



Angus Council

Benefit Fraud

Prosecution and Sanction Policy

Introduction

It is recognised that the decision to prosecute or impose a sanction is a serious matter for all of the parties involved and as such each case will be examined on its own merits in a consistent and impartial basis within the framework of this policy document.

Cases under this policy will be referred by the Chief Internal Auditor to the Head of Finance.

The decision to offer a sanction in lieu of prosecution will be taken by the Head of Finance. In the event of the offer of a sanction being refused by the claimant, or where the circumstances of the case preclude the offer of a sanction, the decision to prosecute will be taken by the Head of Finance.

A record of all cases referred to the Head of Finance will be maintained indicating:

- (a) The reference number of the case.
- (b) The basis of the referral.
- (c) The grounds for proceeding, or otherwise, with the prosecution.
- (d) The date of the decision at (c) above.

Definition

For the purpose of this policy "Benefit" is defined as Housing Benefit, Council Tax Benefit, Income Support, Jobseekers Allowance, Incapacity Benefit, State Pension Credit and Employment & Support Allowance.

Basic Criteria

For a case to be considered under this policy it must in the first instance fall into **one or more** of the categories set out in this section and have sufficient evidence to warrant such action:

- (a) The sum of money defrauded is significant - £250 or more.
- (b) The period of time over which the fraud has been perpetrated is protracted.
- (c) The claimant has previously made a fraudulent claim for Benefit.

- (d) The case has arisen from a collusive action between two or more persons.
- (e) The person is an Angus Council employee.
- (f) The circumstances of the case are such that had intervention by fraud officers not taken place one or more of the above criteria may have arisen.
- (g) Prosecution or sanction action would be in the public interest.
- (h) Prosecution or sanction action would be in the interest of Angus Council.

Public or Angus Council Interest

In determining what constitutes the best interests of both the public and Angus Council the factors noted below should be taken into consideration:

- (a) The age of the person. However, in cases which are considered to be of a serious nature e.g where a substantial sum of benefit or collusive action is involved, the age of the claimant will not in itself create an automatic bar to prosecution.
- (b) The physical and /or mental health of the person.
- (c) Such other personal circumstances of the individual which would militate against prosecution or sanction.
- (d) Previous conduct of the individual when dealing with Angus Council including tenancy record, financial transactions and co-operation given in the course of the investigation.
- (e) Failure in administration procedures of Angus Council or the Department for Work and Pensions, which have permitted a fraud to proceed, which could not have succeeded otherwise.
- (f) The period of avoidable delay in bringing the circumstances to the attention of the relevant authorities.

Prosecution Procedure

In cases where a decision to prosecute is made based on the above criteria, the Head of Finance will establish the appropriate mechanism to take this forward ie referral to Police or referral to the Procurator Fiscal. In either instance the Head of Finance or his nominated representative will act as complainer on behalf of the Council.

Sanction as an Alternative to Prosecution

The Council may offer a sanction as an alternative to prosecution but will only do so where:

- (a) There is sufficient evidence to consider prosecution should the offer of the sanction be refused by the claimant.
- (b) The fraudulent overpayment does not exceed £2,000. At the discretion of the Head of Finance, in exceptional circumstances this limit may be raised.

- (c) The claimant has no previous history of convictions or sanctions for benefit fraud.

When a decision is taken to make such an offer the procedures to be followed will be those of the best practice guidance as may be issued by the Department for Work and Pensions and accepted by the Head of Finance.

Administrative Penalty

In terms of Section 15 of the Social Security Administration (Fraud) Act 1997 the Council is empowered to offer the claimant a penalty of 30% of the fraudulent overpayment. The decision rests with the claimant whether or not to accept the offer. Should the claimant accept the offer he / she have a period of 28 days to withdraw from the agreement.

Administrative Caution

An Administrative Caution is a warning given in certain circumstances where criminal proceedings are not the first option. An Administrative Caution may only be used where the claimant has admitted the offence during an interview under caution. The Administrative Caution is not covered by legislation and cannot be cited in court, however it may be referred to in any submission made to the Procurator Fiscal. The decision rests with the claimant whether or not to accept the offer.