

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**  
**BENEFIT FRAUD PROSECUTION POLICY**

**Introduction**

The Royal Borough of Windsor and Maidenhead (the Council) is committed to protecting public funds through its action on fraud. Where Benefit Fraud is established as a result of an investigation, Social Security Administration Act and Fraud Act legislation provides Councils with several options:

*Formal Caution:*

The offender is interviewed by a Council Officer and advised that an offence has been committed, explaining the seriousness of the offence and that the Caution is an alternative to prosecution. The Caution is recorded by the Council and the Department for Work and Pensions but is not a conviction.

*Administration Penalty:*

Again, the offender is interviewed and advised of the seriousness of the offence. The Penalty is an additional figure equal to 30% of the benefit overpayment and is recovered in the same manner as the overpayment.

*Prosecution*

The Council also has the option to refer cases of benefit fraud for prosecution.

The above courses of action may be taken in respect of the person committing the fraud, be that the person claiming benefit, their landlord or any other person deemed to have committed an offence by colluding with that person.

The Council's Sanction Panel, comprising the Head of Audit and Review and a representative from both the Benefits and Legal Sections within the Corporate Services Directorate, will consider the recommendations of the Fraud Investigation Officer, will apply this Policy and the Sanctions Panel will then make a decision as to which of the above alternatives is applicable in each case.

**The Public Interest Test**

Those involved in this decision making process must be mindful of factors of public or council interest, applying the necessary gravity and relevance to each. These may include:

- Relevant previous convictions or court orders
- RBWM staff or member involvement in the offence
- Period and amount of overpayment
- The offender is in a position of trust
- The age and welfare of the offender
- Social Services involvement
- The possibility of causing severe hardship
- The publicity and deterrent factor

### **Practical Application of this Policy**

The Department for Work and Pensions offers comprehensive guidance (Circular F1/2005) on the factors which Councils should consider when deciding which of the above alternatives is appropriate in each case. As we work closely with DWP Fraud Investigation Service, it is sensible that we should be guided by this advice.

In the main, after applying the Public Interest Test, Councils are advised to consider prosecution where the net overpaid benefit exceeds £5000. Anything below this figure may be considered for EITHER an Administration Penalty or a Formal Caution.

Where the decision has been made not to prosecute then consideration must first be given to the suitability of offering an Administration Penalty. This sanction carries more of a deterrent against reoffending, ensures that the fraudster is financially penalised for the offence and offers the Council some recompense for the costs of the investigation. It is recommended that only where such a penalty would cause severe financial hardship should it not be considered.

Where an Administration Penalty would cause severe financial hardship or where the fraudster has not benefited financially from the offence (an attempted fraud, for example) it is recommended that a Formal Caution be offered, provided that the offender has admitted the offence.

### **Notes to the above**

#### **Partnership Working**

The Council works in partnership with other organisations such as Thames Valley Police, Department for Work and Pensions, Her Majesty's Revenue and Customs and the Immigration Service. Where offences have been proven which affect benefits paid by one of our partner organisations as well as our own, the decision to prosecute or offer a sanction must be a joint one, and must consider the complete loss to public funds and not just those administered by RBWM.

#### **Overpayment Recovery**

In addition to any formal course of action the Council decides to take, the Council will **ALWAYS** seek to recover the overpaid benefit. Where a prosecution is deemed appropriate the Council will seek an award of costs commensurate with the costs of the investigation.

#### **Publicity**

It is the Council's intention to promote this Policy as well as the outcome of any prosecutions, with the intention of deterring others from fraudulent activity.

#### **Policy Review**

- It is intended that this Policy will be reviewed annually to reflect changes in legislation and guidance.

**Date to be approved by Cabinet: 25 June 2009**  
**Effective from: 6 July 2009**