

Appendix A

Housing and Council Tax Benefit

Supplementary Enforcement Policy

September 2011

1. Introduction

- 1.1 This document should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy'.
- 1.2 Herefordshire Council is committed to taking a proactive approach to preventing and reducing the level of Housing and Council Tax Benefit fraud. This policy reflects the Council's vision to reduce the levels of fraud and error and in particular to take a zero tolerance approach to benefit fraud. The Council has a duty to protect the public funds it administers from abuse and is aware of the risks within the benefits system for fraud, error or other irregularity. In carrying out this duty, the authority may use legally obtained information provided for the purpose of the prevention and detection of fraud. It may also share information with other bodies administering public funds solely for these purposes where a legal gateway exists.
- 1.3 Wherever possible, effective internal controls will be incorporated to minimise the risk of fraud occurring. However, despite this, fraud can be perpetrated and appropriate procedures need to be in place.
- 1.4 This policy outlines the approach to be followed with regard to the sanction and prosecution of benefit offences perpetrated for example by benefit claimants, landlords, employers, contractors, or Members. This list is not prescriptive. It will serve as a policy statement and will support an operational guide for Benefit Fraud Officers. This will ensure that offences are dealt with consistently in line with best practice.
- 1.5 It is clear that some people will attempt to deliberately obtain benefit to which they are not entitled. Where an investigation provides evidence of such an offence the Council will consider if criminal proceedings are appropriate.
- 1.6 Where it is decided that criminal proceedings are appropriate but the offence(s) involved are considered to be minor, the Council will consider the offer of a formal caution or administrative penalty as an alternative to proceedings. The policy on formal cautions is included at **Section 3** and the policy on administrative penalties is at **Section 4** of this policy statement.
- 1.7 All sanctions will be authorised by the Benefit Fraud & Interventions Manager following consideration of the evidential and public interest tests outlined in the council's 'Enforcement and Prosecution Policy'..
- 1.8 The policy will be reviewed annually to take account of any legislative changes and to provide assurance that the policy is being correctly followed.
- 1.9 Wherever possible the Council will work jointly with the 'Department for Work and Pensions (DWP) Counter Fraud Investigation Service (CFIS)'. In these cases the combined overpayment from both DWP and Herefordshire Council will determine the appropriate sanction. Where appropriate the Council will authorise the DWP to carry out prosecution on its behalf.

2. Courts

2.1 Where a decision is made that prosecution is the most appropriate sanction, the majority of cases will be dealt with at Magistrates Court. However, in more serious benefit fraud cases, trial at Crown Court will be considered. When considering Crown Court the following criteria will be applied:

- i) The benefit claim was fraudulent from the outset
- ii) The fraud was sophisticated in concept or execution
- iii) The fraudulent overpayment in most cases exceeds £20,000

Every case will be considered on the known facts and the appropriate jurisdiction will be recommended as appropriate.

3. Local Authority Formal Caution

3.1 A formal caution is a written warning given to a person who has committed an offence as an alternative to prosecution. It may not be made conditional upon the satisfactory completion of a specific task such as reparation or payment of compensation.

3.2 Before a formal caution can be offered the evidential test must be satisfied, the offence must have been admitted at an interview under caution and informed consent from the person being cautioned must be obtained. A formal caution is a deterrent, and does not affect the recipient unless they re-offend when it may be cited in Court on conviction. Where a caution has been declined the case must then be referred for criminal proceedings.

3.3 Other considerations to be taken into account before offering a formal caution is:

- i) what action the Department for Work & Pensions is taking on any part of the benefit it administers
- ii) all public interest criteria

3.4 For an effective regime of sanctions to be successful it is essential that accurate records of all convictions, administrative penalties and formal cautions are maintained. This will enable the correct decisions to be made, taking full account of the defendant's background. Therefore, it is important that an acceptance record of each is maintained.

3.5 The 'Benefit Fraud & Intervention Manager' in consultation with the 'Benefit Fraud Officer' will determine whether a formal caution is appropriate.

4. Administrative Penalty

4.1 Section 15 of the Social Security Administration (Fraud) Act 1997 inserted Section 115a into the Social Security Administration Act 1992 introducing administrative penalties as an alternative to prosecution. A financial penalty amounting to 30% of the adjudicated overpayment can be offered in a fraud case if the following conditions are met:

- i) There is a recoverable overpayment of benefit under, or by virtue of, Section 75 or 76 of the Social Security Administration Act 1992
- ii) the cause of the overpayment is attributed to an act or omission on the part of the defendant; and

- iii) there are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based

4.2 Other considerations to be taken into account before offering an administrative penalty are:

- iii) what action the Department for Work & Pensions is taking on any part of the benefit it administers
- iv) all public interest criteria
- v) the ability of the claimant to pay the penalty.

4.3 The offer of the penalty must be by written notice in accordance with Section 115A (2)(a) and (2)(b). If the offender declines the offer of an administrative penalty or the offender withdraws his agreement to pay the penalty the case must be considered for prosecution.

4.4 The Benefit Fraud Officer in consultation with the Benefit Fraud & Interventions Manager will determine whether an administrative penalty is appropriate having regard to the amount of fraudulent overpayment.

5. Alternatives to Prosecution – the Exceptions

5.1 Sanctions are broadly based on financial losses that have been incurred as a result of a fraud.

5.2 In exceptional cases the Benefit Fraud & Interventions Manager may decide that none of the sanctions options of Administrative Penalty, Formal Caution or Prosecution, set out in the policy, are appropriate. In such cases where the Benefit Fraud & Interventions Manager considers the sum overpaid is insufficient to warrant the sanctions referred to above and there is little or no evidence to suggest that the commission of the offence was committed knowingly or dishonestly, the following options may be considered:-

- i) an informal caution sent by letter; or
- ii) no further action be taken

5.3 As a general rule the following cases should not be considered for an alternative to prosecution:

- i) the defendant is a Council Member, employee or contractor of the Council at the time of the offence.
- ii) the defendant has declined to accept, or has withdrawn from their agreement to accept, an administrative penalty
- iii) the defendant has declined a formal caution
- iv) the defendant has already received an administrative penalty or formal caution for a previous offence
- v) the amount of the fraudulent overpayment is greater than £2,000
- vi) the defendant has previous convictions for similar offences

6. Publicity

6.1 It is the Council's intention to positively promote this policy as well as the outcome of any prosecutions, which should deter others from fraudulent activity.

- 6.2 The Council will promote this policy and benefit fraud prosecutions both internally across the Council and externally. In addition, the **Benefit Fraud Hotline Tel. 0800 592 953** and an on-line fraud referral form on the Herefordshire Council website will be available for people to make referrals.

7. Diversity

- 7.1 Herefordshire Council recognises its moral and statutory obligation to meet the needs of a diverse population and to supply a service that embraces these values. All fraud cases are assessed on their individual merits based upon the prosecution criteria outlined within this policy document and adopts Herefordshire Council's diversity policy.

8. Recovery

- 8.1 In appropriate Crown Court cases the Council will seek to apply the 'Proceeds of Crime Act 2002'.
- 8.2. In all other cases recovery of fraudulent overpayments will be pursued through the civil courts.

Version Log

<i>Version</i>	<i>Status</i>	<i>Date</i>	<i>Description of Change</i>	<i>Reason for Change</i>	<i>Pages affected</i>
1.0	First final version	May 09		Annual review	
1.1	Final version	Sep 11	Revised in accordance with the introduction of the Council's overarching enforcement policy	Removal of duplication	