

How to handle an interview under caution

Steve's story

Steve had only been going out with Chloe for about six months when her landlord gave her notice to leave her flat. Things had been going well between them but it was still early days. They decided that she would move in with Steve temporarily to see if it worked out. It never occurred to him that it would make any difference to his benefit. A couple of months later they decided to make it permanent. They told the landlord that Chloe wanted to be an official tenant too. The landlord said it was fine but that he'd need to tell the Housing Benefit office about it.

A few weeks later Steve received a letter from the council telling him that he'd been paid too much – he shouldn't have got any benefit once Chloe moved in because she earns a good wage. Steve rang and arranged to pay some back each week. 'I thought it was all sorted,' says Steve, 'But next thing I know, I get another letter from them, this time saying they need to interview me 'under caution' because of a problem with my benefits!'

Steve rang them up straight away to explain that the overpayment was being dealt with but he was told he needed to speak to the 'fraud section' about why he didn't tell them about Chloe moving in. The fraud section thinks he may have done it deliberately, to get more benefit and want to record the interview in case they have to take him to court.

'I was a bit shook up when I got off the phone,' Steve explains, 'Ok, I know now that I should've told the council about Chloe moving in, but at the time I really thought that it wouldn't make much difference – she wasn't even on the tenancy and I only got a few quid Housing Benefit anyway. Now it's all so serious! 'Under caution' sounds criminal, and they've even mentioned court! Chloe'll go ballistic, and what if my mum finds out?'

If like Steve, the Department for Work and Pensions (DWP) or your local council suspect you may have misled them about something to do with your benefits you might be asked to go to an 'interview under caution'. This could lead to them suspending your benefits and taking you to court.

Introduction

This guide looks at what happens if your council (which pays Housing Benefit and Council Tax Benefit) or the DWP (which pays most other benefits) invites you to an interview under caution. It may also be useful if another organisation such as the Inland Revenue (HMRC – which pays tax credits) wants to interview you under caution, but you will need to check that the information applies to you.

If you are unsure about any of the terms in this guide see the jargon buster on page 17.

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So, you've been asked to an interview under caution: what now?

- Don't ignore it
- Understand what the problem is
- Get help and advice

It's really important to get an independent adviser or solicitor to help you with your case and represent you at the interview. This will give you the best chance of getting a good result. An adviser can check whether you are entitled to the benefits or whether the case against you is weak. A solicitor can advise you about your rights in the interview which could become part of a criminal investigation. However, you might not be able to get all this help, either because you can't find an adviser who can help you, or because you can't afford a solicitor. So this guide will help to answer some of your questions, work out what help you might be able to get and give you an idea of some things you can do to help yourself.



What is an interview under caution?

An interview under caution is a taped interview carried out by the DWP or your local council when they think you might have misled them about something to do with your benefits. An interview is one of the things they can do to help them decide what's happened and what to do next – it doesn't necessarily mean you have done anything wrong or that they're about to take you to court.

'Under caution' means that they will tell you what rights you have during the interview. You've probably heard it in TV dramas: 'You have the right to remain silent...' – but it does *not* mean that you are under arrest or that it's anything to do with the police! If you aren't told your rights (cautioned) when they talk to you, any court that later looked at your case could decide to ignore what you said. If you're cautioned, then what you say can be used as evidence.

The caution

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

This means that you can refuse to answer a question or to say anything at all. But if you bring something up later (for example, in court) that you didn't mention at the interview, the court is allowed to be suspicious about why you didn't explain it at the time. This doesn't mean that you should ever feel that you have to say something if you are unhappy with what you've been asked or the way it was asked.

Why do they want to interview you?

If the DWP or council notice something that could be benefit fraud they ask their fraud section to check it out.

What is an interview under caution?

The benefits and fraud sections in the DWP/council

If the DWP or council suspect you've been paid too much benefit the people dealing with whether you've been overpaid are the *benefits section*. It is the *fraud section's* job to do interviews under caution and to investigate whether there has been any fraud.

As a general rule, you have to tell the DWP or council if something changes that may affect the benefits you get. Sometimes the DWP or council may think that your situation has changed, or that what you put on your claim was wrong, even though you haven't told them so. This may be because someone has told them something, or, more commonly, because they've found that the records about you on different computers don't match up. Sometimes this happens because you tell one office about a change without realising that you need to tell each benefits office separately. Or it may be, for example, that you thought that you didn't need to tell them about your savings, or some work you did, thinking that it wouldn't affect your benefit. It may be that they have got it wrong or that it was a mistake – or it could be fraud.

