**Benefit Fraud Advice**

[**www.THCAN.or.uk**](http://www.THCAN.or.uk) **factsheet for advisors and clients**

**What is benefit fraud**

Benefit fraud is dishonestly or deliberately claiming benefits to which the claimant is not entitled. If such a claim comes to the attention of the office paying the benefits - local authority, DWP (most benefits) and HMRC (tax credits) – they may, as well as recovering any benefits overpaid as a result of the misinformation, investigate the claimant for fraud.

Benefit fraud is a **criminal offence** and can result in a range of serious penalties, so should always be taken seriously by advisers and clients given full advice about what may happen.

Aside from the person claiming benefit, other people can also be prosecuted for benefit fraud, for example employers or landlords who give false information in support of a benefit claim.

**Examples of benefit fraud**

* Deliberately not disclosing income or savings to the benefits office knowing that if it was disclosed then it would reduce or exclude entitlement.
* Not disclosing true household circumstances for example that the claimant is co-habiting or that there are non-dependents living in the household
* Using a fake identity to claim benefits
* Deliberately not disclosing a change in circumstances that the claimant knows would lead to a reduction/withdrawal of benefit.

**Fraud investigations/interviews**

While an investigation is going on, benefit may be suspended if there are doubts about entitlement or if there is the possibility of overpayment. If the benefits office request information or evidence in support of the claim and this is not provided they may terminate benefit. If it appears that the person is in fact still entitled to benefit they should make a new claim.

If the benefits office in the course of reviewing or investigating a claim suspects that the claimant has misinformed them or withheld relevant information, they will invite the claimant to come in for an interview.

The initial interview may be informal, just to gather further information/documents. This may later be used to allege fraud.

If the benefit office already thinks there has been fraud the claimant will be asked to attend an **interview under caution** – anything said at this interview could be used as evidence in court. An invitation to interview under caution may be the first a claimant knows about a suspicion of fraud and they may be very anxious and scared. Clear advice at this stage is essential.

**Dealing with fraud interviews**

* The claimant must be informed why an interview is happening and whether there are grounds to suspect that an offence has been committed. If they don’t do this, the interview may not be admissible in court as evidence. 10 days notice in writing should be given.
* The claimant does not have to attend, but failure to attend won’t prevent prosecution and it may be more difficult later to explain facts and offer a defence.
* Ideally the person should be accompanied at the interview by a solicitor or a benefits specialist, in practice this is rarely possible. A friend or relative can go instead to take notes and give support to the person being interviewed.
* If the claimant cannot make the date given they should explain why in writing and ask for the interview to be rescheduled. This may be because they need an interpreter, or an appropriate adult, or to seek legal advice beforehand. If the person is physically or mentally not fit to attend an interview or face questions, they or the adviser should inform the fraud office in advance and send medical evidence.
* It may be helpful for the person going to the interview to write down in advance any points they want to make and any questions they want to ask. Alternatively, they may hand in a written statement and refuse to answer any questions.
* The interview will be taped, and a transcript provided for any later court or appeal hearing
* When giving advice on interviews under caution, you may find it helpful to download Advice UK’s Advice Guide ‘How to Deal with an Interview Under Caution’ at <http://www.advicenow.org.uk/advicenow-guides/>

**After the interview**

The person conducting the interview will recommend what further action should be taken (if any) and this will be one of the factors used in deciding on the next step.

