



TORRIDGE DISTRICT COUNCIL
SANCTIONS POLICY



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1.0 **Sanctions Procedure: Selecting the relevant sanction**

The sanctions procedures policy should be followed for all benefit fraud investigations where there is clear evidence that an offence has occurred.

Introduction

1.1 Sanctions and prosecutions act as a deterrent to fraudsters.

When deciding whether prosecution is appropriate, each case should be judged on its own merits.

A Local Authority may offer a formal Caution, or an Administrative Penalty, as an alternative to prosecution as long as certain criteria are met and the case is one the council would wish to see in court if the Caution or Administrative Penalty 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 council is in a position to prosecute, should the Caution be refused.

Section 115A of the Social Security Administration Act (SSAA) 1992 provides Local Authorities with an opportunity to offer a customer an Administrative Penalty as an alternative to a prosecution.

If the Caution or Administrative Penalty is refused the council should refer the case for prosecution if it passes the public interest test.

The ultimate sanction is a successful prosecution.

1.2 This document sets out Torridge District Council's policy on the prosecution of persons who have committed fraudulent offences against the Local Authority. In cases involving joint working with the Department for Work and Pensions (DWP) the DWP and TDC overpayments should be added together to arrive at the overpayment figure that will be taken into account when making the decision on which course of sanction action is appropriate.

1.3 At the end of an investigation the Officer in Charge of the Investigation will produce a case report. The decision on whether to refer a case for prosecution will be taken by a Head of Service or Head of Paid Service together with the Revenues and Benefits Manager in consultation with the Council's Solicitor, or High Street Solicitors, acting for the Council. The Council will seek to prosecute benefit fraud under the appropriate legislation including the Social Security Administration Act 1992, The Theft Act 1968, and the Fraud Act 2006.

2.0 **Cautions Procedure**

Procedures for using the Formal Caution



- 2.1 A formal Caution is a meaningful penalty and deterrent for those persons at the lower end of the range of benefit fraud where prosecution proceedings are not a first option and Administrative Penalty action is not appropriate.
- 2.2 Consideration will be given to any known factors concerning the suitability of the person to stand trial. Factors such as the suspect's physical and mental condition will be taken into account. It should, however, be borne in mind when defining policy criteria that should the person refuse to accept a Caution and the Local Authority wishes to prosecute, the ultimate public interest decision, as well as the evidential decision, is made by the prosecutor.
- 2.3 A formal Caution is an oral warning given in certain circumstances to a person who has committed an offence. A Caution would normally be the appropriate course of action when the total overpayment is for less than £2,000 and the circumstances of the offence and person indicate that a Caution is appropriate. A Caution can only be considered when;
 - a) There is sufficient evidence to justify instituting criminal proceedings.
 - b) The person has admitted the offence during an Interview Under Caution.
 - c) The person's history of previous convictions/Cautions has been taken into account by means of checks undertaken with the Department for Work and Pensions Sanctions database and/or Police National Computer.
 - d) The person must sign a document to show they admit to the offence.
 - e) The person agrees to the Caution and they acknowledge they have been cautioned.
- 2.4 If the person is subsequently prosecuted for another benefit offence the Caution may be cited in Court. If a person decides to refuse to accept a Caution, the alternative course of action should be criminal proceedings.
- 2.5 Where criminal proceedings are brought, the court will be informed that the case has been brought because the person refused to accept a formal Caution.
- 2.6 Cautions must not be given to people under the age of 18 years.
- 2.7 Only in exceptional circumstances should a second or very rarely, a third Caution be administered in any case.
- 2.8 The above guidelines have been adopted as the criteria that will be used to decide whether a formal Caution shall be offered. The Officer in Charge of the case will set out the facts of the case for the Revenues and Benefits Manager or the Head of Finance and if the criteria are met recommend to Head of Finance, another Head of Service or Head of Paid Service that a formal Caution should be offered.
- 2.9 The Head of Finance, another Head of Service or the Head of Paid Service will decide whether the customer should be offered the penalty.



- 2.10 The formal Caution interview will be carried out by the Revenues and Benefits Manager or the Head of Finance.
- 2.11.1 If a Caution is refused by the person who has committed the offence then the case will be referred for prosecution action unless there are newly discovered exceptional circumstances.
- 2.11.2 Cautions are no longer offered by the DWP and will therefore not be an option in joint working cases.

