

**REPORT TO:** POLICY AND RESOURCES COMMITTEE - 8 DECEMBER 2008  
**REPORT ON:** COUNTER-FRAUD BENEFIT SANCTION POLICY  
**REPORT BY:** DEPUTE CHIEF EXECUTIVE (FINANCE)  
**REPORT NO:** 598-2008

**1.0 PURPOSE OF REPORT**

This report is to inform the Elected Members of updates to the Benefit Sanction Policy

**2.0 RECOMMENDATIONS**

It is recommended that the Committee approve the updated Benefit Sanction Policy

**3.0 FINANCIAL IMPLICATIONS**

None

**4.0 MAIN TEXT**

Other than minor additions and deletions the main change is that where a claimant refuses a lesser sanction - Administrative Caution or an Administrative Penalty - then the case will be reported to the Procurator Fiscal

**5.0 POLICY IMPLICATIONS**

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management and no issues have been identified.

**6.0 CONSULTATIONS**

The Chief Executive, Depute Chief Executive (Support Services), and Head of Finance.

**7.0 BACKGROUND PAPERS**

None

<b>D K Dorward</b> <b>Depute Chief Executive (Finance)</b>	<b>Date:</b>	<b>8 DECEMBER 2008</b>
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**BENEFIT SANCTION POLICY  
HOUSING BENEFIT AND COUNCIL TAX BENEFIT  
( 8 DECEMBER 2008 POLICY & RESOURCES COMMITTEE REPORT NO 598-2008)**

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
- having 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:

- we must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge.
- When deciding whether there is enough evidence to prosecute we must consider whether the evidence is reliable
- When deciding whether there is enough evidence to prosecute we must consider whether the evidence can be used

### **Public Interest Test**

If a case passes the evidential test then we consider whether a prosecution is needed in the public interest.

Public interest is where a case is reviewed for factors tending against prosecution which clearly outweigh those tending in favour.

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
- Overpayment amount
- Quality of evidence
- Quality of investigation
- The length of time taken in the investigation
- Claimant being a member of staff
- Would public interest be best served by prosecuting
- 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.

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 will be used to prosecute that employer wherever possible.

Employees should be aware of the requirement to working to the highest standards and that 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.

### **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](http://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 and will, in accordance with the Anti-fraud and Anti-corruption Policy, follow the DWP lead in order to maintain our joint working commitment.

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 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, they 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, they will be offered an administrative penalty
- refusal of an administrative caution or penalty will 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 automatically 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.

Refusal of a caution or a penalty will require the Council to report the individual to the Procurator Fiscal where appropriate.

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