



AGENDA ITEM: 5(c)

CABINET: 17th September 2013

Report of: Transformation Manager

Relevant Managing Director: Managing Director (Transformation)

Relevant Portfolio Holder: Councillor I Grant

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SUBJECT: UPDATED BENEFIT FRAUD SANCTIONS AND PROSECUTIONS POLICY

1.0 PURPOSE OF THE REPORT

1.1 This report proposes updates to the current Benefit Fraud Sanction and Prosecution Policy to take account of the changes brought about by the Welfare Reform Act.

2.0 RECOMMENDATIONS

2.1 That the updated Benefit Fraud Sanction and Prosecution Policy as detailed on Appendix 1 to this report be approved for implementation as soon as practicably possible.

2.2 That the Managing Director (Transformation) keeps the Benefit Fraud Sanction and Prosecution Policy under review in light of developments to the Single Fraud Investigation Service anticipated for 2014/15 and report to Cabinet with proposed amendments to the policy when more information becomes available.

2.3 That delegated authority be given to the Managing Director (Transformation) in consultation with the Leader to vary the application of the policy and the sanctions offered in instances where it is in the public interest, or all parties concerned, or as a result of comments received from the courts in respect of prosecutions.

3.0 BACKGROUND

3.1 Current Approach

- 3.1.1 The Borough Council's current Benefit Fraud Sanction and Prosecution Policy allows the Benefits Investigation Team, managed within the Revenues and Benefits Service, to consider the appropriate action in respect of individuals or groups who are found to be committing Housing and Council Tax Benefit fraud.
- 3.1.2 Appropriate action can include prosecution or in certain circumstances an alternative sanction of an Administrative Penalty or Formal Caution
- 3.1.3 All of these sanctions are currently being applied by the Benefit Investigation Team.
- 3.1.4 In 2012 the Welfare Reform Act extended the circumstances in which Councils could apply Administration Penalties in benefit fraud cases. In addition the Act introduced a new permissive power for Councils to apply 'Civil Penalties' for cases where an overpayment had been caused by the claimant's negligence or omission but fraud could not be proven. Civil Penalties became available from October 2012 and Councils were permitted to apply them to any benefit overpayments occurring wholly after this date.
- 3.1.5 The Welfare Reform Act also set out the framework for the creation of a Single Fraud Investigation Service bringing together combined expertise from the Department for Work and Pensions (DWP), Local Authorities and HM revenues and Customs.

3.2 Changes to Administrative Penalties and Prosecution Arrangements

- 3.2.1 The Borough Council's current Benefit Fraud Sanction and Prosecution Policy confirms the types of sanction (Administrative Penalty, Formal Caution and Prosecution) that can be considered at the conclusion of a benefit fraud investigation conducted by the Benefit Investigation Team.
- 3.2.2 In 2012/2013 the Benefit Investigation Team was successful in:
- Offering 11 Administrative Penalties
 - Offering 11 Cautions
 - Prosecuting 25 cases
- In 2013/2014 the Benefit Investigation Team has so far been successful in
- Offering 1 Administrative Penalties
 - Offering 3 Cautions
 - Prosecuting 15 cases
- 3.2.3 In 2010 central government produced the document '*Tackling fraud and error in the benefit and tax credit system*' that sets out a new national approach to address benefit fraud and error.

- 3.2.4 Alongside the introduction of Universal Credit the government will create a Single Fraud Investigation Service (SFIS). The government's stated aims in this regard are to:
- a. Bring together the combined expertise of the welfare benefit fraud investigation work undertaken by the Department for Work and Pensions (DWP) Fraud Investigation Service (FIS), local authority (LA) benefit fraud investigators and Her Majesty's Revenues and Customs (HMRC) (in relation to Tax Credits) into a single service, and;
 - b. Minimise and prevent fraud and error getting into the benefit system through detection and correction together with punishing and deterring those who have committed fraud.
- 3.2.5 Although there are plans for a standard 'National Sanction Policy' once full SFIS practices and procedures commence for all LAs, this is not yet in place. This is expected to be introduced by 2014/15, and therefore further reporting will be required to Members on this issue in the future.
- 3.2.6 However, due to changes contained in the Welfare Reform Act 2012, the Council's current Benefit Fraud Sanction and Prosecution Policy should now be updated. This will affect the current policy in respect of Administrative Penalties and prosecutions and introduce "Civil Penalties".
- 3.2.7 An Administrative Penalty is an alternative to prosecution where the perpetrator accepts that he or she is responsible for the overpayment. The Welfare Reform Act amended both the amount of and the reasons why an Administrative Penalty could be offered.

3.3 Civil Penalties

3.3.1 From October 2012 Councils are allowed to apply "Civil Penalties" of £50 where an overpayment occurs wholly after that date. This is a permissive power for the Borough Council (i.e. which it may choose to apply in cases it considers appropriate) which can be applied against persons who 'negligently':

- make an incorrect statement or representation, or
- give incorrect information or evidence, or
- fail to provide information,

where this results in a benefit overpayment. The Civil Penalty provisions cannot apply to matters subject to benefit fraud sanctions. To date no cases suitable for a Civil Penalty have been identified by the Benefits Service, however this is likely to change as cases in payment from October 2012 or later fall to be investigated.

