



Telford & Wrekin Council

Revenues & Benefits Sanction and Penalty Policy

Effective from 1 July 2015

1. Introduction

Telford and Wrekin Council is committed to the professional administration of Housing Benefit, Council Tax and Business Rates (National Non-Domestic Rates). The Council recognises the importance of ensuring that the correct amount of benefit or discount or exemption is awarded at the correct time.

It is important that the correct amount of Council Tax and Business Rates liability is billed at the appropriate time. The revenue from these taxes is essential to the finances of the Council. Council Tax Support (Council Tax Reduction Scheme) is funded directly from the Council's budget and whilst Housing Benefit subsidy can be claimed back from the Department for Work and Pensions (DWP) the rate of subsidy for overpaid Housing Benefit caused by claimant error or fraud is significantly reduced. Therefore delays in reporting changes, fraudulently or incorrectly claimed benefits, discounts, exemptions and Council Tax / Business Rate evasion has a negative impact on the Council's budget and directly impacts on the front line services it can ultimately afford to fund.

The Council has a duty to protect the public funds it administers from abuse and is aware of the risks within the benefits, Council Tax and Business Rates systems for fraud, error or other irregularity. The Council's Anti-Fraud and Corruption Policy sets out its zero tolerance commitment to dealing with fraud and that those who defraud the Council will be dealt with firmly and appropriate action taken.

The Council will always incorporate effective internal controls to minimise the risk of fraud occurring and secure the gateway to benefits and the administration of liability, discounts and exemptions to reduce the risk of fraud entering the system. However, despite this, fraud can be perpetrated and appropriate procedures need to be in place to respond to this. The use of the Council's full range of powers to tackle fraud and customer error is essential to not only to penalise those who delay in informing or fail to declare their correct circumstances but to deter people from committing fraud in the first place.

This Sanction and Penalty Policy details the actions that will be considered where it has become aware that someone has delayed informing the Council of a relevant change or has committed offences in relation to Council Tax or Business Rates. In all cases the Council will take the necessary steps to recover the resultant debt, including taking action in the Civil Courts if necessary. This will be in addition to any sanction it or the Criminal Courts may impose in respect of the delay or fraud.

From June 2015 the DWP become responsible for investigating instances of Housing Benefit and Council Tax Benefit fraud. The Council still however has the responsibility for ensuring Housing Benefit is paid correctly and authorising any Administrative Penalties in relation to Housing Benefit and / or Council Tax Benefit fraud. The Council remains responsible for investigating instances of fraud in relation Council Tax Support (which replaced Council Tax Benefit from April 2013).

Equalities Impact

Fraud is a criminal offence and as such the local authority has a statutory duty to protect the public purse. The intended beneficiaries of this policy are therefore taxpayers and the general public as a whole.

Investigations carried out by Council Officers will always act within the relevant law, without prejudice or bias and with full regard for all individual human rights when deciding on its policies and its action in any procedures. Officers will ensure that in cases where fraud etc. is suspected those involved will receive clear and understandable information making them aware of their legal rights.

All fraud referrals will receive appropriate risk analysis taking into account the information and intelligence provided in the allegations.

An individual's faith or beliefs, race, gender, sexual orientation or the physical and mental health of anyone subject to or involved in an investigation is not an issue when considering the risk analysis.

The decision making process will be carried out in accordance with the law, the Council's own policies and procedures, and the individual circumstances of the case. At no point will a sanction or prosecution decision be made which would discriminate on the basis of gender, race, sexuality, gender identity, age, disability or beliefs.

In certain circumstances it will be appropriate to give serious consideration to an individual's disability, infirmity, mental health or other personal circumstances with respect to public interest as stated in 'The Code of Crown Prosecutors'. The need for interpreters and support by representatives from specific groups will always be considered as will the location of any contact to ensure full disability access is available.

Using appropriate publicity, Telford and Wrekin Council will always endeavour to inform the public of cases where fraud or dishonesty has led to a conviction and which are in the public interest. Details of these cases will be confined to non-specific information without releasing any information which could identify the party(ies) involved. The Council through its Fraud Investigation Section will never release information regarding an investigation where it is contrary to current legislation, contravenes the Council's Data Protection Policy or is believed to compromise any individuals' identity or personal information in line with Articles 6 and 8 of the Human Rights Act.

