

Housing Benefit and Council Tax Benefit Prosecution Policy

Epping Forest District Council recognises that fair and effective prosecution is essential to law and order but, even in minor cases, prosecutions have serious implications for all involved. Decisions to prosecute will be fair and consistent. Court action will either be undertaken by the Council or the Crown Prosecution Service. An Administrative Penalty or Formal Caution may be offered as an alternative to prosecution.

Prosecution criteria

All the following factors have to be satisfied before the Benefits Division can consider prosecuting for fraud:

- a) Guilty action, knowledge and intent have been proven.
- b) Sufficient admissible evidence exists for a successful prosecution.
- c) Any of the following:
 - I. The recoverable Housing Benefit and/or Council Tax Benefit overpayment exceeds £2,000.
 - II. The offence was premeditated.
 - III. The person has previously been convicted of Social Security or Local Authority benefit fraud.
 - IV. The offender has reneged on or defaulted on a repayment of an Administrative Penalty.
 - V. The offender was in a position of trust. For example a member of staff.
- d) The prosecution is in the public interest.

The Benefits Division will not consider prosecuting in any of the following instances of fraud, except in exceptional circumstances:

- a) Technical reasons. (Flaws in the investigation, maladministration, insufficient evidence or delay).
- b) The offender has voluntarily disclosed the fraud.
- c) The offender is mentally ill.
- d) The offender is terminally ill.
- e) A prosecution is not considered to be within the public interest and would constitute a waste of public funds.
- f) The offender was misled and, it is considered, acted in ignorance.
- g) Extenuating social circumstances exist that greatly contributed to the offence being committed.

Administrative Penalty

An Administrative penalty is a sanction to be offered as an alternative to prosecution. Each penalty will amount to 30% of any benefit overpayment and will be offered in accordance with the guidelines laid down by the Department for Work and Pensions (DWP). However a prosecution must follow if the offender refuses the offer of a penalty. In cases where fraud has been detected before any payments have been made a penalty will not be appropriate.

The following factors have to be satisfied before an administrative penalty will be considered:

- a) Any case where there are grounds for instituting criminal proceedings
- b) Where prosecution is a possibility but not the preferred option with regard to the individual merits of the case.

Any of the following factors outline where an Administrative Penalty will be considered inappropriate:

- a) The offence was committed over at least 9 months.
- b) The offence was premeditated.
- c) The person has previously been convicted of Social Security or Local Authority benefit fraud.
- d) The offender has previously defaulted on the repayment of an Administrative Penalty.
- e) The offender was in a position of trust, for example, a member of staff.
- f) The alleged offence has arisen from a collusive landlord/employer and it is considered to amount to serious fraud.
- g) A prosecution is not being instigated as it is considered unlikely to succeed in court.

Any immunity given by Epping Forest District Council will not prejudice any action taken against an alleged offender by the Department for Work and Pensions in respect of any overpaid DWP benefit. The offer and acceptance of an Administrative Penalty will not give immunity from considering criminal proceedings for a different alleged offence.

Formal Caution

A formal caution is an oral warning given in certain circumstances to a person who has committed an offence. A formal caution is a meaningful penalty and deterrent for those who commit low scale benefit fraud, where criminal proceedings are not a first option and an administrative penalty is not appropriate. The standard of evidence required to issue a formal caution must be of that required to commence criminal proceedings.

A formal caution may only be considered where:

- a) There is sufficient evidence to justify instigating criminal proceedings.
- b) The offender has admitted the offence during an interview under caution.
- c) The offender has no history of benefit fraud.
- d) The offender has signed a certificate of caution admitting the offence.

- e) The offender has agreed to the caution and acknowledged that they have been cautioned.

A prosecution must follow if the offender refuses to accept a formal caution. If the offender is subsequently prosecuted for another benefit offence the caution may be cited in court. Any immunity given by Epping Forest District Council will not prejudice any action taken against an alleged offender by the Department for Work and Pensions in respect of any overpaid DWP benefit. The offer and acceptance of a formal caution will not give immunity from considering criminal proceedings for a different alleged offence.