

Fraud Prosecution Policy



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Fraud Prosecution Policy

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INTRODUCTION

1. Ensuring a Sustainable Gateshead is a key Corporate Priority set out in the Council's Corporate Plan. The Benefit Fraud Prosecution Policy will help to achieve this priority by ensuring the Council makes best use of resources to deliver value for money and long-term financial sustainability. The application of the Benefit Fraud Prosecution Policy will also contribute to the Corporate Priority for Building Stronger Communities by ensuring a cleaner, greener, safer Gateshead. In addition it will help the Council to meet the requirements set out in Section 5 of the Crime and Disorder Act 1998. The Benefit Fraud Prosecution Policy will operate alongside the Council's existing Anti-Fraud and Corruption Policy.

POLICY STATEMENT

2. The Council is committed to protecting public funds through the investigation of fraud. The Council policy on benefit fraud is to:
 - Prevent fraud
 - Detect it quickly
 - Investigate it efficiently
 - Prosecute offenders where appropriate
3. The Council will investigate all allegations of benefit fraud.
4. The Council will respect the rights of persons involved in any investigation of alleged benefit fraud in accordance with Human Rights legislation.
5. The Council will not discriminate (positively or negatively) against any claimant or group of claimants.
6. Each decision to take sanctions under this policy will be made on the merits and circumstances of the individual case and with regard to the Code for Crown Prosecutors.
7. The Strategic Director Finance and ICT will be responsible for the investigation of potential fraud and will ensure that the employees involved in such duties act in accordance with legal requirements. Where sufficient evidence of fraud is established the Strategic Director Finance and ICT is authorised to offer sanctions against offenders in line with agreed procedures or to consider prosecution.
8. The Strategic Director Finance and ICT who is also the Council's Money Laundering Reporting Officer is authorised to pass to the Police or Government Department as appropriate, serious cases of benefit fraud with a view to prosecution.
9. The Strategic Director Legal and Corporate Services in consultation with the Strategic Director Finance and ICT will be responsible for authorising all benefit fraud prosecutions undertaken by the Council. The conduct of such actions, including any decisions as to the sufficiency of the evidence and the public interest in continuing or otherwise a particular prosecution will be the responsibility of the Strategic Director Legal and Corporate Services.

10. The Council is committed to prosecute persons employed in public service who are in a position of trust and who abuse that trust by committing benefit fraud. Disciplinary action will be taken in all cases where employees of the Council make fraudulent benefit claims.
11. The aim of prosecution is to deter benefit fraud; the Council will seek to maximise the publicity of successful prosecutions.
12. In implementing this policy the Council will act in accordance with detailed supporting procedures and guidelines.

Procedures & Guidelines

Procedures and Guidelines

1. INTRODUCTION

1.1 These procedures and guidelines support and augment the Council's Anti - Fraud and Corruption Policy and its Benefit Fraud Prosecution Policy. They identify Gateshead Council's Benefit counter-fraud strategy and outline the procedures to be followed in relation to the reporting and investigation of benefits fraud and corruption. The procedures and guidelines relate only to the investigation of Housing Benefit and Council Tax Benefit.

2. BACKGROUND

2.1 The Council has in place a range of procedures to prevent and detect fraud and abuse of the Housing Benefit and Council Tax Benefit schemes. The introduction of the Social Security Administration (Fraud) Act in 1997 introduced new criminal offences specifically to assist Local Authorities to prosecute in cases of benefit fraud. The Act also introduced a system of administrative penalties (30% of the amount of benefit fraudulently obtained) which can be used as an alternative sanction where prosecution is not the preferred option at the outset. Local Authorities will retain penalty payments in addition to recovery of the overpaid benefit. Formal cautions may also be offered as an alternative to prosecution.

2.2 Local Authorities have statutory powers to prosecute in cases of Housing Benefit and Council Tax Benefit Fraud. All prosecutions will be authorised and conducted by employees of Legal and Corporate Services but it may be appropriate in some instances to refer cases to other agencies, e.g.

- Cases involving linked Social Security fraud will be discussed with the Department for Work and Pensions (DWP)
- Cases involving multiple claims to the DWP will be passed to the Multiple Claims team of the DWP Counter Fraud Investigations Division (Operations).
- Some cases, for example where there is evidence of involvement in other criminal activity, such as money laundering will be passed to the Police for further action

2.3 Prosecution of offenders is an important deterrent. It is clearly not in the public interest to allow carefully planned, high value and organised fraud (for example "money laundering") to go unpunished by the courts.

