

Sanction Policy:
**In respect of fraudulent Social
Security Benefit Claims**

**The Department for
Work and Pensions**

1. Sanction Policy of the Department for Work and Pensions

- 1.1 This document sets out the policy of the Department for Work and Pensions (DWP) towards sanctions, including criminal prosecutions, for offences relating to 'National' benefit fraud.
- 1.2 'Local' benefits (Housing Benefit and Council Tax Benefit) are administered by local authorities as part of their statutory local government functions. The sanctions policy in each local authority is therefore a matter for its members. However in practice local authority sanction policy broadly follows the approach of the DWP.

2. General Principles

- 2.1 The Department for Work and Pensions is committed to the prevention, detection, correction, investigation and, where appropriate, prosecution of fraudulent benefit claims.
- 2.2 The aim is to prevent criminal offences occurring by making it clear to our customers that they have a responsibility to provide accurate and timely information about their claims; to punish wrongdoing; and to deter offending.
- 2.3 This policy supports the new Departmental Strategic Objective (**DSO 6**) to pay our customers the right benefits at the right time which has replaced the Public Service Agreement (PSA 10) to reduce losses from fraud and error for people in working age, on Income Support and Jobseeker's Allowance. It also demonstrates the Department's determination to drive down fraud across the full range of welfare benefits.
- 2.4 Each potential fraud referral is assessed against national criteria. This assessment will result either in cases being investigated further under criminal investigation standards as set out within the remainder of this document or referred for customer compliance action.
- 2.5 Customer compliance action usually comprises a robust interview with the customer where they are questioned about any allegations. Further action depends upon the outcome of the interview but they will be reminded of their responsibilities and may be advised about future conduct and required to rectify or withdraw their claim.
- 2.6 The evidence obtained in each case that is subject to criminal investigation is considered on its own merits, having regard to all of the facts in deciding the most appropriate sanction.

3. Organisation

- 3.1 Criminal investigations are undertaken by the Department's Fraud Investigation Service (FIS) in accordance with:
- ◆ the Police and Criminal Evidence Act 1984 (PACE) and its codes of practice
 - ◆ the Criminal Procedures and Investigations Act 1996 (CPIA) and its codes of practice
 - ◆ all other relevant legislative and common-law rules
 - ◆ Departmental policy
 - ◆ advice from the Department's Prosecution Division.
- 3.2 Fraud Investigation Service investigators receive Professionalism in Security (PINS) training which is accredited by Portsmouth University. Additional guidance is provided by the Fraud Procedures and Instructions Manual which is regularly updated to ensure that:
- ◆ investigations are conducted in a legal and professional manner
 - ◆ policy and legislation is correctly applied, and
 - ◆ approved working methods are applied.
- 3.3 In England and Wales the Department's Prosecution Division decides whether cases submitted by FIS are suitable for prosecution and then prosecute the case. Most cases are heard by a Magistrates Court, although the more serious cases are usually referred to Crown Court.
- 3.4 Prosecution Division provides advice and guidance to investigators throughout the investigative and prosecuting process. They do not conduct any part of the investigation but advise on the investigator's obligations, evidential requirements and any appropriate charges. In deciding which cases are suitable for prosecution, Prosecution Division applies the evidential and public interest tests set out in the Code for Crown Prosecutors.
- 3.5 The Department's Fraud Expert Domain within Jobcentre Plus' Products and Transformation Division provides guidance to investigators on operational policy and technical matters.
- 3.6 In Northern Ireland the practice is to refer cases suitable for prosecution to the Public Prosecution Service, whilst in Scotland cases thought suitable for prosecution go to the Procurator Fiscal.
- 3.7 The Department also works closely with local authorities operating under similar prosecution practices. The Welfare Reform Act (WRA) 2007 provided local authorities with powers to investigate and prosecute offences against certain national social security benefits alongside Housing Benefit and Council Tax Benefit (HB/CTB). It also provided access to such information as is necessary to carry out these activities.

- 3.8 Prosecution Division also prosecutes benefit fraud cases for local authorities that have signed a Service Level Agreement with it.