2. Types of Penalties and Sanctions

Housing Benefit

Administrative Penalties

Section 115 of the Social Security Administration Act 1992 allows Councils to offer a financial Administrative Penalty as an alternative to prosecution where benefit fraud offences

have been committed. Such a penalty can be offered if the case could be brought to prosecution.

The level of the penalty offered is set in legislation and determined by the amount of any fraudulent overpayment and when the offences occurred. The amount of the Administrative penalty is not negotiable.

Where the DWP's Single Fraud Investigation Service has investigated a case and believe that the person is guilty of offences they may offer an Administrative Penalty (fine) as an alternative to a prosecution. In such cases they will provide the Council with details of the case and it will be up to the Council to authorise the Housing Benefit part of the penalty.

Offences prior to 8 May 2012

For offences prior to 8 May 2012 the level of penalty amounts to 30% of the Housing Benefit overpayment and excess Council Tax Benefit incurred as a result of the fraudulent activity.

Offences wholly on or after 8 May 2012

For offences that have occurred wholly after 8 May 2012 the penalty is a minimum of £350 or 50% of the overpayment (Housing Benefit, Council Tax Benefit and DWP benefits), whichever is greater up to a maximum penalty of £2,000.

Where there is an overpayment of more than one benefit in relation to a fraud offence, for example, Housing Benefit and a DWP benefit such as Jobseeker's Allowance, all the overpayments relation to that offence are totalled up so that the total amount of overpayment is taken into consideration when calculating the level of penalty to be applied.

If an Administrative penalty is offered and accepted for both Housing Benefit and a DWP benefit if the amount of penalty is £350 or £2,000 then the penalty is split 50/50 between the Council and DWP. Where the penalty is between these figures then the Administrative penalty will be 50% of the overpayment with each organisation recording 50% of their actual overpayment.

Offences wholly after 1 April 2015

For offences that have occurred wholly after 1 April 2015 the Social Security (Penalty as an alternative to prosecution) (Maximum Amount) Order 2015 has increased the maximum penalty to £5,000.

Fraud Loss of Benefit Penalty

A Fraud Loss of Benefit Penalty is where Housing Benefit and / or a DWP benefit are reduced by a prescribed amount following a successful prosecution or the acceptance of an Administrative Penalty. The period of the loss of benefit is determined by when the offence occurred, whether a prosecution has taken place and the seriousness of the offence.

The DWP's Single Fraud Investigation Service will determine if a loss of benefit penalty should apply and will notify the Council. The loss of benefit will apply to all sanctionable

benefits payable when entitlement exists for any period during the disqualification period. This includes standard Housing Benefit cases. Housing Benefit that is based on Income Support, Jobseekers Allowance (Income Based), Employment and Support Allowance (Income Related) and Pension Credit will not be sanctioned, although the primary benefit will be.

Offences 1 April 2002 to 1 April 2010

Sections 7 to 13 of the Social Security Fraud Act 2001 and the Social Security (Loss of Benefit) Regulations 2001 introduced the Two Strike loss of benefit provision for offences committed after 1 April 2002. Where a person is convicted in two separate proceedings of offences involving prescribed benefits and the offences occurred in a prescribed period (three or five years depending on date of offence) any relevant benefits in payment will be reduced for a period of 13 weeks.

Offences to 1 April 2010 to 1 April 2013

Section 24 of the Welfare Reform Act 2009 and the Social Security (Loss of Benefit) Amendment Regulations 2010 introduced a new four week loss of benefit sanction (One Strike). For offences committed between 1 April 2010 and 1 April 2013 which have resulted in a sanction either the one or two strike sanction applies. These are as follows:

- One Strike loss of benefit applies to benefit fraud offences resulting in a caution, Administrative Penalty or first conviction. The loss of benefit is for a period of four weeks.
- Two Strike loss of benefit applies to cases where someone is convicted of benefit fraud twice within the prescribed linking period (three or five years depending on date of offence). The loss of benefit is for a period of 13 weeks.