What is benefit fraud?

This is a complicated area but, roughly, fraud means deliberately giving false information or not telling the DWP or council something because you know, or should suspect, that you will be better off as a result.

So, when you go to an interview under caution the investigators will want to find out whether:

- there is something you should have told them about that affects your benefits; *and*
- you deliberately misled them about it; *and*
- you should have understood that, because of this, you'd get more (or wouldn't lose) benefits.

Be aware: Some councils interpret the rules very strictly and look at every case where someone has misled them and been overpaid. They may still treat it as fraud even if they decide that you didn't do it deliberately or to get more benefit. If you think your council is doing this, get advice; it's only really fraud if you misled them knowing (or suspecting) that you could get more benefit than you're entitled to.

Although it's usually to do with *your* benefits, they may interview you under caution if they think you have helped someone else to claim benefits fraudulently. For example, if you rent a house to someone and have told the council that the rent is higher than it is so as to help your tenant to get more Housing Benefit you could still be investigated for benefit fraud, even though you aren't claiming the benefits yourself.

Appointees: If you are someone's appointee (you are formally responsible for the benefits of someone who can't manage them for themselves) you can be held responsible for fraud on their claim: follow the advice in this guide, for or with the person you help.

If one office spots a problem that may affect another one, they usually pass the information on. They may decide to interview you jointly, or treat the two things as separate problems – so for example you may get one interview for a problem with Income Support and Housing Benefit, or you may get two interviews – and possibly two different results.

The DWP or council should only ask you to come to an interview under caution if they suspect that your actions may have been fraudulent. But remember: it doesn't mean that you have done anything wrong just because they want to interview you.

“What about my benefits?”

‘What about my benefits?’

If you’ve been paid too much

If the DWP or council is looking at whether you committed fraud, it is likely to be because they also think you’ve been paid too much benefit.

If the benefits section sends you a written decision saying that you have been overpaid, and you don’t agree and want to appeal, then you will need to move quickly to make sure that you don’t miss the deadline. However while the fraud investigation is still going on the benefits section won’t usually want to make a formal decision about an overpayment: you don’t need to appeal until they give you an actual decision.

You should be very careful what you say when you contact the DWP or council as the fraud section may bring it up again later. Try and get an adviser to help you if you need to contact them. See page 5.

Remember: don’t ever be tempted to agree to anything that you don’t think is true (for example, agree that you’ve been paid too much) in the hope that it will stop the fraud investigation.

During the fraud investigation

The DWP or council shouldn’t stop your benefit just because they are investigating you for fraud. However, they have to make sure that they don’t pay you what you are not entitled to. This means that if they have strong evidence that you are being overpaid then they can reduce or suspend your benefit so as to stop paying you too much while they check it out.

Often the benefit section ‘suspend’ your benefit when they ask the fraud section to get involved. Suspending your benefit is different from stopping it: although you still don’t get any money, it means that the claim is still there so you won’t have to re-claim it when the problem is sorted out, if you are still entitled.

The **benefits** section should:

- only suspend the benefits that they think are being paid at the wrong amount, not other benefits you are claiming
- not stop money paid for other people in your claim unless that’s in doubt too



- start paying again as soon as they know what you are really entitled to – even if they think you may have been overpaid or may have committed fraud
- only wait for the fraud section to finish their investigation if it affects what you are now entitled to, for example if they can’t work out what you should get until you’ve been interviewed
- if they later find that they were wrong they should refund any money they suspended

The **fraud** section should not suggest that:

- they can influence what benefits you are entitled to get
- they can stop or change your current claim
- withdrawing your claim will help avoid prosecution

If your benefit is suspended while the fraud section investigates it, you may struggle to make ends meet. However, you, or someone you support, for example, your partner, may be able to claim a different benefit or apply for some emergency money. Get independent benefits advice if this happens to you.

If you think the way your benefit has been suspended is wrong, or you want to make a complaint about how long the fraud investigation is taking, or find out what else you can claim, you can get advice from an advice agency. See page 5.

Before the interview

Get advice!

