

**Winchester City Council**  
**Benefit Fraud Prosecution Policy**

Winchester City Council is committed to combating all forms of benefit fraud and at the same time ensuring that claimants receive their maximum benefit entitlement. The purpose of any prosecution is to deter fraud. The Authority must therefore ensure that there is a balance struck between deterrence and value for money.

Where a claimant has been accused of committing a fraud against the Authority and Benefit Investigators have enough evidence to sustain a prosecution, then the Authority must first consider whether it is in the public interest to undertake the prosecution.

When considering prosecution, the Authority will seek to prosecute under the following Acts -

- The Social Security Administration Act 1992.
- The Theft Act 1968.

When applying the test of public interest, and before making a decision to prosecute, the areas listed below must be considered. It is recognised that some cases will not fall into any of the categories. However, every case will be considered on its own merits and action will be considered as appropriate.

Internal fraud, whether committed by officers or Members is particularly serious. All allegations of such fraud shall be investigated thoroughly and reported to the Director of Finance, the Monitoring Officer and the head of Internal Audit. If the case concerns a Member or a Senior Officer the City Council will either refer the case to the Police or give serious consideration to prosecution itself. In the case of staff, where there is insufficient evidence to prosecute, but there is evidence of deceit, disciplinary action will be seriously considered.

The decision to recommend prosecution to the City Secretary and Solicitor or the Police, issue a formal caution or offer an administrative penalty, must be made by the Benefits Manager as an independent source, who will have due deference to evidential matters.

This Prosecution Policy is not designed to be a definitive document and each case must be considered on its own merits.

## **1. Financial Limit**

The amount of overpaid benefit as a result of the fraud is not in itself the sole reason to consider prosecution. The duration of the fraud should be considered within this scope.

A fraud that is potentially serious but has been discovered at an early stage should not be ignored under these provisions. This is of particular importance if there is a prevalence of similar fraud in the area.

Consideration should also be given to underlying entitlement to other benefits when assessing the net loss to public funds. This is not to say that the overpayment should be reduced by the underlying entitlement, but merely to safeguard the likelihood of the defence using it as mitigation to minimise the debt.

Where the overpayment is in excess of £17,000 consider prosecution under the Theft Act 1968. In these cases representations should be made to the Magistrates Court that the case be referred to the Crown Court.

Where the overpayment is between £5,000 and £17,000 consider prosecution under Section 111A of the Social Security Administration Act 1992 (either-way offence) or the Theft Act 1968.

Where the overpayment is between £2,000 and £5,000 consider prosecution under either Section 112 of the Social Security Administration Act 1992 (summary offence) or Section 111A of the Social Security Administration Act 1992 (either-way offence).

Where the overpayment is over £1,000 but beneath £2,000 consider the use of an Administrative Penalty, (30% of the total overpayment) in accordance with Section 115A of the Social Security Administration Act 1992 or a formal caution, if the offence is admitted.

Overpayments less than £1,000 will not normally be worthy of prosecution as the cost of prosecution would not justify the likely return. In these cases it would be advisable to stop the fraud, issue an informal caution, if appropriate, and commence recovery in the normal way.

## **2. Voluntary Disclosure**

Care should be taken when deciding whether or not disclosure of a fraud is voluntary.

A disclosure is not voluntary if -

- it is not a complete disclosure, or is prompted by the belief or expectation that the fraud would have been discovered e.g. a friend, neighbour or relative has recently been caught defrauding the Authority, or they have discovered that they were being investigated
- the disclosure was solicited in some way perhaps by the issue of a review form or a check visit
- the offender admits all the facts as soon as challenged.

## **3. Offender's, partner's or children's mental or physical condition**

Where evidence is available to support the existence of a physical or mental disability, prosecution may not be desirable.

This should be considered where -

- the offender is suffering from nervous or stress related problems;
- the offender is elderly or bedridden;
- the offender has hearing or sight problems and therefore maybe did not understand the questions, or could not see the forms properly;
- the offender's circumstances are such that the Court may be more sympathetic toward them than the Authority. Prosecution may be desirable if the offence is serious;
- the offender is pregnant, and either the confinement is due within three months or she is not in good health. In the event of an offence being serious consideration should be given to deferring proceedings until after confinement;

- the partner's health or children's may suffer. This will normally apply where the partner or children suffer from a condition that will be exacerbated by the trauma of prosecution, particularly where the offence may result in a prison sentence.

#### **4. Previous Instances of Fraud**

It is usually desirable to prosecute where previous instances of fraud are known. This includes cases that were not the subject of a previous prosecution. Clearly these demonstrate that the offender was aware of circumstances which should be reported and which would affect benefit entitlement.

#### **5. Social Factors**

Consideration must be given to the following areas that may provide a sound reason not to prosecute -

- the offender was driven to commit the offence by a tragic domestic situation;
- there exists a possibility of injury to a third party, e.g. where an illegitimate, adopted or foster child would be made aware of their true status;
- the offender is young or immature and could be dealt with more effectively without redress to proceedings, although youth in itself is not a good reason not to instigate proceedings.

#### **6. Inadequate Evidence**

Prosecution will not be justified where there is insufficient evidence or inadequate evidence, e.g. because of unreliable or unsuitable witnesses.

All evidence that forms the basis of a prosecution must be admissible and sufficient, in full or in part, on which to obtain a conviction in accordance with current regulations and Acts.

#### **7. Failure in Investigation**

Where there has been a clear failure in investigation for whatever reason, prosecution must not take place.

## **8. Failure in Benefit Administration**

Prosecution would not be desirable where poor administration has led to a fraud or allowed a fraud to continue.

Examples of this could be where -

- benefit is paid on incomplete information;
- the claim form has been badly completed by an interviewing officer;
- there has been failure to observe obvious flaws in a statement or document.

Prosecution should not be ignored if internal checks have failed to reveal the offence provided that there is clear intent to deceive.

## **9. Delay**

As a guide, Courts will look critically at offences that are more than six months old. They will not be impressed by excuses of internal administrative difficulties, nor will they be impressed where a customer has been left a long time after an interview under caution. Where there has been an unacceptable delay in the investigation it would not be desirable to prosecute, however, it may be appropriate to proceed if the offender caused the delay.