

How to deal with a benefit fraud interview

If the office which pays your benefits or tax credits suspects that you may have committed a criminal offence with your benefits, they may write and ask you to have an interview.

Usually the letter will be signed by someone like a Fraud Investigator, but sometimes council investigators have different job titles – for example, “Benefits Enquiry Officer” or “Audit Officer”. The letter should also tell you that the interview will be tape recorded and that you may wish to get legal advice.

This is called an Interview Under Caution. It is to gather evidence to prosecute you, so do not ignore this.

Going to the Interview Under Caution

You do not have to go to the Interview Under Caution, but if you don't, it may make it more difficult to explain facts and defend yourself if you are prosecuted. **Do not attend an Interview Under Caution on your own or without a professional legal adviser.**

If you go to the interview with a friend or relative, they have no right to help you. If you have special needs, you can ask for an “Appropriate Adult” to attend the interview to help you, but you still need professional legal advice.

- Don't ignore the letter
- Get legal advice
- Don't go on your own

Get advice

When you get a letter about an Interview Under Caution, do not talk to the benefit authorities, but immediately get independent advice. You have a clear right to legal advice and help; it is not a sign that you are guilty.

First you must contact a solicitor who specialises in criminal defence – even if you think you have done nothing wrong or you can explain things, you can make things far worse by going it alone because you may not realise you have broken the law. Most people facing benefit fraud allegations are entitled to free legal help with an Interview Under Caution.

You must also contact an independent adviser who specialises in welfare benefits – for example, some solicitors' firms, a law centre, Citizens Advice Bureau or council welfare rights service. Ask the solicitor and welfare benefits adviser to liaise with each other about the Interview.

If you cannot make the time and date for the Interview or if you have not been able to get professional legal advice (or can't afford to pay for it), you should write a very short note to the benefits office telling them why you can't attend. Keep a copy. Also say if you need an interpreter – a professional interpreter should be provided for you.



The benefit fraud interview

At the Interview

A solicitor can ask for “prior disclosure”. This means they should be told what evidence is held against you. They don’t have the right to be told about all the evidence, but must be told enough so they can advise you properly. You have the right to speak to your solicitor privately about the evidence so they can advise you what to do during the interview.

If you also have a welfare benefits adviser, the solicitor and the adviser can also discuss where you stand and how your benefits might be affected.

Depending on the case, your solicitor may advise you not to answer questions or to answer questions or to hand in a written statement from you explaining your side of things and to also not answer any questions.

The investigator will ask questions to find out what you know about benefits, why they think you did not tell them something and whether you believe what you did was wrong.

If new evidence is introduced during the Interview, the solicitor should ask for it to be stopped so you can have more advice. You may leave the interview, for example to get advice.

The benefit authorities must not force you to attend an Interview Under Caution by doing things like suspending your benefit – if this happens get advice about how to challenge this.

After the Interview

After the Interview a decision will be made whether you are going to be prosecuted. You may also be sent a letter telling you that you have been overpaid benefit or that your benefit has been stopped (this may be quite a time after the Interview).

You have the right to appeal against an overpayment or stopping benefit to an independent Tribunal and **you should always write and say you wish to appeal even if you think you have a weak case** – most benefit overpayments are wrong in some way and expert help is needed to spot the errors.

You have one month in which to appeal, but you can still appeal after one month if it is within 13 months of being written to and you can show good reasons for appealing late. It is very important to always get independent welfare benefits advice about appealing. If you do not appeal and instead agree to repay the money, you can still be prosecuted. An appeal to the Tribunal ensures that you only repay what you are legally liable for and if you are prosecuted, your solicitor can ask for it to be heard before the court case to sort out what you actually owe.

Social security law is very technical and complicated and so it is easy for benefits officials to make mistakes.

If you are going to be prosecuted, you will receive a bundle of papers telling you this. Do not delay and straight away find a criminal defence solicitor to take on your case – preferably one experienced in defending benefit fraud cases. Again you must also seek independent expert benefits advice as the adviser and your solicitor can work together on the case.

If you are not going to be prosecuted, you should also be sent a letter telling you so.

The information in this leaflet only applies to England and Wales.

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