

How to

Deal with an Interview under Caution about your benefits

advicenow

Making sense of the law and your rights



If you have been asked to come to an interview under caution in connection with your benefits, we know that you are likely to feel very worried and confused whether or not you think you have done anything wrong. Don't panic. It doesn't mean they are going to take you to court or even that you have done something wrong, just that they think you might have.

This guide will explain what an interview under caution is, help you work out whether you want to go, and explain what will happen and help you prepare for it if you do. It explains how you might be able to get help, and what you can do to help yourself if you can't get representation or a solicitor. It also explains what happens after an interview under caution.

This guide is for you if you have been invited to an interview under caution about your benefits. Note that this guide covers what happens in cases of suspected benefit and tax credit fraud but not for other types of fraud, such as tax evasion.

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What is the Counter Fraud and Compliance Directorate?

The Counter Fraud and Compliance Directorate is the part of the Department of Work and Pensions that looks into suspected benefit fraud, housing benefit fraud, or tax credit fraud.

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 so they decided that she would move in with Steve to see if it worked out.



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, as Steve received housing benefit, he'd need to tell the housing benefit office about it.

A few weeks later Steve got a letter from the council asking him to go to an 'interview under caution' because of a problem with his benefits. "I didn't really know what it was about," says Steve, "Although it did occur to me that it might be something to do with Chloe moving in – she earns a good wage. But I thought that if I owed anything I could just pay it back."

When Steve rang the council to sort things out he was told he needed to speak to someone at the 'Counter Fraud and Compliance Directorate'. They think Steve may have deliberately not told the Council about Chloe moving in 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 that I should've told the council about Chloe. But at the time I didn't really think it would make any 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 mentioned court!"

What to do if you've been asked to an interview under caution

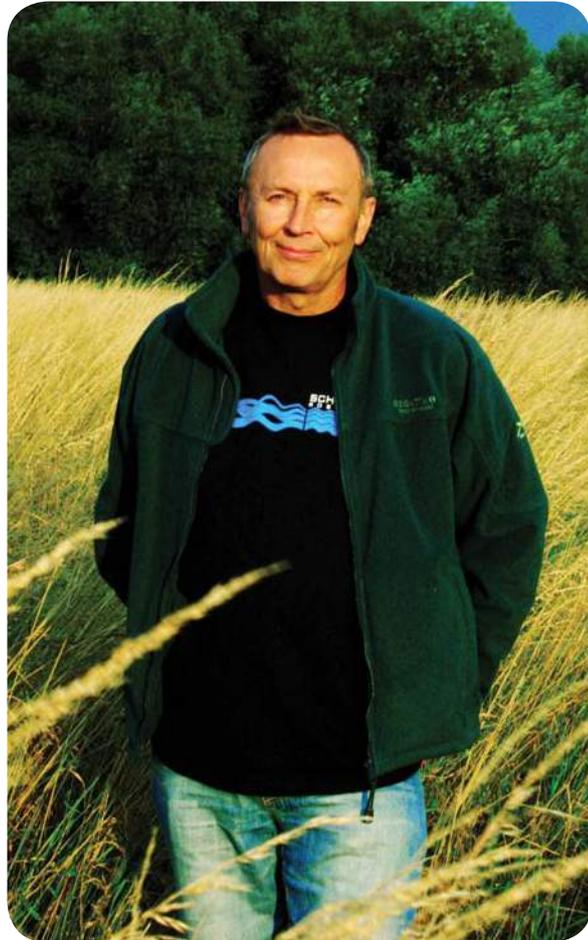
What to do if you've been asked to an interview under caution

- 1 Don't ignore it.**
- 2 Work out what the problem is.**
- 3 Get help and advice if you can.**

Ideally everyone in this situation would be able to get help from an independent adviser to put their side of the story and represent them at the interview. Unfortunately, few people can get this help. But before you try and deal with it all yourself, do see if you can.

An adviser can check whether you are entitled to the benefits you have been getting, or whether the case against you is weak or wrong. They may also be able to help you find a solicitor or accredited representative to come with you.

A criminal defence solicitor or accredited representative can advise you about your rights in the interview which could become part of a criminal investigation. Accredited representatives are qualified members of staff of criminal defence firms who can deal with things like Interviews under Caution. If you are on a very low income you may be able to get Legal Aid to pay for help from either a solicitor or an accredited representative (see **Try to get advice** on **page 11** for more information).



