



METROPOLITAN BOROUGH OF WIRRAL

A GUIDE TO THE HOUSING AND COUNCIL TAX BENEFIT PROSECUTION POLICY

Introduction

Wirral Borough Council administers Housing and Council tax Benefit to over an average of 36,000 customers at any one time. The Council is committed to providing this service in a professional manner and aims to deliver the correct amount of benefit entitlement to the correct people the first time round.

Wirral Borough Council is aware of the high risk within the benefit system from fraud, error or irregularity and the necessity to protect the public purse from abuse. To manage this risk the Council has established a team of highly trained officers dedicated to identifying, investigating and preventing fraud.

The Councils Culture

Wirral is committed to creating an environment that is based on the prevention of fraud and corruption. This is achieved by promoting a culture of openness, and honesty in all Council activities.

The Council expects that individuals and organisations involved in the administration and/or receipt of Housing and Council Tax Benefit will act with integrity and without thought or actions involving malpractice.

Definition of Fraud

Fraud encompasses an array of irregularities and illegal acts characterised by intentional deception. It can be perpetrated for the benefit of or to the detriment of Wirral Borough Council and by persons outside as well as inside the Council.

Housing/Council Tax Benefit

Fraud is a serious criminal offence, which, on conviction in court, may result in substantial prison sentences. Housing/Council Tax Benefit Fraud is regarded as the deliberate misrepresentation of circumstances, or the deliberate failure to notify relevant changes, with the intent of gaining some advantage. It is distinct from genuine accidental failure to report minor changes in circumstances.

Verification of Housing Benefit/Council Tax Benefit Claims

Wirral has adopted the Verification Framework. The Verification Framework is guidance produced by the Department of Work and Pensions which provides Local Authorities with a minimum standard for the collection of evidence and ongoing checks. All claimants applying for benefit will be asked to provide documentary evidence in support of their claim. Once benefit is in payment a regime of finding fraud and error and maximization of benefit is operated by data-matching and risk analysis. The Verification Framework

requires Local Authorities to review Housing Benefit/Council Tax Benefit claims using targeted interventions. These interventions may take the form of a home visit, a postal review or a telephone review.

Investigations

Wirral Borough Council conducts investigations into allegations of fraud in a professional manner in accordance with the Police and Criminal Evidence Act 1984 and subsequent codes of practice.

Interviews under Caution

When we suspect that a fraud is being committed we may interview people under caution in accordance with the Police and Criminal Evidence Act 1984 and subsequent codes of practice.

During the interview under caution the interviewee is given the opportunity to give their explanation of events and answer any questions that may arise. This may involve showing relevant documentary evidence including claim forms, letters and photographs.

The interviewee will be read their rights prior to the start of the interview and the interview will be tape recorded. A copy of the tape will be made available to the customer if they wish to have a copy of the interview.

The interviewee will be advised in writing of the Council's intention to interview under caution and advised to seek independent legal advice.

The Council will consider the circumstances of the person to be interviewed prior to arranging the date, time and venue of interview. If necessary the Council will arrange an interpreter and will change the venue for ease of access.

A copy of the Police and Criminal Evidence Act 1984 and subsequent codes of practice will be made available to the customer during the interview.

Surveillance

In some instances we may undertake Directed Surveillance against people suspected of committing fraud. Surveillance operations will only be undertaken by trained officers and only when authorised in accordance with the Regulation of Investigatory Powers Act 2000. Directed surveillance will only be applied where criminal activity is sufficiently serious to justify the degree of intrusion into the privacy that would result from the techniques used.

Action on Overpayments of Housing Benefit to Landlords

Payments of Benefits are often made directly to landlords on behalf of the claimants. Whilst we recognise that the vast majority of landlords are honest and fair, in some cases landlords may assist claimants to falsify claims for benefit. Landlords who committed an offence will equally be considered for prosecution. This applies to landlords who do not receive payments of Housing Benefit as well as to those that do. Landlords who are receiving benefit directly are also obliged to report any change of circumstances.

When a landlord fails to do this they may be paid more benefit than they are entitled to. The Council makes landlords aware of their duty to report known changes through

landlord forums as well as advice provided to landlords in the form of leaflets, newsletters and notifications. If an overpayment occurs the Council will seek to recover by either on going payments, voluntary agreed arrangements or civil action through the courts.

