

Housing & Council Tax Benefit

Preston City Council Sanction Policy

Sanction Policy

Preston City Council is committed to protecting public funds through its investigations into cases of Housing/Council Tax Benefit fraud. Where it is suspected that a customer, employer or landlord has committed fraud against the Council, and enough evidence has been gathered to sustain a prosecution, the Council must decide what course of action to follow.

This policy has been written on the basis that the following courses of action are available to us. In **all** cases where a fraud is identified in respect of Housing/Council Tax Benefit, the Council will seek to recover the debt from the fraudulent party.

Course of Action decided upon – the policy

The initial decision on what appropriate action may be taken lies with the Senior Fraud Officer or Fraud Manager who will submit a report to the Benefits Manager or the Assistant Director (Head of Revenues and Benefits) making recommendations on the appropriate sanction, taking into account the additional factors outlined further in this policy. If approved the report will be counter signed. If it is not approved, a case conference will take place between the recommending officer and the counter-signing officer to discuss what action, if any, is appropriate.

Consideration will be given to individual persons circumstances in deciding the appropriateness of issuing a simple caution or offering an administrative penalty in all cases where the evidential requirement for prosecution is satisfied and the total overpayment is less than £2000. Consideration will also be given to any overpayment of National Benefits or excess reduction in liability under the Council Tax Reduction Scheme which forms part of the alleged offence.

A. Local Authority Caution

The Council may consider issuing a Local Authority Caution if:

- To the Council's knowledge the person has never previously offended
- The person has fully admitted the offence in an interview under caution. A caution can not be issued if the person refutes or denies the allegation
- An administrative penalty is not appropriate
- The offence is minor
- The overpayment/excess reduction is under £2000
- The person's subsequent attitude e.g. genuine expression of remorse for their actions
- The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished.

If the person refuses the caution, the case will usually be referred for prosecution

B. Administrative Penalty

Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security (Fraud) Act 1997, allows the Local Authority to apply a penalty (30% of the total overpayment for offences committed wholly before 8th May 2012), as an alternative to

prosecution. This penalty is levied in addition to the amount of overpayment. Upon accepting the penalty the person has 28 days in which to change their decision.

For offences committed wholly on or after 8th May 2012 the Welfare Reform Act 2012 amends the Social Security Administration Act 1992 as follows:

- To allow administrative penalties to be offered in attempt cases as an alternative to prosecution, where an offence of benefit fraud has been committed but the fraud is discovered and stopped before any overpayment of benefit is made. In these cases the amount of the administrative penalty would be £350.
- To provide for a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000).
- To reduce the period which an individual (including a colluding employer) may withdraw their agreement to pay the penalty ('cooling off period') from 28 to 14 days.

Where an excess reduction of Council Tax Reduction Scheme is also being considered for a penalty these will be dealt with under the provisions of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

If a penalty is not accepted or it is withdrawn the Authority must consider whether to prosecute, therefore all cases must be up to prosecution standard.

The offer of a penalty should happen at a special interview. The person should be told at the special interview that:

- It is not an interview under caution;
- In light of the evidence available, it is believed there are grounds for instigating criminal proceedings for the alleged offence;
- It has been decided to offer them the alternative of agreeing to pay a penalty instead of the case being referred for prosecution;
- They will be expected to make a decision on whether to agree to pay a penalty, by the end of the interview;
- Acceptance of the penalty is not an admission of guilt;
- Recovery of the penalty will occur in the same way as recovery of the overpayment;
- They have 28 days in which to change their mind should they accept the penalty, or 14 days if the alleged offence was wholly committed on or after 8th May 2012;
- Failure to repay the penalty or default on instalments will result in them facing civil proceedings for recovery.

The officer who conducted the interview under caution will not conduct the special interview.

The Council may consider issuing a penalty if:

- To the Council's knowledge the person has never previously offended
- The overpayment/excess reduction is under £2000
- A Local Authority Caution is not appropriate
- The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished.

If the person refuses the administrative penalty, the case will usually be referred for prosecution.

C. Prosecution

The Decision to Prosecute – additional factors

In cases where the overpayment/excess reduction identified is over £2000, the Council will usually seek to prosecute. The decision on whether to **refer** a case for prosecution lies with the Senior Fraud Officer or Fraud Manager and must be counter signed by the Benefit Manager or Assistant Director (Head of Revenues and Benefits). The following tests will be considered;

In making this decision all circumstances surrounding the case will be considered, with particular emphasis on the following;

- Is there sufficient evidence for a realistic prospect of conviction
- Any failure in investigation
- Any failure in benefit administration, including delay
- Is a prosecution in the public interest
- The amount of the overpayment/excess reduction and duration of the alleged offence
- Any abuse of position or privilege
- Whether the person is elderly or suffering from either significant mental or physical ill health
- Any previous incidence of fraud
- Social factors
- Whether a conviction is likely to result in significant sentence or nominal penalty
- Whether there is evidence that the person was a ring leader or an organiser of the alleged offence
- Whether there was planning in the process
- Whether the claim was false from inception
- Whether there are grounds for believing that the alleged offence is likely to be continued or repeated, based on any history of recurring conduct
- Whether the alleged offence, irrespective of its seriousness, is widespread in the area where it was committed
- The person shows no regret for their actions and does not consider the alleged offence to be serious or shows little or no regard for Social Security legislation
- The person has refused to accept a Local Authority Caution or Administrative Penalty
- Where Authorised Officer powers have been obstructed

- There has been a lack of co-operation with the investigation
- Any voluntary disclosure. This will occur when a person, of their own free will, reveals a fraud of which the Council has been unaware. It does not apply to cases where, for example:
 - The disclosure is prompted by a belief that the fraud will be discovered;
 - The person has discovered that they were already being investigated;
 - The disclosure was prompted by, for example, a verification visit.

Each case will be considered on its own merits to determine the most appropriate course of action.

In all cases considered for sanction, it is essential that each case is subject to scrutiny on the basis of its own particular details. The circumstances of each individual case will ultimately determine the eventual sanction route. In some cases with an overpayment/excess reduction of more than £2000, it may be felt appropriate to offer a caution or a penalty as an alternative to prosecution; having considered all of the factors of the case. The reasons for this must be documented by the officer making the sanction decision.

It should be noted that it may be appropriate to prosecute a person who has not been paid any benefit or received a Council Tax Reduction but where the attempt to defraud was so serious as to justify a prosecution.