Ideally you should get advice from both an adviser and a solicitor who has experience in helping people with interviews under caution. The adviser can advise you about your benefits and the solicitor about your rights in the fraud investigation. They can tell you how the law will affect your particular circumstances, explain your options, negotiate with the DWP or council on your behalf and may come with you to the interview.

Solicitors usually charge for their services. If you can't afford to pay for a solicitor you may be able to get part or all of your legal costs paid through legal aid. Mention this to the solicitor on your first visit. They will be able to carry out the test to check if you are entitled. There is more information on legal aid in the Criminal Defence Service leaflet 'A Practical Guide to the Criminal Defence Service' which you can get by calling **0845 3000 343**.

If you can't afford, or can't find, a solicitor you may be able to get help from an advice agency for free. Many towns have advice centres, such as Citizens Advice Bureau (CAB), Law Centres and local independent centres. Before you go to them, check if they are able to deal with your problem. It may be helpful to take the step-by-step guide (page 6) with you to work through together. Take your letter asking you to the interview under caution and anything else you think might be useful with you.



Before
the interview

You can also get help over the phone. Community Legal Advice is a free and confidential advice service paid for by legal aid. If you live on a low income or benefits they can give you free advice and help you to prepare for your interview over the telephone. You can contact them on **0845 345 4 345**.

It may be difficult to get all the advice and help you need. **However, if you need time to get an adviser or solicitor, the DWP or council must delay the interview.**

See the 'Useful contacts' section for information on how to find a solicitor or adviser. Advicenow's guide 'Do I need a lawyer?' explains the difference between advisers and solicitors and how to use them: www.advicenow.org.uk/gethelp

Whether you get help or not, working through the step-by-step guide on the next page should help you prepare for the interview.

Step-by-step guide:

preparing for an interview under caution

Some of the steps outlined here may be difficult to manage without an adviser or solicitor, but working through the guide should help you to feel more prepared.

What to do

Why and how

Take a step back and look at your case objectively

Try and put any worries, embarrassment or anger aside to think about the situation and decide what to do next. Talking it through with a friend and working through this guide could help.

Find out what it's all about

It's important to know what the DWP/council thinks you might have done wrong so that you can answer their questions. If the letter asking you to interview doesn't tell you much you could try to get more information from them.

Contact them (if the number on your letter is a switchboard you will need to ask for the fraud section) and ask them what they think the problem is and what they think you might have done wrong.

They ought to outline what the problem is, but probably won't want to discuss details until they caution you.

If they won't tell you anything before the interview it may be reasonable to refuse to go until they do. If they won't give you all the information you ask for they should explain to you why not.

You can request a copy of your file using the Data Protection Act, although there are rules about how to do this and what information they can refuse to give you.

An advice centre may be able to help you get the information you need.

See if you can resolve it without the need for an interview

Once you know what the DWP/council's suspicions are you may be able to sort it out without an interview, for example if you think they've made a mistake or you have a simple explanation for what happened.

Check your benefits

While they are looking at whether you committed fraud you may need to appeal against a decision to stop or reduce your benefit, or against a decision that says you were paid too much benefit. You may be able to claim other benefits instead. An adviser can look at your income and situation and work out which benefits you should be getting and help you with the appeal.

(continued)

Before the interview

Be careful: If you do contact the DWP or council be aware that anything you say to them (whether it's in a cautioned interview or not) could affect the way they view your case.

Make sure that what you say is clear and accurate – contacting them through an adviser can help to make sure they don't misinterpret what you say.

Never agree to anything or say something you don't think is true just to try and sort it out, or to try and get them to cancel the interview.



(continued)

What to do : Why and how

Go through your options

To decide what to do next, you will need to decide whether to go to the interview or not (see below), find out if anyone can go with you (page 8), and know what it will be like when you get there. Knowing what all the possible outcomes might be (see page 12) may help you understand the interview better.

Make sure you can attend the interview if you want to

If there are things which might make it difficult for you to go to the interview, for example, if you have difficulty climbing stairs, let them know and they should try and help you, for instance by having the interview on the ground floor.

They should also try and take account of any reasonable special request, such as that a woman interviewer is present.

If the time of the interview is inconvenient, ask for a different time.

Write down what you think happened

Writing down exactly what you think happened or how you think the problems came about can help you to get it clear in your head.

If you have other things that may back up your version of what happened, such as letters from your doctor, or statements from 'witnesses', you should collect them too. If you need time to gather this kind of information (for example if your doctor is away, or you can't get an appointment at the advice centre straight away), ask them to delay the interview.