Offences wholly on or after 1 April 2013

Following a successful prosecution or an Administrative Penalty acceptance in relation to an offence that occur wholly on or after 1 April 2013, the claimant will receive the following loss of benefit penalty:

- Level 1 – Offences which result in an Administrative Penalty will receive a loss of benefit penalty of 4 weeks
- Level 2 – For a first benefit fraud conviction the loss of benefit penalty duration will be 13 weeks
- Level 3 – Where there are two offences, within a set time period, with the latter resulting in a conviction the loss of benefit penalty will be for a period of 26 weeks.
- Level 4 – Where there are three offences within a set time period the latter resulting in a conviction the loss of benefit penalty will be for a period of 26 weeks.
- Level 5 – An immediate three year loss of benefit penalty will apply for serious organised and identify fraud cases.

Housing Benefit Civil Penalty

The Welfare Reform Act 2012 introduced legislation to allow Councils to consider imposing a Civil Penalty in relation to Housing Benefit overpayments caused by a claimant's error. Section 115 of the Social Security Administration Act 1992 prescribes the amount of the penalty (currently £50). A penalty may be imposed where a customer has incurred a claimant error overpayment caused by:

- Either negligently making incorrect statements and failing to take reasonable steps to correct the error
- Or failing, without reasonable excuse, to provide information or to disclose changes in their circumstances.

Council Tax Support

Penalties

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allow Billing Authorities to impose a penalty (fine) of the prescribed amount (currently £70) for incorrect statements or a failure to notify a change of circumstances.

A penalty may be imposed where:

- A person negligently makes an incorrect statement or negligently gives incorrect information or evidence does not take reasonable steps to correct the error and it results in more Council Tax Support being awarded than the person was entitled to.
- A person without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances to the authority. In this case prompt means within 21 days of the change occurring, or as soon as reasonably practicable after the change occurs, whichever is later.

A penalty can not be applied if a person has been charged with an offence, cautioned or been given a penalty as an alternative to prosecution in respect of excess Council Tax Support or being charged with offences in relation to a discount or exemption.

Such penalties can only be imposed for acts or omissions which have occurred after the regulations have come into force (1 April 2013).

A customer can appeal against the imposition of such a penalty and if the decision is not changed on internal review they may appeal to the Valuation Tribunal.

Penalty as an alternative to prosecution

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allow a penalty to be offered as an alternative to prosecution. Such a penalty may be offered if excess Council Tax Support has been awarded due to an act or omission by the claimant and there are grounds for instituting proceedings against the claimant. A penalty can also be offered for an attempt to claim Council Tax Support (even if

it is not put into payment due to the proactive action of the Council) where there are grounds for proceedings.

The amount of the penalty is currently set at 50% of the amount of excess Council Tax Support with a minimum penalty of £100 and a maximum of £1,000.

Prosecution

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows legal proceedings to be brought for an offence under the Regulations. The offender is reported to the magistrates' court to be summonsed for the appropriate offence. It is then a matter for the court to decide the guilt, or otherwise, of the offender and pass sentence accordingly, in keeping with relevant guidelines.

Fines for delay or obstruction of an authorised officer

Where a person intentionally delays, obstructs, refuses or fails to provide information or comply, without reasonable excuse, to a requirement under the specified regulations within The Council Tax Reduction Schemes (Detection and Enforcement (England) Regulations 2013 they shall be guilty of an offence. On summary conviction they are liable for a fine not exceeding level 3 on the standard scale (currently £1,000). If a person is convicted of an offence and the refusal or failure continues after the conviction they will be guilty of a further offence. On summary conviction they will be liable for a fine not exceeding £40 for each day they continue to refuse / fail to provide the requested information.

Council Tax

Penalties

Schedule 3 of the Local Government Finance Act 1992 makes provision for Billing Authorities (Councils) to impose two levels of penalty in connection to the failure to supply information within 21 days following a written request(s) to:

- Identify the liable, or relevant person, or
- Identify if a discount disregard is still applicable, or
- Identify if an exemption is still applicable.

The Council must be satisfied that the information requested is in the possession or control of the person from whom the information is requested.

The Act also allows penalties to be levied where false information has been knowingly supplied in connection to:

- The identification of the liable, or relevant person, or
- The award of a discount disregard.

Where there is an initial failure to provide the requested information or supplying false information a Council may impose a penalty of the prescribed amount – currently £70. A further penalty of £280 may be imposed each time the information is not given, or false information is given.

A customer can appeal against the imposition of such a penalty and if the decision is not changed on internal review they may appeal to the Valuation Tribunal.

