

## **REVISED SANCTIONS POLICY**

**EXECUTIVE MEMBER:** Cllr Elaine Woodburn, Leader  
**LEAD OFFICER:** Liam Murphy, Chief Executive  
**REPORT AUTHOR:** Marilyn Robinson, Audit & Fraud Prevention Manager

**Summary:** The existing Prosecution Policy needs to be revised in line with the Department of Works and Pensions Guidance, updated in June 2006.

<b>Recommendation:</b> That the revised Sanctions Policy be recommended to Full Council for approval.
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**Impact on delivering corporate objectives:** Contributes towards providing an effective Benefits Service to the standards set out in the Department of Works and Pensions Performance Standards.

**Impact on other statutory objectives (e.g. crime & disorder, LA21):** The aim is to minimise fraud in the Benefits system.

**Financial and human resource implications:** The Sanctions Policy will be applied within the existing budgets for Fraud Prevention, Benefits Administration and Legal Services.

**Project & Risk Management:** Not applicable.

### **Key Decision Status**

- **Financial:** None  
- **Ward:** None

**Other Ward Implications:** None

### **1. INTRODUCTION**

- 1.1 The Department of Works and Pensions (DWP) sets out standards for the administration of Benefits. These include standards for the use of sanctions.
- 1.2 Sanctions act as a deterrent to fraudsters. In England and Wales, a Local Authority may offer a formal caution, or an administrative caution, as an alternative to prosecution – as long as certain criteria are met and the case is one the Local Authority would wish to see in court if the caution was refused. To be able to offer a caution, the Authority must satisfy the same standard of criminal evidence as for a prosecution. A caution should only be offered if the Local Authority is in a position to prosecute, should the caution be refused.
- 1.3 Section 115A of the Social Security Administration Act provides Local Authorities with an opportunity to offer a customer an administrative penalty as an alternative to a prosecution.

## **REVISED SANCTIONS POLICY**

The penalty is the amount of the overpayment, plus 30% of the overpayment. Such a penalty requires the same level of evidence as a prosecution.

- 1.4 If the caution or penalty is refused, the Local Authority should refer this case for prosecution if it passes the public interest test. The ultimate sanction is a successful prosecution.
- 1.5 The DWP standards require that there is a balanced sanctions policy – “The Local Authority provides clear guidelines to employees to consider and administer the appropriate sanctions and ensures they are applied strictly in accordance with the law.”

## **2. REVISED SANCTIONS POLICY**

- 2.1 DWP good practice on sanctions requires that the Authority provides defined policy criteria on the issuing of cautions, including consideration of the suitability of the person to stand trial. The existing Prosecution Policy [attached at Appendix A] does not provide sufficient policy criteria to meet the DWP requirements. The detailed criteria were only included in written procedures, which were not formally approved by Members.
- 2.2 The revised Sanctions Policy [attached at Appendix B] expands on the original policy by considering in more detail the alternatives to prosecution – Formal Cautions and Administrative Penalties. The criteria are based on guidelines issued by the DWP.
- 2.3 The revised policy also formally sets out the need for a Sanctions Panel, which will ensure that the evidence in each case is formally reviewed before recommending the appropriate sanction. Although, in the past, there was a procedure where the Benefits Manager reviewed each case, this was not formally included in the policy. The aim is to ensure that the sanction recommended is fair, given the circumstances of the individual case. The case file, with the appropriate recommendation, will then be passed to the Legal Services section to ensure it meets the standard of evidence required.
- 2.4 The draft revised Sanctions Policy was considered by the Overview and Scrutiny Committee Performance and Resources on 20 September 2006. Members endorsed the draft policy without amendment.

## **3. CONCLUSION AND RECOMMENDATION**

- 3.1 The revised Sanctions Policy will enable the Council to meet the DWP standard for a balanced sanctions policy, providing clear guidelines for employees.
- 3.2 It is recommended that the revised Sanctions Policy be recommended to Full Council for approval.

### **List of Appendices**

Appendix A – Existing Prosecution Policy  
Appendix B – Revised Sanctions Policy

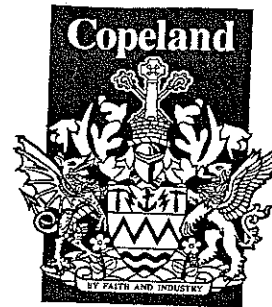
### **List of Background Documents:**

DWP Performance Standards June 2006  
DWP Security Guidance  
DWP Fraud Manual

**REVISED SANCTIONS POLICY**

**Officers Consulted:** Corporate Team, Legal Services Manager, Senior Legal Services Officer, Revenues and Benefits Services Manager, Revenues and Benefits Team Leader (Benefits)





## **APPENDIX A: EXISTING POLICY** **HOUSING AND COUNCIL TAX BENEFIT**

### **PROSECUTION POLICY**

#### **Statement of intention**

Copeland Borough Council is committed to protecting public funds and ensuring that benefits are delivered to those who have true entitlement.