Action on Overpayment of Benefit

If an overpayment is occurs, recovery may be sort by either deduction form future entitlement, repayment by an agreed arrangement or by referring to a recovery agency.

The recovery of the overpayment in full does not mean that a person will not be prosecuted for committing benefit fraud.

Working in Partnership

Where necessary, the Council will work in partnership with other organisations such as the Police, Department for Work and Pensions, Home Office, Customs and Excise and other Local Authorities in order to develop and promote an anti fraud culture.

Data Matching Exercises

We regularly match data with other Agencies including the Department for Work and Pensions and we take part in the National Fraud Initiative. These exercises allow the comparison of housing benefit data with other sources of data and frequently identify irregularities in benefit claims.

Hotline and E-Mail

We operate and promote a confidential free fraud hotline number and e-mail facility accessible to all members of the community who may wish to provide information concerning fraud against the authority.

Fraud Hotline Number.	0800 731 5783
National Fraud Hotline Number.	0800 328 6340
Mini com.	0800 328 6341
E-mail	hben.fraudunit@wirral.gov.uk

Fraud Awareness Training

We provide fraud awareness training to both staff and other agencies. This enhances and promotes an anti fraud culture and is an opportunity to ask questions of an investigating officer.

Publicity

Publicity may be sought to inform the public that Wirral Borough Council has a fraud team whose purpose is to investigate allegations of fraud and take legal Action against persons found perpetrating fraud. Successful prosecutions may be reported to the media and on the Council's website www.wirral.gov.uk

Prosecution

The decision to prosecute a person is a serious step. A prosecution has serious implications for all involved victims, witnesses and defendants. The Council applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions. The Code for Crown Prosecutors is a guide by the Director of Public Prosecutions and provides guidance on the general principles to be applied when making decisions about prosecutions (further details can be found in the policy).

The Council must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each person on each charge. The Council must also consider what the defense case may be, and how that is likely to affect the prosecution case. The Council must also consider whether it is in the public interest to proceed with a prosecution.

In the case where a deliberate attempt has been made to deceive the Council in order to obtain benefit, but no payments have been made, prosecution action may still be considered.

Administrative Penalties

This provision is in accordance with the Social Security Administration (Fraud) Act 1997, which allows an authority to administer a financial penalty. The Council will recover the administration penalty in addition to the overpaid benefit.

The Council will consider financial penalties, as an alternative to prosecution. If the financial penalty is not accepted the matter may be referred for prosecution.

A penalty can only be offered if the case could ultimately be brought to prosecution.

Cautions

A formal caution is an oral warning given in certain circumstances to a person who has committed an offence.

A formal caution is a meaningful penalty and deterrent for those people who committed benefit fraud where criminal proceedings are not a first option and administrative penalty action is not appropriate.

If a caution is not accepted as an alternative to prosecution, then the matter will be referred for prosecution.

If a customer is subsequently prosecuted for another benefit offence the caution may be cited in Court.

The Policy

If you require a copy of the full Policy please contact the Benefits Operational Manager on 0151 666 3517.

THE POLICY

Introduction

1. The Policy document has taken consideration the requirements of the following Legislation.

Data Protection act 1998
Police and criminal evidence Act 1984
Human rights Act 1998
Regulation of Investigatory Powers Act 2000
Freedom of Information Bill 1999
Social Security Administration Act 1992
Social Security Administration (fraud) Act 1997
Social Security fraud Act 2001.

2. Elected members and officers of Wirral Borough Council fully support the prosecution of perpetrators of fraud and the use of administrative penalties in appropriate circumstances. This approach, consistently applied, can have a strong deterrent effect on potential Housing and Council Tax Benefit fraudsters.
3. However, the Council recognises that the decision to prosecute an individual is a serious step and has substantial implications for all concerned (e.g. defendants, witnesses, representatives of the Council, etc.). Consequently, the following criteria and considerations have been drawn up to ensure that all decisions to prosecute Housing and Council Tax Benefit Fraud are appropriate, justifiable and consistent.
4. This policy also applies to any instance of internal fraud committed by elected members, employees of the Council and contractors, which, if substantiated, may lead to dismissal, the termination of contracts where relevant and criminal proceedings.