Fines following Liability Order

The Council Tax (Administration and Enforcement) Regulations 1992 puts a debtor, who has been served with liability order, under a duty to provide the following information within 14 days of a request for:

- information surrounding their employment
- information surrounding their income
- if another person should be joint and severally liable for the debt.

The person shall be guilty of an offence, if following the written request for information they:

- Fail to respond to within 14 days. The offence has a maximum of a level 2 fine which is currently £500.
- Provides false information in respect to the requested information. The offence has a maximum of a level 3 fine which is currently £1,000.

Action in respect of the offence must be taken within six months and the case has to be brought before the magistrates' court.

Prosecution

Whilst Councils are unable to impose a penalty in relation to the false supply of information for a Council Tax exemption they are able to take legal proceedings. The Fraud Act 2006 allows Councils to prosecute where a person has either:

- Made a false representation to make a gain for himself or another; or
- Dishonestly fails to give information which they are under a legal duty to disclose and the intention was to make a gain for himself or another.

The same legislation allows prosecutions in relation to the supply of false information to avoid liability or to secure a discount to which they are not entitled.

Business Rates

Request for Information

Under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 the Council considers that it ought to have information connected with any land the Council may serve on one or more of the following persons, namely

- (a) the occupier of the land; and
- (b) any person who has an interest in the land either as freeholder, mortgagee or lessee or who directly or indirectly receives rent for the land; and
- (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the

letting of it, a notice requiring the recipient of the notice to furnish to the Council the nature of his interest in the land and the name and address of each person whom the recipient of the notice believes is the occupier of the land and of each person whom he believes is, as respects the land (including business premises), such a person as is mentioned in the provisions of paragraph (b) and (c) above.

It is an offence to fail to comply with the requirements of a Section 16 Notice or to otherwise provide false information liable upon conviction in the Magistrates' Court to an unlimited fine.

Prosecution

The Fraud Act 2006 allows Councils to prosecute where a person has either:

- Made a false representation to make a gain for himself or another; or
- Dishonestly fails to give information which they are under a legal duty to disclose and the intention was to make a gain for himself or another.

This legislation therefore could be used to prosecute a person / business who has deliberately evaded Business Rates liability in order to make a gain for themselves or another. It will also allow proceedings to be taken where a person / business has claimed an exemption or relief to which they are not entitled either by providing false information in order to obtain or continue to obtain an exemption or relief.

3. Appropriate Penalty or Sanction

A range of information must be considered before a sanction or penalty is administered.

Housing Benefit

Administrative Penalties

Where the Single Fraud Investigation Service recommends an Administrative penalty as they believe offences have been committed the Council will generally accept their recommendation. However the onus will be on the Single Fraud Investigation Service to prove that offences have been committed. The Council will only authorise an Administrative Penalty where it is likely that the fraudulent Housing Benefit overpayment and the penalty can be recovered in a period of usually not more than two years. In cases of undeclared capital it should be expected that an immediate settlement of both sums should be made.

Fraud Loss of Benefit Penalty

The Single Fraud Investigation Service will determine when a Fraud Loss of Benefit Penalty should be imposed. The Council will then implement this decision. The Council has no discretion over whether to apply the penalty or over the period or amount of penalty.

Housing Benefit Civil Penalty

The Council will have the discretion to impose the Housing Benefit Civil where a claimant has had multiple changes of circumstance which have resulted in overpayments, and they have previously been made aware of the consequences of not reporting changes in their

circumstances.

Council Tax Support

Penalties

The Council will impose a penalty where a customer has failed to report a relevant change of circumstance within one calendar month, or where they have negligently made an incorrect statement or provided incorrect information or they have not taken steps to correct an error where it has been deemed necessary for the Investigation Team to investigate the circumstances of the claim.

Penalty as an alternative to Prosecution

Where it has been deemed appropriate by the Investigation Officer to instigate a formal investigation and it becomes apparent that offences have been committed then if the amount of fraudulently claimed Council Tax Support is £2,000 or below a penalty as an alternative to prosecution will be offered.

Prosecution

Prosecution should generally be considered where the total amount of Council Tax Support fraudulently claimed is in excess of £2,000. Prosecution will also be considered where a penalty as an alternative to prosecution has not been accepted or there are aggravating circumstances as detailed within the public factors section of this policy. In cases where individuals have conspired or colluded with a third party other than their partner, or where false identities or forged documents have been used to commit the fraud, serious consideration should be given to criminal proceedings, irrespective of the amount of the excess reduction.