Where a claimant has been accused of committing a fraud against the Council and there is sufficient evidence to sustain a prosecution, provided it is in the public interest to do so, the council will consider prosecution in accordance with the guidelines below.

#### **In the "Public Interest"**

If the overpayment of benefit is under £500, and the following conditions apply, the Council will not normally consider it in the public interest to prosecute, or offer a Penalty or Official Local Authority Caution.

- The claimant is in genuine financial hardship
- The claimant is a member of one of the following 'vulnerable' groups.
  - The mentally disabled
  - The offender, or offender's partner is suffering from serious long-term or acute illness, or is fragile because of advanced age or disability
  - People recently bereaved
  - People who have experienced recent marital break-up
  - A claimant, or partner, who is in the final weeks of pregnancy
  - Cases where the welfare of young children would be put at risk

In other cases, where the benefit overpayment is under £500, and the offender is not a member of a 'vulnerable group', then the Council will normally issue an Official Local Authority Caution.

#### **Administrative Penalty**

If the benefit overpayment is under £1000 and over £500 then the Council, in most circumstances, will make the offer of a 30% penalty.

## Prosecution

When the overpayment is substantial prosecution is normally the preferred course of action. Under Department of Works and Pensions (DWP) guideline if the overpayment is above £2000, the case should be considered for prosecution. Cases where the overpayment is less than £2000 should not be excluded merely because the amount fall below this threshold. There may be other factors that would still make prosecution appropriate. These circumstances could include the following:

- The person involved in the fraud was in a position of trust, e.g. a member of staff
- The fraud is calculated and deliberate e.g. planned from the outset by making a false statement on a new or repeat claim
- The person used false identity documents either forger or counterfeit to claim benefits
- The fraud continued over a long period of time
- The person has been previously convicted of benefit fraud within the last five years
- The person previously agreed to pay an administrative penalty or has received an official caution in respect of an earlier offence
- The person has declined the offer of an administrative penalty or a formal caution

In cases of landlord fraud, the Local Authority will seek to prosecute in all cases, regardless of the amount of benefit overpayment.

**COPELAND BOROUGH COUNCIL  
SANCTIONS POLICY – BENEFIT FRAUD**

**PURPOSE OF THIS POLICY**

Local Authorities have a duty to administer Housing and Council Tax Benefit claims, including the responsibility to prevent and detect Benefit fraud. Copeland Borough Council is committed to the prevention, detection, correction and investigation of Benefit fraud. Where an offence has been committed, the Council can consider administering a caution, offering an administrative penalty, or instigating a prosecution.

The purpose of this policy is to assist in making a decision on what action will be taken and to demonstrate a fair and consistent approach. The evidence gathered must be of a sufficient standard to sustain a sanction and any sanction applied should be in the public interest. The Sanctions Panel will take into account the additional factors outlined in this policy.

The Sanctions Panel consists of the Audit and Fraud Prevention Manager and the Revenues and Benefits Team Leader (Benefits). Both parties are required to sign the document presented by the Fraud Prevention Team Leader with their decision. The assessment and decision will be documented on the fraud case file.

**PUBLIC INTEREST TEST**

It would be inadvisable to prosecute in the following cases:-

- The offender, or offender's partner is suffering from serious long term illness, or is fragile because of advanced age or disability.
- People with mental illness.
- Heavily pregnant females (within last 8 weeks of pregnancy).
- People recently bereaved.

**VOLUNTARY DISCLOSURE**

Voluntary disclosure is where a claimant, of their own free will, reveals a fraud. In this case, prosecution would not be appropriate. However, a disclosure is not voluntary if:-

- The admission is not a complete disclosure of the fraud.
- It was apparently prompted by the expectation that the fraud would be discovered e.g. they knew the Authority was making enquiries of their employer etc.
- The claimant admits all the facts as soon as they are challenged.
- The claimant discloses the fraud as a result of being required to complete a review form.

In the above cases prosecution should be considered in the normal way.

