

Sanction Policy

EQUALITY STATEMENT

Torbay Council is committed to ensuring that no member of the public is treated less favourably than others on the grounds of gender, sexual orientation, race, colour, ethnic origin, age, disability or any other reason that cannot be justified during the course of staff duties.

If you would like a copy of the policy in another format, language, audio tape or braille, please contact us on 01803 207543

SANCTION POLICY

Torbay Council is committed to the protection of the public purse, including those used in the payment of Housing / Council Tax Benefit.

Council staff at all times will seek to ensure that Benefit payments are made to those persons who are genuinely entitled to receiving them.

If payments in excess of entitlement are revealed the Council will take action to stop further overpayment and seek to recover excess Benefit paid.

Where the Council discovers that Benefit payments have been made as a result of false information in support of applications or failure to notify changes of circumstances, consideration will be given to taking action against any person knowingly involved in fraudulent activity against whom sufficient evidence can be obtained.

FORMS OF ACTION WILL INCLUDE

1. ACCEPTANCE OF AN UNDERTAKING TO REPAY THE OVERPAYMENT
2. THE OFFER OF AN ADMINISTRATIVE PENALTY WHERE APPROPRIATE
3. THE OFFER OF A CAUTION WHERE APPROPRIATE
4. PROSECUTION THROUGH THE USE OF COUNCIL OR DEPARTMENT OF WORK AND PENSIONS SOLICITORS (TO INCLUDE RECOVERY OF THE OVERPAYMENT AND RELEVANT COSTS.)
5. PROSECUTION THROUGH THE POLICE WHERE APPROPRIATE.

The Council will adhere to Code for Crown Prosecutors at all times.

**AGGRAVATING FACTORS TO BE CONSIDERED IN FAVOUR
OF PROSECUTION**

1. The offending was committed in the course of employment for Torbay.
2. The accused holds a position of trust outside the Authority
3. A net overpayment of £2000 has been identified during the offending period.
4. There was more than one offence or offences committed on more than one occasion.
5. The offending was committed over a long period of time irrespective of the overpayment.
For example the offending was committed for a period of 6 months or more.
6. The offending demonstrates a level of effort, consideration, planning or premeditation. (i.e. false National Insurance Number; names and addresses)
7. The offending involves conspiracy or collusion.
8. The offender has committed other similar offences.
9. The offender has previously been convicted of Benefit Fraud or other similar offences
10. The accused was the organiser or ringleader.
11. There are grounds for believing that the offence is to be continued or repeated , for example, by a history of recurring conduct
12. The person has failed to attend formal interview after reasonable attempts have been made to see them.
13. There are grounds to commence proceeding if a penalty /caution declined.

Factors weighing against prosecution but not excluding appropriate alternative sanction

1. The amount of money was less than £2000.00 providing there are no aggravating features present.
2. The offending was an isolated incident / there was only one offence
3. The offending ended voluntarily
4. There has been a reasonable attempt to repay the overpaid Benefit or make good the harm
5. The accused has no history of such or similar offences
6. There has been a long delay between the offence taking place and the date of trial, unless;
the offence is serious
the delay has been caused in part by the defendant
the offence has only recently come to light
the complexity of the offence has meant there has been a long investigation
7. A prosecution is likely to have a bad effect on the accused physical or mental health

So as to ensure that the final decision of whether a person should be cautioned, offered an administration penalty or prosecuted, all evidence relating to each individual cases is to be presented to the Head of Service (or Deputy) who will make a decision on each file.

The person to be guided by the quality of evidence, and the above points.

A guide to whether a case should be Prosecuted, or have an Administrative Penalty or Caution applied.

Prosecution Preferred

1. If the overpayment during the offending period exceeds £2000 prosecution should be considered from the outset.
2. The person has declined the offer of an administrative penalty, criminal proceedings should be considered in all cases, **irrespective** of the amount of the overpayment. Unless there are other exceptional circumstances
3. The person has declined the offer of a caution, criminal proceedings should be considered in all cases, **irrespective** of the amount of the overpayment. Unless there are other exceptional circumstances
4. The offending has continued, for six months or more.
5. The fraud was calculated and deliberate.
6. The accused has been previously convicted of benefit fraud.
7. An administrative penalty has been previously imposed for benefit fraud.
8. A caution has been previously imposed for benefit Fraud
9. The accused was in a position of trust, for example a member of staff. (E.g. A solicitor/teacher/respected member of the public etc this list is not exhaustive).
10. The case has arisen from a collusive employer investigation. These cases are considered to amount to **serious fraud** and **irrespective** of the amount of overpayment, should be considered for prosecution from the outset.

There is no minimum overpayment limit.

Joint investigation with the Benefit Fraud Investigation Service **may** be necessary in line with Government legislation

Administrative Penalty

1. The case is not sufficiently serious that it should be considered for prosecution at the outset.
2. The adjudicated overpayment during the offending period is less than £2000. Unless there are aggravating factors present.
3. There are grounds for instituting legal proceedings(-an admission is not necessarily required)

**If the penalty is declined the case must be considered for prosecution.
Unless exceptional circumstance apply**

Joint Administrative Penalties with the Benefit Fraud Investigation Service
may be necessary in line with Government legislation

Formal Caution

If criminal proceedings or administrative penalty action is not appropriate and the adjudicated overpayment is less than £2000 (depending on the circumstances of the offence and the person) a formal caution shall be considered when: -

1. The accused has not offended before
2. The accused's attitude towards the offence indicates that a caution would be an appropriate sanction.
3. There is sufficient evidence if the caution is declined to prosecute.
4. The accused admits the offence during the Interview Under Caution

Joint cautions with the Benefit Fraud Investigation Service may be necessary in line with Government legislation.

Couples

Where a claim to Benefit is made by couple as defined by the Housing Benefit regulations, both will be investigated and based on the evidence obtained an appropriate sanction will be applied.