The benefits office may

* Take time to make further enquiries, or call the partner of the claimant or non-dependent children for interview.
* Take no further action – if they believe there was no fraud or that it would be impossible or too costly to prove fraud. Benefit should be reinstated if it was stopped.
* Recover any overpaid benefits (in the normal way)
* Even where fraud is not suspected/proved, they may impose a **Civil Penalty** of £50 if they believe the person has ‘negligently’ made a misrepresentation about a claim or an award of benefit and not taken reasonable steps to correct it, or has failed to provide information or evidence or notified a change in circumstances without a reasonable excuse and either action has resulted in an overpayment of more than £65. Recovery is added on to the overpayment recovery. A decision to impose a Civil penalty can be appealed in the usual way (mandatory reconsideration, appeal to Tribunal)
* If fraud is suspected they may decide to **prosecute**. The evidence will be referred to the benefits office legal team and they will decide whether a case should be forwarded to the Crown Prosecution Service for further action. It is the CPS, not the benefits office, who decide whether to prosecute or not. Cases will be referred to the CPS if the overpayment is more than £2000, or less but a caution/administrative penalty has been refused, false documents or identities have been used, the claimant has helped or encouraged others to commit an offence, there was organised fraud, or the claimant has a previous conviction for fraud. In deciding whether to prosecute the CPS will consider the strength of the evidence, the amount of benefit involved, whether it is a first or subsequent offence, whether it was planned and organised, the intentions of the claimant, and their personal circumstances (for example, mental health issues).. The case is heard and decided by the Magistrates or Crown Court. Conviction can result in a fine of up to £5000 (payable in addition to any overpayment) or imprisonment for up to six months.
* Alternatively the benefits section may agree not to prosecute if the claimant agrees to admit the offence and accept a **Formal Caution** and pay an **Administrative Penalty** to (also added to the overpayment recovery).
* **Sanctions for benefit offences** can be applied if the offence was committed after 2002 if more than one benefit offence has occurred (either prosecuted or agreed to an administrative penalty) – there may be a reduction or withdrawal of the personal allowance from 4 weeks to 3 years)

**Advising clients about fraud investigations**

* The client should be advised not to ignore the interview letter. The problem will not go away. If they can’t attend the given date they should write to explain why.
* They should be advised to get legal advice from a criminal law solicitor.
* They should be referred to a specialist benefits adviser if possible.
* You can dispute the overpayment at the same time as the client is dealing with any fraud investigation. If the overpayment can be successfully challenged, this may help with defending against a fraud allegation/prosecution.
* Many clients will sign up for the caution and administrative penalty out of fear of being prosecuted without first considering whether there is actually a sound case for prosecution. It may be in their interests not to agree to the penalty and for the adviser to challenge/defend the fraud allegation. Prosecution by the CPS is not automatic, and if it does go ahead the person may be acquitted, or if convicted may be cautioned, given community service, or given a smaller fine. On the other hand they could be given a bigger fine, or imprisoned. Clients should always be advised to seek specialist advice before signing any agreement to accept a penalty.

**Administrative Penalties**

For an administrative penalty to be enforceable, there must have been a decision that an overpayment has arisen as a result of a revision or supersession of an award and that it is recoverable; in addition, the overpayment must have been due to an act or omission, and there must be grounds to prosecute.

If the benefits office believes there is a case for prosecution, they may invite the claimant to an interview to agree to a formal caution and an administrative penalty. They must issue a notice to the claimant explaining the Administrative Penalty scheme and giving information on how to agree and how to withdraw agreement. If this notice is not given the penalty may not be enforceable.

At the interview the claimant will be invited to sign to agree to the penalty. It should be explained that they have five days from the date of the interview to make up their mind and they should not be pressured to sign there and then.

If the claimant signs the agreement then changes their mind, they have 14 days to withdraw their agreement.

The amount of the penalty will be 50% of the overpayment *plus* an additional amount up to a maximum of £2000 (for offences committed partly or wholly before 1/4/15) or up to a maximum of £5000 if the offence was wholly committed after 1/4/15.

If the claimant agrees to the caution and penalty, they cannot be prosecuted for that overpayment.

If the overpayment decision is subsequently revised and found not to be recoverable, or not to be due to any act or omission by the claimant, any amount of penalty already recovered must be repaid.

If the overpayment amount is changed on revision, the agreement is cancelled and any money recovered is repaid; however the claimant will lose their immunity to prosecution for the new amount unless they sign a new agreement.

Agreeing to Administrative Penalty does not mean the benefit cannot also be sanctioned.

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