

Suffolk Coastal District Council Corporate Counter Fraud Unit

Explaining Interviews Under Caution



What is this booklet about?

The Council appreciates that for many people being asked to attend an interview under caution can be worrying, particularly if you are not aware of what an interview under caution is, how it is undertaken or what can happen after the interview.

In order to address these concerns, the Council has produced this booklet to explain the interview under caution and investigation processes as undertaken by its Corporate Counter Fraud Unit; the team employed by the Council to deter, prevent, detect and investigate cases where there is a suspicion of fraud or corruption.

Please note that this booklet is for general information purposes only; if you have been asked by the Council to attend an interview under caution you should consider seeking independent / legal advice by contacting your local Citizens' Advice Bureau (contact details are provided on page 9) or a Solicitor / suitably qualified legal advisor.

Why does the Council investigate?

As a public body, Suffolk Coastal District Council is under a duty to ensure that the funds it administers, including housing and council tax benefits, are properly managed and protected from fraud, corruption and other forms of misuse.

Where it appears that information provided to the Council in support of a claim for housing and / or council tax benefit may be incorrect, misleading or where there has been a failure to report a notifiable change in personal circumstances, and it is possible that this could result in a financial loss to us, then we will undertake an investigation in order to safeguard public assets.

Like other statutory bodies with an enforcement role, such as HM Revenues and Customs, the Police and the Department for Work and Pensions, the majority of the Council's investigations into suspected benefit fraud are undertaken in accordance with criminal legislation such as the Police and Criminal Evidence Act 1984 and the Criminal Procedures and Investigations Act 1996.

All criminal investigations undertaken by the Council into alleged benefit fraud offences are done so by accredited Counter Fraud Investigators (accredited by the University of Portsmouth), who follow both legislation and the Council's own internal procedures.

The Council does not undertake investigations lightly, we only do so where we believe that it is reasonable to do so and that offences may have been committed against our financial systems.

What is an Interview Under Caution?

An interview under caution is a formal interview undertaken as part of a criminal investigation. The interview is recorded on either magnetic tape or compact disk and is conducted only where it is suspected that criminal offences may have been committed.

It is because we suspect that you may have committed an offence that at the beginning of the interview we caution you, which means we will tell you that:

- You do not have to answer any questions we ask you during the interview or say anything about the matter; but
- If you choose not to answer any questions during the interview then a Court, assuming that your case went to Court, could make its own conclusions about why you chose not to say anything during the interview; and
- Anything you do say could be used in evidence if the case went to Court.

Shortly after you have been cautioned we will inform you of your legal rights whilst being interviewed, which are:

- You are not under arrest or otherwise detained;
- You are free to leave at any time;
- You may have a friend and / or a solicitor present during the interview (Please note that any friend present must have no connection with the investigation and they are present solely for moral support.)

If you wish to be accompanied / represented by a Solicitor or similarly qualified legal practitioner (who must hold current certification from the Law Society), it is important that you ask your Solicitor to contact the Investigator dealing with your case as soon as possible to arrange for advanced disclosure to be made.

Please note that the Council does not have or provide childcare facilities; if you have parental responsibility for a dependent child (under 18 years) you should make suitable arrangements.

Why have I been asked to attend an interview under caution?

The Council has asked you to attend an interview because we believe that there are grounds to believe that you might have committed a criminal offence. We might believe that you might have committed an offence because you have been claiming (or have applied for) housing and/or council tax benefit and it appears that:

- You have given incorrect, incomplete or misleading information within a benefit application form or documentation supporting such a claim; or
- You have not told the Council about a reportable change in your personal circumstances.

The reason(s) why you have been asked to attend the interview will have been stated on the letter (that accompanies this booklet) we have sent to you, inviting you to attend an interview.

The fact that you have been asked to attend an interview does not mean that the Council believes that you are guilty of an offence and intends to prosecute you; it simply means that the evidence we have collected so far suggests that you might have committed an offence.

The interview is held in order to give you the opportunity to provide an explanation about what has happened – although should evidence emerge during the interview that you have committed an offence, then you may be prosecuted.

Do I have to attend an interview?