Similarly, the failure to prosecute other less serious but common cases of benefit fraud may appear to condone the action. However, prosecution is not appropriate in all cases and in some, the offer of an administrative penalty or formal caution will be more suitable. In deciding which route is appropriate, Council employees will have regard, amongst other matters, to the provisions of the Code for Crown Prosecutors.

2.4 Guidelines have been prepared to determine those cases that are suitable for prosecution, administrative penalty or formal caution.

3. MEASURES TO DETER, DETECT, INVESTIGATE AND PROSECUTE FRAUD

3.1 The Council operates a range of measures to ensure security within the administration of Housing Benefit and Council Tax Benefit. These cover the complete service including systems, employees, claims and documentation. The following list is not exhaustive but refers to the major areas the Council is actively involved in:

- Security guidance
- Royal Mail “do-not-redirect” service
- Benefit Investigation team
- Joint Investigations with DWP
- Proactive investigations
- Reactive investigations
- Data-matching:
 - Housing Benefit Matching Service
 - National Fraud Initiative
- Internal audit scrutiny
- Audit Commission scrutiny
- Corporate Performance Management Framework
- DWP Housing Benefit Review team
- Quality control internal checking
- System access to DWP records
- Land Registry checks
- Service Level Agreements with:
 - DWP/Employment Services
 - Sector Fraud
 - The Rent Service
 - Joint Operations Board
- Computer Security Policy
- Register of employee interests
- Benefit Fraud Prosecution policy

3.2 The Council’s Fraud Investigations team include an appropriate number of employees that are Accredited Counter Fraud Officers holding Authorised Officer powers of inspection under the Social Security Administration Act 1992.

3.3 The Fraud caseload is held on the Fraud Investigation Management System (FIMS). This ensures that documentation is produced as appropriate and that audit trails are available for each investigation. It is also used to provide management information for a wide range of purposes including reports for employees, managers and members and statistical returns to the DWP.

3.4 The administration of all systems including controls, parameter setting, granting of access and maintaining security levels is maintained by managers within the Fraud Investigation Team.

3.5 All investigative work including intelligence gathering, procurement of evidence, surveillance and interviewing will be carried out in accordance with relevant legislation such as The Criminal Procedures and Investigation Act 1996 (CPIA), the Police and Criminal Evidence Act 1984 (PACE) and Regulation of Investigatory Powers Act 2000 (RIPA). Council employees will also have regard to Benefits and Fraud regulations, Data Protection principles and Human Rights legislation and caselaw.

4. EMPLOYEE ROLES AND RESPONSIBILITIES

4.1 All Council employees have an inherent interest in preventing Benefit fraud. Apart from the professional and moral issues, fraudulent payments divert Government funding from more deserving targets and take up valuable employee resources.

4.2 The identification and recovery of fraudulent payments is less cost-effective than prevention. It is, however, an important deterrent to fraudulent activity and can result in a range of sanctions. Council employees from a number of groups and services are involved in recovery work including Community Based Services, Legal and Corporate Services and Financial Services. Other aspects of fraud impinge on front-line employees in Benefits, Revenues and Community Based Services and The Gateshead Housing Company.

4.3 All employees are expected to have regard to potential fraud and to act appropriately on suspicion or discovery. The Financial Services Training Section will provide Fraud awareness training sessions to appropriate Council employees and other stakeholders as deemed appropriate.

4.4 All Benefits employees (who have update access) are required to sign a declaration of interest statement identifying whether or not they have an interest in any rented accommodation or property for which Housing Benefit is paid. Measures are in place to ensure any employee with such an interest will be prevented from updating particular records. This will also be extended to other personnel who from time to time are given update access to the system (e.g. Internal Audit Service, Customer Services).

5. PROCEDURES FOR REPORTING ALLEGATIONS OF FRAUD

5.1 Reporting of incidents by employees

Reports by employees of suspected fraud or irregularities in claims for Housing Benefit and Council Tax Benefit (or any other benefit) are among the most productive and should be directed to the Fraud Investigations team within the Benefits Section. The most appropriate way to do this for members of the Revenues and Benefits Division will be to complete an appropriate document within the Council's E.D.M. system. Other employees can pass on information in person to any Benefits officer or by telephone to the Fraud team on extensions 3748, 3352, 3653 and 3651.