4. Sanction Policy

- 4.1 Where an offence has been committed the Department can consider offering a caution, an administrative penalty, or instigating a prosecution. The choice will depend on the factors below.

4.2 Cautions

- 4.2.1 A caution is an administrative sanction that the Department in England and Wales is able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one the Department could take to court if the caution was refused.
- 4.2.2 Cautions are usually aimed at the less serious benefit frauds and those where the overpayment is under £2,000. It also provides an additional tool for the Fraud Investigation Service to use in those cases where the deterrent effect is considered a sufficient and suitable alternative to prosecution or an administrative penalty.
- 4.2.3 The offender must make a clear and reliable admission of the offence verbally or in writing and there must be a realistic prospect of conviction if the offender were to be prosecuted in line with the full Code Test of the Code for Crown Prosecutors.
- 4.2.4 If the customer is subsequently prosecuted for another benefit offence the caution may be cited in court.
- 4.2.5 In Scotland a caution is known as an administrative caution and cannot be cited in court, but may be referred to in a report submitted to the procurator fiscal for consideration of prosecution of any subsequent offence.

4.3 Administrative penalties

- 4.3.1 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.
- 4.3.2 It is current DWP policy to offer these penalties where the case is deemed to be not so serious and the offer of an administrative penalty is considered a suitable alternative to prosecution, and where the gross overpayment is under £2,000. Unlike cautions no admission of guilt is required from the customer before offering an administrative penalty,

although there is a statutory requirement for investigators to ensure that there are grounds for instituting criminal proceedings for an offence relating to the overpayment.

4.4 Prosecutions (England & Wales)

4.4.1 If there is sufficient evidence the Department will refer the case to the Department's Prosecution Division for consideration of criminal prosecution where one or more of the following criteria are met:

- ◆ The gross adjudicated overpayment (including Housing and Council Tax Benefit) is £2,000 or over
- ◆ False identities or other personal details have been used
- ◆ False or forged documents have been used
- ◆ Official documents have been altered or falsified
- ◆ The person concerned occupied a position of trust
- ◆ The person concerned assisted or encouraged others to commit offences
- ◆ There is evidence of premeditation or organised fraud
- ◆ The customer had previously been convicted of benefit fraud
- ◆ The amount of the overpayment is under £2,000 and the offer of an administrative penalty or caution is not accepted.

4.4.2 In all cases, including those which do not fall within any of the above criteria, the Department's Prosecution Division retains discretion as to whether criminal proceedings are started.

4.4.3 The Department's Prosecution Division is bound by the Code for Crown Prosecutors. A copy of the Code can be obtained either on the CPS website www.CPS.gov.uk or from the CPS Communications Branch, 50 Ludgate Hill, London EC4M 7EX

5. Proceeds of Crime Act (POCA)

5.1 The Department has an active policy of referring all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order prevents a person from dealing with specified assets. A confiscation order enables the Department to seek to recover its losses from assets which are found to be the proceeds of crime.

6. Loss of Benefit Provision

6.1 The Loss of Benefit Provision is designed to be a deterrent against the continued abuse of the benefit system by applying a benefit sanction against those who commit benefit fraud.

- 6.2 This provision introduced by the Social Security Fraud Act 2001 allows the Department to apply a sanction in the form of a fixed 13 week benefit disqualification period where a person is convicted of benefit fraud in two separate proceedings, which have been committed within a five year period.
- 6.3 The provision was extended by the Welfare Reform Act 2009 to include a new 4 week loss of benefit sanction for all offences of benefit fraud which result in a criminal sanction (convictions, administrative penalties and cautions).
- 6.4 The existing 13 week loss of benefit sanction still applies to those who have been convicted of benefit fraud in two separate proceedings, which have been committed within a five year period.
- 6.5 Benefits can be withdrawn, or reduced by 20 or 40 percent during the disqualification period.

7. Recovery of Debt

- 7.1 Where an overpayment arising from fraud is identified the Department takes steps to recover the resultant debt, including taking action in the civil courts if necessary, in addition to any sanction it may impose in respect of that fraud.