Take all this information with you to the interview. It will help you to answer their questions and remember what you want to tell them.

If you know exactly what they think the problem is, you could choose to send them details of what you think happened beforehand, especially if you think it may clear the matter up. However, it is very important to get advice before doing this as you need to be sure that what you say will help and won't make things worse.

Before the interview

Do I have to go to the interview?

You don't have to go to the interview. But you should think about whether you would be better off going, or trying to sort it out another way. Deciding whether to go or not can be difficult. Every situation is different and there are different views on what is the best thing to do.

Some advisers say that if you can't get an expert in benefit fraud to go with you, it is better not to go rather than go on your own and say things that might incriminate you. If you don't go to the interview, it could mean that the fraud section won't have enough information to decide if you committed fraud which could mean that they have to drop the case against you. On the other hand, the fraud section may feel they have enough information to take you to court anyway and you

will have lost an opportunity to find out what they think happened and to explain your side of the story.

Whether you go or not may depend on things like whether you can get an adviser or solicitor to go with you, how strong the case against you is, and if you feel you could deal with the interview confidently on your own.

Get advice beforehand about whether or not you should go and how this could affect your case. And if you decide not to go you should write to tell them giving your reasons, for example, explaining if it's because you can't get someone to represent you.

If I go to an interview under caution, should I go alone?

If you go to an interview it is best to take a solicitor to represent you. Unfortunately, it might be difficult to find or afford a solicitor with experience in interviews under caution (See 'Get advice!' on page 5). You can, however, consider taking someone else, such as an adviser or a friend.

Many advice centres (for example, CABs and Law Centres) specialise in helping with benefit problems, and some may have advisers who have experience in interview under cautions. They may agree to go with you.

Some people want to take a friend to the interview for support. If you do, be careful: if the interviewer thinks they are there as a witness or your representative they may try questioning them, or they may refuse to let them stay. If the interviewer thinks that they are influencing what you say, they may think that you are unsure of the facts.

Many advisers would say that if you can't find either an expert in interview under cautions or benefit problems, you should go alone rather than take someone who is not an expert.

Whether you go alone or not, being thoroughly prepared, perhaps having jotted down or practised what you will say, will help you manage the interview better.

If you are someone's appointee and their claim is being investigated, you should be able to speak for them. The person you speak for does not have to go, unless they want to.

Replying to their invitation to an interview under caution

When you are asked to an interview under caution you should always reply. If you decide not to go to the interview, or want to postpone it, you should explain this. If there are things you need, so as to be able to go to the interview, such as changing when or where it is or asking for an interpreter, let them know as soon as possible. Keep your letter short and simple and make sure that you don't say anything that could be used against you. Below is an example of a letter that someone might write if they wanted to delay an interview until they got more information about the case.

Before the interview

National Insurance number

Date

Dear Sir/Madam

Thank you for your letter inviting me to an interview under caution next week.

I will be in a better position to help you with your investigation if you let me know what you're accusing me of. Please explain what the problem is and why you think it was caused by fraud rather than a simple mistake. If you think you have evidence against me please send me copies.

I will need a quick and full response to this letter before I can come to an interview, so please postpone it until after you have given me more details.

Yours faithfully

Vanessa Morgan

It is unlikely that they will send you all of the information that you need. If they don't, see the step-by-step guide (page 6).

If you do manage to get enough details of what they think the problem is, it will make it easier for you to be able to write down what you think happened, or to make a list of things you want to ask or say at the interview.

“What will the interview be like?”

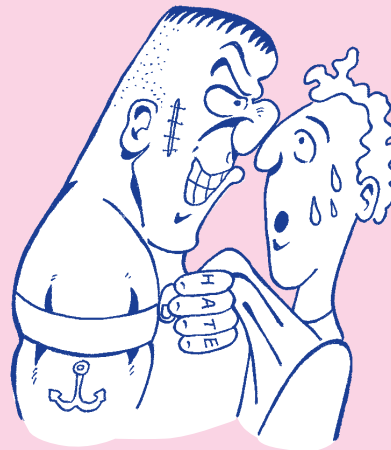
Interview standards

Although every interview will be different, all interviews must match national legal standards, known as 'PACE', (the Police and Criminal Evidence Act). PACE rules set out your rights and lays down what the interviewer must and must not do to ensure that interviews under caution are fair. If your interview doesn't meet these standards it may be that the interview record can't be used in court.