It is beneficial to know the name and location of the employee in case of the need for further information. The source of referral, will at all times be kept anonymous from the claimant.

5.2 Reporting of incidents by the public:

Members of the public can report their concerns directly and in confidence to any of the following:

- the Council Benefits Fraud Section - tel. (0191) 4333748
(0191) 4333653
(0191) 4333352
24 hour Confidential Voicemail Service on (0191) 4333657
- DWP Benefits Fraud hotline - tel. (0800) 854440
- the Council's website - fraudinvestigations@gateshead.gov.uk
- any DWP office
- in person at the Civic Centre
- in writing to: **Gateshead Council, Civic Centre, Regent Street, Gateshead NE8 1HH**

6. INVESTIGATING ALLEGATIONS OF FRAUD

- 6.1 The Strategic Director Finance and ICT is responsible for the investigation of Housing Benefit and Council Tax Benefit fraud. The Fraud investigation team is located in the Fraud Section of the Council's Benefits Section within Financial Services.
- 6.2 Employees involved in fraud investigation will act in accordance with legal requirements and the Criminal Procedures and Investigations Act 1996 (CPIA) governing the conduct of investigations, The Police and Criminal Evidence Act (PACE) 1984 and the Social Security Administration Act 1992. They will also comply with working procedures laid down by the Strategic Director Finance and ICT in conjunction with the Fraud Procedures and Instructions Manual produced by the DWP and located on the NAFN (National Anti Fraud Network) web site.
- 6.3 Where Housing Benefit and/or Council Tax Benefit fraud is established, reference will be made to agreed guidelines when considering cases for prosecution.
- 6.4 The decision to prosecute or to offer a penalty or a formal caution as an alternative to prosecution is the responsibility of the Strategic Director Finance and ICT and the Strategic Director Legal and Corporate Services.
- 6.5 In cases where investigation establishes serious fraud (with exception of money laundering), the Strategic Director Finance and ICT has the discretion to transfer responsibility for the investigation and prosecution process to the appropriate agency such as the Police.

7. GUIDELINES ON SANCTIONS

- 7.1 Guidelines on prosecutions, administrative penalties and sanctions have been developed taking into account guidance from the Policy branch of the DWP, the Crown Prosecution Service and other Best Practice.
- 7.2 Employees from the Benefits Section and Legal and Corporate Services will work closely with representatives from the Police and the DWP to ensure consistency and clarity.
- 7.3 Not all cases of fraud are suitable for prosecution. This guidance will assist in identifying the appropriate action in each case.

8. PROSECUTIONS

8.1 The following factors will be taken into account when considering prosecution:

8.2 Evidence

There should be sufficient evidence to obtain a conviction and this should be:

- Admissible
 - Substantial
 - Reliable
-
- There should be evidence of intent.
 - Evidence should be obtained in a way consistent with legal requirements such as the PACE Code of Conduct and CPIA 1996.

8.3 The offence

Cases where the fraud has been deliberate and over a long period of time or where there is clear dishonest intent will normally be considered for prosecution. The list below indicates some circumstances where prosecution would normally be the preferred option.

- The person has previously been convicted of, or cautioned for, Social Security or Local Authority fraud or a similar relevant offence
- The person fails to attend any interviews under caution
- The fraud was calculated and deliberate
- The case involves a collusive employer or landlord
- The person has abused a position of trust
- This list is not exhaustive and each case must be judged on its own merits balancing aggravating factors with any mitigation.

8.4 Voluntary Disclosure

A voluntary disclosure occurs where a person voluntarily reveals a fraud that was previously unsuspected. A disclosure is not voluntary if:

- It does not constitute a complete admission of the fraud
- Admission is only made because discovery of the fraud is likely
- The disclosure was precipitated by the issue of a review form etc.
- The person admits the fact when questioned

A prosecution would not normally be pursued in cases where full and voluntary disclosure is made, providing there is a willingness to prevent recurrence and to repay any amounts fraudulently claimed.