If you can't find an adviser who can help you, you cannot get Legal Aid, and you can't afford a solicitor or accredited representative, don't panic. This guide aims to answer your questions, explain what help you can get, and show you what you can do yourself.

What is an interview under caution?

What is an interview under caution?

An interview under caution is an interview, usually taped, carried out by the Counter Fraud and Compliance Directorate when they think you might have misled the council, HMRC or DWP about something to do with your benefits or tax credits. 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 do not have to say anything..." 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 like this when they talk to you, any court that later looked at your case could decide to ignore what you said. If you are cautioned, then what you say can be used as evidence.

Many people get asked to come for a 'compliance interview', which does spot checks on claimants. This might be just to check that your circumstances haven't changed and they still have all the details right. Being asked to go to a compliance interview is *not* the same as an interview under caution. An interview under caution is a special type of interview that should only be used when there is some reason to suspect there may be fraud. The advice here only covers this special type of interview.

What is 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 the Counter Fraud and Compliance Directorate to investigate.

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 because they've found that the records about you on different computers don't match up. Sometimes this happens because you didn't tell them about some savings, or some work you did, thinking that it wouldn't affect your benefit. They could have got it wrong or made 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. Sometimes it can be hard to tell the difference between mistakes, negligence, or fraud. The important thing is that you can't normally commit fraud by accident – there has to be something deliberate or intentional about your actions. If, for example, you honestly think that you don't need to tell them of a change it may be an innocent mistake or negligence, but as soon as you realise that you should tell them, it becomes fraud if you don't take action to sort it out.

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 as a result, you'd get more (or wouldn't lose) benefits.

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 or DWP that the rent is higher than it is so as to help your tenant to get more benefit you could still be investigated for benefit fraud.



What is an interview under caution?

Appointees

If 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.

You should only be asked to come to an interview under caution if they have reason to suspect that your actions may have been fraudulent. But remember it doesn't mean that you have done anything wrong.

Tom's story



Tom's Housing Benefit was £20 a week less than the rent and he owed his landlord money.

When his mother died and left him and his sister £20,000 each, he knew that he should tell JSA and HB that he now had savings, but he was scared about how he'd manage if they cut off his benefits. So he decided to wait until he had sorted out all his debts. After 10 months he'd spent most of it anyway – paying the rent arrears, credit card bills, and owed maintenance for his kids. But he decided the time had come, so he wrote to the Housing Benefit department and told them about the money.

Over the next few weeks Tom got an avalanche of letters:

- He got one from the Counter Fraud and Compliance Directorate who decided they needed to 'interview him under caution' to ask him about whether he had deliberately not told them about the capital.
- He also got sent a new housing benefit claim form and then a decision that as he only had £3,000 left he could still get housing benefit.
- Separately, the overpayment section decided that he had been overpaid for 8 months while he had too much capital. He was told that he needed to repay this, although he could appeal if he didn't agree.

Tom agreed that he had been overpaid and to repay this, but although he knew he'd been wrong not to tell them about the money, he was really shocked that they thought this was fraud: it sounded so much more serious when they put it like that.

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 need to move quickly to make sure that you don't miss the appeal deadline. You usually have 21 days from the date at the top of the letter they sent you.

You should be very careful to be clear about your circumstances when you contact the DWP, HMRC or council as the Counter Fraud and Compliance Directorate may bring it up again later. For example, don't refer to anyone as your 'partner' if they don't live with you permanently. If you have to mention your boyfriend or girlfriend for some reason, if they do not live with you, be clear that they do not live with you and are just visiting.

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. It's always best to make a note of who you have spoken to and when, and also what was said.



What about my benefits?

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 they believe you are not entitled to. This means that if they have strong evidence that you are being overpaid they can reduce or suspend your benefit so as to stop paying you too much while they check it out.

Often your benefits are 'suspended' when the Counter Fraud and Compliance Directorate Service are asked 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 any other benefits you are claiming.
- 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 investigation to end 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 **Counter Fraud and Compliance Directorate** should not suggest that:

- they can influence what benefits you are entitled to get.
- they can stop or change your current claim.
- they make any decisions on whether you have been overpaid.
- withdrawing your claim will help avoid prosecution.

