

Sanctions Policy

Introduction

Darlington Borough Council is committed to the delivery of Housing Benefit and Council Tax Benefit to its residents. However the Council understands that some people will attempt to obtain benefit to which they are not entitled. The Council believes that it is important to discourage and prevent fraud in the first instance, and has implemented the guidance supplied by the Department for Work and Pensions (DWP) Security Guidance Manual. The Anti-fraud Strategy and Policy details how this will be implemented by the Benefit Section.

This policy document has taken into consideration the requirements of the following legislation: -

- Data Protection Act 1998
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Public Interest Disclosure Act 1998
- Freedom of Information Act 2000
- Social Security Administration Act 1992
- Social Security Administration (Fraud) Act 1997
- Child Support, Pensions and Social Security Act 2000
- Social Security Fraud Act 2001
- Local Government Act 2000
- Fraud Act 2006
- Welfare Reform Act 2007
- Social Security (Loss of Benefit) Regulations 2001
- Social Security (Loss of Benefit) Amendment Regulations 2010

Policy

The purpose of this policy is to assist the Council in making a decision on what action should be taken in the light of a proven criminal breach of the law. The council has a fiduciary duty in relation to public resources. The delegated powers of the Council to the Director of Services for People enables officers to identify fraudulent claims for Housing and Council Tax Benefit fraud and to instigate prosecutions in appropriate cases. The Borough Solicitor has a delegated power to institute criminal proceedings.

Every case will be decided based on the facts.

In considering whether a sanction is appropriate the Council must therefore consider the following: -

- Is there sufficient evidence for a realistic prospect of a conviction?

- Is a prosecution in the public interest?
- The deterrence value of publicity.

When a potential sanction case is identified by a Benefit Investigator, the case papers must be passed to the Investigations Team Leader for consideration. If the Investigations Team Leader considers the case to be suitable for a sanction, they will prepare a summary and make a recommendation. A panel made up of the following people will then consider the recommendations: -

The Head of Revenues and Benefits, the Benefits Manager, the Local Taxation Manager, the Local Taxation Team Leaders, the Quality and Systems Team Leader, the Front Line Services Team Leader, the Assessments Team Leader, and the Systems Administrator for Revenues and Benefits.

The decision to apply a sanction will be taken by the Head of Revenues and Benefits, or the Benefits Manager in their absence in consultation with the panel.

In making the decision as to whether to apply a sanction, the following criteria will be used -

- The amount of money obtained and the duration of the offence;
- The suspect's physical and mental condition;
- Voluntary disclosure;
- Any previous incidence of fraud;
- Social factors;
- Whether there is evidence that the defendant was a ringleader or an organiser of the offence;
- Whether there is evidence of the offence being premeditated;
- Whether there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct;
- Whether the offence, although not serious in itself, is widespread in the area where it was committed;
- Whether the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they can pay compensation)
- Failure in the investigation;
- Failure in benefit administration, including delay
- Whether the defendant holds a position of trust or responsibility within the community such as a magistrate, police officer etc.
- Whether the defendant had a higher understanding of the benefits system, such as someone who works or has worked in Housing or Council Tax benefits for this or any other council, or any related department such as Audit, Housing or Council Tax Registration.
- Whether there has been one or more false statements made in order to gain benefit to which the defendant knew they were not entitled to.

Sanctions

Further to the above, the level of overpayment will in part determine whether a sanction is appropriate, and if so which one.

Informal warning letter

If more than one of the following apply: -

- This is a first offence
- There was no planning involved in the process
- There was no other person involved in the fraud
- The person is in the opinion of the panel in genuine hardship
- The person is in receipt of support and assistance from Social Services or requires supported accommodation

This case may not be appropriate to sanction. It may be appropriate for the Investigations Team Leader to send a warning letter to the customer.

Simple Caution

The simple caution system was introduced in England and Wales on 1/06/1998. It is a warning given in certain circumstances as an alternative to prosecution.

If more than one of the following apply: -

- The overpayment is less than £2,000 but more than £500
- This is a first offence
- The person has admitted the offence during the interview under caution
The evidential requirement for prosecution is satisfied
- There are no mitigating social or health factors

This case may be appropriate to offer a simple caution.