8.5 Mental or physical condition

The mental or physical condition of the person or their partner may mean that prosecution is not desirable in some cases. In particular, prosecution may not be appropriate if:

- The strain of criminal proceedings may lead to a considerable worsening of a pre-existing mental or psychiatric or physical illness
- A person suffers from hearing, speech or sight defects
- The person is elderly or infirm and the courts would be likely to be more sympathetic to the person than to the Council
- The person is pregnant and confinement is due within three months or she is suffering from the complications of pregnancy
- The person is someone with a recognised lack of capacity and they would have difficulty in the proper preparation and presentation of their case or the courts would be likely to be more sympathetic to the person than to the Council

8.6 Social factors

Social factors may make a prosecution undesirable, for example when:

- The person is driven to an offence by tragic domestic circumstances
- When there is the possibility of trauma to an innocent third party
- The person is young and immature and may appear to the Court as someone who could be dealt with effectively without proceedings. However, if the offence shows an adult degree of sophistication or the person has already been involved with the Police, proceedings may not necessarily be stopped.
- Other factors which will be assessed on the merits of the particular case.

8.7 Technical factors

Technical factors may prevent a case being forwarded for prosecution. This may apply where:

- The investigation is flawed, for example the investigation officer has behaved improperly or the correct procedures have not been followed.
- A failure in benefit administration has allowed the offence to take place or to have remained uncovered
- There has been an unjustifiable delay in bringing the case to a conclusion

9. ADMINISTRATIVE PENALTIES

9.1 An administrative penalty may be offered to a person as an alternative to prosecution and therefore is likely to be suitable for cases where prosecution is a possibility but not the preferred option. The following conditions must be satisfied where the offer of an administrative penalty is considered:

- An overpayment must exist which is recoverable and attributable to an act or omission on the part of the person. There must be grounds for instituting proceedings for an offence relating to the overpayment.
- The overpayment must relate to a period after 18 December 1997 (the date the legislation came into force)
- There must be grounds to institute criminal proceedings and the case should be suitable for prosecution
- The case for prosecution must not have been rejected on the grounds of:
 - Insufficient evidence
 - Physical or mental condition (claimant or partner)
 - Social reasons
 - Technical reasons

10. FORMAL CAUTIONS

10.1 A formal caution may be offered to a person as an alternative to prosecution and is therefore likely to be suitable for cases where prosecution is not the preferred option at the outset. The aims of cautioning are:

- To deal quickly and simply with less serious offenders
- To divert them from unnecessary appearance in the criminal courts
- To reduce the chances of their re-offending

10.2 The following conditions must be satisfied in the offer of a formal caution:

- There must be grounds to institute criminal proceedings and the case should be suitable for prosecution
- The case for prosecution should not have been rejected on the grounds of:
 - Insufficient evidence
 - Physical or mental condition (claimant/partner)
 - Social reasons
 - Technical reasons
- The offender must admit the offence
- The offender must be offered the opportunity to take legal advice before deciding whether to accept a caution.
- The offender must, if they so request, be given disclosure of the case against them.
- The offender must understand the significance of a caution and give informed consent to being cautioned.

10.3 A formal caution will normally be considered where the above factors are met, or in the case of attempted fraud, where no overpayment exists.

10.4 These sanctions may be applied in cases where prosecution would normally be considered, however other factors can be taken into account including the public interest test and social and economic factors.

10.5 None of the above will give absolute protection against prosecution, which may be justified by the seriousness of the offence.

11. OVERPAYMENTS

Every effort will be made to recover both overpayments of Housing Benefit & Council Tax Benefit and administrative penalties using all avenues of recovery available:

- Recovery of overpaid benefit will normally be undertaken in the following order:
 - From ongoing entitlement at the normal fraud recovery rate (unless evidence of severe hardship is provided)
 - From other benefits at the normal fraud rate (via Debt Management)
 - By separate individual arrangement direct with the Council
 - By external collection agency
 - Following further Legal proceedings and as directed by the courts

- Recovery of Administrative Penalties will normally be undertaken in the following order:
 - By individual arrangement direct with the Council
 - By external collection agency
 - Following further legal proceedings and as directed by the courts

- Recovery of Overpayments and penalties in respect of these cases will be monitored and appropriate action taken where the current recovery action is proving ineffective.

- All monitoring and action taken will be reported to the benefits manager and senior management on at least an annual basis.