Fines for delay or obstruction of an authorised officer

If an authorised officer is obstructed or a person fails to provide them with information which means that the investigation of a case cannot be concluded then consideration will be given to prosecuting the person who obstructed or failed to provide the requested information.

Council Tax

Penalties

The Council will impose a penalty where a customer has failed to report a relevant change of circumstance within one calendar month, or where they have negligently made an incorrect statement or provided incorrect information or they have not taken steps to correct an error where it has been deemed necessary for the Investigation Team to investigate the circumstances of the claim.

Fines following Liability Order

Cases won't ordinarily be referred to the Magistrates Court for this type of fine as alternative

action can usually be taken to recover the outstanding debt via an Enforcement Agency. However in some circumstances it may be that to refer such cases to the Magistrates Court for a fine will be the most effective way to obtain information which is necessary in order to recover the debt. In cases where we have evidence that someone has purposely provided a false statement or information to avoid paying the Council Tax owed consideration will also be given to referring the case to the Magistrates Court.

Prosecution

Prosecution should generally be considered where the total amount of Council Tax evaded or the amount of discount / exemption fraudulently claimed is in excess of £2,000.

Prosecution will also be considered where there are aggravating circumstances as detailed within the public factors section of this policy. In cases where individuals have conspired or colluded with a third party other than their partner, or where false identities or forged documents have been used to commit the fraud, serious consideration should be given to criminal proceedings, irrespective of the amount of the avoided liability.

Business Rates

Fines following Section 16 Request

Where it has been deemed necessary to issue a Section 16 request a case will be referred to the Magistrates Court where a person or business' failure to comply with the request means that the Council is unable to establish business rate liability without the requested information.

Prosecution

Prosecution should generally be considered where the total amount of Business Rates that the bill payer has fraudulently evaded is in excess of £5,000.

Prosecution will also be considered where there are aggravating circumstances as detailed within the public factors section of this policy. In cases where individuals have conspired or colluded with a third party other than their partner, or where false identities or forged documents have been used to commit the fraud, serious consideration should be given to criminal proceedings, irrespective of the amount of the evasion.

4. Further Redress in Prosecution Cases

In cases where an individual or business has been prosecuted for a fraud offence(s), the Council may also consider using powers to recover any assets that have been appropriated by the individual as a direct result of their income obtained fraudulently. This would usually be considered in cases where an individual has acquired considerable assets as a result of the criminal lifestyle which if confiscated by the courts could be realised to repay the sums obtained from the Council.

Confiscation Order - this is an order requiring the convicted defendant to pay a sum of money representing the defendant's benefit from crime. The purpose of confiscation proceedings is to recover the financial benefit that a defendant has obtained from their criminal conduct.

Restraint - this is an order prohibiting a specified person from dealing with any realisable property held by him or her. Effectively this prevents them from disposing of any assets that we may be looking to recover as part of a Confiscation Order.

5. Disciplinary

Where a member of staff has received an administrative penalty, a penalty as an alternative to prosecution or has been found guilty by the Court of a benefit fraud, Council Tax Discount or Exemption or Business Rate evasion, the Investigating Officer will report the matter to People Services for consideration of disciplinary action.

6. Prosecution and Sanctions

Telford & Wrekin Council is committed to tackling Council Tax fraud and business rates evasion and to sanction or prosecute offenders where this is appropriate. The relevant Revenues or Benefits Service Delivery Manager will give careful consideration to taking further action against anyone who has committed fraud in order to obtain benefit. All the specific details of each case will be taken into account and measured against the evidential and public interest test stated in the Code of Crown Prosecutors.

This code lays down the general principles that should be applied when considering whether or not a case is suitable for prosecution or alternative sanction. Any case failing to meet the requirements associated with either test should not be considered suitable for sanction or prosecution.

Each case will be prepared for prosecution and will meet the standard of presentation of evidence and documentation expected by the Council's legal Department.

Evidential Test

In making a decision to prosecute, the Council must be satisfied that there is enough evidence to provide a realistic prospect of conviction. A realistic prospect of conviction is an objective test meaning that a jury, magistrate or judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence.

Evidence must be able to be used in a court of law. It must have been gathered appropriately and be from a reliable source.

