

Orkney Islands Council

Housing Benefit - Fraud Prosecution Policy



1. Introduction

- 1.1 Housing Benefit can only be paid to claimants who are in law entitled to receive them. Fraud occurs when the facts are not presented to the Council and the Council is cased to process and award on the basis of the incorrect information. Fraud is a criminal offence. The Council have a responsibility to consider reporting such a case to the Procurator Fiscal for prosecution.

2. Consideration of available sanctions

- 2.1 A fraudulent claim for benefit is a criminal offence and the Council must consider the following range of options:
- 2.1.1 To investigate and gather evidence to ascertain if a criminal offence has occurred. As part of that process an Interview Under Caution can be undertaken to ascertain the applicant's position. Thereafter the quality and weight of the evidence gathered requires to be considered to ascertain if there is a sufficiency of evidence to prove this offence to the required standard to determine whether a fraud has been committed;
 - 2.1.2 If there is insufficient evidence, to take no further action as there is insufficient evidence to support criminal proceedings;
 - 2.1.3 Until 1 April 2013, if there is a sufficiency of evidence, consideration can be given to offer an Administrative Caution. Cautions cannot be offered on cases where the offence is committed wholly on or after 1 April 2013.
 - 2.1.4 If there is a sufficiency of evidence, consideration can be given to offer an Administrative Penalty as a direct alternative to prosecution. From 8 May 2012 this is a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000) - where the offence is committed prior to 8 May 2012 or spans 8 May 2012 the fixed penalty is calculated as 30% of the benefit overpayment arising from the offence;
 - 2.1.5 To consider prosecution;
 - 2.1.6 To report the case to the Procurator Fiscal.
- 2.2 An interview under caution can take place to ascertain the circumstances of an offence having occurred and to ascertain the applicant's position. The applicant is not obliged to answer questions during that interview. The following steps must be taken:

- 2.2.1 Prior to arranging an interview under caution this course of action must be approved by either the Rents and Benefits Officer or the Revenues Manager;
- 2.2.2 Following the interview under caution, the Revenues Manager must agree the most appropriate course of action and record the steps taken in the decision making process;
- 2.2.3 Some benefit fraud cases might be considered suitable only for prosecution, without offering any other alternative sanctions. In such instances it is considered, as a guide, that the total of the fraudulent overpayment should exceed £4,000.

3. Interview Under Caution

- 3.1 Benefits staff cannot issue a caution until they have successfully completed the appropriate Professionalism in Security (Pins) training provided by the Department for Work and Pensions.
- 3.2 An Interview Under Caution should be undertaken as part of the investigation into an allegation that an offence has been committed. Further to the interview a reassessment of the available evidence can be undertaken.
- 3.3 From September 2015 responsibility for Housing Benefit investigation will transfer from the Council to the Department for Work and Pension's (DWP) Single Fraud Investigation Service (SFIS) and the Council will not be responsible for undertaking Interviews Under Caution.

4. Administrative Caution

- 4.1 If there is a sufficiency of evidence, consideration can be given to offer an Administrative Caution. A fraud has to have been committed, and admitted to.
 - 4.1.1 Cautions cannot be offered on cases where the offence is committed wholly on or after 1 April 2013.

5. Administrative Penalties

- 5.1 As an alternative to prosecution the Council will consider the use of an Administrative Penalty in accordance with the Social Security Administration (Fraud) Act 1997.
- 5.2 From 8 May 2012 there is a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000) - where the offence is committed wholly on or after 8 May 2012.
 - 5.2.1 For offences that are committed prior to 8 May 2012 or span 08 May 2012 the fixed penalty is calculated as 30% of the of the benefit overpayment arising from the offence;

- 5.3 The penalty is collected in addition to the fraudulent overpayment and is retained by the Council.
- 5.4 The following requirements are mandatory if a penalty is to be offered:
 - 5.1.1 The benefit overpayment is determined to be recoverable;
 - 5.1.2 If the person agrees to pay the penalty, criminal proceedings cannot then be taken;
 - 5.1.3 The person may withdraw from the agreement within a period of 14 clear days beginning with the day the agreement was reached.
- 5.5 Before an Administrative Penalty is offered there must be sufficient evidence to support criminal proceedings.

6. Selection criteria for prosecution

- 6.1 When a case is being considered for prosecution it will be necessary to consider the following factors:
 - 6.1.1 The nature of the allegation;
 - 6.1.2 The weight and quality of the evidence;
 - 6.1.3 That sufficient credible, reliable and admissible evidence is available to demonstrate beyond reasonable doubt that a crime has been committed by the applicant;
 - 6.1.4 The period over which the crime has been committed and the value of it;
 - 6.1.5 That there is a clear record of the investigation; each stage of the investigation has been recorded; all supporting documents are available; and that there are no errors in procedure and the information has been obtained fairly;
 - 6.1.6 That the report of such a crime to the Procurator Fiscal and that prosecution is in the public interest.
- 6.2 From September 2015 responsibility for Housing Benefit investigation will transfer from the Council to the DWP SFIS and the Council will not be responsible for the reporting of cases to the Procurator Fiscal.

7. Loss of Benefit Penalties

- 7.1 To tackle fraud and error in the benefits and tax credits system the following Loss of Benefit (LOB) penalties apply from 1 April 2013:

- 7.1.1 Level 1 – offences which result in an Administrative Penalty or Caution will result in a LOB penalty of 4 weeks;
- 7.1.2 Level 2 – for a first benefit fraud conviction the LOB penalty duration is 13 weeks;
- 7.1.3 Level 3 – where there are two offences, within a set time period, with the latter resulting in a conviction the LOB penalty will be for a period of 26 weeks;
- 7.1.4 Level 4 – a 3 year LOB penalty where there are three offences within a set time period the latter resulting in a conviction;
- 7.1.5 Level 5 – an immediate 3 year LOB for serious organized and identity fraud cases

8. Publicity of convictions

- 8.1 Successful investigations of benefit fraud cases may act to deter others from committing benefit fraud.
- 8.2 Publicity should be used to raise awareness of benefit fraud and to demonstrate how the Council enforces its statutory obligations to investigate and penalise benefit fraud.
- 8.3 Information should also be made available on the Council's website to publicise the success of detection of benefit fraud and the sanctions imposed.

9. Monitoring and review of the policy

- 9.1 The effectiveness of the policy will be monitored at monthly meetings between the Verification/Fraud Officer and the Revenues Manager.
- 9.2 The policy will be reviewed and appropriate changes made where legislation and working practices make such amendments necessary.

Policy adopted by the Council on 23 June 2009 at the meeting of the Policy and Resources Committee.

Document reviewed and revised June 2015