What **should** they do in an interview under caution?

- Caution you and make sure you understand your rights – to silence, to legal representation and to leave at any time
- Be courteous and listen to you
- Let you see and have time to read any papers they refer to
- Read and consider any papers you bring and points you make
- Take account of any special needs you have, for example difficulties because of illness, disability or language
- Make sure you understand what they are asking you
- Check if you have any questions or points to raise before finishing the interview.

What **shouldn't** they do in an interview under caution?



- Pressure or intimidate you
- Suggest your benefit will be stopped or threaten you with court action or the police if you don't co-operate
- Suggest there won't be a prosecution if you withdraw your benefits claim or say you are 'guilty'
- Use unhelpful language such as refer to a benefit overpayment as a theft
- Pressure you to make or sign a statement.

'What will the interview be like?'

Where will the interview be?

If the interview is at their offices it will just be in a normal room – don't worry, it won't be a cell or a court room.

The DWP or council may ask to have the interview at your home or some other place. This may be easier for you, although they could request this if they think it may help their investigation. For example, if they suspect you are living with a partner you've not told them about, they may be looking to see evidence of this when they come to your home. Although you may feel more relaxed having the interview in a familiar place it may also be more distracting for you, and harder to stop thinking about it afterwards.

You don't have to wear a suit! Although it is a formal interview, they are not there to judge you, only to get a clearer picture of what has happened.

Who will be there?

Sometimes there is only one interviewer, from the fraud section, but it is not unusual for there to be two. If you have asked for an interpreter, a trained interpreter who speaks your language should be there: they should only interpret and not add anything to the interview.

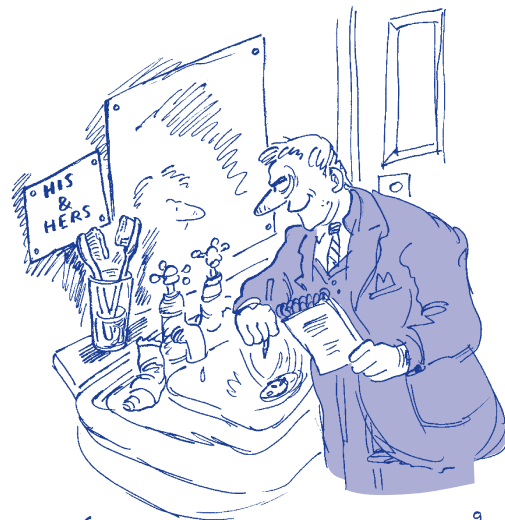
What will happen?

All of the interview should be taped. At the end of the interview you should be given information explaining how to get a copy of the tape (this usually involves writing in and asking for it).

Very occasionally the interview is not tape recorded. If it's not tape recorded the interviewer should make a full written record of the interview and at the end you'll be asked to sign to say that it's accurate: take the time to read it thoroughly and correct anything you think isn't right.

They should begin with the caution (see page 2) and should check that you understand it and that you know your rights.

They should tell you what they suspect and why, give you details of the evidence they have and ask you to tell them your side of the story. However, they may just start asking you questions without explaining what it's about.



'EVIDENCE OF COHABITATION'⁹

They may produce information you've not been aware of, for example, if you are suspected of doing work you haven't told them about, they may have talked to your 'employer' or watched your house. There are rules about what they can do and who they can talk to about you, so if you are concerned about any of the information they mention, say that you'll need to take advice about it before you discuss it.

'What will the interview be like?'

They are unlikely to be able to tell you what will happen after the interview but they should be able to tell you roughly when they'll next contact you. They may tell you about some of the things that *could* happen – see page 12 – or if they are likely to want to interview you again.

What can you do?

Take a list of questions that you want them to answer and points you want to make. If they don't begin by explaining what it's all about, ask them to explain. Once you know what they think has happened, show them any relevant information you've brought with you that will help your case. (See step-by-step guide, page 6)

Take a pen and paper and write down things you want to remember. For example, if they spell out what they think happened it may be helpful to note it down so that you can go through their suspicions point by point. If there is anything you are unhappy with you can write it down to remind you to tell your adviser later.

Ask to see, and have time to read, any information they mention. (There are, though, some things they don't have to tell you, such as who told them something.) It may be reasonable to refuse to discuss things that they haven't given you the chance to look at.