If your benefit is suspended while the investigation happens, 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. Try to get independent benefits advice if this happens to you. See **Try to get advice** on **page 11** for more help.

If you think the way your benefit has been suspended is wrong, you want to make a complaint about how long the fraud investigation is taking, or find out what else you can claim, try to get help from an advice agency. See **Try to get advice** on **page 11**.

Try to get advice

Ideally you should get advice from both **an adviser who knows about benefits and a solicitor or accredited representative who has experience in helping people with interviews under caution.** 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.

Look for a solicitor's firm that specialises in criminal defence. Solicitors or accredited representatives usually charge for their services. Accredited representatives are less qualified than a solicitor but are often very experienced in representing people at interviews under caution. If you have to pay, an accredited representative will usually be cheaper than a solicitor.

You cannot get Legal Aid for a solicitor to come to interviews conducted at Department of Work & Pensions, however it is possible in some circumstances to get legal aid-funded advice and assistance to help you before the interview. You have to be on income support, income-related Employment and Support Allowance, income-based Jobseeker's Allowance, or the guarantee credit part of Pension Credit or Universal Credit. If you get Working Tax Credit, you might be able to get legal aid for advice depending on your income and personal circumstances. If you do not receive any of these benefits, you may still be able to get free advice if you have a very low income and savings. We recommend that you speak firstly to a solicitor, who will be able to tell you whether or not you qualify for legal aid funding.



If you can't find or can't afford a solicitor, you may be able to get some form of help from an advice agency for free. Many towns still have advice centres, such as Citizens Advice Bureau (CAB), Law Centres and local independent advice centres. If you find one, before you go to them, check if they are able to deal with your problem. Be aware these services are usually incredibly busy and may not be able to provide everything you need.

- **Independent advice centres** will often be able to help with all benefit issues. Most will be a member of Advice UK. Use their website to see if there is one in your area **www.adviceuk.org.uk/find-a-member**
- **Law Centres** assist with a range of legal problems and usually offer a free service to people who cannot afford a solicitor. They usually only help people who live or work in their area. They 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/about-law-centres/law-centres-on-google-maps/alphabetically**

Try to get advice

- **Citizens Advice** 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 at www.citizensadvice.org.uk/index/getadvice.htm
- **Council welfare rights services** still exist in many areas and they are usually very good. They are likely to be able to help you work out what benefits you are entitled to now, and if you have been overpaid. They won't usually be able to help with the fraud allegation. Check your local council's website or call their switchboard.
- **LawWorks** supports 170 free legal advice clinics across England and Wales. The majority of these law clinics take place in the evening and provide free initial advice with a particular focus on social welfare issues, employment law, housing matters and consumer disputes. Look for a clinic near you:
www.lawworks.org.uk/legal-advice-individuals/find-legal-advice-clinic-near-you
- **Shelter** has a search facility on their website which you can use to find local services in England that may be able to provide advice on benefits, care and health needs, housing and debt. Many of the organisations included in their service can only help particular groups of people in specific areas.
http://england.shelter.org.uk/get_advice/advice_services_directory

It may be helpful to take the **How to prepare for an interview under caution** section with you to work through together. Take your letter asking you to the interview under caution, details of your benefits and any savings, and anything else you think might be useful with you.

Failing that, you may be able to get help from an adviser over the phone. Citizens Advice can now provide telephone advice to people in Wales, and are in the process of rolling this out over different areas of England. In Wales call **03444 77 20 20** or in England call **03444 111 444**.

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 Counter Fraud and Compliance Directorate should agree to delay the interview. If you can't find an adviser, don't worry – working through the step-by-step guide below will help you prepare for the interview.

