

THE MORAY COUNCIL

HOUSING AND COUNCIL TAX BENEFIT

FRAUD SANCTIONS POLICY

1. INTRODUCTION

- 1.1 The Moray Council is committed to the prevention, detection, investigation and prosecution of fraudulent claims to Housing Benefit and Council Tax Benefit and the protection of public funds.
- 1.2 The Council has a corporate “Policy to Combat Fraud and Corruption” which provides a summary of the responsibilities of members and staff and outlines the procedures in place for the prevention and detection of fraud and corruption. This Sanctions Policy forms part of and should be read in conjunction with the Policy to Combat Fraud and Corruption.
- 1.3 Housing Benefit and Council Tax Benefit fraud occurs where a claimant knowingly makes a false statement or knowingly fails to report a relevant change in circumstances with the intention of obtaining benefit to which he or she is not entitled. This is a criminal offence and the Moray Council has a responsibility to consider prosecution *or apply an appropriate sanction* against anyone who commits such an offence.
- 1.4 In applying this policy, no individual concerned will be discriminated against on the grounds whatsoever including physical or mental disability, age, marital status, sexual orientation, racial, ethnic or social origin, religious beliefs or political opinion. All communication will be in ‘plain language’. Appropriate arrangements for communicating with customers who have special needs including difficulty with vision, hearing, learning, literacy or numeracy, will be made.

2. GUIDELINES FOR PROSECUTION OR ALTERNATIVE SANCTION

- 2.1 It is recognised that the decision to prosecute or apply a sanction is a serious matter for all parties involved and as such each case will be examined on its own merits and in a consistent and impartial basis within the framework of this policy.
- 2.2 Cases will be reported to the Benefits Manager to decide if referral for proceedings or the offer of an alternative sanction is appropriate. Where a recommendation is not in accordance with the framework of this policy the case report will also be sent to Internal Audit for adjudication in conjunction with the Benefits Manager.

2.3 For a case to be considered under this policy it will be necessary to have regard to all circumstances, and in particular whether:

- There is sufficient admissible, reliable and credible evidence to prove the person committed the offence.
- There is sufficient evidence of fraudulent intent.
- The case reaches the standard of proof demanded in a criminal case.
- There is a complete and clear record of the investigation and all information has been obtained fairly and without undue delay.
- Administration procedures of the Council have permitted a fraud to proceed which, otherwise, could not have succeeded.
- There have been undue delays in reporting the case to the Procurator Fiscal.
- The claimant has fraudulently claimed benefit in the past.

In addition the following personal circumstances of the claimant will be taken into account when deciding whether prosecution or an alternative sanction is more appropriate:

- The age of the person.
- The physical and/or mental health of the person, partner or dependant.
- Such other social factors or personal circumstances of the person, partner or dependant.

3. PROSECUTION

3.1 In accordance with the Council's corporate Policy to Combat Fraud and Corruption, prosecution will be considered in cases of serious fraud.

The types of cases when prosecution will be considered include where:

- There has been a significant loss to public funds, for example the total recoverable fraudulent overpayment exceeds £2000.
- The period of time over which the fraud has been perpetrated is protracted, for example more than 12 months.

- The person has been previously investigated and reported to the Procurator Fiscal for benefit fraud.
- The person has refused the offer of an Administrative Caution.
- The person has declined the offer of an Administrative Penalty or has withdrawn their agreement to pay an Administrative Penalty.
- The person has agreed to pay an Administrative Penalty or accepted an Administrative Caution during the past five years, for a similar benefit offence.
- The case has arisen from a collusive landlord or employer investigation.

3.2 All cases deemed suitable for prosecution will be reported to the Procurator Fiscal by the Benefit Fraud Team or by The Department for Work and Pensions, Central Prosecution Team, on behalf of the Council.