**FORMAL CAUTIONS/ADMINISTRATIVE PENALTIES**

A caution is a warning given in certain circumstances as an alternative to prosecution to a person who has committed an offence. This sanction is only considered when there is sufficient evidence to justify criminal proceedings. The person has to have admitted the offence during an interview under caution before an official caution can be given.

An administrative penalty is the offer to the customer to agree to pay a financial penalty where the customer has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is currently stipulated at 30 per cent of the amount of the gross overpayment.

An administrative penalty is made on behalf of the Secretary of State and carries no right of appeal. Unlike an official caution, there is no requirement for the person to admit the offence before an administrative penalty can be offered. However, an administrative penalty can only be offered when the Local Authority is satisfied that there is ground for instituting criminal proceedings in respect of the overpayment. The amount of the penalty is at the rate fixed by the Government, which is currently 30% of the fraudulent overpayment.

Formal Cautions or Administrative Penalties may be offered to persons who fit the following criteria:

- The overpayment is between £0 and £1,999 or the overpayment is £2000 or over but the claimant has significant ill health where a prosecution would have a severe impact on their health.
- The person has committed an offence, which has a realistic prospect of conviction.
- The person has admitted their guilt (caution only).
- The case meets the Public Interest Test.
- There has been no previous sanction applied to the person for a benefit fraud offence within five years recorded on the Department of Works and Pensions database.
- There are no convictions for fraud and kindred offences within the last 5 years.
- Where there has been an attempt to claim benefit fraudulently but no payment has been made (caution only).
- There was no other person involved in the offence.

**EMPLOYER ADMINISTRATIVE PENALTY**

An Administrative Penalty may be offered to an employer who has committed an offence of:-

- Making a false statement or
- Obstructing an Authorised Officer or
- Failing to provide the required information or
- Committing false accounting



when dealing with an enquiry concerning their employees, i.e. under section 109B (2) or 109C of the Social Security Administration Act 1992.

If it is established that an offence has been committed, there must be grounds for recommending proceedings and prosecution must not be a first option. In these cases, the amount of the Administrative Penalty is £1,000. If the penalty is being offered to an employer and the grounds for instigating proceedings against them is because of incitement, conspiracy or aiding and abetting (England and Wales) (i.e. conduct that facilitates the commission of a benefit offence by an employee) and the employer's conduct involved more than five employees, the amount of the Administrative Penalty is £5,000.

In all other cases, where the employer has less than five employees, that amount of the Administrative Penalty is £1,000 multiplied by the number of employees involved in the employer's conduct.

Repeat offences only should be considered for prosecution. This is because, for sanction action to be effective, subsequent offences should be dealt with more severely than previous ones.

If the employer declines the offer of an Administrative Penalty, then the case will be passed for prosecution. The court will be informed in any particular case that the employer has been offered a penalty but declined to accept it.

## PROSECUTION

When the overpayment is substantial, prosecution is normally the preferred course of action. Under the Department of Works and Pensions (DWP) guideline, if the overpayment is above £2000, the case should be considered for prosecution. Cases where the overpayment is less than £2000 should not be excluded merely because the amount falls below this threshold. There may be other factors that would still make prosecution appropriate. These circumstances could include the following:

- The person involved in the fraud was in a position of trust, e.g. a member of staff.
- The fraud is calculated and deliberate e.g. planned from the outset by making a false statement on a new or repeat claim.
- The person used false identity documents, either forged or counterfeit to claim benefits.
- The fraud continued over a long period of time.
- The person has been previously convicted of benefit fraud within the last five years.
- The person previously agreed to pay an administrative penalty or has received an official caution in respect of an earlier offence.
- The person has declined the offer of an administrative penalty or a formal caution.

In cases of landlord fraud, the Local Authority will seek to prosecute in all cases, regardless of the amount of benefit overpayment.

## PROCEDURAL GUIDE

Following an Interview under Caution and where a case is considered suitable for prosecution because one of the above seven criteria has been met, the Fraud Prevention Team Leader will forward all case papers to the Sanctions Panel, who will decide whether there are any social or other factors which may indicate a prosecution may not be appropriate. The Fraud Prevention Team Leader will highlight whether any of the social or other factors listed below have come to light during the investigation to date.

The offender falls into once of the following vulnerable groups:-

- Suffers from a mental disability.
- Suffers from a long-term serious illness or his/her partner is similarly affected.
- Is fragile due to age or disability.
- Has experienced a recent bereavement of a close relative (close relative to be as in accordance with Reg. 2 of the Housing Benefit (General) Regulations 1987).
- Is in the final month of pregnancy or is a single parent and the welfare of children may be put at risk.