5. **Decisions on Prosecution**

- 5.1. Decisions whether to proceed to prosecution, offer the administrative penalty or issue a formal caution in individual cases will be the responsibility of Housing Benefit Manager or the Director, Deputy or Assistant Director of Finance based on the criteria and considerations contained in the following paragraphs. The reasons for the decisions will be formally recorded and the fraud manager will be instructed of the course of action to follow.
- 5.2. Elected members do not play any part in the decision-making process on prosecutions in individual cases but receive reports on statistics and the results of prosecution cases, administrative penalties and costs to Wirral Borough Council.
- 5.3. Senior officers of Wirral Borough Council will be advised or consulted in respect of any potentially sensitive or high profile cases or where it is otherwise appropriate.

6. **Evidential and Public Interest Criteria**

6.1. Before any case can be considered for prosecution, it must meet the evidential and public interest criteria contained in the Code for Crown Prosecutors, the aim of which is to ensure that fairness and consistency is achieved in this decision making process.

6.2. These two tests of evidence and public interest would be applied in a similar manner as in the Crown Prosecutors Code. This will involve seeking answers to the following:-

a. Evidence

- Is there sufficient evidence to provide a realistic prospect of conviction? (Mere suspicion is not admissible evidence).
- Can the evidence be used?
- Is the evidence reliable?

b. Public Interest

Is it in the public interest to prosecute? Relevant factors that favour prosecution include:

- A conviction is likely to result in a significant sentence.
- The defendant was in a position of authority or trust.
- The evidence shows that the defendant was a ringleader or organiser of the offence.
- There is evidence that the offence was premeditated.
- There is evidence that the offence was carried out by a group.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.

Factors that mitigate against prosecution bearing in mind the seriousness of the offence:-

- The offence was committed as a result of a genuine mistake or misunderstanding.
- The defendant is elderly or at the time of the offence suffering from significant mental or physical ill health.

6.3. The Director of Finance will ensure evidence is in the form of one of the following:-

- Evidence of a witness who has direct knowledge of the issues in question that will be put before the court. This evidence may be given by the witness in person, or by means of a witness statement, properly prepared and served within the provisions of Section 9 of the Criminal Justice Act (1967).
- Admissions made by the person during the course of an interview, properly conducted within the Code of Practice i.e. Police and Criminal Evidence Act.
- Documentary evidence.

- 6.4. In addition to the Code for Crown Prosecutors, it is normally the policy of Wirral Borough Council that, as a general rule, cases of fraud will only be considered for prosecution where a fraudulent overpayment of benefits or related Council funds in excess of £2,000 has been identified.
- 6.5. However, before the decision to prosecute is taken, all other relevant factors relating to each specific case and claimant will be considered, which may override this general rule where it is appropriate and proper to do so. The following list (which is not exhaustive) contains examples of such relevant factors:
- Amount of money overpaid
 - Duration of the offence
 - Previous incidence of fraud
 - Voluntary admission (disclosure)
 - Strength of evidence (how clear cut it is)
 - Collusion with others
 - Sophistication of fraud
 - Physical or mental condition of claimant
 - Age of claimant and partner
 - The public interest
 - Any other exceptional circumstances that mitigate against prosecution.

7. **Prosecuting Authority**

The Council's Fraud Investigators will conduct investigations into cases of suspected fraudulent benefit claims and, where the decision to prosecute is taken, contact will be made with the Borough Solicitor. Case papers and assistance will be provided to the Borough Solicitor in accordance with laid down standards in respect of file quality contents and time scales.

- 7.1. The assistance of the Police may be sought at any stage of an investigation where it appears appropriate e.g. the scale or complexity of the fraud, where serious criminal offences other than fraud are suspected or where powers of arrest search and seize are appropriate.
- 7.2. On completion of a prosecution file, the fraud investigator will forward the case papers to the Borough Solicitor who will review the evidence by reference to the Prosecutor Code, detailed in this policy, and, where appropriate, conduct the prosecution case. It should be noted that, notwithstanding the Council's prosecution policy, the Borough Solicitor may recommend to dispose of the matter by a means other than prosecution (e.g. the issuing of a Formal Caution, Administration Penalty or discontinuing proceedings).
- 7.3. Whilst investigating Housing and Council Tax Benefit Fraud if it is suspected that there may be other frauds linked to the Authority (e.g. renovation grants, insurance claims etc) relevant Departments will be informed.

