

*Benefits Team*

# Prosecution Policy



BE

STIGATIONS SECTION

0845 129 7777

## PROSECUTION POLICY

High Peak Borough Council is committed to protecting public funds and has a responsibility to prevent and detect benefit fraud. They should consider the prosecution of persons who have committed offences against the Authority.

To claim benefit falsely is an offence under the Social Security Administration Act 1992, or the Theft Act 1968.

Where there is evidence of an offence under one of the Acts, the customer must be interviewed, and in cases where there is an overpayment of benefits, a formal interview under caution must be considered.

If there are other Social Security benefits (i.e. Income Support or Incapacity Benefit), the Authority should consider including the Department of Work and Pensions in the formal interview. Likewise, the Authority will ensure that it is included wherever possible, in any formal interviews instigated by our colleagues at the Department of Work and Pensions.

According to the Social Security Administration Act and accompanying guidelines, the Authority should consider one of the following:

- a) Formal Caution
- b) Administrative Penalty
- c) Prosecution.

## FORMAL CAUTIONS

A caution will apply where;

- a) the customer has admitted an offence at the interview under caution,
- b) the customer has not previously offended, and
- c) the overpayment of benefit is low or has not arisen over a long period of time.

The caution gives a customer a record with Local Authorities and the Department of Work and Pensions for 5 years, and will be cited in court, should the customer commit another benefit offence during the next 5 years.

## ADMINISTRATIVE PENALTY

A penalty will apply where:

- a) the customer has NOT admitted the offence at the interview under caution,

- b) the customer has not previously offended, and
- c) the overpayment is low or has not arisen over a long period of time.

A penalty does not give the customer a record, but means that they must pay an additional 30% of the benefit overpaid in addition to the overpayment itself.

## OFFERING THE CAUTION/PENALTY

Wherever possible, the officer who interviewed/charged the customer, **MUST NOT** offer the customer the caution or penalty.

If a customer refuses the caution or penalty, the case must be referred for prosecution.

## PROSECUTION

The final decision on whether to refer a case for prosecution lies with the Fraud and Interventions Manager and the Legal Section.

Prosecution will apply where:

- a) the evidence shows an offence has been committed,
- b) the overpayment is high, or has arisen over a long period of time, OR
- c) the customer has previous incidences of fraud,
- d) an administrative penalty or caution has been refused.

Social factors must be considered before a prosecution is instigated (i.e. the customer's age and health).

All prosecutions will be presented in court by the High Peak Borough Council legal team unless they specify otherwise.

## PUBLICITY

As a deterrent, and to promote awareness of the fraud team, consideration must be given in all cases to releasing details of any successful prosecution to the press.

The Investigating Officer will produce a press release and issue it to the Council Press Officer at the first available opportunity on return from court.

**THIS PROSECUTION POLICY IS NOT DESIGNED TO BE A DEFINITIVE DOCUMENT, AND ANY SANCTIONS OR PROSECUTIONS WILL ALWAYS HAVE REGARD TO AN INDIVIDUALS CIRCUMSTANCES.**