Other factors will incorporate the following:-

- Whether the offender voluntarily disclosed that he/she has committed fraud.
- Whether the offender co-operated with the Council's Investigation Officer during the investigation.
- Whether the offender has either paid back the benefit fraudulently obtained or has made satisfactory arrangements to pay back the said sum.

Whilst the above factors must be considered, the weight of evidence and the seriousness of the offence may still on balance mean a prosecution should be pursued. However, it must always be borne in mind that a prosecution must be in the public interest and there should be an effective deterrent value.

## RESPONSIBILITIES OF FRAUD SECTION

It is essential that the Investigating Officer attempts to gather sufficient information regarding the social background of the offender to assist the Fraud Team Leader in the decision process although, if there is insufficient information, it may be necessary for the Fraud Team Leader to interview the offender.

The Fraud Prevention Team Leader will complete the investigation file and recommend to the Sanctions Panel what, in her view, is the appropriate sanction to be considered. [See Appendix 1.] The case papers will be forwarded to the Sanctions Panel, together with a recommendation as to the appropriate action.

## RESPONSIBILITIES OF LEGAL SECTION

Before commencing the prosecution the Senior Legal Executive must be satisfied that the case papers and associated documents provide sufficient evidence to indicate that a prosecution is likely to be successful and that any relevant Human Rights have been considered. (If there is a lack of evidence do not pursue a prosecution).

The Senior Legal Executive will provide regular feedback on progress with regard to any prosecution and give adequate notice of dates and times of Court Hearings where other officers may be required to give evidence to the Court.

Copeland Borough Council has the use of In House Legal Services. When an offender is prosecuted, any fraudulent gain as well as investigative and prosecution costs will be applied for through a compensation order at the court.

It should be remembered that by referring a case for prosecution it is not a determination of the sentence. Sentencing is a matter for the courts.

## HUMAN RIGHTS ACT 1998

Officers must be familiar with this legislation in carrying out their duties and consider what action should be taken if it appears that a decision to initiate a prosecution would infringe a convention right. All prosecution decisions should be assessed against the framework provided by the Human Rights Act 1998.

In preparation for a situation arising where a prosecution could be considered under the above criteria Investigating Officers must be familiar with the 1984 Police and Criminal Evidence Act (PACE) and the 1996 Criminal Procedures and Investigation Act (CPIA). The Fraud Prevention Team Leader will ensure adequate training is provided.

## CONCLUSIONS

It is essential that each case is treated on its own merits. The decision to prosecute an individual is a serious step.

Fair and effective prosecutions are imperative to the maintenance of Law and Order BUT even in minor cases, a prosecution has serious implications for all involved. Decisions to prosecute should always be fair and consistent. The application of the criteria in this policy will contribute to fairness and consistency.

8 September 2006



## APPENDIX 1

COPELAND BOROUGH COUNCILFRAUD PREVENTION TEAMSANCTION CHECKLIST

<b>NAME</b>	<b>DOB</b>	
<b>ADDRESS</b>	<b>NI NO</b>	
<b>CLAIM NO</b>	<b>CASE NO</b>	
1. Procedural Difficulties/Delays/Failures in the Investigation/Administration Process. If yes, give details:	<b>YES</b>	<b>NO</b>
2. Level of Overpayment	<b>£</b>	
3. Duration of offence(s)	<b>YRS</b>	<b>MTHS</b>
4. Any record of similar previous offences.	<b>YES</b>	<b>NO</b>
5. Was the offence calculated and premeditated.	<b>YES</b>	<b>NO</b>
6. Were other people involved in the fraud.	<b>YES</b>	<b>NO</b>
7. Any aspects of collusion.	<b>YES</b>	<b>NO</b>
8. Are there any known Mental or Physical Conditions. If yes, give details:	<b>YES</b>	<b>NO</b>
9. Are there any known Social Factors, which would make Prosecution undesirable. If yes, give details:	<b>YES</b>	<b>NO</b>
10. Aspects of Voluntary Disclosure.	<b>YES</b>	<b>NO</b>

**Fraud Team Leader Recommendation**  
 Formal Caution/Admin Penalty/Prosecution

Signature \_\_\_\_\_ Fraud Team Leader Date \_\_\_\_\_

**Recommendation Authorised/Rejected**

Signature \_\_\_\_\_ Audit & Fraud Prevention Manager Date \_\_\_\_\_

Signature \_\_\_\_\_ Benefits Team Leader Date \_\_\_\_\_