Administrative Penalty

If more than one of the following apply: -

- The overpayment is more than £500.00 but less than £2,000
- This is a first offence or this is a second offence, and the person has previously received a simple caution for an earlier offence
- The person has not admitted the offence during the interview under caution
- The evidential requirement for prosecution is satisfied

- There are no mitigating social or health factors
- Awarding an Administrative Penalty will not cause severe hardship

This case may be appropriate to offer an Administrative Penalty. Section 115A and 115B of the Social Security Administration Act 1992, and subsequently amended by the Social Security Administration (Fraud) Act 1997 and the Social Security Fraud Act 2001 governs the use of Administrative Penalties. An Administrative Penalty is currently set at 30% of the gross recoverable overpayment, rounded down to the nearest penny.

Prosecution

If more than one of the following apply: -

- The overpayment is £2,000 or more
- There were other people involved in the fraud
- There is evidence of planning involved in the fraud
- The person has made a false statement on at least on occasion.
- The person holds a position of trust within the community or could be expected to have a greater understanding of the benefits scheme
- The evidential requirement for prosecution is satisfied
- There are no mitigating social or health factors
- The overpayment is less than £2,000 and the defendant has made a false statement on one or more occasions in order to gain benefit to which he or she was not entitled.

If the panel recommends that the case be submitted for prosecution then the Investigations Team Leader will refer the file to Legal Services.

These guidelines are not prescriptive. Every case will be considered on its own merits, even if they do not fall into any of the above categories and action will be considered as appropriate.

Loss of Benefit Provision

Darlington Borough Council may apply a 4 week reduction in a customer's Housing Benefit entitlement under the Social Security (Loss of Benefit) Amendment Regulations 2010 under the following circumstances:-

- The customer has accepted a simple caution or administrative penalty.
- The customer has pleaded guilty or been found guilty in the court and it is a first offence.
- The whole offence occurred after 01.04.2010.
- The customer does not have an entitlement to a DWP administered benefit.

- The customer has a current entitlement to Housing and or Council Tax benefit, or makes a successful application within 8 weeks of accepting the simple caution, administrative penalty or guilty verdict.
- The person, who has been convicted, accepted a simple caution or administrative penalty is now a partner on another person's claim for Housing and or Council Tax Benefit.
- The Department for Work and Pensions have notified Darlington Borough Council that a 4 week Loss of Benefit sanction should be applied.

In these circumstances, the customer's current Housing and or Council Tax Benefit entitlement may be reduced by 40% for a 4 week period, or in certain circumstances such as serious illness or pregnancy, be reduced by 20%.

Where a customer is convicted of a second benefit offence within the prescribed linking period of

- 3 years if the second offence occurred before 01/04/08,
- 5 years where the second offence occurred on or after 01/04/08.
- The person, who has been convicted, is now a partner on another person's claim for Housing and or Council Tax Benefit.
- The Department for Work and Pensions have notified Darlington Borough Council that a Loss of Benefit sanction should be applied.
- The customer does not have an entitlement to a DWP administered benefit
- The customer has a current entitlement to Housing and or Council Tax benefit, or makes a successful application within 8 weeks of accepting the simple caution, administrative penalty or guilty verdict.

The Housing and or Council Tax Benefit entitlement may be reduced by 40% for a 13 week period, or in certain circumstances such as serious illness or pregnancy, be reduced by 20%

Refusal to accept a simple caution or administrative penalty

If a customer refuses to accept a simple caution or administrative penalty the case will always be referred to legal services to consider prosecuting for the benefit offence.

Legal Services

The Investigations Team Leader will pass the file to the prosecuting solicitor in legal services. They will consider the file, and will consider if there is sufficient evidence to proceed with a prosecution and apply the public interest test. The prosecuting solicitor will notify the Investigations Team Leader whether the case should be prosecuted or not.

If the prosecuting solicitor determines that the case should not be prosecuted then the Investigations Team Leader will send a warning letter to the customer.