3.3 It is noted that the final decision on prosecution is reserved for the Procurator Fiscal.

4. ADMINISTRATIVE PENALTIES

4.1 As an alternative to prosecution the Council will consider the use of an Administrative Penalty in accordance with the Social Security Administration (Fraud) Act 1997. This allows the Council to offer a financial penalty equal to 30% of the fraudulent overpayment. The penalty is recouped in addition to the overpayment and retained by the Council.

4.2 The types of cases when an Administrative Penalty will be considered include:

- The case is not so serious that it should be considered for prosecution at the outset.
- The loss to public funds is not so significant that prosecution should be considered, for example the total recoverable fraudulent overpayment is less than £2,000.
- Where prosecution is not in the Public Interest due to personal, mitigating and/or social factors.

4.3 An Administrative Penalty can only be offered where the fraudulent overpayment is recoverable and there is sufficient evidence to support criminal proceedings. If a person declines an Administrative Penalty, or withdraws their agreement the case should then be considered for criminal proceedings unless exceptional circumstances apply.

5. ADMINISTRATIVE CAUTIONS

5.1 An Administrative Caution is intended to be an official warning and meaningful deterrent for those persons where criminal proceedings are not the first option and Administrative Penalty action is not appropriate.

5.2 The types of cases when an Administrative Caution will be considered include:

- The offence is minor and the total amount of the fraudulent overpayment is low.
- The period of the offence is short, for example no more than 3 months.
- The circumstances of the case merit a more serious form of deterrent action over and above the recovery of the overpaid benefit(s).
- The circumstances of the offence and the person indicate an Administrative Caution may be appropriate.
- The person has fully admitted the offence during an Interview Under Caution.

5.3 If an administrative caution is appropriate, the person must be offered and give their informed consent to the caution.

5.4 If a person refuses the offer of an Administrative Caution, the alternative is the recommendation of criminal proceedings. Therefore the case needs to meet the evidential test before an Administrative Caution can be offered.

6. PROSECUTION OR SANCTION NOT APPROPRIATE

6.1 It is recognised that not every case investigated by the Benefit Fraud Team will meet the guidelines or criteria for prosecution or alternative sanction as detailed in this policy.

6.2 For example prosecution or sanction will not be appropriate in cases where:

- There is insufficient evidence to prove beyond reasonable doubt an offence has been committed.
- There is insufficient evidence of fraudulent intent.
- There has been failure or delay in the investigation or administration of the case.
- The amount of the recoverable fraudulent overpayment of benefit is negligible.

This list is not exhaustive; there may be other circumstances where prosecution or an alternative sanction is considered inappropriate.

7. RECOVERY OF OVERPAYMENTS

- 7.1 In all cases where evidence is established of an incorrect benefit award it will be passed to a Housing Benefit and/or Council Tax Benefit decision maker for any reassessment of the award to be made and any resulting recoverable overpayment calculated.
- 7.2 In addition a claimant will either be interviewed or issued a warning letter to advise them of the requirements and legal obligations of claiming benefit and that failure to meet them is a criminal offence that could result in action being taken against them, including consideration of prosecution or sanction, in addition to recovery of the overpayment.
- 7.3 Regardless of whether or not any prosecution or sanction action is taken all recoverable fraudulent overpayments will be pursued using all appropriate methods.

8. WORKING IN PARTNERSHIP

- 8.1 Many cases involve Housing Benefit, Council Tax Benefit and Department for Work and Pensions administered benefits, particularly Income Support and Job Seekers' Allowance.
- 8.2 The Moray Council is committed to working with the Department for Work and Pensions, Fraud Investigation Service with regards to joint investigations to ensure a consistent and fair application of sanctions.
- 8.3 In cases involving joint working the combined total loss of public funds of all benefits involved will be instrumental in determining whether prosecution or an alternative sanction is appropriate.

9. PUBLICITY OF CONVICTIONS

- 9.1 A successful prosecution for benefit fraud may act as a deterrent to others. A press release may be issued if it will generate positive publicity and promote the willingness of the Council to prosecute and it is considered the case has not been adequately reported through normal press coverage.

