



## **Surrey Heath Borough Council**

# **Prosecuting benefit fraud and issuing sanctions (Administrative Penalties and Formal Cautions).**

## **A Policy Statement**

## **Part I – Prosecutions**

**(Revised January, 2009)**

## **Background**

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The Audit Commission, in their 1998 report “Countering Housing Benefit Fraud” underlined the necessity for all Local Authorities to formally set out their strategies for tackling benefit fraud. The widely distributed Benefits Fraud Inspectorate reports have also encouraged Local Authorities to take this stance. Their ‘Good Practice Guide’ states; “Local Authorities should have a clear policy on prosecution and the use of administrative penalties.... Such a policy, if it is consistently applied, can be a strong deterrent”.

This policy statement sets out Surrey Heath Borough Council’s policy for prosecuting cases of Housing or Council Tax Benefit fraud, and for administering sanctions. (Sanctions are used as an alternative to prosecution and come in the form of Formal Cautions or Administrative Penalties.) The policy forms part of the Council’s strategy for tackling fraud and corruption and should be read in conjunction with the Anti Fraud and Corruption Policy (as approved by the Joint Staff Consultative Group in January 2000; subsequently amended to include provisions for the Public Interest Disclosure Act 1998).

The policy is separated into two parts: Part 1 and Part 2. Part 1 deals with prosecutions and Part 2 deals with the different sanctions.

## **Part 1: Surrey Heath Borough Council's policy for prosecuting benefit fraud**

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In adopting this policy the Council has given due consideration to a number of important factors concerning benefit fraud. These include:

- the fact that Government figures show approximately 15% of all benefit paid out is known to have been claimed fraudulently
- that both the Department of Work & Pensions (DWP), the Benefits Fraud Inspectorate (BFI) and the Audit Commission have commented favourably on the effectiveness of clear and detailed prosecution policies
- the consistency of approach provided by a cohesive policy which, greater enables the Council to make re-enforceable decisions to proceed with action based on a pre-determined, fair and structured policy
- the likely implications that (often) high profile prosecutions may have upon the Council's standing in the community

This policy, as written, is not to be regarded as "set in stone" with only case types outlined within it considered. The Council will consider each case individually and will give thought to both mitigating and aggravating factors.

### Deciding whether or not to prosecute:

Although it may be desirable to prosecute offenders, there are associated costs in bringing a case to court which, can be substantial and must be borne by the Council and the Council Taxpayers of Surrey Heath. By adopting this policy the Council commits itself to give serious thought to the costs involved before proceeding with any prosecutions.

As a general guide, the Council will consider the prosecution of all benefit cases with a level of overpayment in excess of £2000, once a 'Public Interest Test', as detailed elsewhere in this statement has been applied. Cases below this level will usually be judged using the following criteria: the Department of Work and Pensions raised the figure of £2000 from £1500 in November 2004. It is considered 'best practice' to follow the example set by the Department.

### Overpayments of less than £2000

In most cases the Council **will** consider prosecution if;

it is known the claimant has previously offended;

there was planning involved in the process;

there were other persons involved in the fraud, or;

it is considered to be in the public interest.

In most cases Council **will not** prosecute if;

it is known the claimant has not previously offended;

there was no planning involved in the process;

there was no other person involved in the process, or;

prosecution is considered not to be in the public interest.

It may be that for cases below £2000 the Council seeks to apply a Sanction. See Part 2 of this policy for details.

A panel of senior officers from Audit & Partnerships, Community Services, Financial Services and Legal Services will take the Council's final decision as to whether to prosecute or not. In all cases they will consider the following three factors:

1. Whether there is sufficient evidence for a realistic prospect of a conviction.
2. Whether a prosecution is in the public interest.
3. The deterrent value to be gained from publicising the case.

In certain cases, dependent on the scale and scope of the fraud, the decision to prosecute will be taken by the Police and/or the Department of Work and Pensions. In such cases the Council will contribute whatever relevant information it holds towards the legal action.

### The Public Interest Test

As previously stated, an important principle affecting any decision to prosecute is, whether a prosecution is in the public interest. The Council will not make a decision to prosecute – even if the overpayment is over £2000 or the claimant has offended before (where the overpayment is below £2000) – unless and until it has been decided that prosecution is in the public interest.

Deciding on what constitutes the public interest is not simply a matter of adding up the number of factors on each side. Officers must decide how important each factor is in the circumstances of each case before going on to make their overall assessment.

The Council applies a Gravity Factor system as an aid to any decision to prosecute. The system used is recommended by the BFI and is shown below. The panel of officers including Head of Audit & Partnerships, Head of Financial Services, Head of Benefits, Head of Investigations and Legal Services, as they consider the other factors of the case, consider the Gravity Factors at the same time. Gravity Factors are not the defining criteria for prosecutions; they are used solely as guidance.

<b>QUESTION</b>	<b>GRAVITY FACTOR</b>
1. Was the offence planned or systematic?	3
2. Was more than one person involved?	3
3. One point for each multiple of £500 of overpayment (the first £500 equals 1 point)	1
4. Two points for each previous offence	2
5. One point for unpaid overpayment or penalty	1
6. Being the identifiable ring leader or has instigated the offence (where more than one person is involved)	1
7. Breach of trust (employee or Councillor) (1 point for General Grades 1-4, SH 1-5 or 2 points for SMG1 upwards/ SH6 upwards or Councillor)	1
8. Length of time (1 point for each month or part of month from change date excluding first 30 days)	1
9. One point for each DWP benefit affected	1
10. If the person is in Social Services care	Minus 4
11. One deduction point for each 5 years over 65 (65-69, 70-75, 76-80 etc)	Minus 1
12. If the claimant is under 18 years of age	Minus 1
13.If the claimant is a member of a household which includes children under the age of 16	Minus 1

If a Gravity Factor of 6 or more is reached and the other contributory conditions are met – a sufficiently high level of overpayment, evidence that the offence is not the offender’s first etc – the Council will prosecute.

