



BENEFITS AND TAXATION

HOUSING BENEFIT / COUNCIL TAX BENEFIT

SANCTIONS POLICY

Revised April 2008

1.0 Introduction.

- 1.1** Barnsley Metropolitan Borough Council (BMBC) is committed to protecting public funds it administers through its action on fraud.
- 1.2** Where a person is accused of committing fraud against Housing Benefit and/or Council Tax Benefit and there is sufficient evidence to sustain a prosecution the Council will always consider whether to undertake a prosecution or apply an “alternative sanction”.
- 1.3** Fraud is a serious matter and as such the sanctioning of offenders is an important deterrent in this process.
- 1.4** BMBC is committed to the sanctioning of those who have abused the benefits scheme and obtained monies to which they are not entitled.
- 1.5** This document sets out the policy for dealing with offenders and should not be used in isolation. Other relevant and related policies should also be considered.
- 1.6** By implementing and enforcing this Sanctions Policy BMBC is sending out a clear message that it will not tolerate or accept fraud.
- 1.7** Every case will be considered on its own merits, taking into account various criteria and also whether it is in the public interest to undertake a prosecution.
- 1.8** The Council will also consider the Crown Prosecution guidelines in all cases.
- 1.9** Where a person is suspected of committing an offence they will be interviewed in accordance with relative legislation to ensure the highest standards of integrity are maintained.
- 1.10** The Council is authorised to include in the prosecution any of the following benefits affected by the fraud uncovered:-
- Income Support
 - Job Seekers Allowance
 - Incapacity Benefit / Employment Support Allowance
 - Retirement Pension
 - Severe Disablement Allowance
 - Widows Pension

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- 1.11** All investigations undertaken that are suitable for sanction action will be referred to the Sanctions Panel that will consist of senior managers. Prior to this each case will be subject to a series of robust quality checks to ensure full compliance to legislation.
 - 1.12** The Sanction Panel will consider each case on its own merits applying the criteria within this policy and taking into account any additional mitigating factors.
 - 1.13** Any recommendations to instigate criminal proceedings will be forwarded to the Council's Legal Department or in exceptional circumstances an external Solicitor.
 - 1.14** In any case of a joint investigation undertaken with the Department for Work and Pensions (DWP) the DWP's own solicitors may process the prosecution. In such cases the Sanction Panel will authorise the delegation of further action.
 - 1.15** In joint investigation cases should the DWP decline to institute criminal proceedings and the Council considers it has sufficient evidence to prosecute the case this will be forwarded to the Council's Legal Department for further action.
 - 1.16** In addition to applying a sanction on fraudsters Barnsley Metropolitan Borough Council will also seek recovery of any overpayment by recovery from ongoing benefit entitlement or by invoice.

2.0 Sanctions Available

There are a number of sanctions available:

Formal Caution:- An oral warning may be given in certain circumstances to a person who has committed an offence and may be offered as an alternative to prosecution.

Administrative Penalty:- A penalty will be considered and may be offered as an alternative to prosecution. This is a financial penalty amounting to a statutorily determined percentage of the gross overpayment.

Prosecution:- criminal proceedings may be brought against alleged offenders and the case heard in Court with a view to obtaining a criminal conviction and an appropriate sentence. The Council reserves the right to seek prosecution in every fraud case taking into account a number of factors (see section7).

3.0 Sanction Criteria

3.1 Decisions to apply a sanction must be undertaken fairly, consistently and effectively for law and order to be maintained.

This decision will be made in accordance with Section 222 of the Local Government Finance Act 1972 which provides that "*where a local authority considers it expedient for the promotion or protection of the interests of the inhabitants of their area*" they may prosecute.

3.2 The decision made will take into account a number of criteria, including the following:

- The public interest test
- The age and health of the person(s) involved
- The amount of loss to the Council
- The period of the offence or how long the fraud continued
- Where there has been full /partial repayment
- The evidential test
- Where there is realistic prospect of a conviction
- The admissibility and reliability of the evidence

4.0 Formal Caution

- 4.1** The Social Security Administration Act 1992 states that Councils may offer a Formal Caution as an alternative to prosecution.
- 4.2** A formal caution is an oral warning given in certain circumstances to a person who has committed an offence.
- 4.3** Formal cautioning is based on a principle that no prosecuting authority is under an obligation to prosecute. BMBC recognises the need to introduce a meaningful penalty and deterrent for those persons at the lower end of benefit fraud whilst being aware of the increasing importance of keeping offenders out of the Courts.
- 4.4** The use of formal cautions is purely administrative and there is no legislation covering their use. BMBC has introduced robust procedures based on instructions and guidance issued by the Home Office (Circulars 18/1994 and 59/1990) and Department for Work and Pensions.
- 4.5** Barnsley Council will consider the offer of a formal caution, when some/ all of the following apply:
- Prosecution is not the first option.
 - There is sufficient evidence to justify criminal proceedings
 - The person has admitted the offence during an interview under caution
- 4.6** The Council will not offer a formal caution if there is insufficient evidence to justify instigating criminal proceedings.
- 4.7** All formal cautions will be administered in-house. A fully trained Fraud Investigation Officer will be designated for the preparation and administration of formal cautions.
- 4.8** The officer administering the formal caution will not have been present at the interview under caution.
- 4.9** Where a formal caution is accepted the person will be informed that a record of the formal caution will be kept in accordance with the Council's Investigation Section's Retention, Security and Destruction Policy.
- 4.10** The person will also be informed that the caution may be cited in Court if, they are subsequently convicted by a Court for a future benefit offence.