3.0 Administrative Penalty Procedure

Procedures for using the Administrative Penalty

- 3.1 The Welfare Reform Act received Royal Assent on 8 March 2012. These new measures will be brought into force on 8 May 2012, two months after Royal Assent and will apply to cases where the offence/s is committed wholly on or after 08/05/12. For offences that are committed prior to 08/05/12 or span 08/05/12, Administrative Penalties should be calculated at the 30% rate.
- 3.1 Members of the Housing Committee approved the adoption of the scheme under the Social Security Administration (Fraud) Act 1997 on 20 May 1998. The scheme enables fraudulent claimants to pay a fixed penalty instead of being prosecuted, where the details of the case fall within the legislative guidance.

The Welfare Reform Act amends sections 115A and 115B of the Social Security Administration Act 1992 as follows:

- To allow administrative penalties to be offered in attempt cases as an alternative to prosecution, where an offence of benefit fraud has been committed but the fraud is discovered and stopped before any overpayment of benefit is made. In these cases the amount of the administrative penalty would be £350.
- To provide for a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2,000).
- To reduce the period during which an individual (including a colluding employer) may withdraw their agreement to pay the penalty ('cooling off period') from 28 to 14 days.

(For offences that are committed prior to 08 May 2012, or span 08 May 2012, Administrative Penalties should be calculated at the 30% rate.)

- 3.2 The decision to offer an Administrative Penalty is delegated to the Head of Finance, another Head of Service or the Head of Paid Service.
- 3.3 The legislative guidance sets out types of cases, which would be inappropriate for the penalty scheme and then goes on to give types of cases, which should be considered for the penalty scheme.



- 3.4 Consideration will be given to any known factors concerning the suitability of the person to stand trial. Factors such as the suspect's physical and mental condition will be taken into account. It should, however, be borne in mind when defining policy criteria that should the person refuse to accept an Administrative Penalty and the council wishes to prosecute, the ultimate public interest decision, as well as the evidential decision, is made by the prosecutor.
- 3.5 The guidance sets out the following cases where penalties may be inappropriate, **however, the guidance also emphasises that each case should be judged on its own merit.** It would be inappropriate to offer the penalty if:
- a) The overpayment is substantial (greater than £2,000)
 - b) A person has declined the offer of an Administrative Penalty or withdrawn a previous offer
 - c) The fraud was committed over a long period of time (more than 6 months)
 - d) The fraud was calculated and deliberate (e.g. planned from the outset)
 - e) The person has previously agreed to pay an administrative penalty
 - f) The person was in a position of trust (e.g. a member of staff)
 - g) There has been collusion with landlord/employer.
- 3.6 The guidance further sets out general conditions for cases where an Administrative Penalty may be considered
- a) The overpayment must be recoverable under or by virtue of sections 75 or 76 of the Social Security Administration Act 1992 and attributable to an act or omission on the part of the person, and grounds exist for instituting proceedings for an offence relating to the overpayment
 - b) Any case where prosecution is possible but is not the preferred option at the outset may be suitable for the offer of an Administrative Penalty.
 - c) An Administrative Penalty can only be offered where the Local Authority is satisfied that there are grounds for instituting criminal proceedings.
 - d) In the event of the person declining to pay a penalty, criminal proceedings must always be considered unless exceptional circumstances apply (e.g. the person's health deteriorates dramatically before proceedings can be instigated.)
- 3.7 The above guidelines have been adopted as the criteria that will be used to decide whether an Administrative Penalty shall be offered. The Officer in Charge of the investigation will set out the facts of the case for the Revenues and Benefits Manager or the Head of Finance and if the criteria are met recommend to the Head of Finance, another Head of Service or the Head of Paid Service that a penalty should be offered.



- 3.8 The Head of Finance, another Head of Service or the Head of Paid Service decide whether the claimant should be offered the Administrative Penalty.
- 3.9 A trained member of staff delegated by the Investigations & Visiting Team Leader, Revenues and Benefits Manager, or the Head of Finance will carry out the Administrative Penalty offer interview and complete the relevant prescribed documents where appropriate. A separate record will be maintained for all Administrative Penalties offered, together with the copies of standard documents and guidance instructions.

