

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 Department's Public Service Agreement (PSA 10) to reduce losses from fraud and error for people in working age, on Income Support and Jobseeker's Allowance, with a 50% reduction by March 2006 and in Housing Benefit, with a 25% reduction by March 2006. A new PSA 10 target will commence in April 2006 to reduce losses from fraud and error in Income Support and Jobseeker's Allowance for people of working age by 15% by 2010, measured against a new baseline set in 2005/2006. It also provides a full response to the need to be effective against fraud in 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. 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.
- 2.5 Each case that is subject to criminal investigation is considered on its own merits, having regard to all of the facts, before an appropriate sanction is administered.

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 Solicitors Branch.
- 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 Solicitors are a prosecuting authority in their own right. There are five Area Legal Offices who advise on whether a case is suitable for prosecution and then take the case forward. Most cases are seen before a Magistrates Court, although the more serious cases are usually referred to Crown Court.
- 3.4 Departmental Prosecuting Solicitors provide 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. Departmental Solicitors are also responsible for identifying those cases which are not suitable for criminal prosecution for evidential and/or public interest reasons.
- 3.5 The Department's Technical Support provides guidance to investigators on policy and technical matters.
- 3.6 In Northern Ireland the practice is to refer cases suitable for prosecution to the Director of Public Prosecutions, 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 and has a Partnership Agreement with them to support joint working activity such as joint Interviews under Caution and joint investigations, to aid in the tackling of Housing Benefit and Council Tax Benefit fraud.

4. Sanction Process

- 4.1 Where an offence has been committed the Department can consider administering a caution, offering an administrative penalty, or instigating a prosecution. The choice will depend on the factors below.
- 4.2 Cautions:**
- 4.2.1 A formal 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 admit to the offence in an Interview Under Caution and provide informed consent to being cautioned. To be able to offer a caution requires the same standard of criminal evidence as for a prosecution and should only be offered if the Department could prosecute should the caution be refused.
- 4.2.4 If the customer is subsequently prosecuted for another benefit offence the formal caution may be cited in court.
- 4.2.5 In Scotland a caution is known as an administrative caution which 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 has been adjudicated to be 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:

- 4.4.1 If there is sufficient evidence the Department will refer the case to the Departmental Solicitors 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 person concerned has relevant previous convictions
 - ◆ The customer had previously been convicted of benefit fraud
 - ◆ The amount of the adjudicated overpayment is under £2,000 and the offer of an administrative penalty or formal caution is not accepted.
- 4.4.2 In all cases, including those which do not fall within any of the above criteria, the Departmental Solicitors retain discretion as to whether criminal

proceedings are started. All cases referred to Departmental Solicitors may be prosecuted under any of the 'Relevant Legislation' listed in Annex 1

- 4.4.3 The Department's Solicitors are 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 and can be translated into other languages or be made available as a brail document.

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 will prevent a person from dealing with specific assets. A confiscation order will enable the Department 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 convicted of one or more benefit offences within a prescribed period in each of two separate sets of criminal proceedings.
- 6.2 This provision 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 three year period. Benefits can be withdrawn, or reduced by 20 or 40 percent for the 13 week 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.

Relevant Legislation

The Department has regard to and will prosecute under any relevant legislation or common law rules including but not exclusive to the following Acts:

- ◆ The Theft Act 1968
- ◆ Criminal Law Act 1977
- ◆ The Theft Act 1978
- ◆ Magistrates' Courts Act 1980
- ◆ Forgery and Counterfeiting Act 1981
- ◆ Criminal Attempts Act 1981
- ◆ Police and Criminal Evidence Act 1984
- ◆ Criminal Justice Act 1987
- ◆ Criminal Justice Act 1991
- ◆ The Social Security Administration Act 1992
- ◆ Criminal Justice and Public Order Act 1994
- ◆ Proceeds of Crime Act 1995 (c.11)
- ◆ Proceeds of Crime (Scotland) Act 1995 (c.43)
- ◆ Criminal Procedures (Scotland) Act 1995
- ◆ Criminal Procedures and Investigations Act 1996
- ◆ The Social Security Administration (Fraud) Act 1997
- ◆ Human Rights Act 1998
- ◆ Crime & Disorder Act 1998
- ◆ Regulation of Investigatory Powers Act 2000
- ◆ Regulation of Investigatory Powers Act 2000 (Scotland)
- ◆ The Social Security Fraud Act 2001
- ◆ Proceeds of Crime Act 2002