

North Ayrshire Council

Benefit Fraud Prosecution Policy

1. Introductory Statement

- 1.1. North Ayrshire Council is committed to the prevention, detection, investigation and prosecution of fraudulent claims for Housing Benefit and Council Tax Benefit and the protection of public funds.
- 1.2. The Council has a policy for the prevention and detection of fraud and corruption. It provides a summary of the responsibilities of members and officers and outlines the procedures to be followed where suspicion of financial irregularity is raised. This policy document forms part of and should be read in conjunction with the policy for the prevention and detection of fraud and corruption.
- 1.3. The Council recognises that it is a criminal offence to knowingly make a false claim or to fail to report changes in circumstance to obtain benefit to which there is no entitlement and will consider prosecution or applying an appropriate sanction against anyone who commits such an offence.
- 1.4. The Council is determined to recover overpaid benefit in every case where the overpayment is caused by a fraudulent claim and has invested resources in setting up a team of officers dedicated to investigating and preventing fraud.
- 1.5. All investigations of suspected fraud will be carried out in accordance with the Council's code of conduct for Council employees and all persons contacted throughout an investigation will be treated with discretion, respect, fairness and courtesy at all times.

2 Prosecution

- 2.1 In accordance with the Council's corporate policy to prevent and detect fraud and corruption, prosecution will be considered in cases of serious benefit fraud. The Council must be satisfied that there is sufficient corroborative evidence to support a successful prosecution against each person and each charge.
- 2.2 Each case will be considered on its own merits and in accordance with the Council's sanction and prosecution policy. All cases of fraud will be considered for prosecution and in particular where cases fall within the public interest as outlined below. Although not an exhaustive list it will generally be considered to be in the public interest to prosecute:
 - ❖ Where the total recoverable fraudulent overpayment exceeds £2,000.
 - ❖ Where the fraud has continued over a period of time i.e. in excess of 3 months.
 - ❖ Where a conviction is likely to result.
 - ❖ Where even though it is a first offence the sums are significant.

- ❖ Where there is evidence to support that the fraud was calculated, premeditated or there is evidence of collusion with other parties.
 - ❖ Where there is evidence that shows that the person was a ringleader or an organiser of the offence.
 - ❖ Where the person has a relevant previous conviction or caution for benefit fraud.
 - ❖ Where the person has declined the offer of an administrative penalty or has withdrawn their previous agreement to pay an administrative penalty.
 - ❖ Where the person has refused the offer of an Administrative Caution.
- 2.3 The Procurator Fiscal will make the final decision as to whether any individual case referred is suitable for prosecution.

3 Administrative Penalties

- 3.1 While all cases will be considered for prosecution the Council is aware of the discretion available under Section 15 of the Social Security Administration (Fraud) Act 1997 which provides the Council with the authority to administer a penalty, which is calculated at 30% of a recoverable benefit overpayment. The administrative penalty is recovered in addition to any repayments of the overpaid benefit and can only be offered if the case could be sent for prosecution.
- 3.2 If the claimant does not accept the offer of an administrative penalty then the case will be passed to the Procurator Fiscal.
- 3.3 Although not an exhaustive list the Council may as an alternative to prosecution impose an administrative penalty in the following circumstances:
- ❖ Where the recoverable fraudulent overpayment is between a de-minimus of £50 and £2,000.
 - ❖ Where a prosecution would not be in the public interest.
 - ❖ Where it is a first offence.
 - ❖ Where there were mitigating personal and /or social factors to be considered for example the age, physical and mental health of the claimant.
 - ❖ Where the person was not in a position of authority or trust.
 - ❖ Where there is evidence to support that the fraud was not planned or pre-meditated.
 - ❖ Where the person was acting alone and does not involve collusion.
 - ❖ Where the person has offered to repay the full amount of their fraudulent overpayment.
 - ❖ Where there is no record of a previous sanction or prosecution for the same person.
- 3.4 A gross overpayment of less than £50 will not attract an administrative penalty but the overpayment will be recovered.

Other sanctions available to the Council

4 Administrative cautions

- 4.1 An administrative caution is a meaningful deterrent for those persons who have made a fraudulent claim where criminal proceedings are not a first option and an administrative penalty is not appropriate.
- 4.2 A caution may only be used where there is sufficient evidence for a prosecution and the claimant has admitted the offence during an interview under caution. The caution is an oral warning and there is no financial penalty involved.
- 4.3 An Administrative Caution will be considered as the preferred option to a prosecution or administrative penalty:
- ❖ Where there is sufficient evidence to support a prosecution but the offence is considered minor.
 - ❖ Where there is no previous history of convictions or sanctions for benefit fraud.
 - ❖ Where the person has admitted the offence during an interview under caution.
 - ❖ Where the person agrees to the caution, they acknowledge they have been cautioned and sign a document to show they admit the offence.
 - ❖ Where the overpayment is less than £50.

