

# Sanction Policy

## 1. Sanction Policy of Cherwell District Council

- 1.1 This document sets out the policy of Cherwell District Council towards sanctions, including criminal prosecutions, for offences relating to benefit fraud.
- 1.2 Housing Benefit and Council Tax Benefit are administered by local authorities as part of their statutory local government functions. The sanctions policy in each local authority is therefore a matter for its Members. However, to ensure a consistent approach, the local authority sanctions policy would broadly follow the approach of the Department for Work & Pensions.

## 2. General Principles

- 2.1 Cherwell District Council is committed to the prevention, detection, investigation and, where appropriate, prosecution of fraudulent benefit claims.
- 2.2 The aim is to prevent criminal offences occurring by making it clear to our customers that they have a responsibility to provide timely and accurate information about their claims; to punish wrongdoing; and to deter offending.
- 2.3 This policy supports the Council's commitment to reduce losses from fraud across the full range of welfare benefits and to protect public money.
- 2.4 Each potential fraud referral is risk assessed for its suitability for investigation. This assessment will result either in cases being subjected to criminal investigation, rejected, or referred to a more appropriate team for further investigation.
- 2.5 Investigations usually comprise a robust interview with the customer, where they are questioned about any allegations. Further action depends upon the outcome of the interview but they will be reminded of their responsibilities and may be advised about future conduct and required to rectify or withdraw their claim.
- 2.6 The evidence obtained in each case that is subject to criminal investigation is considered on its own merits, having regard to all of the facts in deciding the most appropriate sanction.

### **3. Organisation**

3.1 Criminal investigations are undertaken by the Council's investigation team in accordance with:

- the Police and Criminal Evidence Act 1984 (PACE) and its codes of practice
- the Criminal Procedures and Investigations Act 1996 (CPIA) and its codes of practice
- all other relevant legislative and common-law rules
- Council policy
- advice from the Council's legal department.

3.2 Investigation Officers receive Professionalism in Security (PINS) training which is accredited by Portsmouth University. Additional guidance is provided by the Fraud Procedures and Instructions Manual to ensure that:

- investigations are conducted in a legal and professional manner
- policy and legislation is correctly applied, and
- approved working methods are applied.

3.3 The Council's Legal team decides whether cases submitted by Benefits Investigation are suitable for prosecution and then prosecute the case. Most cases are heard by a Magistrates Court, although the more serious cases are usually referred to Crown Court.

3.4 The Council's Legal team provides advice and guidance to investigators throughout the investigative and prosecuting process. They do not conduct any part of the investigation but advise on the investigator's obligations, evidential requirements and any appropriate charges. In deciding which cases are suitable for prosecution, the Council's Legal team applies the evidential and public interest tests set out in the Code for Crown Prosecutors.

3.5 The Council works closely with the DWP operating under similar prosecution practices. The Welfare Reform Act (WRA) 2007 provided local authorities with powers to investigate and prosecute offences against certain national social security benefits alongside Housing Benefit and Council Tax Benefit (HB/CTB). It also provided access to such information as is necessary to carry out these activities.

- 3.6 The DWP's Prosecution Division will prosecute benefit fraud cases involving joint benefits for those local authorities that have signed a Service Level Agreement with it.

#### **4. Sanction Policy**

- 4.1 Where an offence has been committed the Council can consider offering a caution, an administrative penalty, or instigating a prosecution. The choice will depend on the factors below.
- 4.2 An overriding factor for the Investigation team to consider is whether it would be cost effective to conduct an investigation. Therefore, 2 caveats are placed on an investigation when the customer has no fraudulent history. Firstly, that the overpayment/potential overpayment exceeds £150.00. This is because small overpayments are regarded as 'de minimis.' And/or secondly, that the length of the overpayment exceeds 4 weeks.
- 4.3 However, in cases which involve aggravating factors, these 2 caveats are discretionary. In addition, the Criminal Attempts Act 1981 will be used where appropriate.

#### **4.2 Cautions:**

- 4.2.1 A caution is an administrative sanction that Councils in England and Wales are able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one the Council could take to court if the caution was refused.
- 4.2.2 Cautions are usually aimed at the less serious benefit frauds and those where the overpayment is under £2,000. It can be used in those cases where the deterrent effect is considered a sufficient and suitable alternative to prosecution or an administrative penalty.
- 4.2.3 The offender must make a clear and reliable admission of the offence verbally or in writing and there must be a realistic prospect of conviction if the offender were to be prosecuted in line with the full Code Test of the Code for Crown Prosecutors.
- 4.2.4 If the customer is subsequently prosecuted for another benefit offence within 6 years of the original offence, then the caution may be cited in court.

#### **4.3 Administrative penalties:**

- 4.3.1 An administrative penalty is an offer to the customer to agree to pay a financial penalty where the customer has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is currently stipulated at 30 per cent of the amount of the gross overpayment.

4.3.2 It is current Council policy to offer these penalties where the case is deemed to be not so serious and the offer of an administrative penalty is considered a suitable alternative to prosecution, and where the gross overpayment is under £2,000. Unlike cautions no admission of guilt is required from the customer before offering an administrative penalty, although there is a statutory requirement for investigators to ensure that there are grounds for instituting criminal proceedings for an offence relating to the overpayment.

#### **4.4 Prosecutions :**

4.4.1 If there is sufficient evidence the Investigation team will refer the case to the Council's Legal team for consideration of criminal prosecution where one or more of the following criteria are met:

- The gross adjudicated overpayment (including any other externally administered benefits) is £2,000 or over
- False identities or other personal details have been used
- False or forged documents have been used
- Official documents have been altered or falsified
- The person concerned occupied a position of trust
- The person concerned assisted or encouraged others to commit offences
- There is evidence of premeditation or organised fraud
- The customer had previously been convicted of benefit fraud
- The amount of the overpayment is under £2,000 and the offer of an administrative penalty or caution is not accepted.

4.4.2 In all cases, including those which do not fall within any of the above criteria, the Council's Legal team retains discretion as to whether criminal proceedings are started.

#### **5. Loss of Benefit Provision**

5.1 The Loss of Benefit Provision is designed to be a deterrent against the continued abuse of the benefit system by applying a benefit sanction

- against those convicted of one or more benefit offences within a prescribed period in each of two separate sets of criminal proceedings.
- 5.2 This provision allows the Council to apply a sanction in the form of a fixed 13 week benefit disqualification period where a person is convicted of benefit fraud in two separate proceedings, which have been committed within a five year period. Benefits can be withdrawn, or reduced by 20 or 40 percent for the 13 week period.

## **6. Recovery of Debt**

- 6.1 Where an overpayment arising from fraud is identified the Council takes steps to recover the resultant debt, including taking action in the civil courts if necessary, in addition to any sanction it may impose in respect of that fraud.

*Jeff Brawley – March 2009*