4.0 **Prosecutions Procedure**

Who takes the Prosecution

- 4.1 Prosecutions may be taken by either the Council, or by referral to the Department for Work and Pensions Solicitors (Housing Committee 13/1/99), or where a case has been referred to the Police, by the Crown Prosecution Service.

Deciding whether to prosecute

- 4.2 The Officer in Charge of the case will set out the facts of the investigation for review by the Revenues and Benefits Manager or the Head of Finance. The Revenues and Benefits Manager or the Head of Finance will then recommend further action to The Head of Finance, another Head of Service or the Head of Paid Service. The Head of Finance, another Head of Service or the Head of Paid Service will decide whether the case is suitable for prosecution action. If prosecution action is deemed to be appropriate then the case will be forwarded (via the Officer in Charge) to Torridge District Council's Solicitor or to High Street Solicitors who will advise on whether legal action should take place in accordance with guidelines laid down in the Code for Crown Prosecutors.
- 4.3 The facts should be considered against the following criteria.
- a) Is there sufficient evidence to realistically expect a conviction?
 - b) Is a prosecution in the public interest?
 - c) What would be the deterrence value of any publicity?
- 4.4 Each individual case should be judged on its merits after the following guidelines have been taken into account:
- a) The amount of money obtained. If the total amount of the overpayment is greater than £2,000 and the duration of offence is greater than 6 months then prosecution action should normally be taken.
 - c) Any previous known incidence of fraud such as Cautions, Administrative Penalties or successful Prosecutions.



- d) Social factors which may have lead to the offence.
- e) How clear-cut the evidence is.
- f) Any failure in the investigation.
- g) Whether there is evidence that the defendant is involved in organised fraud.
- h) Whether there are grounds for believing that the offence is likely to be continued or repeated.
- i) Whether the offence, although not serious in itself, is widespread in the area where it is committed.
- j) Whether the defendant has put right the loss or harm caused (suspects must **NOT** avoid prosecution simply because they can repay).
- k) Any failure in benefit administration, including delay.
 - l) Where the suspect is pregnant and confinement is either due within three months, or she is not in good health, it may be appropriate to defer consideration of a sanction until after the birth, but this must be subject to statutory time-bar considerations
- m) The suspect's physical and mental condition.
- n) In joint cases with the Department for Works and Pensions, consideration will need to be given as to whether the Prosecution Division will reject a recommendation on the basis of their new working practices which were introduced from April 2011, which would then exclude any other form of sanction being applied.

It may not be in the public interest to prosecute suspects if they are elderly, or at the time that they committed the offence they were suffering from significant mental or physical ill health unless the offence is serious or there is a real possibility that the offence may be repeated.

The significant mental or physical conditions could include the following:

- Terminal illness.
- Suspect is bedridden.
- Depression (such as Bipolar Disorder), particularly if there is evidence that they have attempted or contemplated suicide.
- The suspect is so mentally impaired that the court might criticise the council for bringing criminal proceedings.
- The health of the suspect's partner may suffer. This would normally only apply if the partner suffers from a serious condition that may worsen if proceedings are taken.



It should, however, be borne in mind when defining policy criteria that the ultimate public interest decision, as well as the evidential decision, is made by the prosecutor.

4.5 The action to be taken regarding benefit fraud will be dependent on the amount of the overpayment in addition to the above guidelines as follows:

- a) Issue of a formal letter setting out that if there has been an overpayment that this will be reclaimed.
- b) Where a formal Caution is to be offered. If refused prosecution will be taken unless there are exceptional circumstances.
- c) Where an Administrative Penalty is to be offered. If refused Prosecution action will be taken unless there are exceptional circumstances.
- d) Prosecution under Social Security Legislation, Fraud Act 2006 or under Theft Act or other appropriate legislation.

Where a member of staff commits a fraud, whether benefit fraud or non-benefit fraud, the disciplinary procedure will be implemented and this may be in addition to any prosecution action.

5. Changes to Prosecution Action from April 2011

Changes to Prosecution Action From April – Cases under £20,000 – Applicable to Joint Investigations with the Department for Work (DWP) and Pensions only, or in instances whereby the DWP Prosecution Division act on behalf of a Local Authority.

