
Aberdeen City Council

Benefit Fraud Investigation Team

Sanctions
Policy

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1. Introduction

This policy comes into effect from 1 April 2009 and will be reviewed annually in the Benefit Fraud Business Plan.

As outlined in the Aberdeen City Council's antifraud policy statement, the City Council is committed to protecting the public funds it administers through its actions in respect of the investigation of suspected fraudulent claims for Housing Benefits and/or Council Tax Benefits.

This policy statement is intended to provide the agreed framework for City Council officers involved in the detection, investigation and prosecution of Housing Benefit and Council Tax fraud.

At the conclusion of all investigations by members of the City Council's Fraud Investigation Team, where it is considered that appropriate evidence exists to sustain a prosecution the Authority will consider which of the following actions are appropriate:

Local Authority Caution

Administrative Penalty

Criminal Prosecution

However, every case will be considered on its own merits and action will be considered as appropriate. It is noted that some cases will not fall into any category.

This policy is based upon recognised practices within the Scottish criminal justice system and Department for Work & Pensions good practice guides. The policy will be reviewed in the light of any legislative changes; trends or other factors that impact on the effectiveness of the policy

2. Fraud Manager & Evidential Test

In considering whether the evidential test has been met the Fraud Manager must decide:

- i. Whether there is clear evidence of an offence
- ii. Whether it is likely evidence will be excluded by the court, given the rules of evidence.
- iii. Whether there has been any remiss administration or fault on the part of the Council or the DWP (including Job Centre Plus) that has contributed to the processing of the fraudulent claim or subsequent benefit
- iv. Whether there is evidence that might support or detract from the reliability of a confession.
- v. Whether a court is likely to find the explanation given by the defendant is credible in the light of all the evidence and whether the evidence supports an innocent explanation.
- vi. Whether a witness' background may weaken the prosecution case. For example if a witness has a motive which may affect their attitude to the case.
- vii. Whether there are concerns over the accuracy or credibility of a witness and is there further evidence which the investigator should seek which may support or detract from the account of the witness
- viii. Whether all reasonable lines of enquiry have been pursued
- ix. Whether there has been a delay a court is likely to find unacceptable
- x. Whether there are any other relevant considerations from the Code for Crown Prosecutors or relevant circumstance of the particular case.

3. Public Interest

In deciding whether 'public interest' is best served by prosecuting an offender the following factors should be considered:

- i. obtained significant fraudulent payments, or for a prolonged period
- ii. the fraud was planned or systematic,
- iii. evidence that they had previously claimed Benefits fraudulently
- iv. no personal circumstances likely to be offered in mitigation
- v. abused their position of trust within the Authority

The following paragraphs go into greater detail regarding the factors which must be considered, to ensure consistent and equitable treatment of those accused of fraud.

3. 1 Financial Limits

The amount of money obtained and the duration of the offence.

Careful consideration would have to be given to commencing a prosecution where the amount of the fraudulent activity has not resulted in 'significant financial gain' to the claimant, i.e. the amount of the fraudulent overpayment is less than the cost of proceedings.

Where there is no significant financial gain a prosecution could still be considered if it is felt that the fraud was a deliberate attempt to gain money by deception (if, for example, the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution would be warranted.

An initial financial guideline figure of £3,500 has been established as the minimum amount at which the Authority would refer a case for prosecution,

unless there were aggravating factors such as previous history of fraud or where the offences were planned.

Appendix A gives details of sanctions available depending on the overpayment amount.

3.2 Physical / Mental Factors

The Suspects Physical and Mental Condition, including age.

Consideration must be given to the mental and physical condition (including age) when deciding whether to prosecute. The officer should consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration should be given where there is any evidence to suggest that the claimant or partner or a third party (e.g. a child) would be severely affected by our action. Obvious examples include acute medical conditions, mental health, and age, or any case where it appears that health would be affected detrimentally.

It is essential when considering the above issues that an appropriate impartial opinion as to the claimant's physical and/or mental condition is obtained.

3.3 Voluntary Disclosure

It may not be appropriate to prosecute those whose disclosure of their own free will has led to the identification of a fraud of which the Authority was unaware. Admissions made after enquiries had commenced do not constitute voluntary disclosure.