How to prepare 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 will help you to be better 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 about	<p>It's helpful to know what the DWP/council think you might have done wrong so that you can answer the investigators questions. The letter asking you to interview should say briefly what they want to interview you about (for example, that they suspect you of living with a partner that you haven't told them about).</p> <p>If the letter doesn't explain, you could contact them to try to find out more. They can choose to outline what the problem is, but they don't have to. They don't usually want to discuss details until they caution you.</p> <p>An advice centre may be able to help you get the information you need.</p>	<p>Be careful: If you do contact them 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.</p> <p>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.</p>
See if you can resolve it without the need for an interview	<p>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. However, they may still want you to attend an interview.</p> <p>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.</p>	

How to prepare for an interview under caution

(continued)

What to do	Why and how
<p>Check your benefits</p>	<p>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. If you can, see an adviser. They can look at your income and situation and work out which benefits you should be getting. They may also be able to help you with the appeal. If you cannot see an adviser, use the benefit calculator on the Turn 2 us website. www.turn2us.org.uk/Find-Benefits-Grants</p>
<p>Go through your options</p>	<p>To decide what to do next, you will need to decide whether to go to the interview or not (see below), and find out if anyone can go with you. Knowing what all the possible outcomes might be (see What might they do after the interview, page 22) may help you understand the interview better.</p>
<p>Make sure you can attend the interview if you want to</p>	<p>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 example, by having the interview on the ground floor).</p> <p>They should also try and take account of any reasonable special request, such as that a woman interviewer is present.</p> <p>If the time of the interview is inconvenient, ask for a different time.</p>
<p>Write down what you think happened</p>	<p>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.</p> <p>If you have other things that may back up your version of what happened, such as letters from your doctor, statements from ‘witnesses’, or proof that your boyfriend/girlfriend pays rent or council tax somewhere else (and therefore doesn’t live with you), you should gather them too.</p> <p>If you need time to get this information (for example if your doctor is away, or you can’t get an appointment at the advice centre until later), ask them to delay the interview.</p> <p>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.</p> <p>If you know exactly what they think the problem is, you could choose to send them details of what you think happened beforehand. 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. They may still want to interview you.</p>

How to prepare for an interview under caution

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. 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. This is because you may say things that might incriminate you. If you don't go to the interview, *and* they don't have enough information to decide if you committed fraud, it could mean that they have to drop the case against you.

On the other hand, the DWP say that it's in your best interests to attend, and some other advisers agree. It gives you a chance to find out what they think happened and to explain your side of the story. If the Counter Fraud and Compliance Directorate feels that it has enough evidence it may just take you to court anyway, without an interview, and you will have missed out on an opportunity to stop things going further.

Your decision 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.

If you can, get advice about whether or not to go and how this could affect your case.

If you decide not to go, you should write to them to explain your reasons (for example, 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 or accredited representative to represent you. Unfortunately, it is difficult to find or afford a solicitor or accredited representative with experience in interviews under caution (See **Try to get advice** on **page 11**). 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 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, having written down or practiced what you will say, will help you manage the interview better.



How to
prepare for
an interview
under
caution

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, in order to be able to go to the interview, such as changing the time or location, 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 some advice.

If you simply don't reply to an invitation to an interview under caution they should offer a new interview date, and may do this several times, so it is better to let them know if you don't intend to come, want to sort it out some other way, or want to go but have difficulty with the interview arrangements that they gave you.

How to
prepare for
an interview
under
caution

National Insurance number

Date

Dear Sir/Madam

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

I would like to get advice before I come to the interview, but am unable to get an appointment at my local Citizens Advice Bureau for another three weeks. I would be grateful if you would postpone the interview until I have had the chance to meet my adviser.

Yours faithfully

Vanessa Morgan

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 1984). The PACE Code of Practice sets out your rights and what the interviewer must and must not do to ensure that the interview under caution is 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 also make sure you understand your rights – to silence, to legal representation and to leave at any time. It is not enough for them just to ask “Do you understand your rights?”
- 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.
- Provide you with the opportunity to present your account of events and offer any explanations of how you came to make any mistake. (For example, that your mother had just died, and you were too upset and busy dealing with the death to think about what impact it might have on your benefits)

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 that you won't be prosecuted or that you will receive a smaller fine if you withdraw your benefits claim or say you are 'guilty'.
- Use unhelpful language such as refer to a benefit overpayment as a theft, or talk as if being overpaid is the same as committing fraud or being dishonest.
- 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.

Occasionally, they 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 who 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 agree to have an interview at home, and can ask them to leave at any time if you change your mind during the interview.

You don't have to dress smartly, like you would if you were going to court. Although it is a formal interview, they are not there to judge you, only to get a clearer picture of what has happened.

If you have to make a special journey to their office to get to the interview you can claim back your travel expenses. For this reason, they may arrange the interview at your Jobcentre Plus on the day that you normally have to sign on.