If a case does not pass an evidential test it must not go ahead no matter how important or serious the offence seems. If the case does pass the evidential stage then it should move on to the second stage to decide if a prosecution is appropriate in the public interest.

Public Interest Test

Having examined the evidential test and established that there is sufficient evidence of a realistic prospect of conviction, the Public Interest Test is then applied to determine whether a prosecution should take place or whether an alternative Sanction may be suitable. The factors for and against prosecution should be balanced carefully. It is a matter of common

sense that if there are additional factors that should be taken into account then these factors should be considered.

Factors against prosecution action

- a. There has been undue delay between the offence taking place and the date of the trial, unless the offence is serious, or the delay has been caused in part by the defendant.
- b. There are major physical or mental health issues for the defendant, which has been confirmed in writing by a medical practitioner and that the ordeal of a prosecution could have a significant detrimental impact on their wellbeing, unless the offence is serious or there is a real possibility that it may be repeated. Age is not in itself a bar factor against prosecution, but if the customer has poor health because of their advanced years this should also be considered.
- c. The fraudulent overpayment is partly attributable to mal-Administrative or unreasonable delay in connection with the Administrative of the housing/council tax benefit by either Local Authority or the Department for Work and Pensions.

Factors In favour of prosecution action

- a. The defendant is alleged to have committed the offence whilst under an order of the court or suspended sentence.
- b. The defendant's previous convictions or sanctions are relevant to the present offence.
- c. The defendant is in a position of trust, where their financial impropriety would have a bearing on their ability to continue in their role.
- d. There is evidence that the defendant has taken deliberate action or provided false statement/documentation to perpetrate the deception.
- e. The motivation for the fraud was one of pure financial greed where the perpetrator is in a position of relative prosperity.
- f. There are grounds for believing that the offences were likely to be continued or repeated e.g. by a history of recurring conduct.
- g. The offence is alleged to have occurred over a protracted period of time involving more than one period of deception.
- h. The evidence shows that the suspect has instigated, encouraged, or coerced others to commit fraud.
- i. The defendant has declined to accept or has withdrawn from their agreement to accept a penalty as an alternative to prosecution.

- j. Where a person occupies a position in public office and the fraud is considered to have brought their position into disrepute.
- k. The defendant has received a previous caution, administrative penalty, or been previously successfully prosecuted in relation to benefit fraud, Council Tax Discount or Exemption fraud or Business Rate fraud.
- l. In certain exceptional circumstances, the authorising officers, may decide to recommend proceedings where the normal criteria are not met. These cases will be where there are extenuating/aggravating circumstances and each case will be considered on its merits.

The various reasons listed above are not exhaustive. The factors that apply will depend on the facts in each individual case.

Having reviewed the case, taking into account the Evidential Test and the Public Interest Test, the Council may consider offering Formal Cautions or other Sanctions as an alternative to Prosecution.

Compensation Order

When an individual or business is successfully prosecuted the Council will consider whether it is appropriate in the circumstances to ask the Court to make a Compensation Order in respect of the whole or part of the fraudulent claim.

When a defendant is convicted of an offence the Magistrates can make a compensation order when passing sentence. The order is intended to make the defendant compensate the victim of the crime, in this case the Council. A compensation order can either be a sentence in its own right or more commonly an additional part of the overall sentence. Compensation can be ordered if the defendant is sent to prison only if the defendant has the means to pay immediately. If the Magistrates decide that no compensation is payable then they must state their reasons why in open court.

Formal Caution

A Formal Caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence.

A Formal Caution can only be considered when there is sufficient evidence to justify instituting criminal proceedings and the offender has admitted the offence during an Interview under Caution (IUC).

If the offender is subsequently prosecuted for another benefit offence the Formal Caution may be cited in Court.

Cautioning is based on the principle that no prosecuting authority is under an obligation to prosecute. The use of Formal Cautions is purely administrative there is no legislation covering their use by local authorities.

A Formal Caution is intended to be a meaningful sanction and deterrent for those offenders where criminal proceedings are not a first option and penalty action is not appropriate.

Formal Cautions only apply to minor offences. In most cases a minor offence can be defined as one where the overpayment is small.

For the purpose of this policy a small overpayment is considered less than [£2000]. In some circumstances a Formal Caution will be considered for overpayments exceeding this amount, the figure should only be perceived as a guideline.