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- 4.11** In any case where the person refuses to accept a caution the case will be referred to the Sanction Panel to reconsider for prosecution proceedings.
- 4.12** In joint investigation cases the function of administering a formal caution may be delegated on the authorisation of the Sanction Panel or the DWP Fraud Manager.

5.0 Administrative Penalty.

- 5.1** Section 115A of the Social Security Admin Act 1992 (as amended by Section 15 by the Social Security Admin (Fraud) Act 1997) introduced administrative penalties as an alternative to a prosecution.
- 5.2** The penalty is set at 30% of the gross overpayment. If more than one benefit is overpaid, then each separate benefit may attract a penalty.
- 5.3** BMBC will consider offering an Administrative Penalty when some/all of the following apply:
- There is sufficient evidence to justify instigating criminal proceedings
 - Prosecution is not the first option.
 - The person has not admitted the offence during an interview under caution
- 5.4** All administrative penalties will be administered in-house. A fully trained Fraud Investigations Officer will be designated for the preparation and administration penalties.
- 5.5** The officer administering the administrative penalty will not have been present at the interview under caution.
- 5.6** Where an administrative penalty is accepted the person will be informed that a record of the administrative penalty will be kept in accordance with the Council's Investigation Section's Retention, Security and Destruction Policy.
- 5.7** In any case where the person refuses to accept an administrative penalty the case will be referred to the Sanction Panel to reconsider for prosecution proceedings.

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- 5.8 The Council will not offer an administration penalty if there is insufficient evidence to justify instigating criminal proceedings.
- 5.9 In joint investigation cases the function of administering a administration penalty may be delegated on the authorisation of the Sanction Panel or the DWP Fraud Manager.

6.0 Formal Caution and Administrative Penalties – General

- 6.1 All persons will be given the opportunity to attend an interview to explain the process.
- 6.2 All persons will be given clear information regarding the sanction action being taken against them. They will also be informed of what action may be taken should they refuse the offer of an alternative sanction.
- 6.3 All persons will be asked to sign appropriate documents that will be retained by Barnsley Council. Appropriate copies will be given to the customer.
- 6.4 Once a formal caution or administrative penalty has been accepted the Council will not consider criminal proceedings for that offence.
- 6.5 Upon accepting an administrative penalty a person has 28 days in which to withdraw from the agreement. If the penalty is not withdrawn within that time then action to recover the debt will commence.
- 6.6 If a formal caution or administrative penalty is:
- not accepted or
 - withdrawn within 28 days (in cases of an administrative penalty) or
 - the person fails to attend or declines to attend an interview

BMBC will recommend that criminal proceedings are instigated.

7.0 Prosecutions

7.1 BMBC will consider instigating criminal proceedings as a first option in all cases where:

- It considers it has sufficient evidence to justify doing so
- The amount of overpayment or financial gain from fraudulent activity warrants proceedings
- The fraud has continued for a long time
- The customer /associate has had the opportunity to declare the relevant or correct facts

7.2 In some cases it will instigate criminal proceedings as a first option regardless of the amount of overpayment. Some examples are where:

- The offer of a formal caution or administrative penalty has been refused
- An administrative penalty has been withdrawn
- There is a previous conviction of a related offence
- The fraud was deliberate and/or planned
- The person has attempted fraud
- The person refuses or fails to attend an invitation to interview
- The person has failed to offer a satisfactory explanation
- The person failed to co-operate with the investigation
- The person is in a position of trust ie BMBC employee, Councillor etc
- The case is a matter of collusion or conspiracy
- The offence is widespread in the area
- There is reason to believe that the person would have continued to offend had the fraud not been detected

7.3 This list is not exhaustive and each case will be judged on its own merits.

7.4 Although the amount of the overpayment can be used as a guide, fraud may have been detected in the early stages or before payment was actually made and as such an overpayment prevented. The attempt itself may be serious enough to warrant prosecution.

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- 7.5** The Council would not normally consider prosecution in some cases. Some examples are;
- The person is suffering chronic ill health (supporting medical evidence will be required)
 - The offence was as a result of a genuine mistake or misunderstanding
- 7.6** For the purpose of this policy a person's age, health, well being and any other relevant factors will be considered by the members of the sanction panel.

8.0 No sanction

- 8.1** In accordance with this policy if the Sanction Panel considers that the circumstances of the case are such that no sanction is appropriate or is it not considered in the public interest, no sanction will be applied.
- 8.2** Should the person have been interviewed formally ie under caution, they will be notified in writing that no further action is to be taken and released from caution.

9.0 Appeals

- 9.1** If the person appeals against a fraud overpayment decision the prosecution proceedings will continue. This does not affect the persons' appeal rights.
- 9.2** Once the Sanction Panel have authorised criminal proceedings any appeal proceedings will be suspended until such time that the result of the criminal proceedings are known.

10.0 Publicity

- 10.1** The Council will publicise sanctioned cases as a deterrent against fraud.

11.0 Interviews

- 11.1** Should the Council believe that there are grounds to suspect that a criminal offence may have occurred, the interview will be tape recorded in accordance with the Police and Criminal Evidence Act, 1984.
- 11.2** The interview is to enable the customer /associate the opportunity to offer an explanation of the facts and/ or the events that have occurred.
- 11.3** The customer/associate may have legal representation and/or an interpreter
- 11.4** Should an interview be required a letter and information leaflet explaining the process will be issued.
- 11.5** Should the person refuse / fail to attend the Council may consider requesting South Yorkshire Police to issue an arrest warrant.

12.0 Voluntary Disclosure

- 12.1** This will occur when claimants, of their own free will, reveal 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 would have been discovered;
 - The claimant has discovered that they were already being investigated;
 - The disclosure was prompted by, for example, a verification visit.

Any voluntary disclosure will be taken into consideration when the decision on appropriate action is taken