Who will be there?

Sometimes there is only one interviewer 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 too. They should only interpret and not add anything to the interview.



What will happen?

All of the interview should be recorded and you should not be asked any questions about what has happened until the recording machine has been switched on. Very occasionally the interview is not recorded. If it isn't 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. Before signing, take the time to read it thoroughly and correct anything you think isn't right. Do not sign it if you don't think it is correct.

They should begin with the caution (see **page 6**) and should check that you understand it and that you know your rights. Do not be afraid to say you do not – most people don't. Ask them to explain in everyday language what the caution means. Only agree that you understand when you do.

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.

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 already talked to the people they think may be employing you or have watched your house. There are rules about what they can do and who they can talk to about

What will the interview be like?

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.

The interview should not be too long, but if you need a break they should agree to this.

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 **What might they do after the interview, pages 22–23** – 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.

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 an 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.

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 ask them 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.

Listen carefully to the questions and think about what you're going to say before answering – don't be afraid to take your time.

Whatever they say or do, try to stay calm. If you feel upset, ask for a break. A short breather may help give you time to think what to say, or to regain your control.

If you don't feel that you can carry on with the interview without getting upset, or saying something you might regret, it is better to say that you want to end the interview. If you do decide to leave the interview, try to explain why, preferably while the tape is still running, to help them avoid taking it the wrong way. For example, "I'm getting upset and flustered. I want to have time to think about what you have said and take advice."

What will the interview be like?

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'; you should be aware how this might be seen, however – see **What is the caution?** on **page 6**. If, during the interview, you decide that you do need some legal advice, you have the right to do this at any time and the interview must be stopped until such time as you have spoken with a legal advisor. This may mean postponing the rest of the interview to another time.

If they suggest that you should 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 to ask them before the tape machine is turned off.

What will the interview be like?

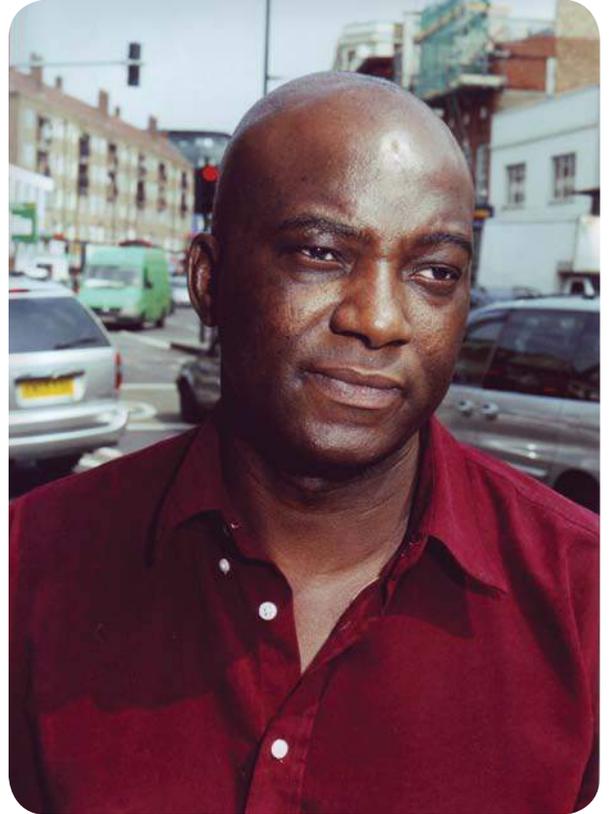
Can I get a copy of the recording?

Whether or not you have a right to a copy of the recording will depend on the outcome of the investigation into your case. They can refuse to let you have a copy if:

- They are continuing their investigation and may want to question you again, *or*
- They have decided to take no further action against you because they now realise you have done nothing illegal.

If they decide that you should be given a penalty or a caution, or should be prosecuted, then they have to give you a copy of the recording if you ask for one.

If you are unsure whether you have a right to the recording you can ask them. They then have to tell you if you can have a copy, and if so you should be given written information explaining how to get it (this usually involves writing in and asking for it).



At the end of the interview

The interviewer may hand you some forms at the end of the interview.

They may also write out a statement summarising what they think you have said – for example if you have told them that you did commit fraud they may write this on a form and ask you to sign it to confirm your statement.