What can you do? – *continued*

If at any point you feel intimidated or don't understand, tell them this and ask them to slow down. Don't be afraid to repeat things, or to ask them to explain if you're not clear what they are asking or feel they are asking something unfairly.

Whatever they say or do: stay calm. If you feel upset, ask for a break: a short breather may help to give you time to think what to say, or to regain your control. If you don't feel that you can carry on the interview without getting too upset, or saying something you might regret, it is better to say that you want to end the interview: tell them that you will think about what they have said and take advice. Although you can leave the interview at any time, remember that you may lose a good opportunity to explain what happened. If you do decide to leave the interview try and explain why, preferably while the tape is still running, to help avoid them taking it the wrong way.

Remember that you have the right to remain silent. If you are unsure about anything they ask you, or about what you want to say, don't be afraid to say 'no comment' or explain that you want to get advice before you answer. You should, though, be aware how this might be seen – see 'The caution' on page 2.

If they suggest that you agree to something so as to avoid going to court: don't agree without taking advice first, especially if you feel they are putting you under pressure.

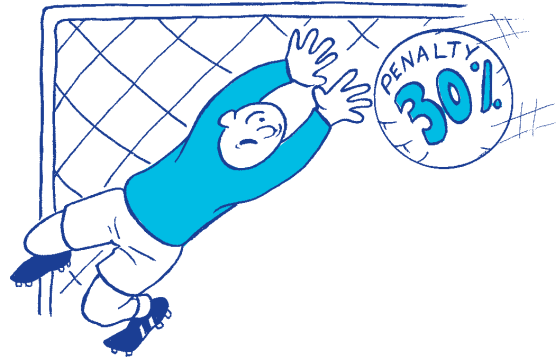
If you have any questions at the end of the interview, try and ask them before the tape machine is turned off.



'What will the interview be like?'

After ^{the} interview under caution

If your interviewer thinks you may have committed fraud, they may then recommend to their legal department that they prosecute you. The legal section may not take the fraud section's advice: before taking the case to court they need to be sure they have enough evidence to convince a court that you broke the law so that it is worth the time and money to take the case. It will rarely be enough to go to court and only produce what you said in an interview and hope that you will be found guilty.



What might they do after the interview?

After the interview (or if you don't go to it) they could decide to:

- 1 Do nothing more:** this may be because they decide no fraud was committed, or it may be that they think the case would be too difficult or costly to prove.

Or, if they have enough evidence to take you to court they could do one of the following:

- 2 Prosecute you:** this involves taking you to a magistrates' or a crown court. If you are found guilty they could fine you up to £5,000, or, in extreme cases they could send you to prison, (although this is very rare). If they think the case is serious enough they may decide to prosecute without giving you any other options to avoid it.

Or

- 3 Agree not to prosecute you if you agree to accept either of the following:**

- **A penalty:** You would have to pay a penalty of 30% of the amount of the overpayment (on top of paying back the overpayment). You could be offered a penalty for each benefit you were overpaid.

Before you accept: take advice, as a penalty *could* be pretty expensive – and might add up to more than what a court might fine you if they found you guilty.

If you accept a penalty, you can change your mind within 28 days.

- **A formal caution:** You sign to say you agree you've committed fraud and they promise not to prosecute you for it. However, someone else can still prosecute you for a related offence (for example another benefit fraud), and it could be raised again if there is another case later.

Once you've signed to accept a formal caution you can't change your mind.

Always try to get advice before accepting or refusing a penalty or formal caution:

They should only offer these options if they believe they have enough evidence to prosecute, and not just to try and get you to 'admit' guilt. If you are considering accepting a penalty or formal caution, it can be useful to see a copy of your file (see the step-by-step guide, page 6) to see if they really do have a strong enough case that they could take to court. Refusing a penalty or caution doesn't automatically mean they will prosecute and shouldn't influence their decision about whether to do so. Nor does it mean that they have found you guilty: only a court can do that.

A **formal caution** isn't given by the police and is not the same as having a criminal record. It is only recorded on the fraud section's records and no-one else will be told about it unless you are prosecuted later for another fraud.

Some councils have a different name for a formal caution: check if you are unsure.

After
the interview

Remember that you will have to pay back any benefit that you have been overpaid, regardless of what happens to the fraud issue.