10. MONITORING THE EFFECTIVENESS OF THIS POLICY

- 10.1 The policy will be reviewed and appropriate changes made where legislation and working practices make it necessary and based on the results of cases. In particular, financial guidelines referred to in this policy will be reviewed annually and may be revised with the approval of the Corporate Director (Corporate Services).
- 10.2 Other amendments as a consequence of legislative change or for other material reasons shall be referred to the Policy and Resources Committee for consideration.

LOSS OF BENEFIT PROVISIONS
(ONE and TWO STRIKE SANCTIONS)

1. BACKGROUND

Since 1999, Administrative Penalties and Administrative Cautions have been offered to claimants for lower level benefit fraud offences, with criminal prosecution pursued in more serious cases. Additionally, for repeat offenders, a 'Two Strikes' sanction, introduced in April 2002, imposes a fixed 13 week loss/reduction of benefit where a claimant, partner or family member is convicted of benefit fraud in two separate proceedings within a five year period.

From 1 April 2010 the Department for Work and Pensions introduced a new sanction to reduce or withdraw entitlement to benefit for four weeks after a first benefit fraud offence, known as a 'One Strike'. Section 24 and schedule 4 of the Welfare Reform Act 2009 amended the Social Security Fraud Act 2001 to include the 'One Strike' sanction.

This new 'One Strike' sanction was introduced to make the benefit system more active and tougher on those who commit benefit fraud and to deter more people from committing benefit fraud in the first place. The 'One Strike' sanction increases the deterrent effect of the existing benefit's sanctions regime by extending the loss of the right to continuing benefit provision to those who commit a first benefit offence which results in a conviction, an Administrative Penalty or Administrative Caution.

2. LOSS OF BENEFIT PROVISIONS

First Benefit Fraud Offence

A 'One Strike' sanction of four weeks will apply if a claimant, their partner or a family member, is entitled to a sanctionable benefit at any time within the disqualification period, and

- is convicted of one or more benefit fraud offences, or
- agrees to pay an Administrative Penalty, or
- accepts an Administrative caution, and
- the offence was wholly committed on or after 1 April 2010

Second Benefit Fraud Offence

A 'Two Strike' sanction of 13 weeks will apply if a claimant, their partner or a family member is convicted of a second benefit fraud offence in two separate proceedings and the second or subsequent offence was committed

- within three years of a previous conviction (where the 2nd offence is committed before 1 April 2008), or
- within five years of a previous conviction (where the 2nd offence is committed on or after 1 April 2008) and
- both the offences and convictions occurred on or after 1 April 2002.

3. SANCTIONABLE BENEFITS

The loss of benefits sanctions apply to all sanctionable benefits when entitlement exists for any period during the determined disqualification period.

For Local Authorities this only applies to 'standard' Housing Benefit and/or Council Tax Benefit.

Housing Benefit and/or Council Tax Benefit in payment as a result of entitlement to Income Support, Income Based Jobseekers Allowance, Income Related Employment and Support Allowance or Pension Credit will not be sanctioned.

4. DETERMINING THAT A LOSS OF BENEFIT SANCTION APPLIES

Determining that a loss of benefit sanction applies and calculating the disqualification period, including those against standard Housing Benefit and/or Council Tax Benefit, is the responsibility of the Department for Work and Pensions Fraud Investigation Service.

Local Authorities are responsible for applying the benefit sanction to Housing Benefit and/or Council Tax Benefit claims.

5. IMPACT OF A LOSS OF BENEFIT SANCTION ON STANDARD HOUSING AND/OR COUNCIL TAX BENEFIT

A Loss of Benefit sanction is equivalent to 40% of the single person's personal allowance or 20% in cases of serious illness or pregnancy.

A claimant will remain entitled to Housing Benefit and/or Council Tax Benefit during the sanction period, provided they continue to meet the qualifying conditions for benefit and report any changes of circumstances.

At the end of the sanction period Housing Benefit and/or Council Tax Benefit will either

- be reassessed and put back into payment, or
- if deemed appropriate, a review form issued to confirm the claimants circumstances haven't changed during the sanction period.