



Suffolk Coastal District Council

Benefit Fraud Sanction and Prosecution Policy

1. Introduction

1.1 Suffolk Coastal District Council is committed to providing the highest quality value for money public services to all those resident or working within its District.

1.2 In seeking to achieve this aim, the Council recognises the requirement to safeguard public funds by countering the threat of benefit fraud. Therefore, the Council commits itself to countering such fraud through the active prevention, detection, investigation and prosecution / sanctioning of those individuals who it believes are guilty of benefit fraud offences.

1.3 This document sets out the Council's policy in respect of prosecutions and the application of sanctions (Formal Cautions and Administrative Penalties) for cases of suspected benefit fraud. This is done in order to ensure that all interested parties are aware of the framework of principles applied by the Council when considering what course of action to take concerning those it believes have committed an offence.

1.4 The aim of this policy is to ensure the fair, proportionate and consistent treatment of those persons who are suspected of having committed a benefit fraud related offence.

2. Counter Fraud Policy Statement

2.1 The Council recognises the importance of securing public confidence in the services it provides and recognises that the loss of public funds through fraud and other dishonest activity serves only to undermine this confidence. We believe that benefit fraud is an unacceptable waste of public funds and only serves to steal money away from those within our society who most need public services and support.

2.2 The Council acknowledges that the majority of its customers are honest, however, it also acknowledges that there are a small minority who will dishonestly obtain benefit payments they know they are not entitled to.

2.3 To this end, the Council will maintain and support a dedicated counter-fraud service who shall have delegated responsibility for the prevention, detection, investigation and referring to a prosecuting body, cases of suspected benefit fraud.

2.4 The Council will ensure that all investigations are undertaken by professional and suitably qualified staff. Furthermore, all investigations will be undertaken in a fair and proportionate manner and in accordance with stated best practice and applicable criminal and civil legislation.

2.5 The Council commits itself to actively participating and working with other Local Authorities and partnership agencies to reduce the threat of fraud by active liaison, data matching, joint investigations and the joint application of sanctions and prosecutions.

3. The Evidential Test

3.1 In determining whether any further action should be taken, the Council will decide whether there is sufficient evidence by which to instigate criminal proceedings; this is known as “the evidential test”.

3.2 In undertaking this test, the Council will decide whether there is a realistic prospect of conviction within the criminal courts and in doing so the Council will have regard as to whether the available evidence is admissible in court and whether or not it is reliable.

3.3 In order for a case to pass the evidential test, there must be sufficient evidence to provide for a realistic prospect of conviction within a criminal court in respect of each defendant on each charge. A realistic prospect of conviction means that a Jury or a Bench of Magistrates, properly directed in accordance with the law, would be more likely than not to convict the defendant of the charge alleged.

3.4 Only a suitably legally qualified officer (a practising Solicitor) may make this objective determination and in doing so shall examine all the available evidence, regardless as to whether it points towards or away from the accused person.

3.5 If a case does not pass the evidential test, no further criminal action will be taken, albeit that this decision does not effect the recovery of any overpaid benefit by means of the civil law.

4. **The Public Interest Test**

4.1 Where a case has passed the evidential test, a determination concerning what course of action is most appropriate shall be taken; this is the “public interest test”.

4.2 Prior to referring a case to the Council’s prosecuting solicitor, the Assistant Director of Finance (Audit) shall give consideration as to whether it is in the public interest to refer the case further. This shall be done in order to ensure that unsuitable cases are not referred to the prosecuting solicitor.

4.3 As with the evidential test, the public interest test will be undertaken only by a suitably legally qualified officer (a practising Solicitor) and in reaching a decision, that officer shall give consideration to the “Code for Crown Prosecutors” as well as being guided by the following factors:

- The likely sentence upon conviction;
- Whether the defendant was in a position of authority or trust;
- The length of time over which the offence was committed;
- Whether the defendant was the ring-leader or organiser of the offence;
- Whether the defendant colluded, or acted in conjunction, with any other person in the commissioning of the offence;
- The circumstances surrounding the commissioning of the offence;
- The personal circumstances of the defendant, including the likely impact of the Council’s decision on the defendant;

- The level of the overpayment;
- The defendant's previous character;
- Whether the defendant has put right the loss or harm created by the offence (but the defendant cannot avoid prosecution or the application of a sanction by simply repaying any overpaid benefit).

4.4 The officer making the public interest test shall be guided by these factors, but shall reach their own determination as to the weight of each factor based on the individual circumstances of each case. The public interest decision may only be made by a Council's officer (a practising solicitor), and their decision cannot be subject to an appeal by the defendant or their representative(s).

5. **The Options Available to the Council**

5.1 In determining which course of action to take, the Council shall give due consideration to all the options available:

No Further Action

5.2 There may be occasions where there is sufficient evidence to provide for a realistic prospect of conviction but the personal circumstances of the offender and / or the circumstances surrounding the commissioning of the offence are so exceptional that the Council will not pursue the matter further.

