



**BENEFIT SANCTION POLICY
HOUSING BENEFIT AND COUNCIL TAX BENEFIT
(DIRECTOR OF FINANCE APPROVAL 29 SEPTEMBER 2010)**

Dundee City Council is committed to preventing, detecting and deterring Benefit Fraud and has adopted the policy of taking action on any persons who have committed benefit fraud offences against the Authority by applying appropriate sanctions as an essential element of an effective anti-fraud strategy

Sanction cases go through a three part testing process prior to being authorised for sanction action. The tests are the test of fairness, evidential test and public interest test.

EQUALITY BILL 2006 - EQUALITY IMPACT ASSESSMENT

This policy has been EQIA'd and no concerns were raised.

Test of fairness

Dealings with persons in relation to benefit sanction investigations should be fair and be demonstrated to have been fair and proportionate.

The elements to our test of fairness are:

- our record keeping throughout the investigatory process
- officers' awareness of the test of fairness
- the interviewee's rights
- the interviewee's needs
- the level of information given to the interviewee prior to interview
- the level of information given to the interviewee during the interview
- allowing the interviewee sufficient time to respond
- advising the interviewee what will happen next
- delay during an investigation
- being able to provide transcripts of interviews to demonstrate the above
- making the interview DVD, tape or transcript available to the interviewee on request

Evidential Test

Sanction cases should be fit for prosecution and so must be able to demonstrate a suitable level of evidence gathered during the investigatory process.

If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be

The elements to the evidential test that must be demonstrated are that the evidence is:

- sufficient to provide a realistic prospect of conviction
- reliable
- useable
- corroborated

Public Interest Test

If a case passes the evidential test then we consider whether a prosecution would serve the public interest by being a good use of public funds.

While this is ultimately the remit of the Procurator Fiscal we have empirical data from our past prosecution cases that enables us to review our cases for public interest rather than referring cases to the Procurator Fiscal when we know that they will be marked no proceedings.

If the council is aware that a case will not be successful before reporting, it would be a poor use of resources for the:

- council to take the time to prepare the case and submit it to the fiscal
- fiscal deputed to spend time assessing the case
- council to then have a mark against it as an unsuccessful prosecution

The Public Interest Factors that are considered are:

- Age
- Social Welfare
- Mental Health
- Physical Health
- Voluntary disclosure of any information
- Whether criminal intent can be demonstrated
- Fraud history
- Period of fraud
- Overpayment amount
- The length of time taken in the investigation
- Claimant being a member of staff
- Whether the claimant has declined a Caution or Administrative Penalty
- The level of the fraudulent scheme showing increased fraudulent intent
- Any collusive scheme with third parties
- Effect on DWP benefit
- Any failure in investigation
- Any failure in benefit administration

This list is not exclusive or exhaustive and each case will be judged on its own merits as a whole with no single criterion being the deciding factor.

Where a case is identified as being suitable to be progressed to prosecution the Council will consider invoking the powers invested in Local Authorities by the Social Security Administration Act 1992 and all subsequent amendments allowing the imposition of Administrative Cautions and Administrative Penalties as an alternative to prosecution. Please refer to the Anti-fraud and Anti-corruption Policy for information on how each sanction is determined - www.dundee.gov.uk/fraud

If an employer obstructs an officer by failing to provide required information as requested under Section 110 of the Social Security Act 1992 (as amended for the Fraud Act 2001) Authorised Officer legislation - then Section 111 of the same act may be used to prosecute that employer wherever possible.

Council employees should be aware of the requirement to working to the highest standards. Any fraudulent activity on their part in relation to their own departments, other Council departments or the Finance Department which includes Housing Benefit and Council Tax Benefit or any other fraudulent activity which could be deemed as bringing the Council into disrepute, will be subject to disciplinary procedures.

The Role of Members

Elected Members are responsible for ensuring that adequate Management arrangements are in place; for developing and taking decisions on the use of the Council's physical, financial and human resources; to concern themselves with the performance, development, continuity and overall well-being of the organisation.

The Role of Management

Management at all levels are responsible for ensuring that their staff are aware of the Authority's Schemes of Administration, i.e. financial regulations, tender procedures and delegation of powers, and that the requirements of each are being met. It is also a Management responsibility to maintain internal controls and to ensure that the Authority's resources are properly applied in the manner and on the activities intended. This includes responsibility for the prevention and detection of fraud.

Special arrangements may apply where employees are responsible for systems that generate payments, for example the Housing Benefit computer system. Managers should ensure that adequate and appropriate training is provided for staff and that checks are carried out to ensure that proper procedures are being followed. Managers should also consider whether pre-employment checks should be undertaken for certain posts.