Background

The DWP confirmed that from 01 April 2011 all benefit fraud cases under £20,000 will be dealt with a Summary only.

From 1 April 2011, all cases under £20,000 must be received by Prosecution Division in time to issue proceedings for a Summary only offence.

This means for:

- **S112(1A) SSAA 1992** – fail to notify offences proceedings must be issued within 12 months of end of offending period (usually the end of the overpayment or the date of last Interview Under caution (IUC): whichever the earlier date)
- **S112 SSAA 1992** – false representation cases proceedings must be issued within 12 months of date of representation, usually false claim form/benefit document.

Time barred HB/CTB offences



Prosecution Division should receive in time all:

- Local Authority (LA) cases under £20,000, and
- Combined local authority and Department for Work and Pensions (DWP) cases under £20,000.

S116 certificate

S116 (2)(a) Social Security Administration Act 1992 only enables the Secretary of State (delegated to Prosecution Division) to issue Secretary of State Certificates for 'time barred' offences relating to prescribed DWP benefits.

If more than 12 months have elapsed since the date of the commission of the HB/CTB offences(s) in the case, Prosecution Division will consider whether the case can be saved by the use of a S116 certificate.

To proceed with time barred case under S112 as a Summary only matter, Prosecution Division will require a **signed S116 certificate from the LA under S116(2)(b) SSAA 1992**. The DWP has no statutory authority to complete or sign this certificate and it will need to be signed by a responsible officer within the LA.

Alternatively, if the case is under £20,000 and is likely to be time barred by the time it arrives at Prosecution Division, LA's may prefer to issue a certificate and send it with the documents sent to Fraud Investigation Service (FIS) for prosecution. FIS will then place the local authority's certificate in the prosecution file sent to Prosecution Division.

The LA S116(2)(b) certificate will provide the date on which sufficient evidence to justify a prosecution of the HB/CTB offences came to light.

Prosecution Division will have three months from **that** date (not the date the certificate was issued or signed) to commence the HB/CTB proceedings.

Either way or indictable cases

There will be a limited, exceptional category of benefit fraud cases under £20,000 when the Summary only offence will not be available for legal reasons not related to delay or time bar and either way or indictable only offences will be the only option. For example, forgery and counterfeit offences, conspiracy to defraud, joint HMRC offences.

Time barred benefit fraud cases under £20,000 **will not be prosecuted as either way offences and will be returned for closure** if they;

- cannot be saved by a Secretary of State Certificate (usually due to delay), or;
- do not come within the exceptional category of case

The Head of Finance or the Head of Paid Service will be authorized to sign the S116 Certificate on behalf of Torridge District Council.



6. No Further Action

The investigation may be closed without any further action (other than the reassessment of benefit and the recovery of any overpayment) in certain circumstances such as the following.

There was no intention to undertake a fraudulent act.

- The offence is minor.
- The period over which the fraud occurred is very short.
- The amount of the attempted fraud is low. However in cases where a potentially large fraud has been stopped before there is any actual loss to the public funds this would be likely to result in prosecution action being taken.

7. Changes introduced from October 2012

Civil Penalties for Housing Benefit and Council Tax Benefit

Sections within the Welfare Reform Act 2012 ensure that Civil Penalties are an alternative to prosecution.

A Civil Penalty (CP) of £50 can be imposed on customers who receive an overpayment of Housing Benefit (or Council Tax Benefit – CTB Only up to 31.03.13) caused by either:

- Negligently making incorrect statements, or
- Failing without reasonable excuse to provide information or disclose changes in their circumstances.

This penalty is for cases of claimant error where the overpayment is wholly after the date of commencement of the legislation of 1st October 2012 and where the recoverable overpayment which results from this negligent act or failure is above £65.

In a joint claim only one penalty will apply. Either member of the couple might receive the penalty, subject to limitations. In the case of a negligent statement it will not apply to the person who did not make the statement if that person could not reasonably have been aware of the other person's negligence in making the incorrect statement.

A customer can appeal about the decision to impose a Civil Penalty in the same way, and with the same timescales as a Housing Benefit or Council Tax Benefit appeal, with appeals being dealt with by the Tribunals Service.

The Civil Penalty will be recovered by raising an invoice for the customer.



