

REVIEW OF MPS' EXPENSES AND ALLOWANCES

NOTE ON THE ENFORCEMENT POWERS AND SANCTIONS OF HM REVENUE AND CUSTOMS (HMRC) AND DEPARTMENT FOR WORK AND PENSIONS (DWP)

HMRC

Question - What specific sanctions, civil or criminal, available in the case of a person who:

- **Refuses to provide you with relevant information you reasonably require to deal with their case or**
- **Refuses to repay a sum which has been wrongly paid or misclaimed, whether fraudulently or otherwise?**

Response

Where HMRC have issued a formal notice for information and the person fails to comply there is a penalty of £300; if the failure continues after the imposition of that penalty they can impose a daily penalty not exceeding £60 until the failure is remedied; where an officer of Revenue and Customs has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been, it can apply to the Upper Tribunal for a tax geared penalty. In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.

As part of HMRC's modernisation and alignment of powers they largely moved away from powers in the Taxes Acts for criminal investigation in 2007 (apart from for Scotland), so their processes should align with other criminal investigatory bodies under the relevant parts of the Police and Criminal Evidence Act.

Where someone refuses to pay (or pay back) HMRC are in the process of introducing legislation to align a variety of different regimes dating back to

when they were Inland Revenue and HM Customs and Excise. But if Self-Assessment is taken as an example, there is a penalty of 5% of the tax due one month after payment is due and a further penalty of 5% after 6 months and a tax geared penalty of up to 30% after one year. In addition, interest is due on all unpaid debts.

In addition HMRC have enforcement powers and can distrain goods, set debts against repayments, take county court proceedings and take insolvency proceedings.

DWP

Question - What specific sanctions, civil or criminal, are available to you in the case of a person who:

- **Refuses to provide you with relevant information you reasonably require to deal with their case or**
- **Refuses to repay a sum which has been wrongly paid or misclaimed, whether fraudulently or otherwise?**

Response

Where the Department requires information before it can assess whether a person is entitled to benefit and the claimant refuses to provide the information, the Department may be unable to award the benefit, award less or terminate the payment of benefit. It is therefore in the interests of the claimant to provide all of the required information.

In practice if the claimant fails to provide all the necessary information in order to process the claim, the claim is treated as defective. The claimant is given a month in order to provide the missing information necessary to process the claim. If the claimant is able to do this within the given time scale then the claim will be treated as duly made in the first instance. If they fail to provide the necessary information within the given time scale then a decision will have

to be made not to award benefit. The claimant will need to make a new claim if they wish do to so.

The Secretary of State has powers under section 71 of the Social Security Administration Act 1992 to recover any amount of benefit which has been overpaid where there is a misrepresentation or failure to disclose material facts which leads to an overpayment of benefit. A formal decision would have to be made by a decision maker prior to any recovery of the overpayment. If the claimant is on benefit and assuming the overpayment decision is not contested by the claimant the Secretary of State can commence recovery action by procedures set out in secondary legislation to recover the overpayment at source from the prescribed benefits. If the claimant is no longer on benefit and refuses/fails to pay, recovery can be enforced by execution issued from the County Court.

The claimant has a right of appeal against an overpayment decision made by the Secretary of State to the First Tier Tribunal and then a further right of appeal on a point of law to the Upper Tribunal. If the claimant is on benefit and fails to appeal against the overpayment decision within the time limits provided for by social security legislation, the Secretary of State can commence recovery action by deduction from prescribed benefits. If the claimant is no longer on benefit and refuses/fails to pay the overpayment recovery can be enforced by execution issued from the County Court.

The benefit system is based on the requirement for benefit claimants to be honest about their personal circumstances. Where the Department finds out that the claimant may have provided false information or may have deliberately failed to provide information which would have caused the claimant getting less or no benefit - it decides how best to deal with this.

The Department may suspect a claim is false through

- 1) an anonymous letter or call on benefit hotline
- 2) cross referencing its own and other government databases

- 3) information received from another government department or other source
- 4) information volunteered by the customer
- 5) use of Authorised Officer powers to conduct pro-active fraud drives in areas of high risk employment

It may decide that

- 1) there is no basis to the allegation and no further action should take place,
- 2) the claimant should be interviewed and the rules on notification explained to them and warned as to their future conduct (but no further action) - this process is called "Customer compliance"
- 3) a criminal investigation should take place which will include the claimant being interviewed under caution and may result in a simple caution, an administrative penalty or a prosecution.

A simple caution is similar to cautions issued by the police. Fraud Investigators from the Department's Fraud Investigation Service offer the caution, an admission of guilt is required and a Ministry of Justice circular and internal DWP guidance provides guidance on how cautions should be administered.

An administrative penalty requires the claimant to repay 30% of the adjudicated overpayment in addition to paying the original overpayment. It is offered by a fraud investigator, requires a finding by a fraud investigator that grounds for instituting criminal proceedings exist and is added to the overall debt but recovered separately. The power stems from S115 Social Security Administration Act 1992 again internal guidance sets out the guidance on its implementation.

In DWP, in most cases where a criminal investigation has resulted in a conclusion that a sanction should be imposed - a caution or administrative penalty will usually be offered where the overpayment is less than £2,000. If

the overpayment exceeds this sum, consideration will be given to submitting the case to the Department's Prosecution Division.

DWP Prosecution Division prosecutes approximately 8,000 benefit fraud cases every year for the Department and Local Authorities. It also prosecutes regulatory and fraud offences for the Department of Health.

A decision to prosecute a person for benefit fraud is made on the basis of whether the evidence reveals a realistic prospect of conviction and it is in the public interest to prosecute the suspect, in accordance with the Code for Crown Prosecutors.

A claimant's refusal (or willingness) to repay the adjudicated overpayment has no relevance to the decision of whether to prosecute.

Recovery of benefit is an entirely separate process to the prosecution.

There may be interplay between the criminal and civil process in benefit fraud cases where the court orders compensation or confiscation orders in the criminal proceedings. When the court makes such orders -the Department will decide how any payments made as a result of the orders will affect the recoverability of the overpayment decision.

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