

# North Wiltshire District Council

## Draft Benefit Fraud Prosecution Policy

<b>1. INTRODUCTION .....</b>	<b>2</b>
<b>2. POLICY STATEMENT.....</b>	<b>2</b>
<b>3. GENERAL PRINCIPLES .....</b>	<b>3</b>
<b>4. THE DECISION MAKING PROCESS.....</b>	<b>3</b>
<b>5. THE EVIDENTIAL STAGE .....</b>	<b>3</b>
<b>6. PUBLIC INTEREST FACTORS .....</b>	<b>4</b>
COMMON PUBLIC INTEREST FACTORS IN FAVOUR OF THE PROSECUTION: .....	4
COMMON PUBLIC INTEREST FACTORS AGAINST PROSECUTION:.....	5
<b>7. DECISION TO PROSECUTE .....</b>	<b>6</b>
<b>8. ALTERNATIVES TO PROSECUTION.....</b>	<b>6</b>
<b>9. THE ADMINISTRATIVE PENALTY .....</b>	<b>7</b>
<b>10. A FORMAL CAUTION.....</b>	<b>8</b>
<b>11. ALTERNATIVES TO PROSECUTION – THE EXCEPTIONS.....</b>	<b>8</b>

## **1. Introduction**

- 1.1 North Wiltshire District Council is committed to protecting the public funds it administers through its action against benefit fraud. In January 2000 the Council approved a comprehensive strategy for tackling fraud. This prosecution policy forms an integral part of the Councils overall strategy to prevent, detect and deter fraudulent benefit claims.
- 1.2 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. This document serves as a policy statement for Members of the Council, and as an operational guide for those involved in the decision making process.

## **2. Policy Statement**

- 2.1 North Wiltshire District Council will not tolerate abuse of welfare benefits by claimants, landlords or internally by staff. The Council will take an active stance against those that abuse the benefit scheme and any fraud will be vigorously investigated.
- 2.2 The Council will seek full redress through the law of any internal or external fraudulent activity perpetrated against it. This redress may be actioned through either the Criminal and/or Civil Courts as deemed appropriate. The ultimate sanction against offenders will be prosecution and successful cases will be publicised through the media.
- 2.3 In less serious cases of fraud the Council will consider offering a fixed penalty fine or administering a Formal Caution as an alternative to prosecution.
- 2.4 The Council is committed to working with other agencies to reduce the incidence of fraud. Council Officers will continue to work with the Department of Work and Pensions (DWP) Counter Fraud Investigation Service (CFIS) on related investigations into Income Support and Job Seekers Allowance claims.

### **3. General Principles**

- 3.1 Each case must be considered on its own facts and merits. However, there are general principles that must be applied in all cases.
- 3.2 Officers tasked with undertaking investigations into allegations of fraud must have full regard to all legislation and statutory guidance relating to criminal investigations, including the Police and Criminal Evidence Act 1984, the Code of Practice for Crown Prosecutors and the Criminal Procedure and Investigations Act 1996.
- 3.3 For the purposes of the Human Rights Act 1998 North Wiltshire District Council is a public authority. Therefore officers must apply the principles of the European Convention on Human Rights in accordance with the Act.
- 3.4 Officers must not allow any personal views about ethnic or national origin, disability, sex, religious beliefs, age, political views or the sexual orientation of the alleged offender influence their decisions.

### **4. The Decision Making Process**

- 4.1 The Council must be satisfied that there is a realistic prospect of conviction. Therefore, it is essential that there is sufficient admissible evidence so that a court, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence.
- 4.2 When deciding whether there is enough evidence to prosecute, the Council must consider whether the evidence can be used and is reliable. This is known as the evidential stage. The decision criteria for the evidential stage are detailed at section 5.

### **5. The Evidential Stage**

- 5.1 There must be sufficient evidence to provide a realistic prospect of conviction against each defendant on each recommended charge. In considering the evidence the following factors should be considered:
  - (i) Any evidence held should be admissible, reliable and sufficient so that a court properly directed in accordance with the law is more likely to convict than dismiss the case against the defendant.
  - (ii) Any circumstances and/or evidence available to the defence, which could cause a doubt in the prosecution's case.

5.2 In deciding the strength of the prosecution case the following factors should be considered:

- (i) The reliability of any admission taking into account the defendant's understanding or lack of understanding of all the circumstances.
- (ii) The strength of the evidence of witnesses. The case may be weakened if the defence questions their reliability because of their motive, background, or previous convictions.
- (iii) The evidence of the defendant's identity should be strong enough to withstand any questioning by the defence.

5.3 If the case does not pass the evidential stage it is unsuitable for prosecution, no matter how serious the allegations are.

5.4 If the evidential stage has been satisfied, a decision will be made as to whether or not it would be in the public interest to prosecute. Cases that pass the evidential test will not automatically be prosecuted and various factors should be borne in mind when considering whether or not it is in the public interest to do so. These factors are listed at section 6

## **6. Public Interest Factors**

6.1 The Public Interest factors can increase the need to prosecute or may suggest an alternative course of action. These factors will vary from case to case. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. It is a matter of common sense which factors are relevant and which do not apply. In making the decision to prosecute all available information must be carefully and fairly considered.

6.2 The following points should be used as a guide in determining whether or not prosecution is in the Public Interest.

### **Common Public Interest Factors in FAVOUR of the prosecution:**

- (i) The defendant is alleged to have committed the offence whilst under an Order of the Court.
- (ii) The defendant's previous convictions or cautions are relevant to the present offence.
- (iii) A conviction is likely to result in a significant sentence.
- (iv) The defendant was in a position of trust.
- (v) There is evidence that the offence was premeditated.
- (vi) There are grounds to believe that the defendant was motivated solely by personal gain.