No, you do not have to attend an interview under caution if you do not wish to, but if you do not attend an interview we will not have heard your account of events and failing to attend an interview does not prevent the Council from taking further action against you, including prosecution.

Who will interview me?

You will usually be interviewed by two officers from the Council's Corporate Counter Fraud Unit, these officers are specially trained to conduct interviews under caution. On occasions interviews are conducted by an officer from the Corporate Counter Fraud Unit assisted by an officer from one of the Council's other enforcement teams.

Sometimes the Council conducts interviews with officers from other agencies such as the Police, the Department for Work and Pensions and HM Revenue and Customs. If there has been a joint investigation into your case, you may be interviewed by an officer from the Council and an officer from another agency. If this is the case, this will be made clear to you before the interview commences.

Where will I be interviewed?

The Council usually conducts its interviews under caution at its Melton Hill offices in Woodbridge. Occasionally interviews are conducted at the Council's sub-office in Felixstowe or, if the interview is to be conducted with officers from the Department for Work and Pensions, at Job Centres in Felixstowe, Woodbridge and Leiston.

Only in exceptional circumstances (such as severely disability) and at the Investigating Officer's discretion, will the Council conduct an interview under caution at your home address.

Who can come to the interview with me?

Anyone who is not connected to the investigation can sit in the interview with you, this person could be a friend, a relative or someone like a social worker or support worker. If the person accompanying you is not a practicing and accredited Solicitor or Legal Advisor (accredited by the Law Society), then they are treated as an observer; they have no right to speak on your behalf, answer questions, advise you or ask questions during the course of the interview.

We will not conduct an interview under caution with any dependent children (those who are under 18 years old) present nor with anyone whom the investigating officer believes could be a potential suspect, witness or similarly connected to the case. Again, please note that the Council does not have childcare facilities; if you are attending an interview under caution please ensure that you have made adequate childcare provision.

If you have a severe hearing impediment or English is not your first language (and you have difficulty in understanding and answering in English) the Council will provide a translator without charge to you.

What happens during the interview?

As soon as you sit down in the interview room the lead interviewer will unseal 2 cassette tapes or compact disks (CDs) in front of you; this is done so you can be sure that the tapes or CDs have not been pre-recorded or otherwise tampered with. The cassettes or CDs will be placed into the recording device used and the interview will begin.

Before you are asked any questions about the case, the Council's officers will explain:

- That the interview is being recorded;
- That the interview is being conducted in accordance with the Police and Criminal Evidence Act 1984 (PACE) and that a copy of the PACE Codes of Practice are available for you to consult;
- That you are under caution: that you do not have to say anything, but it may harm your defence if you do not mention when questioned something you later rely on in Court, and that anything you do say may be used in evidence;
- That you are not under arrest or detained, you are free to leave the interview at any time you choose (or if the interview is taking place in your home, you are free to ask the interviewers to leave at any time); and that
- You are free to seek legal advice or consult with your legal advisor at any time.

You will then be told about why the Council wishes to interview you, and be asked questions about the matter. Please note that the Council's officers are not bound to accept the first answer they are given, but are under a duty to try and establish the truth about what has happened.

At the end of the interview you will be asked to sign a label, which will be used to seal one of the cassettes or CDs used. The sealed copy of the recording will be safely stored by the Council until it is either required at Court or, if no further action is taken against you, destroyed. The unsealed copy of the recording will be transcribed by the Council and will be safely stored until it too is destroyed.

You can obtain a copy of the recording from the Council, at no cost, however, we will not provide you with a copy if our enquiries are continuing or if we decide not to take any further action against you. If you would like a copy please either ask the interviewing officer immediately after the interview, or write to:

Solicitor to the Council
Suffolk Coastal District Council
Melton Hill
Woodbridge
IP12 1AU

What action can the Council take?

