

# **Sanctions Policy**

## **Statement of Intent**

Haringey Council ("The Council") is responsible for administering public funds. The Benefits and Local Taxation Service has a key role in this function and must ensure that the right benefits go to the right people in accordance with their entitlement.

Our responsibility for administering Housing and Council Tax Benefits includes a duty to ensure that the system is not open to abuse by any person or group.

The Council will ensure that effective policies and procedures are implemented to prevent and detect benefit fraud either internally or externally and we place a high regard on maintaining confidence in our Service and the benefit system as a whole.

The Council will use the criminal and civil powers available to it to take action against those who have committed benefit fraud. Prosecutions may either be undertaken by the Council through its own legal service or in partnership with the Department for Works and Pensions Solicitors Office or the Crown Prosecution Service.

## **Sanction Policy**

This policy is intended to provide clear guidance on what sanctions are available against those who commit benefit offences and when the use of a sanction is suitable. The guidelines contained within this policy must be implemented in a fair and consistent manner and apply equally to members of the public, Council staff, and members of the Council.

When deciding to apply a sanction the decision should not be based entirely on the level of overpayment as a result of the offence. Instead, all cases will be looked at on their own merit and any mitigating circumstances taken into account on a case by case basis.

## **Sanctions Available to the Council**

The Council has the power to impose three forms of sanction on those whom it believes have committed benefit offences namely:-

1. Prosecutions
2. Simple Cautions
3. Administrative Penalties

## **Prosecutions**

Prosecutions will be reserved for those cases which in the opinion of the Council are the most serious.

Prior to any decision to prosecute being made the Evidential Test and then the Public Interest Test, as set out in the *Code for Crown Prosecutors* should be satisfied.

## **Evidential Test**

Whilst not an exhaustive list, officers should consider the following:-

- Is the evidence of sufficient quality and reliability to support a prosecution
- Is the reliability of the evidence affected by such factors as the defendant's age, mental capacity or understanding?
- What explanation has the defendant given? Is the court likely to find it credible in light of the evidence as a whole?
- If the identity of the defendant is likely to be questioned is the evidence about this strong enough?
- Is the reliability of the evidence likely to be compromised by the accuracy or credibility of a witness?

## **Public Interest Test**

Only once the Evidential Test has been met should the Council consider whether or not a prosecution would be in the public interest as defined by the *Code for Crown Prosecutors*.

Factors that apply will depend on the facts in each case. They are not exhaustive but may include the following:-

- Whether the defendant was a ring leader or an organiser of the offence;
- Whether there has been any abuse of position or privilege;
- Whether there are grounds for believing that an offence is likely to be continued or repeated, based on the person's previous history;

- Whether the offence, although not serious in itself, is widespread in the area where it was committed and so prosecution may act as a deterrent;

When considering a case for prosecution in addition to the Evidential and Public Interest Tests outlined above the following should also be taken into consideration; -

- Whether there was a degree of planning in the process that was more than minimal
- Whether a false, counterfeit or forged instrument was used in the commission of the offence
- Whether offences have been committed against more than one agency, authority or government department
- Whether the defendant has a previous history of benefit fraud
- The duration of the alleged offence
- Whether the person has refused to accept a Formal Caution or Administrative Penalty?

### **Simple Cautions**

A Caution is a formal written warning that can be administered as an alternative to prosecution. Details of the Caution are retained for a period of five years and may be cited should further benefit fraud offences occur.

The Authority may consider issuing a Simple Caution as an alternative to a Prosecution if:

- The claimant has been Interviewed Under Caution (“IUC”)
- To our knowledge the claimant has never previously offended
- There was little or no planning involved in the process of committing the offence
- The person has fully admitted the offence during an IUC.
- The person expresses genuine remorse for what they have done.

If the person refuses the Caution the case will usually be referred for prosecution.

### **Administrative Penalties**

Section 115 of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security (Fraud) Act 1997, allows the authority to apply an Administrative Penalty as an alternative to prosecution. The penalty is fixed to 30% of the total overpayment.

The Authority may consider issuing an Administrative Penalty if:

- The claimant has been Interviewed Under Caution
- To our knowledge the claimant has never previously offended
- There was little or no planning involved in the process of committing the offence

If the person refuses the Administrative Penalty the case will usually be referred for prosecution.

### **Decision to Administer a Sanction.**

It is for the Investigating Officer to identify potential cases and what sanction should be imposed. Once the relevant evidence has been obtained the Investigating Officer, using the above criteria, should make a recommendation to the Fraud Investigations Manager ("FIM"). It will be for the FIM or deputy FIM to make a final decision on what sanction to impose and whether to proceed. Once this has been received the case can be passed to the relevant prosecuting authority for the sanction to be proceeded with.

### **Publicity**

Benefits Services will seek to publicise cases identified for prosecution. The final decision to publicise will rest with the Council's Communications & Consultation Unit.

### **Recovery of Overpayments**

Regardless of whether or not any sanction action is taken the Council will endeavour to recover all overpayments. This action is taken by the Enforcement Team who will pursue all available methods of recovering the debt when necessary.

**Proceeds of Crime**

The underpinning principle of the Proceeds of Crime Act 2002 (POCA) is to demonstrate that crime does not pay. In addition to the recovery of monies obtained directly through criminal activity (i.e. the overpaid benefit) the use of POCA ensures that the full scope of the financial gain is identified and confiscated as appropriate.

The Council refer all suitable cases for financial investigation. These investigations will be carried out in conjunction with accredited Financial Investigators from the Department of Work and Pensions, Asset Recovery Agency, Serious and Organised Crime Agency, or the Metropolitan Police Service.