

GEDLING BOROUGH COUNCIL

HOUSING BENEFIT/COUNCIL TAX BENEFIT PROSECUTION POLICY

Gedling Borough Council is committed to protecting public funds by effectively investigating allegations of Benefit Fraud. In addition to the recovery of any overpayment of benefit claimed incorrectly, the Authority may take further action against an individual by means of a Caution, an Administrative Penalty or in more serious cases, instigate Court proceedings.

Where the Authority has enough evidence to sustain a prosecution, that being that it believes that it has established beyond reasonable doubt that an offence has been committed, they will also consider whether it is in the public interest to prosecute the individual.

Public interest factors in favour of a prosecution include:-

- A conviction is likely to result in a significant sentence
- The amount of benefit incorrectly claimed
- The period of the fraudulent act
- The offence was premeditated
- The individual was in a position of trust
- The investigation involves collusion (landlord / employers)
- The individual has a proven history of fraud/dishonesty

Public interest factors against prosecution include:-

- Individual is seriously or terminally ill
- Individual is suffering from significant mental health problems
- Individual is a juvenile or over 75 years of age
- Individual has social factors that may be relevant
- The offence is minor in that the overpayment is less than £100 and the offence occurred for less than one month.

TYPES OF SANCTION

Caution: The person interviewed must have admitted the offence. Any overpayments are recovered. They are invited into the office and are asked whether they wish to accept a caution as an alternative to proceedings being taken against them. It is explained that if accepted, no further action will be taken at this time however it is held on records for 5 years. The existence of a previous Caution may influence the decision on whether to prosecute should the individual offend again. The Caution can be cited for sentencing purposes should they be found guilty of a future benefit offence for which they are prosecuted. The Caution is **not** a criminal conviction.

Administrative penalty: The person interviewed does not have to admit the offence at the Interview Under Caution. They are invited into the office and given the opportunity to state whether they wish to accept an Administrative Penalty instead of criminal proceedings being instigated against them. The Administrative Penalty is calculated at 30% of the overpayment. They must repay the overpayment and the 30% figure. The Administrative Penalty cannot be cited in Court at a later date however, it is held on record for 5 years and it may influence the decision to prosecute should the individual offend again.

Prosecution: The authority must have evidence to prove that “beyond reasonable doubt” an offence has been committed. Before instigating proceedings, the Council will take into account the public interest factors as mentioned above.

When to offer a Caution or an Administrative Penalty:

- If the overpayment is less than £2,000 and there are no previous offences held on record within the last 5 years.
- If a person has attempted to fraudulently obtain benefit but no benefit has been paid.
- If there are previous allegations of fraud, whether proven or not, but sanction action was not taken at that time.
- If the overpayment is over £2,000 **but** due to public interest factors or the individual's circumstances, a prosecution is not appropriate at that time. However, the Authority may wish to offer a sanction to highlight the seriousness of the offence to the individual and advise them they may be prosecuted should they commit a further offence within the next 5 years.
- Employers may be offered an Administrative Penalty if they have refused to provide information, obstructed an officer or collusively employed individuals. In these cases it is advised to seek solicitor's advice as to whether prosecution may be a more suitable course of action. The Administrative Penalty is calculated at £1,000 per employee for whom they have failed to provide information, have given false information or they have collusively employed.

When to consider prosecution:

- The overpayment is more than £2,000.
- The individual has previous Cautions, Administrative Penalties and prosecutions held and therefore Professional Standards Unit advise that we should consider proceedings.
- The individual has been offered a Caution or Administrative penalty but they have refused to accept it.
- The individual has been asked to attend the office on 2 occasions to discuss whether they wish to accept a Caution or Administrative Penalty but they have failed to attend and no contact has been made.
- The individual has been notified in writing on 4 occasions to attend the office for an Interview Under Caution but did not attend and failed to contact the Council to explain why.
- When an individual has obstructed or refused to provide information to an Authorised Officer appointed under section 110A of the Social Security Administration Act 1992.
- If the individual is a Local Authority employee or in a position of trust. This may include any staff employed by the Government.
- When it is recommended we prosecute the individual because the offence was highlighted on a National Fraud Initiative Data match. The overpayment may be less than £2,000 but the Authority may feel that the case is serious enough to warrant prosecution.

The above considerations are guidelines only and each case will be looked at individually on its merits. Discretion will be applied with regards to all people based on their individual circumstances and the test of public interest.

The Head of Finance will make the decision whether to take sanction action on cases that may fall outside the above criteria or on those cases where the Fraud Manager requires guidance as to what should be the appropriate course of action in a particular case.