



Benefit Fraud - Prosecutions and Sanctions Policy

May 2018



Background

From 1 December 2015, responsibility for Housing Benefit fraud investigation transferred from Boston Borough Council to the Department for Work and Pensions (DWP) under the Single Fraud Investigation Service (SFIS). Boston Borough Council retains responsibility for investigating potentially incorrectly claimed Council Tax Support.

This document sets out the Council's policy on the use of sanctions including prosecutions for offences relating to any of the following schemes: -

- Housing Benefit
- Council Tax Benefit
- Council Tax Support
- Any successor benefit to these schemes

It details the general policy principles adopted by us in relation to benefit and council tax fraud, its investigation and its policy in relation to taking enforcement action against people whom we believe have committed benefit and council tax fraud. It should be read in conjunction with the Council's Anti Fraud and Corruption Policy.

Statement of Intent

Boston Borough Council is committed to protecting public funds by taking action to combat benefit fraud. The council will not tolerate any form of benefit fraud, whether it is attempted from within or outside of the council. If there is sufficient evidence to show that a claimant or some other third party has committed benefit fraud, the council will consider taking action against that person under the appropriate legislation.

We will seek to recover any benefit overpaid as a result of fraudulent activity and will use every power available to us to minimise the loss to the public purse through fraud.

Action to counter fraud

Boston Borough Council considers benefit fraud is theft and we have a legal and moral duty to take action to prevent and detect fraud.

We are committed to operating in an open and honest way in order to: -

- Minimise the risk of fraud entering the benefit system
- Encourage the prevention of fraud
- Deter those who are considering committing benefit fraud from doing so
- Investigate allegations of fraud in an effective and professional manner.



Organisation

In accordance with Section 151 of the Local Government Finance Act 1972, each local authority has a statutory duty to appoint one person (known as the Chief Financial Officer or Section 151 Officer) to have responsibility for the proper administration of its financial affairs. The Section 151 Officer has a legal duty to put in place measures to enable the prevention and detection of inaccuracies and fraud.

If required at any time, The Head of Paid Service will appoint an “Authorised Officer” under Regulation 3 of the Council Tax Reduction Schemes (Detection of Fraud & Enforcement) (England) Regulations 2013.

The Authorised Officer may exercise any of the powers that are conferred by Regulations 4 and 5 of the Council Tax Reduction Schemes (Detection of Fraud & Enforcement) (England) Regulations 2013. Authorised Officers exercise powers to obtain information to assist in an investigation.

Duties and Considerations of Investigation Officers

Whilst investigating benefit fraud, the Council’s investigation officers and authorised officers will work within the guidelines of the Police & Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers 2000, the Social Security Acts and subsequent amendments, any new legislation introduced to govern this area of work and the council’s policies on customer care.

Officers will operate within the confines of the relevant Data Protection Act Legislation (currently the Data Protection Act 1998, but in May 2018 new legislation covering Data Protection will be enacted) and will maintain client confidentiality.

Officers will have sufficient training to undertake investigatory duties within all the above legislation and Council policy frameworks.

The council will investigate any instances where an officer has abused their powers whilst investigating any allegation of fraud. If the investigation reveals breaches of the law or council policy, then disciplinary action may take place.

Sanctions Process

Once an investigation has been completed, there will be one of several different possible outcomes:

- The allegation may have been proved to be entirely without foundation
- There may have been an error in the amount of benefit paid to the claimant
- There may be evidence that the claimant has committed a criminal offence



In cases where there is evidence that the customer has committed a criminal offence, we will consider what action we will take as a sanction against that offence. In all cases we will seek to recover any overpaid benefit by using a range of different methods available.

The administering of sanctions serves 3 purposes: -

- To act as a punishment against the person who has committed the offence
- To act as a future deterrent against the person who has committed the offence
- To act as deterrent to prevent members of the public committing future offences.

Consideration for a Sanction

There are two forms of sanction available to us: -

- Administrative Penalty – As an alternative to prosecution, the offender may agree to pay an extra financial penalty. The amount of the penalty is specified by law, but varies dependant upon the period of the offence and the scheme against which the offence has been perpetrated.
- Prosecution through the Courts – The offender may be prosecuted through either the Crown or Magistrates Court depending on the severity of the case and if found guilty will face a maximum sentence of seven years in prison, or a fine, or both for the most serious of cases.

Each case is considered on its own facts and merits. The Code for Crown Prosecutors is used as a guide when considering any sanction.

Every case where a sanction will be applied must pass the full code test. This consists of two stages, the evidential stage and the public interest stage. The Investigators report will highlight any factors that need to be considered such as: -

- The amount of money obtained, the duration of the offence and the number of previous offences
- The amount of any overpayment of any other welfare benefit or loss to public funds made as a consequence of the fraud
- The physical and mental condition of the alleged offender
- Any voluntary disclosure
- The level of co-operation offered by the alleged offender during the investigation
- Social Factors
- Strength of the evidence
- Any failings in the investigation
- Any failings in the administration of the claim that could have contributed to the alleged offence



- Any exceptional or unusual factors specific to the case
- Any mitigating factors brought to the attention of the Council
- Any admission or denial of the offence by the alleged offender
- Any refusal to accept an Administrative Penalty.

In deciding which sanction is appropriate, the following guidelines will be followed. These guidelines are based upon DWP research and practice as well as local experience. The council will also give consideration to DWP overpayment amounts for prosecution. SFIS will liaise and update the council as and when these guideline limits change. Each case will be considered on its own merits and the guidelines are not binding.

- If the overpayment of benefit is under £3,000, the council will generally seek to offer an administrative penalty, unless when considering other factors, prosecution is more appropriate.
- If the overpayment of benefit is over £5,000, the council will generally seek to prosecute the offender, unless when considering other factors an alternative to prosecution is more appropriate.
- The option will remain to take prosecution action in any case if aggravating circumstances exist, including attempted fraud, irrespective of the level of overpayment involved.

Decision Making Process

Administrative Penalties will be authorised by the Chief Finance Officer or the Credit Control Manager who has day to day responsibility for benefit/support fraud.

Any Boston Borough Council prosecutions will be authorised by both the Credit Control Manager and the Chief Finance Officer.

Housing Benefit investigation is now a function under the DWP as part of the SFIS. As such, the evidence provided and case summaries will be the responsibility of SFIS. However, the decision making process will follow that stated above.

The Council can decide to take no action in respect of any case. If this occurs, a record of the reasons for reaching this decision will be recorded.

In all cases, the claimant will be expected to repay any amount of benefit overpaid.



Delivering sanctions and prosecutions

Prosecutions will generally be taken by Legal Services Lincolnshire or by the Criminal Prosecution Service if the case has been investigated by SFIS. In cases where the investigation has been undertaken jointly by the Council and the DWP, the case may either be prosecuted by Legal Services Lincolnshire or solicitors acting on behalf of the DWP, whichever is considered the most appropriate in each case.

In some cases, it may be appropriate for another local authority to administer the sanction, if for example, the alleged offender has moved away and is resident in another local authority area – or the Council is working with another local authority on investigative functions delivery.

Publicity

The Council may seek publicity about successful benefit fraud prosecutions. The aim of such publicity is to deter others from committing similar frauds and to demonstrate to taxpayers that the Council is protecting public funds.