5.3 In this instance, the Council will consider exceptional circumstances as being:

- The personal circumstances of the offender are so exceptional (due to serious financial or health matters affecting the claimant, their partner or any dependant member of their family) that the Council will take no further criminal action; or

- The Council has been partly culpable or has made serious failings that have contributed to the commissioning of the offence.

5.4 Whilst taking no further criminal action, the Council will still seek to recover all overpaid benefit through civil law means.

Formal Caution

5.5 A Formal Caution is an alternative to prosecution and involves an officer of the Council giving the offender a formal verbal warning as to their conduct.

5.6 The purpose of the Formal Caution is to:

- Deal quickly and simply with less serious offences;
- Divert the offender from unnecessary appearance(s) in the criminal courts; and
- Reduce the chances of the offender from re-offending.

5.7 Before a Formal Caution may be offered and administered, the following conditions must be satisfied:

- There must be evidence of the offender's guilt that is sufficient to give a realistic prospect of conviction;
- The offender must admit the offence at an interview under caution;
- The offender's previous conduct must be such that the administration of a caution is appropriate; and
- The offender must understand the significance of the caution and give informed consent to receiving a Formal Caution.

5.8 The Council may offer Formal Cautions by virtue of common-law.

5.9 Where accepted, a Formal Caution will be administered by a officer of the Council, usually from within the Counter Fraud Unit / Internal Audit Section, who has had no direct involvement in the investigation of the case. A record in respect of each Formal Caution, administered nationally, will be retained by the Department for Work and Pensions' Professional Standards Unit. Where a Formal Caution has previously been administered (whether by Suffolk Coastal or another Local Authority) this will be a factor when making the public interest test.

5.10 The fact that a Formal Caution has previously been issued may be cited to the Court should the offender commit further like offences.

5.11 A Formal Caution is offered as an alternative to prosecution; where a Formal Caution is not accepted, unless there are exceptional circumstances, the Council will instigate criminal proceedings (prosecution).

Administrative Penalty

5.12 As with a Formal Caution, an Administrative Penalty is also an alternative to prosecution. It involves the Council applying a penalty of 30% (fixed by law) of any overpaid benefit arising from the commissioning of the offence.

5.13 The purpose of the Administrative Penalty is to:

- Deal quickly and simply with less serious offences; and
- Divert offenders from unnecessary appearances in the criminal courts.

5.14 The Council may offer Administrative Penalties by virtue of s.115(A) of the Social Security Act 1992, however, the following conditions must be satisfied:

- There must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- There has been an overpayment of benefit resulting from the offence; and
- The offender must accept the Administrative Penalty.

5.15 A record in respect of each Administrative Penalty, administered nationally, will be retained by the Department for Work and Pensions' Professional Standards Unit. This record may be referred to when considering whether to offer a Penalty to an offender.

5.16 That fact that an Administrative Penalty has been administered will be a factor when making the public interest test should the offender commit further like offences.

5.17 An Administrative Penalty is offered as an alternative to prosecution; where an Administrative Penalty is not accepted, unless there are exceptional circumstances, the Council will instigate criminal proceedings (prosecution).

Prosecution

5.18 The Council may instigate criminal proceedings against an offender and prosecution will be considered in the most serious cases.

5.19 The Council can prosecute for a number of different offences, whether under the Theft Acts or under Social Security Administration Legislation. When deciding what offence an offender should be charged with, the Council will select charges which:

- Are appropriate to the offence;
- Reflect the seriousness of the offence;
- Give the court adequate sentencing powers; and
- Enable the case to be presented in a clear and simple way.

5.20 The Council will not charge the offender with any more offences than it considers necessary.

6. Publicity

6.1 The Council will publicise, via all appropriate media sources, all appropriate prosecution cases where a conviction has been secured in order to deter others from committing similar offences.

6.2 At the end of each financial year, the Council will further publicise the numbers of Formal Cautions and Administrative Penalties successfully administered as well as the total amount of overpaid benefit identified in respect of these and prosecution cases.

7. Overpayments

7.1 The Council will take all necessary and appropriate steps to ensure the recovery of all overpaid benefit resulting from incidents of benefit fraud. Where appropriate, the Council will seek financial restitution from both the civil and criminal courts.

8. Joint Working with the Department for Work and Pensions

8.1 The Council is committed to joint working with partner organisations and in particular with the Department for Work and Pensions' Counter Fraud Investigation Service, the Inland Revenue's Special Compliance Team and Counter-Fraud Services operated by other Local Authorities.

8.2 The Council will liaise closely with these organisations and will undertake joint investigations and prosecutions with them. Where these organisations lead an investigation in which the Council participates, the Council shall, having satisfied itself of the evidential test, make the public interest test with reference to the lead organisation's Sanctions and Prosecution Policy.

8.3 Wherever practicable, the Council will seek to take the same course of action as taken by the lead organisation, however, the Council retains the right to take a different course of action where it believes it is in the public interest to do so.

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