5 Benefit Fraud Review Group

- 5.1 The decision to take no action or to apply an administrative penalty, an administrative caution or to prosecute a claimant will be considered by a Benefit Fraud Review Group.

- 5.2 The group comprises of:

The Chief Revenue and Benefits Officer
The Chief Legal Officer (Litigation)
The Benefits Manager

In the event that a member of the group cannot attend then a senior member of staff will deputise in their place. A quorum of three must be maintained at all times.

- 5.3 The team leader of the investigation team is responsible for identifying cases that are considered suitable for prosecution by the Procurator Fiscal and which can be referred to the fraud review group for a decision. All cases must be passed to the review group no later than 4 weeks from the date a decision is taken by an investigating officer that there is sufficient corroborative evidence for a successful prosecution. The team leader will also provide a quarterly list of cases which haven't been presented to the review group along with an explanation as to why they were not considered suitable to proceed.

- 5.4 The group will meet monthly or more regularly if required. The investigator responsible for the case will prepare a case summary that includes details of the charge, the amount of overpaid benefit involved, the evidence gathered and remarks. The investigator will attend the group along with the team leader to present each case.
- 5.5 The group will consider any report from Social Services regarding the claimant but the claimant will not be represented at any meeting of the group. The claimant will be advised of the Council's policy and asked to bring to the Council's attention any special circumstances that they feel should be taken into account in considering how to deal with their case. The claimant will be recommended to seek independent advice.
- 5.6 When the group is considering a case for prosecution or sanction it will take cognisance of the following factors:
- ❖ That the charge made against the claimant can be substantiated by corroborative evidence.
 - ❖ The value and duration of the benefit overpayment.
 - ❖ That the standard of evidence gathered is sufficient to meet the standards required by the Procurator Fiscal for criminal proceedings.
 - ❖ If a prosecution would be in the public interest.
 - ❖ The previous history of the claimant.
 - ❖ Any mitigating circumstances and reports from Social Services.
 - ❖ Any failure on the part of the Council including unnecessary delay or in the quality of the investigation itself.
 - ❖ That the investigation has been carried out in accordance with the Council's code of conduct.
- 5.7 By measuring each case against these criteria will ensure a fair and consistent approach to deciding to refer the case for prosecution or to apply a sanction.
- 5.8 In cases where the group has given its approval to prosecute then the claimant will be notified of the decision in writing within 5 working days. The case report will be sent to the Procurator Fiscal no later than 7 working days from the date the decision was reached.
- 5.9 In cases where the group has given its approval to apply a sanction then the claimant will be notified in writing within 5 working days of the sanction and any action required on their part.
- 5.10 In cases where no action has been taken, the claimant will be advised that an offence appears to have been committed but that no further action other than recovery of the overpayment will be taken on this occasion.

6 Recovery of overpayments

- 6.1 All recoverable fraudulent overpayments and administrative penalties will be passed to the appropriate resource for recovery in accordance with the Council's policy.

7 Working in partnership with other organisations

- 7.1 The Council will work in partnership with the Department for Work and Pensions, Counter Fraud Investigation Service (CFIS), Operational Intelligence Unit (OIU), Fraud Proceedings Unit (FPU), the Police, Customs and Excise and other Local Authorities in order to promote and develop an anti fraud culture.
- 7.2 The Council has the power under Sections 46 and 47 of the Welfare Reform Act 2007 to investigate and prosecute prescribed national benefits as well as housing benefit and council tax benefit fraud. These powers will be used, as required. The Council will also continue to carry out joint investigations and interviews under caution as required ensuring a consistent and fair application of sanctions.
- 7.3 The Council will participate in the National Fraud Initiative (NFI) in accordance with Section 100 of the Local Government (Scotland) Act 1973 and Section 53 of the Local Government in Scotland Act 2003.

8 Employees and Members

- 8.1 Internal Audit will, in consultation with fraud investigators investigate any suspected benefit fraud involving an employee or Member of the Council.
- 8.2 The Chief Executive will consider any disciplinary action and prosecution.

9 Publicity

- 9.1 Following a successful prosecution the Council will issue an anti fraud press release if there is evidence to suggest that a case hasn't been adequately reported through normal press coverage.

10 Policy monitoring and annual review

- 10.1 The Chief Revenues and Benefits Officer, Benefits Manager and the team leader of the fraud investigation team will review this policy at the end of March each year. The Chief Revenues and Benefits Officer will be responsible for updating the policy to reflect changes in legislation, general procedures and work practices.