiated despite any of the above factors. It would then be a matter for the Courts to determine if there are any mitigating factors.

Administrative Penalty (AdPen)

Section 115A of the Social Security Administration Act 1992 (as amended by s15 Social Security Admin (Fraud) Act 1997) introduced financial administrative penalties as an alternative to prosecution for some offences.

An Administrative Penalty is a financial penalty which **may** be offered to a person when an overpayment is recoverable from that person by virtue of sections 71, 71a, 75 or 76 of the Social Security Administration Act 1992, and it appears that the overpayment was attributable to an act or omission on the part of that person, and there are grounds for instituting proceedings for a criminal offence relating to the matter.

Administrative Penalties are offered on behalf of the Secretary of State and there is no right of appeal.

An Administrative Penalty will be considered as an alternative to prosecution where:

- There is sufficient evidence to prosecute
- A prosecution is possible, but the case is not so serious that the first option should be prosecution – e.g. the amount of the overpayment, seriousness and duration of the fraud are not at a level sufficient to make prosecution the first option
- There have been no previous benefit offences

An Administrative Penalty is not a conviction and as such there is no requirement to obtain an admission before offering an Administrative Penalty.

An Administrative Penalty may not be appropriate where the claimant has limited means to repay the penalty, or it is considered that the claimant may be tempted to further fraudulent activity in order to repay the imposed penalty.

Upon accepting the penalty the claimant has 14 days in which to change their decision. If a penalty is not accepted or is withdrawn, we will consider prosecution. Therefore all cases will be up to to prosecution standard before an Administrative Penalty is offered.

For offences committed wholly after 8 May 2012, the AdPen will be equal to the higher of 50% of the total overpayment, or £350, subject to a maximum of £2000.

For offences before 8 May 2012 the AdPen imposed will be a sum equal to 30% of the amount of benefit that has been overpaid.

These percentages are fixed by law and as such as not negotiable. The overpaid benefit must be repaid in addition to the Administrative Penalty.

A copy of the Administrative Penalty form will be retained by the Council, by the DWP and on a local authority fraud database for a period of 5 years.

The fact that a claimant has previously been subject to an Administrative Penalty may be referred to in any future investigation and may be taken into account when a decision is being made in relation to sanctions for subsequent offences.

Council Tax Reduction - Penalty

Under the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 a financial penalty may be applied as an alternative to prosecution. These penalties are only available in respect of fraud relating to the Council Tax Reduction Scheme.

If the misrepresentation is more serious we will consider the imposition of an Administrative Penalty of 50% of the total overpayment, subject to a minimum of £100 and a maximum of £1000.

Civil Penalty

A £70 penalty can be applied where a person negligently, without fraudulent intent, makes a false statement, provides false information, fails to notify a change in circumstances or fails to correct an assumption.

A £70 penalty may also be applied where a person fails to supply information within 21 days of a request, or knowingly supplies inaccurate information in purported compliance with a request.

If the misrepresentation is more serious a penalty of 50% of the total overpayment, subject to a minimum of £100 and a maximum of £1000 may be applied

Caution

Cautions can, in certain circumstances, be offered as an alternative to prosecution. The Guidance “Simple Caution for Adult Offenders (MoJ)” will be taken into account in considering whether a caution is an appropriate sanction in the circumstances.

A caution will be considered as an alternative to a prosecution, where:

- There is sufficient evidence to prosecute
- A prosecution is possible, but the case is not so serious that the first option should be prosecution
- There has been a clear admission of the offence during an Interview Under Caution (or by other PACE compliant means)
- There is an indication of remorse or regret at having committed the offence.

A caution will be less appropriate where the offence has continued over a long period, or where there has been previous fraudulent activity within the past 5 years.

If a case is considered appropriate for a caution, the person accused of the offence will be invited to attend an interview for a caution to be administered.

If the caution is accepted a record of the caution will be retained for 5 years by the Council, the DWP and the on the local authority database.

A caution is not a conviction but may be cited in Court in any future proceedings. In addition, an earlier caution may be taken into account may be taken into account where a decision is being made in relation to subsequent offences.

The acceptance of a caution takes the place of a prosecution. If the offer of a caution is refused, a prosecution will be considered.

Proceeds of Crime Act – Restraint and / or Confiscation Orders

Under the Proceeds of Crime Act, in prescribed circumstances restraint and / or confiscation orders of identified assets may be sought in connection with a prosecution. A restraint order will prevent a person from dealing with specific assets. A confiscation order will enable the Council to recover losses from assets which are found to be the proceeds of crime.

The Council may, if appropriate, seek to recover the costs of prosecution.

No further action

If, following investigation, the Revenues & Benefits Manager (or a deputy with the appropriate delegated authority) considers that the circumstances of a case are such that no sanction is appropriate, (for example, there is insufficient evidence of an offence, the amount of an overpayment is not substantial or it is not considered to be in the public interest) the case will be closed with 'No Further Action'.

If the person has attended an Interview under Caution, he or she will be notified in writing that no further action is to be taken.