If after the interview they decide to drop the case, or if you refuse a penalty or formal caution, you may not be told what has happened. It can be very unsettling not knowing whether the issue has been dropped or whether you may hear from them again. An advice centre can help you find out what is happening and help you to make a complaint if you think you have been treated unfairly.

What about your benefits?

Your benefits should be paid as soon as the DWP/council decides what you are entitled to. You shouldn't have to wait until the fraud issue is sorted out. See page 4 for more information.

Even if the fraud section or a court decides you committed fraud, you should still get any benefit you claim and are entitled to. It is only if you are found guilty (by the court) of fraud more than once in three years that your benefits can be 'sanctioned', which means they may be reduced for up to 13 weeks.

Jen's story

“Jen didn't know what to do. She'd taken on a friend's shift at their local pub while he recovered from an operation and hadn't told the Job Seekers Allowance office about it. 'It hardly brought in a fortune and was only temporary,' Jen says. But she got found out and had to go to an interview under caution. 'To be honest, I didn't think the interview was too bad,' Jen explains, 'But that was before I got letters saying I was going to get a formal caution or get taken to court – and that I owed them over £1,000!'.

In the end, Jen made an appointment at the advice centre in town. The adviser listened to her story and talked through it all. She explained to Jen what a formal caution involved and reassured her that it wasn't a criminal record, which helped Jen decide whether to accept it or risk prosecution. The adviser spent ages with her calculator and on the phone to the DWP and they agreed the amount was nearer £600. 'And she said I could still get Job Seekers Allowance, so long as I told them when I worked and they'd knock some of my wage off my benefit each week, along with some towards clearing the money I'd been overpaid. By the time I left, it all felt a lot more manageable.'”

After
the interview

Step-by-step guide: after an interview under caution

What to do : Why and how

Check that everything has been done correctly

If you think the interviewer didn't behave as they should have (see page 9) or you are unhappy with anything about how the interview or the investigation went it is worth checking that they haven't broken any rules. If you want to you can make a complaint. An adviser may be able to help you with this.

Don't forget that you have a right to a copy of the tape recording.

Think about your options

Some things may have come up at the interview that you want to respond to, for example if you can get proof to back up what you've said you may want to send it to them with a follow-up statement.

If they write to you to offer you a penalty or formal caution you will need to think carefully whether to accept. Before deciding, you can ask them for full details of what they believe their case against you to be so that you can decide if they really do have a good enough case to go to court if you don't accept.

An independent adviser can help you decide what to do.

Sort out your benefits

After the interview they may take some time to decide what to do, but if your benefits have been suspended, you should ask them to decide quickly. Tell them if you are finding it difficult to manage and remind them that they have a duty not to suspend your money without good reason.

Even if they think you have committed fraud you may still be entitled to the benefit, or to some other benefit. Get advice on what to do next.

After the interview

Interview under caution: summary

There are many things that you can do to make sure your interview under caution goes as well as it can. Here is a quick reminder of some key points:

Before the interview under caution:

- Get free independent professional advice.
- Get more information (ask for a copy of your file, or evidence of what you have been accused of).
- Decide whether to go, alone or with someone.
- Make sure you're getting the right benefits.
- Prepare a statement of what you think happened.
- Get proof which backs up your statement.

At the interview under caution:

- Listen to their points and make notes if you want to.
- Be clear what you want to say to them.
- Don't agree to something just to try and sort it out.
- Stay calm: if you start to feel upset or angry ask for a break in the interview.
- If you don't understand anything: ask them to explain or repeat it.
- If they tell you something that you didn't know about, ask to see their proof.
- You can refuse to comment or to answer their questions, but be careful not to lose the opportunity to say something that you may want to rely on later.
- You can end the interview at any time, but try and do it politely if you can.

After the interview under caution:

- Talk to your adviser about what happened in the interview. They can advise you on what to do next.
- Ask for a copy of the tape recording if you need it.
- Send them extra information to back up points you made in the interview.
- Check that you are on the right benefits.

Quick
summary

Useful contacts

advice^{UK} advice centres

advice^{UK} is a support network for independent advice centres. Some of these centres give general information and advice on a range of subjects whilst others specialise in particular areas. Independent advice centres may be able to help you prepare for the interview, and in some cases may be able to send an adviser with you. You can find out whether there is an advice^{UK} advice centre near you by telephoning **020 7407 4070**. www.adviceuk.org.uk

Citizens Advice Bureaux (CAB)

Citizens Advice Bureaux help people resolve their legal, money and other problems by providing free information and advice. Local CABs may be able to help you prepare for an interview and in some cases may be able to send an adviser with you. You can find your local CAB by going to: www.citizensadvice.org.uk/index/getadvice.htm or looking under 'Citizens Advice Bureaux' in The Phone Book.

