

## **Warwick District Council – Sanctions Policy**

Housing Benefit and Council Tax Benefit are administered by local authorities as part of their statutory local government functions and this responsibility includes the prevention and detection of Benefit fraud. For each case investigated, the authority will apply the most appropriate sanction depending on the circumstances of the case. This document sets out the policy of Warwick District Council towards sanctions, including criminal prosecution in cases where it is found some fraudulent activity has occurred.

### **General Principles**

Warwick District Council is committed to the prevention, detection, correction and investigation and where appropriate prosecution of fraudulent Benefit claims. As part of this commitment we will ensure that all of our investigators have either obtained, or work towards obtaining their Professionalism in Security (PINS) qualification.

Claimants have a responsibility to provide accurate and timely information in respect of their claims and where they fail to do so, and that failure is considered to be a deliberate act, we will apply the most appropriate punishment after considering the facts in each individual case.

All cases of suspected fraud are referred to the senior fraud investigator who will assess their suitability for investigation. The fraud team, will then make appropriate enquiries and gather evidence to determine whether the initial allegation can be proven. If fraud has been found, the case will then be referred to determine the most appropriate course of action to be taken.

Warwick District Council works closely with the Department for Work and Pensions and any case where a DWP Benefit is also found to be in payment, a joint investigation between staff at WDC and DWP will take place. In these cases WDC will confer with DWP when applying the most appropriate sanction.

## **Sanctions**

### **Administrative Penalties**

Section 115A of the Social Security Administration Act 1992, as amended by Section 15 of the Social Security (Fraud) Act 1997, allows the Authority to apply a penalty equal to 30% of the total overpayment, as an alternative to prosecution. For offences committed wholly after the 8<sup>th</sup> May 2012 the penalty will be equal to 50% of the total overpayment or £350.00 whichever is the higher. An Administrative Penalty is a financial penalty which can be offered to a person when an overpayment is recoverable from that person by virtue of section 71, 71a, 75 or 76 of the Social Security Administration Act 1992 and it appears that the overpayment was attributable to an act or omission on the part of that person and there are grounds for instituting proceedings for a criminal offence relating to the overpayment.

Administrative Penalties are offered on behalf of the Secretary of State – there is no right of appeal. Upon accepting the penalty the claimant has 14 days in which to change their decision. If a penalty is not accepted or is withdrawn the Authority must consider whether to prosecute. Thus, all cases must be up to prosecution standard.

If an Administrative Penalty is declined prosecution action must normally be taken.

**An administrative penalty may be appropriate where:**

- It was a first offence
- The fraud has occurred over a short period
- The claimant does not admit the offence

**An administrative penalty is less appropriate where:**

- It is considered that the claimant would be minded to submit another fraudulent claim in order to repay the penalty imposed
- The claimant has limited means to repay the penalty (regardless of any anticipation that this could motivate the claimant to submit another fraudulent claim to repay the penalty)

**Official Cautions**

Unlike the administrative penalty, a caution can only be issued when a claimant has admitted an offence. It cannot be issued if the claimant refutes or denies the charge. The case should again be up to prosecution standard if a caution is to be issued.

**An official caution may be appropriate where:**

- The claimant has admitted the offence during an Interview Under Caution
- The claimant appears to show some degree of remorse

**An official caution is less appropriate where:**

- The offence has continued over a long period
- The claimant has a conviction for fraud in the last 5 years
- The claimant has been cautioned in the last 5 years
- The offence is considered to be calculated and deliberate
- The person was in a position of trust.

**Prosecution**

The final decision on whether a case should be submitted for prosecution will be made following discussions between the Benefits Investigation Officer, the Head of Service, and the relevant Portfolio holder, taking into account any legal advice and any additional factors outlined in this Policy.

**Prosecution may be appropriate where:**

- The claimant has previously been prosecuted for a similar offence
- The claimant has received an Official Caution or Administrative Penalty for a similar offence
- The offence has continued for some time

- The offence is considered to be deliberate (e.g. claims that are false from the outset)
- The offender has a position of trust
- The offence involves collusion
- The claimant has refused to accept an Official Caution or Administrative Penalty
- The claimant has made threats against an officer of Warwick District Council
- An Authorised Officer has been obstructed in the course of carrying out necessary enquiries
- The claimant is a first time offender but the overpayment exceeds £1000

***Prosecution is less appropriate where:***

- The case would involve Warwick District Council in adverse publicity
- There have been serious errors in administration of the claim
- There have been failures in investigation (e.g. unnecessary delays)
- To do so would place a vulnerable person at risk (e.g. an informant or minor)
- Cases are deemed to fail the Public Interest Criteria (see below).
- Such cases would be considered for caution/administrative penalty or limited to recovery of overpaid Benefit.

**General Test of Public Interest:**

In determining whether a prosecution is in the public interest, the following factors will be taken into account:

- The amount of the overpayment
- The health of the claimant
- The age of the claimant
- The level of cooperation given and remorse shown by the claimant
- Previous offences by the claimant
- Social factors pertaining to the claimant.
- This list is not exhaustive and each case is considered on its merits.