3.4 Previous Incidence of Fraud

Any evidence of previous benefits-related fraudulent activity should form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

3.5 Social Factors

If it is considered that the claimant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these should be fully evaluated. The fact that an individual was in debt or has limited assets would not in itself meet this requirement unless they were exceptional.

3.6 Adequacy of Evidence

Substantive evidence is essential to secure any conviction. Proceedings should not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of benefit regulations and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

3.7 Failure in Investigation

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Scottish Common Law, Criminal Procedures (Scotland) Act 1995 and other relevant legislation. Particular consideration should also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

3.8 Failure in Benefit Administration

Full account must be taken of remiss administration or fault on the part of the Authority or the DWP that has contributed to the processing of the fraudulent claim and subsequent award of benefit.

4. Post-investigation Considerations

Once the Investigating Officer has completed the investigation and where there has been an overpayment of benefit the case will be passed to the Fraud Manager who will consider each case on its merits applying the criteria in this policy and in the Code for Crown Prosecutors.

The Fraud Manager will decide whether there is enough evidence to provide a realistic prospect of securing a conviction and if so, whether it is in the public interest to offer a caution, offer an administrative penalty or recommend prosecution. In cases where the Fraud Manager has decided that no further action, other than to recover any overpayment, is to be taken the benefit recipient will be notified in writing and the case closed.

5. Authorisation of Sanction including Prosecution

Where the Fraud Manager has decided that there is sufficient evidence to undertake additional action the case will be passed to the Council's sanction panel. The panel will normally meet and make a decision, taking full regard to this policy, within 6 weeks of the interview under caution taking place.

Following this decision the benefit recipient will be notified, in writing what action, if any, the Council will take. *There is no right of appeal against this decision.*

The sanctions panel consists of the Fraud Manager and a member of the senior management team,

6. Publicity

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, nature of the offence, public interest and deterrent value of publicising a particular case. For example if the court imposes an unusually lenient sentence it may not be in the public interest to publicise the case as it sends out the wrong message.

7. Tackling Benefit Fraud – “Two Strike” Loss of Benefit Provision

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.

This provision allows Aberdeen City 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.

7.1 Tackling Benefit Fraud – “One Strike” Loss of Benefit Provision

The Welfare Reform Act 2009 amended the Social Security Fraud Act 2001 and introduced a new “one-strike” provision.

From 1 April 2010 Aberdeen City Council may apply a four-week benefit reduction or disqualification in cases where an administrative caution, or administrative penalty has been accepted. Benefit recipients who continue to claim, or reclaim Housing or Council Tax benefit, within the disqualification period, may be subject to the benefit either being withdrawn or reduced for four weeks. The decision to apply this reduction or disqualification will be taken by the DWP.

8. Recovery of Debt

Where an overpayment arisen from a fraud investigation is identified, Aberdeen City Council will take steps to recover this debt, including referring appropriate case to the Sherriff Officers. The Council may also claw back money from benefits administered by the Department for Work and Pensions.

APPENDIX A

As recognised by the Benefit Fraud Inspectorate it may be necessary, on occasion, to vary the level at which sanctions or prosecution are applied in the light of particular circumstances or, for operational reasons. The financial amounts are to be treated as guidelines as it may, at times, be necessary to offer a sanction out with the financial criteria set below. Factors taken into account include current workload, length of time to prepare case for submission and guidance from the Procurator Fiscals office.

Local Authority Caution

Where the overpayment is under £1000, and

- the claimant has never previously offended, and
- the offence(s) were not planned or systematic, and
- there was no other person involved in the fraud, and
- the offender has admitted the offence,

Administrative Penalty

Where the overpayment is under £3,500, and

- it was a first offence, and
- the offence(s) were not planned or systematic, and
- there was no other person involved in the fraud, and
- the person is not in genuine financial hardship, or the person is a single parent, or a pensioner, or is in need of Social Services assistance,

Criminal Prosecution

For all other cases where the overpayment is over £3,500, or

- it was not a first offence, or
- the offence(s) were planned or systematic, or
- there were other persons involved in the fraud, or
- Employees or Members are involved in the commission of the offence(s)