A Formal Caution can be administered as an alternative to prosecution. The following factors must be satisfied:

- Admission – A clear and reliable admission of the offence
- Acceptance – The person has to accept the Formal Caution and that they committed the offence detailed.
- The details of previous sanctions that have been obtained from the appropriate agencies have been taken into account
- The person is 18 or over
- The individual's attitude towards their offence indicates that a caution would be an appropriate punishment.
- The evidential and public interest criteria for prosecution are satisfied.

If an offender refuses to accept a Formal Caution the case will be referred to the solicitors for consideration of prosecution.

If a suspected offender fails to attend three interviews under Caution the case will be considered for prosecution

A record of the Formal Caution will be maintained for five years

If a second offence is committed within that five year period the case will be immediately referred for prosecution unless there are extenuating circumstances such as the overpayment being exceptionally small or there is an indication that the person's personal circumstances in connection with the second offence border on one or more of the mitigating factors that would normally exclude prosecution.

The officer issuing the Formal Caution must not be the officer who presided over the interview conducted under Caution.

7. Authority to Impose a Sanction

The decision to proceed with a prosecution will be made by the relevant Revenues or Benefits Service Delivery Manager following a recommendation from the relevant Group Manager. In the absence of the relevant Service Delivery Manager the decision will be made by the Assistant Director for the Service.

Once a case has been authorised by the Revenues or Benefits Service Delivery Manager for prosecution, the case will be passed to legal services who will decide on the suitability for proceedings in line with the Code of Practice for Crown Prosecutors.

The decision to offer the customer an administrative penalty or a penalty as an alternative to prosecution will be made by the Benefit Welfare & Assurance Group Manager. In the absence of the Benefit Welfare & Assurance Manager the decision will be made by the Revenues or Benefits Service Delivery Manager.

In appropriate cases where a prosecution has been authorised, the decision to take further action to recover the overpayment of benefit using powers available under the Criminal Justice Act 1988 or the Proceeds of Crime Act 2002, namely a confiscation order or a restraint order will be made by the Revenues or Benefits Service Delivery Manager.

Investigation Officers are authorised to add Civil Penalties to the appropriate cases as detailed within this policy.

8 Training

The Council employs fully qualified Fraud Investigators who are trained to a minimum of Level 7 in Professionalism in Security (PINS), a nationally recognised qualification or suitable equivalent. They also adhere to all relevant guidance which reiterates the high professional standards expected of them during the course of their duties. They operate within the confines of legislation such as the Police and Criminal Evidence Act 1984, the Human Rights Act 2000, the Data Protection Act 1998, the Criminal Procedures Investigation Act 1996, the Regulation of Investigatory Powers Act 2000, the Freedom of Information Act.

9. Staff and member responsibilities

All relevant employees are issued with a copy of the Council's Fraud and Corruption Policy and are obliged to disclose any interests in claims or related work

All Elected Members of the Council adhere to a Code of Conduct that provides for their duties and responsibilities in respect of their roles as Members of the Council including disclosure of interests

All staff and Elected Members of the Council must comply with the Data Protection Act 1998 and the common law duty of confidentiality for which training and notes are given.

All relevant employees need to read and understand this Policy so that they can ensure they are fully aware of their responsibilities.

10. Publicity

Since a principal objective of this policy is to deter fraud, in conjunction with the Council's Communications Team the Council will seek to publicise successful prosecutions for benefit fraud offences using the local press and Council produced publications.

While any successful prosecution will be considered for publicity, particular attention will be given to cases that involve a high value of fraudulently obtained benefits and/or a newsworthy method of committing fraud/business rates evasion and/or where the offender has received a significant sentence.

Following a successful prosecution a suitably worded press release will be prepared by the Council's Communications Team. Other press releases may be considered from time to time, regardless of particular recent cases, such as reports of sanctions applied over a period

Use shall also be made of Council-produced publications as well as intranet and internet websites to report results both to the general public and to staff.

11.0 Reporting and Review

Summary information on cases and action taken will be reported to the relevant Cabinet Member for the Service Area on a regular basis.

Investigation and Sanction information will be reported in the corporate Anti-Fraud and Corruption annual report to the Audit Committee.

This policy will be reviewed when legal or procedural circumstances dictate.

List of amendments

Date	Review – principal changes	Name of reviewer