If the case is suitable for prosecution, the file will be returned to the Investigation Team for a prosecution file to be prepared.

Joint Working

Where the case has been investigated as part of a joint working exercise, the Council will make its own determination of whether a sanction was appropriate, and if so which one. If the case has been jointly worked and interviewed under caution with the DWP the following procedures should apply: -

- If both parties consider offering a simple caution, both a member of the DWP Fraud Investigation Service and the Investigations Team Leader should offer this at the same meeting.
- If both parties consider offering an Administrative Penalty, either the DWP or the Council can choose to delegate this function to the other party to offer on their behalf, or to offer the Administrative Penalty at the same meeting.
- If both parties consider prosecuting for the benefit offence, the Council will normally use legal services to prosecute for the Housing or Council Tax benefit offence, although it reserves the right to instruct the DWP's Solicitors Branch (Prosecutions).
- When deciding whether a sanction or prosecution is appropriate, the decision will rest with the lead organisation. The other organisation will then decide whether they wish to join in with that party's sanction action.

Investigating National Benefits

Where appropriate, and where the law allows under the Welfare Reform Act 2007, the Council will investigate allegations of certain benefits administered by the DWP (called the national benefits). If the allegation is proven, then the Council will consider offering a sanction or prosecuting for the offence, where the law allows, and according to the details of this Sanctions Policy.

Administrative Penalties for Employers

Section 109B(2) or 109C of the Social Security Administration Act 1992 gives Authorised Officers the powers to make enquiries with employers regarding their employees wage details, where there is reason to believe that a benefit offence may be being committed. Section 115B of the Social Security Administration Act 1992 inserted by the Social Security Fraud Act 2001 governs the use of offering Administrative Penalties to Employers.

An Administrative Penalty may be appropriate where an employer has committed an offence of

- Making a false statement or

- Obstructing an Authorised Officer or
- Failing to provide the required information or
- Committing false accounting

when dealing with an enquiry concerning their employees i.e. under Section 109B(2) or 109C of the Social Security Administration Act 1992. The Council should establish that an offence has been committed, that there are grounds to take proceedings against the employer, but that this is not a first option. In these cases an Administrative Penalty of £1,000 may be offered to the employer.

However,

- If the Administrative Penalty is being offered to the employer and
- The grounds for instigating proceedings against them is because of incitement, conspiracy or aiding and abetting (i.e. conduct that facilitated the employee to commit a benefit offence) and
- The employers conduct involved more than 5 employees

an Administrative Penalty of £5,000 should be offered to the employer.

Where the employer has less than 5 employees the Administrative Penalty offered is calculated at £1000 multiplied by the number of employees involved in the employers conduct.

Repeat offences may be considered for prosecution.

Landlords

When a Landlord fails to notify the Council of a change of circumstances, they may be paid more benefit for their tenants than they are entitled to. The Council makes Landlords aware of their duty to report known changes and failure to do so is an offence under: -

Section 112 (1C 1D 1E) or
Section 111A (1C 1D 1E 1F) of the Social Security Administration Act 1992.

Landlords are considered by the Council to operate in a professional manner. When an allegation is received that a landlord has failed to report a change in circumstances that they were aware of, or any other offence such as providing a false document in order to obtain benefit, this will be thoroughly investigated and the landlord may be interviewed under caution.

Where an offence has been committed, the Council will consider an appropriate sanction (either an administrative penalty or prosecution) and will recover any overpaid benefit.

The Council will also consider whether the landlord should receive any future payments of Housing Benefit.

Recovery of fraudulent overpayments

All overpayments that are found to be created as the result of fraudulent activity will be vigorously recovered in line with the Anti-fraud policy and strategy and the Overpayment Policy.

Publicity

Where appropriate and making use of the professional services within the Council, consideration should be given to releasing details of any potential prosecution to the press, with a view to the details being published in the local press.

Alternatively the Council should consider supplying such details as is reasonable in response to a request from a member of the press. The decision on this matter should be based on whether such action will assist the objective of deterring fraud.

This Sanctions Policy is not designed to be a definitive document, and any prosecutions will always have deference to individuals' circumstances.