They may also write out a statement of what they believe has happened: for example if they didn't tell you before the interview what the offence was that they thought you had done, they may hand you a 'charge' which sets out what they think you have done wrong.

If you are asked to sign any kind of statement, make sure you are completely sure that you fully understand and agree with what is written. **Don't sign anything that you don't agree with or isn't quite right. It is often best to ask to take it away to read through it and send it to them later.**

Even if you are happy to sign something at the interview, ask them to agree to you taking a copy home with you. If they do not agree, you could make notes or copy out what it says before you sign it.

The interview is only one part of the fraud investigation. It is therefore unlikely that the person interviewing you will be able to tell you what the fraud section will decide to do. They may, however, be able to give you some idea about what they will recommend should happen.

For example, they might say that they will recommend that the case is dropped, or that they will need to follow up some of the things that you said. They may be able to give you some idea of how long it will be before they make their decision. They can also explain to you what options they could pursue, but you should not have to make any decisions at the interview.

Before turning off the recording machine or formally ending the interview, they should give you the opportunity to ask any questions you still have or to say anything that you think should have been covered during the interview.

What will the interview be like?

After the interview



What might they do after the interview?

The person who interviewed you will decide what to recommend is done in your case. This recommendation is just one of the things used to make the decision about what they will do next.

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.
- 2 Give you a Civil Penalty of £50** if it is felt to be your mistake that caused the overpayment (but that you didn't do it deliberately) and the overpayment was more than £65.01. You will have to repay the overpayment as well as paying the £50 penalty.

Or, if they have enough evidence to take you to court they could:

- 3 Prosecute you:** this involves taking you to a magistrates' or a crown court. This will normally be considered where the overpayment of benefit is more than £2,000. The court, not the fraud investigators, decides whether you are innocent or guilty of the fraud, and if you are

found guilty the judge will decide what punishment to impose. This could be anything from a fine to, in extreme cases, sending you to prison (although this is very rare).

If the Counter Fraud and Compliance Directorate recommends prosecuting you, they will talk to their legal department who will decide whether there is enough evidence to prove there was a fraud 'beyond reasonable doubt'. This means that to find you guilty in court they need to have a very strong case which shows that you deliberately defrauded them. It would not be enough for them to prove that it was likely, or probable, or just that you were paid too much benefit, or that you made a mistake.

Defendants in criminal cases may have to take a means test to see if they have to contribute to the cost of their defence. If you are proved innocent you will get back any money you have had to pay, but not if you are found guilty.

Or, agree not to prosecute you if you agree to admit the offence and accept:

4 An Administrative penalty

(sometimes called an 'Ad-Pen'): This is a fine of at least £350. If they think you have been overpaid more than £700 in benefits the fine will be 50% of the overpaid amount. The maximum amount is £5,000. This fine is added to the amount of the overpaid benefit that you will also have to pay back. If you are separately disputing whether you have been overpaid, the fine would wait until that appeal is sorted out.

This option should only be offered if the overpaid amount is relatively low (their guideline is that it was under £2,000) and this is a first offence.

They should only offer a penalty if they have a strong enough case to prosecute. If you agree to an Administrative Penalty, **you are agreeing that you committed fraud**. Although you would not have a criminal record, this would be recorded on your DWP/HMRC/ council benefit record and they could then suspend your benefits for a period of time.

Whether you agree to accept an Administrative Penalty is your choice – they cannot insist that you accept it. Before you accept, take advice. A penalty could be pretty expensive – it might add up to more than what a court might fine you if they found you guilty.

You may be asked to come to a special interview to discuss the option of a penalty.

If you accept a penalty, you can change your mind within 14 days.



If your case was for *attempted* fraud you can still be prosecuted or offered an Administrative Penalty – the penalty would be £350 if there was no benefit overpaid to you.

- 5 An administrative caution (often known as a formal caution):** this is a written warning that is held on file for 5 years and will be taken into account if you do something similar again. Due to changes in the law, only a few councils still have the option of using an administrative caution – the DWP, other councils and the HMRC have to choose one of the other courses of action described above. A formal caution would normally only be offered if you have admitted the offence and that the council has sufficient evidence to prove it, you have not been accused of fraud before, and the overpayment was a fairly small amount. If you accept a formal caution you are admitting to the offence. There is no additional penalty to pay where a caution is given but you will still have to repay any overpayment. The council may also decide to impose a 'Loss of Benefit' penalty, which means that some of your on-going benefits might be stopped.