The Council has a number of options available to it, which option it will choose depends on a number of factors, and any decision made will be done so in accordance with the Council's Benefit Fraud Sanction and Prosecution Policy. A copy of the Policy, amongst other related documents, is available online at: http://www.suffolkcoastal.gov.uk/cgi-bin/MsmGo.exe?grab_id=651&page_id=14494464&query=Fraud&hiword=FRAUDS+Fraud+

A paper copy of the Sanction and Prosecution Policy is available upon request to:

Corporate Counter Fraud Unit
Suffolk Coastal District Council
Melton Hill
Woodbridge
IP12 1AU

The decision is also made in accordance with the Code for Crown Prosecutors, which is available online only (as it is not a Suffolk Coastal publication) at: <http://www.cps.gov.uk/Publications/docs/code2004english.pdf>

The options available to the Council in dealing with your case are:

No Further Action

Where the Council believes that there is no evidence of an offence having been committed or there is such evidence but we do not believe it is in the public interest to take any further action, we will write and advise you that we will not be taking criminal proceedings against you. Whilst the Council may not take any further criminal action against you, it will seek to recover all overpaid benefit from you: you remain liable to repay all overpaid benefit. If you do not repay the overpaid amounts the Council can take civil proceedings against you in the Country Court.

Sanctions

Where the Council believes that there is sufficient evidence to successfully prosecute you in the Criminal Courts but believes that the circumstances of the case are thus that it should offer an alternative to prosecution, either a Formal Caution or an Administrative Penalty. Irrespective as to which sanction you are offered and whether or not you accept the sanction, the Council will seek to recover all overpaid benefit from you.

Formal Caution

A formal caution is where you will be informed by a senior officer from the Council that your conduct has been unacceptable, that it constitutes a criminal offence and that any reoccurrence could result in your prosecution.

To receive a Formal Caution you must have admitted an offence when interviewed under caution and you must agree to receive the Caution. Unlike a Police Caution, a Formal Caution given by the Council is not recorded on the Police National Computer although a record of the Caution will be held by the Council and the Department for Work and Pensions.

Administrative Penalty

An Administrative Penalty is a civil penalty applied by the Council, and is fixed by law (and is therefore non-negotiable) as being 30% of the benefit overpayment. Unlike a Formal Caution, you do not have to admit an offence during an interview under caution. If you accept an Administrative Penalty you have a 28 day “cooling off” period in which you can cancel the agreement.

It should be remembered that Formal Cautions and Administrative Penalties are alternatives to prosecution; if the Council offers a sanction and it is refused, the case file will be returned to the Council’s Legal Section and criminal proceedings could be instigated without any further notice.

Prosecution

Where the Council has sufficient evidence and believes it is in the public interest to do so, it will instigate criminal proceedings against individuals, either in the Magistrates’ Courts or Crown Courts. Most of the Council’s prosecutions take place in the Magistrates’ Court (Ipswich or Lowestoft) with only the most serious cases being heard at Crown Court (Ipswich).

If you are prosecuted and found guilty, you will receive a criminal record and face punishment by the Court, the Council also publicises its successful prosecutions. If you are acquitted by the Court, no further action will be taken against you by the Council (other than collecting the benefit you have been overpaid) and the Council will not publicise the prosecution.

If you are found guilty, the Courts have a number of penalties they can apply a range of penalties, such as:

Conditional Discharge: the Court will take no further action against you providing that you fulfil certain conditions for a period of time set by the Court (i.e. not to commit any further offences for 12 months). The Court may also order you to pay costs to the Council to cover some of the cost of the prosecution.

A Fine: A financial penalty imposed by and payable to the Court. The Court may also order you to pay costs to the Council to cover some of the cost of the prosecution.

Community Service Order: The Court can order that you undertake a unpaid work on community or other projects for a number of hours. The Court may also order you to pay costs to the Council to cover some of the cost of the prosecution.

Imprisonment: The Court can send you to prison for a period of time. The Court may also order you to pay costs to the Council to cover some of the cost of the prosecution.

Irrespective of whether you are found guilty or not guilty, the Council will seek to recover all overpaid benefit from you.

Where can I find further information?

You can receive independent information and advice concerning interviews under caution and criminal investigations from a Solicitor or from your local Citizens' Advice Bureau. You may be eligible for legal aid – you should ask your Solicitor or the Citizens' Advice Bureau about this:

Felixstowe CAB

2-6 Orwell Road
Felixstowe

Tel: 01394 275958

Leiston, Saxmundham and District CAB

14 Colonial House
Leiston

Tel: 01728 832193