



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 Fraud Co-ordinator to the Service Manager, Governance, and the Head of Corporate Improvement & Finance.

The decision to offer a sanction in lieu of prosecution will be taken jointly by the Service Manager, Governance, and the Head of Corporate Improvement & 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 Service Manager, Governance, and the the Head of Corporate Improvement & Finance.

A record of all cases referred 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 , Income Support, Jobseekers Allowance, Incapacity Benefit, 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 - £500 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 Benefit Fraud Team will refer the case to the Procurator Fiscal via the Specialist Reporting Agency website. The Fraud Co-ordinator will act as the 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 Corporate Improvement & 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 issued by the Department for Work and Pensions.

Administrative Penalty

In terms of Section 15 of the Social Security Administration (Fraud) Act 1992 the Council is empowered to offer the claimant a penalty. Where the offence is committed wholly on or after 8 May 2012 the penalty is a minimum of £350 or 50% of the total overpayment, up to a maximum of £2000. Should the claimant accept the offer he/she has a period of 14 days to withdraw from the agreement. Where the offence commenced prior to 8 May 2012 the penalty is calculated at 30% of the fraudulent overpayment. Should the claimant accept the offer he/she has a period of 28 days to withdraw from the agreement.

The decision rests with the claimant whether or not to accept the offer.

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.