After the interview

If you accept a Formal Caution, Civil Penalty, or are found guilty of fraud in court your benefits may be suspended.

Always try to get advice before accepting or refusing a penalty.

They should only offer these options if they believe they have enough evidence to prosecute you. But refusing a penalty or caution doesn't automatically mean they will prosecute you and shouldn't influence their decision about whether to do so.

Accepting a penalty does not mean that you have a criminal record but it will go on their records that you have admitted fraud and they can suspend your benefit.

How much of your benefit you will lose and for how long varies, but for most benefits it means that you won't get any payments for 4 weeks (as long as it is the first time you have admitted fraud – if it isn't it could be much longer).

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

If they decide to drop the case, or if you refuse a penalty, they should let you know as soon as possible what is going to happen. However, in practice you may find that you don't hear anything if the decision is to drop the case.



What can you do after the interview?

1 Check that everything has been done correctly

If you think the interviewer didn't behave as they should have (see **page 17**) 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 may have a right to a copy of the recording.

2 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 you will need to think carefully about 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.

3 Sort out your benefits

After the interview they may take some time to decide what to do, but if your benefits have been suspended while they investigate, 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.

Still not heard?

It can be very unsettling not knowing whether the issue has been dropped or if they are going to take action against you. If they aren't going to take further action, people often just don't hear anything more.

If you want to know what's going on you can just ask them. But if you're worried about doing this, weigh up the pros and cons. What would you find most stressful: not knowing and fearing the worst or getting in touch and perhaps having to deal with negative consequences?

If you do decide that you want to know, an advice centre may be able to help you find out.

What will happen to your benefits?

Your benefits should be paid as soon as the DWP/council/HMRC decides what you are entitled to now. You shouldn't have to wait until the fraud issue is sorted out. See **pages 9–10** for more information.

If you accept an Administrative Penalty or a Formal Caution, or if you are prosecuted and found guilty of fraud, you will lose some of your ongoing benefit if you are still on it (as well as having to pay any Penalty or overpaid benefit). How much you will lose and for how long varies as there are different rules for different benefits, but for many benefits the DWP can reduce or stop your benefit for four weeks if you admit fraud by accepting a penalty, or 13 weeks if the court finds you guilty of fraud (if it is the first time. It will be for longer if you have admitted or been found guilty of benefit fraud before). This power is in addition to any other reasons unrelated to the fraud that they may have to disqualify you from benefit. This loss of benefit is often referred to as a penalty or a sanction.

There should be a proper decision made about whether to reduce or suspend your benefit in this way, and you should get notice of this decision. At the end of the 4/13 weeks your benefits should return to normal (less any amount you are paying back) without you having to make a new claim.

After the interview

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 Jobseekers 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 taken to court unless I agreed to pay a fine of £550 – and that I owed them over £1,100 as well!"



In the end, Jen got an appointment at the advice centre in town. The adviser listened to her story and talked through it all. She explained to Jen that the fine was a penalty that she could choose to pay 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 that Jen was actually only overpaid £700, so they agreed to recalculate it and reduce the fine to £350. Jen could still get Jobseekers Allowance, so long as she told them when she worked.

The bad news for Jen was that if she accepted the fine, she would have to pay it, she wouldn't get any JSA for 4 weeks, and when it did start again, she'd get less until she had paid back the overpayment.

After the interview

Top tips

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 our top tips.

Before the interview under caution

- Get independent professional advice if you can.
- Get more information about what they suspect you of.
- Decide whether to go alone or with someone.
- Make sure you're getting the right benefits. Either speak to an adviser or use the benefits calculator on Turn 2 us (www.turn2us.org.uk/Find-Benefits-Grants)
- Prepare a statement of what you think happened.
- Get evidence which backs up your statement.