Community Legal Advice

Community Legal Advice is a free and confidential advice service paid for by legal aid. If you live on a low income or benefits, they may be able to help you prepare for your interview over the telephone. Through their website and helpline you can also get contact details of local advice services (including solicitors) who hold the CLS Quality Mark.

Telephone: **0845 345 4 345**
www.communitylegaladvice.org.uk

Law Centres

Law Centres specialise in solving a range of legal problems and offer a free service to people who cannot afford a private solicitor. They usually only help people who live or work in their area. A Law Centre may be able to help you prepare for an interview under caution and may be able to represent you at the interview. You can find out whether there is a Law Centre near you by going to: www.lawcentres.org.uk/

The Law Society

The Law Society is the organisation that represents solicitors in England and Wales. You can search for details of local solicitors at www.solicitors-online.com or phone **0870 606 2555**. If you telephone explain to the operator that you are looking for a solicitor with experience of interviews under caution.

The Law Society website also contains a section on how to choose a solicitor: www.lawsociety.org.uk/choosingandusing/howtochoose.law

Useful
contacts

Jargon buster

Jargon

What it means for interview under caution

Advice centre	Most towns have advice centres such as Citizens Advice Bureaux, (CAB) or independent advice centres (often these are in community centres). Unlike some other professional help, help from an advice centre should always be free . If you go for advice, take this guide with you as it will help them to know what you need them to do. They will only go with you to an interview if they have experienced staff available but can help you to prepare before, and sort out what to do afterwards.
Appointee	Someone appointed by the Department for Work and Pensions (DWP) to claim and manage benefits or pension on behalf of someone who can't do it for themselves.
Caution	The caution at the start of an interview advises you of your rights during that interview. It is different from a police caution or a formal caution.
Council	A section of your local council, or local authority (LA), pays benefits such as Council Tax Benefit and Housing Benefit.
Court	If the DWP/council decides to prosecute you, your case will go to court. Less serious cases go to the magistrates' court, but more serious ones to the crown court where the judge can sentence you to a stronger punishment if they decide you are guilty.
DWP (Department for Work and Pensions)	The DWP, including Job Centre Plus, used to be called the Benefits Agency (BA) or the DSS (Department of Social Security). They pay most benefits, but don't pay Housing and Council Tax benefits, tax credits or Child Benefit.
Formal caution	If the DWP believe they have enough evidence to prosecute you they may offer you this instead. If you accept it means you are signing to say you agree that you are guilty of that offence, but it doesn't give you a criminal record. Some councils give this a different name.
Fraud	Benefit fraud is if you say something that's not true, (or don't tell something you should have), deliberately so as to gain (or to keep) benefits, for yourself or someone else.
HMRC (Inland Revenue)	The HMRC (HM Revenue and Customs) used to be called the Inland Revenue. It pays tax credits & Child Benefit, as well as dealing with tax, VAT etc.
Penalty or administrative penalty	If the DWP or the council believe they have enough evidence to prosecute you they may offer you the choice of paying a penalty (30% of the overpayment), on top of re-paying any overpayment, instead of prosecution. It does not mean you have a criminal record.
Prosecution	An official body (for example, the DWP or council) can prosecute you (take you to court) if they think you have committed a crime. If you are found guilty you will have a criminal record, but the prosecution, or threat of it, isn't recorded.

This guide was written by Jana Elles with material from Dave Walsh, School of Law and Criminology, University of Derby. It was produced by Advice Services Alliance (ASA) Advicenow for Community Legal Advice. ASA Advicenow would like to thank all those who provided feedback on drafts of the guide and took part in the review.

Advicenow is an independent, not for profit website providing accurate up-to-date and relevant information on rights and legal issues.

What do you think of this guide?

Has it helped you deal with an interview under caution?

Was it easy to read and interesting?

Or was the guide not much help at all?

If you've got any comments or would be willing to take part in a survey about the guide's usefulness please get in touch:

feedback@advicenow.org.uk

www.advicenow.org.uk

community
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