- (vii) There are grounds for believing that the offence is likely to be continued or repeated e.g. by a history or recurring conduct.
- (viii) The offence is alleged to have occurred over a long period of time involving more than one act of deception.
- (ix) The offence, although not serious in itself, is widespread in the area where it is committed.
- (x) There is evidence that the offence was carried out by a group.
- (xi) The evidence shows that the suspect was a ringleader or an organiser of the offence.
- (xii) The overpayment of benefit is substantial (£2000 or more). This does not exclude taking prosecution action when the overpayment is below £2000.

**Common Public Interest Factors AGAINST prosecution:**

- (i) There has been a long delay between the offence taking place and the date of trial, unless:
  - the offence is serious;
  - the delay has been caused in part by the defendant;
  - the offence has only recently come to light;
- (ii) The defendant is or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated
- (iii) The offence is committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- (iv) The loss or harm can be described as minor and was a result of a single incident, particularly if it was caused by misjudgement.
- (v) The period of the offence is short and there are only isolated acts of deception.
- (vi) The complexity of the offence has meant that there has been a long investigation.
- (vii) The court is likely to award a very small or nominal penalty.
- (viii) The defendant admitted the offence at the first opportunity and made an offer of repayment.
- (ix) The defendant has put right the loss or harm that was caused (the defendant must not avoid prosecution simply because they can pay compensation).

## **7. Decision to Prosecute**

- 7.1 Failure to consider Evidential and Public Interest factors when reaching a decision on prosecution can have serious consequences. The laying of criminal information when there is insufficient evidence to do so can amount to an abuse of the process leaving the prosecutor open to legal action by the intended defendant.
- 7.2 Prosecution cases must be processed diligently to the final conclusion avoiding any undue delay. Failure to do so could also amount to an abuse of process, resulting in the loss of the case and possible legal action by the intended defendant.
- 7.3 Before the case is submitted to the prosecutor it will be reviewed by the Investigations Team Leader and certified as suitable for prosecution by the Customer Services, Strategic Manager.
- 7.4 The prosecutor will make the final decision as to whether a case is suitable for criminal proceeding after taking into consideration the Code of Conduct for Crown Prosecutors and this policy.

## **8. Alternatives to Prosecution**

- 8.1 Cases, which qualify for court on the strength of evidence and the public interest factors, can be considered for an alternative course of action to prosecution.
- 8.2 The defendant must give his informed consent to the alternative procedure to prosecution being offered. If the offer is declined criminal proceedings must always be considered. This means that an investigation must have been undertaken as if it was the intention to prosecute. It would be a serious misuse of power to offer an alternative to prosecution in any case where there is not a realistic prospect of a prosecution succeeding in court.

## **9. The Administrative Penalty**

9.1 Section 115 of the Social Security Administration Act 1992 allows Local Authorities to issue an administrative penalty as an alternative to prosecution where

- (i) Grounds exist for instituting proceedings
- (ii) Prosecution is possible but not the preferred option
- (iii) The case is not so serious that prosecution should be considered from the outset and:-
- (iv) The offer of an administrative penalty would not cause severe financial hardship placing vulnerable family members at risk

9.2 Administrative Penalties can be issued to:

- (i) Benefit claimants who are believed to have committed an offence
- (ii) Employers of benefit claimants who are believed to have committed an offence and where the employer has condoned, hidden or assisted the alleged offender in committing an offence.

9.3 Benefit Claimant - Administrative Penalty

This is a fixed penalty amounting to 30% of the gross adjudicated overpayment and can be offered if the following conditions are met:

- (i) There is recoverable overpayment of Benefit under, or by virtue of, sections 75 or 76 of the Social Security Administration Act 1992;
- (ii) The making of the overpayment was attributable to an act or omission on the part of the defendant.
- (iii) There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based.
- (iv) It is a first offence where the overpayment is generally below £2000

9.4 Employer – Administrative Penalty

An employer administrative penalty can only be offered if the offence occurred after the commencement date of 30<sup>th</sup> April 2002. The level of employer penalty is based on the circumstances of the offence:

9.5 If a person declines to agree to pay a penalty, or subsequently changes their mind, the case must then be considered for criminal proceedings unless exceptional circumstances apply.

## **10. A Formal Caution**

- 10.1 A formal caution is an oral or written warning given to a person who has committed an offence as an alternative to prosecution. In any case selected for caution there must be evidence to prove the offence, an admission at the Interview Under Caution and the person being cautioned must give his informed consent to the procedure.
- 10.2 A formal caution is a deterrent and does not affect the recipient except by re-offending when it can be cited in court on conviction. Where a caution has been declined the case must then be considered for criminal proceedings unless exceptional circumstances apply.
- 10.3 The Customer Services, Strategic Manager, in consultation with the Investigations Team Leader, will consider offering a formal caution in appropriate cases. These will include:
- (i) A first offence which was disclosed by the defendant.
  - (ii) A first offence where the overpayment is generally under £2000.

## **11. Alternatives to Prosecution – The Exceptions**

It should be noted that as a general rule, the following cases should not be considered for an alternative to prosecution:

- (i) The defendant is a council employee.
- (ii) The defendant has declined to accept or withdrawn from their agreement to accept an administrative penalty.
- (iii) Then defendant has declined a formal caution.
- (iv) The defendant has already received an administrative penalty or formal caution.
- (v) The amount of the fraudulent overpayment is greater than £2,000.
- (vi) The defendant is subject of a prosecution by another Agency for a similar offence.
- (vii) The defendant has previous convictions for similar offences.
- (viii) Where there is evidence that the defendant has used alias/es to claim Benefit.