At the interview under caution

- Try not to be intimidated.
- Listen to their points. Make notes if you can.
- Be clear what you want to say to them. Make notes of the points you want to make before the meeting and tick them off after you have said them. This way you won't forget to say something important.
- Don't agree to anything just to try and sort the problem out. Only say something is right if it is.
- If you don't understand anything, ask them to explain or repeat it.
- Stay calm. If you start to feel upset or angry, ask for a break in the interview to collect yourself.
- Don't assume everything they say is correct. Sometimes investigators can get things wrong.
- If they tell you something that you didn't know about, ask to see what evidence they have gathered.
- 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 to do it politely.

Top tips

After the interview under caution

- If you have managed to find an adviser, talk to them about what happened during the interview. They can advise you on what to do next.
- Send the Counter Fraud and Compliance Directorate any extra information or evidence you have that backs up points you made in the interview.
- If you have a right to the recording (see **page 20**) and need it, ask for a copy.
- Check that you are getting the right benefits. Speak to an adviser if you can or use the benefits calculator on Turn 2 us (www.turn2us.org.uk/Find-Benefits-Grants)



Further help

Other reading material

Some people find it useful to read the DWP's guidance to their fraud officers about Interviews under caution. Be warned it is a very long document, and some people find it overwhelming. You don't have to read it, but it is useful to some people as it contains all of the guidelines the investigation staff must follow, as well as containing a lot of information on the investigation process. You can find this on their website at: **www.gov.uk/government/publications/fraud-investigations-staff-guide**.

Further
help

What does it mean?

Jargon	What it means for interview under caution
Administrative caution (Often called a formal caution)	A few Local Authorities have the option of giving people formal cautions instead of prosecuting them or giving them an Administrative Penalty. This is a written warning that is held on file by the council and will be taken into account if the cautioned person reoffends. If you accept a formal caution you are admitting that you committed fraud. A formal caution would normally only be offered if you have admitted the offence, you have not been accused of fraud before, and the overpayment was a fairly small amount.
Administrative penalty (or Ad-Pen, or Penalty)	If the Counter Fraud and Compliance Directorate believe they have enough evidence to prosecute you they may offer you the choice of paying a penalty, on top of re-paying any overpayment, instead of prosecution. It does not mean you have a criminal record. This is different from a Civil Penalty.
Advice centre	Most towns have advice centres such as Citizens Advice Bureaux, (CAB) or independent advice 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	This is 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 explains your rights during that interview. It is different from a police caution or an administrative/formal caution.
Cautioned interview	If at the start of any interview you are warned or 'cautioned' that whatever you say can be used as evidence in court, then it is an interview under caution (or sometimes called a Cautioned interview). If you are not cautioned, then a court may not accept a record of the interview as evidence. A cautioned interview is different from any other type of interview such as a compliance or work focused interview.

(continued)

What does it mean?

Jargon	What it means for interview under caution
Civil penalty	A fine of £50 that you can be given if you have been overpaid and the overpayment was your fault, but a mistake rather than a deliberate fraud.
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 of Work and Pensions)	The DWP, including Jobcentre 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	Frequently used name for the Administrative caution – see above.
Fraud	Benefit fraud is if you say something that's not true, (or don't tell something you should have), deliberately so as to get (or to keep) benefits, for yourself or someone else.
Prosecution	An official body (for example, the DWP or council) can take you to court if they think you have committed a crime such as benefit fraud. This is called a prosecution. If you are found guilty you will have a criminal record, but not if you are found innocent or if the prosecution doesn't go ahead.
Sanction/Loss of benefit penalty for fraud offence	If you admit to or are found guilty of fraud, the DWP or council can suspend your ongoing benefit for a period of time. This does not stop your entitlement or mean you need to claim again, but means that you will get either no benefit for a number of weeks or less benefit for a number of weeks. This should only happen once a decision has been made about whether there was fraud. It is usually for 4 weeks if you accepted an Administrative Penalty or Administrative/Formal Caution, 13 weeks if you are prosecuted and found guilty, and longer if you have been found guilty or admitted benefit fraud before.

What does it mean?

The information in this guide applies to England and Wales only. The law may be different if you live in Scotland or Northern Ireland.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law. We recommend you try and get advice from the sources we have suggested.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

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This guide was written by Jana Elles with material from Dave Walsh, School of Law and Criminology, University of Derby and Andrew Whittaker, Institute of Criminal Justice Studies, University of Portsmouth. Advicenow would like to thank all those who provided feedback on drafts of the guide and took part in the review.

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