8. **Administrative Penalty**

- 8.1. In appropriate cases (i.e. where instituting criminal proceedings is not the primary intended course of action and the overpayment is between £400 and £2000) and where statutory conditions are satisfied, an administrative penalty may be offered under S115 of the Social Security Administration Act 1992. This penalty currently stands at 30% of the overpayment.
- 8.2. A full investigation, including interviewing the suspect under caution, must be completed before the Administrative Penalty can be considered. If the suspect refuses to attend an interview under caution this will be considered and an administrative penalty may still be issued. Should the person concerned decline the opportunity to pay the administrative penalty, then a prosecution file should be submitted without delay.
- 8.3. The offer to a person of an administrative penalty must be carried out at a separate interview, not under caution, by a member of staff not connected with or involved in the investigation. The person concerned does not have to admit guilt and facility to pay the financial penalty will not normally be offered in the case of a repeat offence.
- 8.4. The person is given a 28-day cooling off period after the administration interview has taken place and can during this period change their mind about accepting such a penalty.
- 8.5. If the recovery of the Benefit overpayment and the administration penalty is causing hardship the Council will have regard to the Fair Debit policy and then an arrangement can be made to pay back the overpayment in stages.

9. **Formal Cautions**

- 9.1. A Formal Caution may be issued in cases involving relatively small amounts of overpayment (e.g. under £400) or where other weighty mitigating factors indicate that either prosecution or the issue of an administrative penalty would not be appropriate.
- 9.2. Before a Formal Caution can be considered, there must be sufficient evidence to justify criminal proceedings and there must be an admission to the offence by the individual concerned.
- 9.3. The offer of a Formal Caution to a person must be carried out during a separate interview, not under caution, by a member of staff not connected with or involved in the investigation.
- 9.4. If the Formal Caution is accepted, the person concerned must sign a document to the effect that:
 - the offence is admitted,
 - there is agreement to a formal caution being issued,
 - the formal caution has been received; and
 - It is understood that the caution may be cited in court in any future proceedings.

10. Cases Referred to Department for Work and Pensions or Other Statutory Body

- 10.1. In general where Housing Benefit Fraud occurs it is linked to false claims to the Department for Work and Pensions.
- 10.2. Where fraud is suspected in respect of benefits administered by both the Council and the Department for Work and Pensions, a local service level agreement is in place to determine which body will lead the investigation and undertake any subsequent prosecution.
- 10.3. In such cases the Department for Work and Pension may prosecute both offenses. Wirral Borough Council will provide evidence for the Housing and Council Tax Benefit element. The Department for Work and Pensions will lead on such prosecution and this will continue to be a major route for prosecution.
- 10.4. In appropriate cases, joint investigations and joint proactive exercises are conducted between staff of the Council Fraud Team and Department for Work and Pensions personnel, where the lead authority is agreed beforehand.

11. Records of Decisions

- 11.1. All decisions made on the means of disposal of individual cases will be fully recorded on the appropriate file, together with reasons for the decision.

12. Publicity and Fraud Awareness

- 12.1. Publicising prosecuted cases acts as a deterrent to other potential fraudsters. In all cases where prosecution takes place the Council will work with partner agencies such as Benefits Agency for effective publicity to be used.
- 12.2. The Fraud Team Manager, will liaise with Wirral's Press and Public Relations Officer to devise a strategy to support the prevention and deterrence of fraud by giving publicity to selected cases that have been successfully prosecuted and by publicising counter fraud initiatives.
- 12.3. Elected Members will receive regular reports in General Financial Matter reports and in an annual report on the work of the Housing Benefit Section.
- 12.4. Effective fraud awareness training of the Council's employees makes a valuable contribution towards preventing fraud from entering the benefits system and effectively detecting fraud where it is suspected.

13. Review of Arrangements

- 13.1. The arrangements contained herein will be subject to a continuous process of evaluation and review, in line with new legislation, new Government directives, local agreed policy and in the light of experience, in consultation with other relevant agencies.