If the Gravity Factor is below 6 and above 4 the Council may still prosecute, depending on the other factors of the case; or a sanction may be administered.

If the Gravity Factor points score is below 4, the claimant will usually be written to and informed that no further action is being taken in that instance, but that the offence has been noted and their benefit review period reduced to a 26 week cycle.

## **Part 2 Surrey Heath Borough Council's policy for administering sanctions**

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In cases where, having considered all the factors of the case, the Council chooses not to prosecute, it has the option of applying a sanction against the claimant. There are two types of sanctions; an Official Caution and an Administrative Penalty.

The Council's policy statements are detailed below. The policy statements themselves are not binding when considering action, they are general statements that the Council recognises the relevant deterrent value of sanctions and supports their application, where appropriate.

### Formal Cautions

A Formal Caution is an oral warning given in certain circumstances to a person who has committed an offence. A Formal Caution can only be given where there is sufficient evidence to justify instituting criminal proceedings and the person has admitted the offence during an interview under caution.

In the scale of possible actions, which can be taken against a claimant, Formal Cautions rank below Prosecutions and Administration Penalties. However, a Formal Caution is still a deterrent and, if a claimant is subsequently prosecuted for another benefit offence, the Council will cite the previous caution in any court proceedings.

The Council may (dependent upon circumstances) issue a Formal Caution where the gross adjudicated overpayment is less than £2000. A caution may also be given where the points scored on the Gravity Factor matrix are 4 or 5. However, in certain cases where the matrix scores are 4 or 5 the Council may decide to prosecute. As previously stated, there is no one defining factor in the decision to prosecute, or not to prosecute. Each case is considered on its own merits.

Formal Cautions are given orally by senior Council officers, during an interview conducted at Surrey Heath House and then confirmed in writing. During the interview the claimant is required to sign a document stating that they admit to the offence, agree to the Formal Caution and acknowledge they have been cautioned.

The officers advise the person being cautioned that their benefit entitlement period will be affected, and that the Benefits Agency will be informed of the matter.

If the caution is not accepted by the accused, the case is referred for prosecution regardless of any other factor. It is the Council's view that unless the threat of criminal proceedings is evident the use of Formal Cautions may be undermined.

There are certain circumstances when the Council may choose to issue a Formal Caution over another form of action. These include cases where;

following the start of legal proceedings, the Council receives representations from the claimant, or their solicitor that indicate a Formal Caution to be more appropriate: e.g. an admission of guilt and willingness to receive a caution

following the start of legal proceedings, the Council receives information regarding the claimant's particular circumstances: e.g. poor health, severe personal difficulties

These are examples only; the list is not exhaustive.

### Administrative Penalties

Section 115A of the Social Security Administration Act 1992, inserted by the Social Security Administration (Fraud) Act 1997, introduced a new power to offer an Administrative Penalty as an alternative to prosecution. The effective use of this power depends on being able to prosecute should the claimant refuse the penalty. If the claimant accepts the penalty, the Council will not instigate proceedings against them in respect of the particular overpayment.

The penalty to be imposed amounts to 30% of the amount of the recoverable overpayment. It can only be offered where the Council has sufficient grounds for instigating criminal proceedings and, in accordance with certain statutory requirements of the above-mentioned Fraud Act.

The Council may (dependent upon circumstances) seek to apply an Administrative Penalty where the gross adjudicated overpayment is under £2000. The Council may also seek to apply a penalty where the points scored on the Gravity Factor matrix total 6 or below (even though 6 is generally the point score which triggers prosecution).

There are certain circumstances when the Council may choose to seek to apply an Administrative Penalty over another form of action. These include cases where;

following the start of legal proceedings, the Council receives representations from the claimant, or their solicitor that indicate an Administrative Penalty to be more appropriate: e.g. an admission of guilt and willingness to pay a penalty

### **Conclusion**

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The Government requires Local Authorities to combat benefit fraud and to recover overpayments. Where practicable, Councils should seek to prosecute the perpetrators of fraud through the courts. In circumstances where court action is impractical or undesirable, the Government has granted the power to apply sanctions.

Both the Department of Work and Pensions and the Benefits Fraud Inspectorate have recommended Councils have a written statement of their prosecution/sanction policy.

Councils must consider whether prosecution serves the public interest. Simply setting monetary levels above or below which prosecutions will or will not be instigated is not a satisfactory policy. The Council's standing in the community may be adversely effected by rigid enforcement of such criteria. The abiding theme of this policy is that; each case is considered on its individual merits. Monetary levels are considered with the same gravity as the deterrent value of prosecution and the interests of the public.

Prosecution is expensive and Councils need to weigh up whether the use of public money to pursue cases through the courts is the best use of its resources. By applying the approach to prosecution represented within this policy this Council is able to demonstrate a level of consistency in each case it considers.

In all cases the Council keeps detailed records pertaining to each case it considers for prosecution.

A full report of all cases meeting the necessary criteria for consideration for prosecution or, for applying a sanction, is submitted to the Policy and Resource Select Committee annually.

This policy was amended in January 2005 following an application for judicial review based on the Department Of Work And Pensions financial guidelines for Administrative Penalties. Counsel's opinion was that, failing to consider the offer of an Administrative Penalty to cases that fell within the previous lower financial guideline (£400) would fail a test of rationality. Therefore, in November 2004 The Department issued guidelines for more consideration to be given to individual customer's circumstances in deciding the appropriateness of issuing a Formal Caution or offering an Administrative Penalty in all cases where the evidential requirement for prosecution is satisfied and the overpayment is less than £2000.