The Council's Recruitment and Selection process should be strictly adhered to and, in particular, the references and qualifications of all proposed new employees of the Authority should be thoroughly checked prior to a position being offered.

To assist Management in discharging their duties, advice should be sought from Internal Audit, the Head of Personnel and the Deputy Chief Executive (Support Services).

Employee Responsibility and Disciplinary Implications

Employees are responsible for their own conduct, standard of work and behaviour. Heads of Departments are responsible for the management and discipline of their Departments. A manager/supervisor may caution an employee when a minor infringement of the established standards of conduct or performance has been committed. Whilst this will not constitute formal disciplinary action, further misconduct or failure to achieve required standards of work will lead to formal action. In cases of formal disciplinary action, the Head of Department, or a nominated senior officer, has the right to warn, suspend without pay, withhold incremental progression, and demote or dismiss, subject to an employee's right of appeal. The Personnel Department will advise department managers on all disciplinary matters.

Employees have a duty of good faith towards their employer. If an employee is found to have committed or to have known about a benefit offence being committed and has failed to notify or withheld information from the Council, he/she will be subject to disciplinary action in accordance with the Council's Disciplinary Procedure, which could result in dismissal.

DCC Employee Benefit Fraud

Where an employee is a benefit claimant and the benefit fraud investigation has resulted in a proven fraud outcome and the following action has been pursued:

- Administrative Caution (warning)
- Administrative Penalty (financial penalty 30% of overpaid benefit accruing from December 1997)
- Prosecution

Or where an employee is the benefit claimant's partner/spouse and the investigation officer can provide supporting information or evidence where the comments or actions of the partner/spouse demonstrate that they had knowledge of the benefit fraud offence while it was taking place and where they took no steps to prevent it continuing then the relevant information will be provided to the Director of Finance and the Head of Personnel to assess whether the case is suitable to proceed to disciplinary action.

If the decision is to proceed then the information will be provided to the Head of the relevant service to follow the Council's disciplinary procedures.

Self-provision of evidence

Where a benefit claimant provides the Revenues Division with evidence which assists in proving an offence, providing the claimant was cautioned prior to providing the evidence, and therefore was aware of the possible implications of providing that evidence, the evidence will be accepted and used in the investigation negating the requirement to obtain this evidence and accompanying witness statement from the originating source.

Discretion

The offering of Administrative Cautions or Administrative Penalties will be at the discretion of the Council under the legislation and the fuller guidelines outlined in the Council's Anti-Fraud and Anti-Corruption Policy (www.dundee.gov.uk/fraud).

Exceptional Circumstances

If there are exceptional circumstances, an example of which could be where a claimant holds a position of trust in the community or is an employee with the Council, this will be taken into consideration when determining both any appropriate sanction action and also disciplinary action.

All cases where there is both a Department for Work and Pensions benefit and a Council Benefit in payment to the claimant during the period of the fraud and where both benefits could be effected by the fraud being perpetrated, the cases will be considered for joint working with the Department for Work and Pensions Fraud Investigation Service. In such cases, as part of our joint working commitment and in accordance with the Council's Anti-fraud and Anti-corruption Policy (www.dundee.gov.uk/fraud), the Council will follow the DWP lead in the action to be taken.

When an investigation leads to a proven fraud against a pensioner claimant, and the normal claimant circumstances have been considered resulting in the case proceeding to sanction, the Council will assess the suitability for sanction as follows:

- where there is previous fraud history then the case will normally be reported to the Procurator Fiscal
- where there is no previous fraud history, the individual admits the offence, and it fits the overpayment and fraud offence period criteria, the individual will be offered an administrative caution
- where there is no previous fraud history, the individual does not admit to the offence, and it fits the overpayment and fraud offence period criteria, the individual will be offered an administrative penalty
- refusal of an administrative caution or penalty will normally result in the matter being reported to the Procurator Fiscal
- where the sanction overpayment of benefit amounts to £5,000 or over the matter will normally be reported to the Procurator Fiscal

Only cases where the circumstances of the sanction decision are outside any of the above noted criteria will be taken to be variances to the policy and reported to the Elected Members as such. If approved these variances will be incorporated into the Anti-fraud and Anti-corruption Policy and the Benefit Sanction Policy as appropriate.

Should an offender decline the offer of an Administrative Caution or an Administrative Penalty, the matter will normally be reported to the Procurator Fiscal to consider prosecution.

In order to deter future fraudulent activity, where a case is referred to the Procurator Fiscal for criminal proceedings and is subsequently brought to court, the Council may publicise the details in the local press.

Chief Executive
Dundee City Council