3.3.2 The Civil Penalty will be in addition to the requirement for repayment of the overpaid benefit and decisions to apply the penalty will be considered by the Benefit Service. A right of appeal is available to the customer.

3.3.3 The Benefits Service proposes to apply Civil Penalties only in circumstances where the specific criteria described above are clearly evident. These are likely

to be cases where fraud investigation has commenced, but a prosecution or other sanction is not considered appropriate.

3.4 Administrative Penalties and Cautions

3.4.1 Administrative Penalties and Formal Cautions are considered lesser sanctions as an alternative to prosecution due to the circumstances being less serious than other cases (usually with the overpaid benefit being less than £2,500). Both Administrative Penalties and Formal cautions are currently being utilised by the Benefit Investigation Team.

3.4.2 If a fraud involves an overpayment in excess of £2,500 and / or the circumstances are aggravated, prosecution will be considered in the first instance.

3.4.3 An Administrative Penalty was previously equivalent to 30% of the benefit overpayment which the claimant agrees to pay on top of the overpaid benefit. A person is under no obligation to accept an Administrative Penalty; however a refusal will result in the matter being considered for prosecution. The Welfare Reform Act increased Administrative Penalties so that they are now equivalent to 50% of any overpayment and the minimum amount of £350. This is a technical change rather than a matter of policy as it is required by legislation. The Act also introduced a 'fixed' Administrative Penalty of £350 for attempted fraud where no overpayment was generated. The Council's Benefit Investigation Team has yet to identify a case that will fulfil the criteria for a fixed Administrative Penalty.

3.4.4 It is envisaged that the use of Formal Cautions will diminish over time as they are unlikely to be included in the practices and procedures of SFIS upon commencement.

3.5 Establishment of SFIS

3.5.1 In 2010 the Government produced the document 'Tackling Fraud and Error In the Benefit and Tax Credit System' that sets out a new national approach to address benefit fraud and error.

3.5.2 A pilot period that includes 4 Local Authorities has commenced to test ways of working as well as the impact of a single investigation policy and the new legislation. Therefore some design decisions will change or evolve as the best way to proceed is developed.

3.5.3 The results of the pilot period will be known by 2014 and work on the long term organisational model for SFIS will be issued for consultation and agreement with Ministers. In 2014/15 full roll out to all LA's will commence including IT solutions.

3.5.4 SFIS will investigate suspected fraud within Universal Credit and legacy benefits such as Housing Benefit, Income Support and Job Seekers Allowance. However

SFIS will not investigate Council Tax Support, social housing fraud or other corporate frauds.

3.5.5 Further reports will be issued to Members to confirm the progress of the implementation of SFIS and the impact for the Authority.

4.0 KEY ISSUES

4.1 The Welfare Reform Act 2012 introduced amendments to the criteria in respect of offering Administrative Penalties for offences with benefit overpayment occurring wholly after 1st May 2012, and Civil Penalties for negligent acts resulting in an overpayment of benefit from 1st October 2012.

4.2 It is proposed to make a number of revisions and updates to the Council's current Benefit Fraud Sanctions and Prosecutions Policy as follows:

- Include the technical changes to Administrative Penalties. This includes a minimum Administrative Penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000) for overpaid benefits occurring wholly after 1st May 2012.
- Include the change permitting a fixed Administrative Penalty of £350 where an offence of benefit fraud has been committed, but the fraud is discovered and stopped before any overpayment of benefit is made.
- Reduce the time an individual, either claimant or employer, has to withdraw their agreement to pay the penalty ('cooling off period') from 28 to 14 days for overpaid benefit wholly after 1st May 2012. This is another technical change.
- Include the permissive power to apply a £50 Civil Penalty for non-fraud matters determined from 1st October 2012 for negligent actions that result in an overpayment of benefit within the provisions of the Social Security Administration Act 1992 (as amended by the Welfare Reform Act 2012).

4.2.1 Other proposed revisions are as follows:

- Include the existence of the Welfare Reform Act 2012 into the Statement of Intent.
- Include further clarification and amendment in respect of variations to sanction guidelines within the 'Statement of Intent' to account for the Crown Prosecution Service (CPS) being the prosecuting body. This is because the CPS will gradually assume responsibility for all prosecutions as SFIS is established.
- Include reference to the Crown Prosecution Service being able to prosecute fraud investigated by the Benefit Investigation Team.

5.0 CONCLUSION

5.1 The Authority is required to maintain an up to date sanctions policy. This report provides an update to the current policy and brings it into line with current DWP

recommendations. The additional powers available to the authority in respect of Civil Penalties may now be required in respect of recent overpayments.

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

6.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

7.1 There are no significant financial or resource implications arising from this report.

8.0 RISK ASSESSMENT

8.1 The actions referred to in this report are covered by the scheme of delegation to officers and any necessary changes have been made in the relevant operational risk registers. Failure to implement the changes to the policy would result in the Council failing to adopt the full range of punishment and deterrents now available to the authority.

Background Documents

There are no background documents (as defined in Section 100D (5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a direct impact on members of the public, employees, elected members and stakeholders. Therefore an equality impact assessment is required. A formal equality impact assessment is attached as an appendix to this report, the results of which have been taken into account in the recommendations contained in this report.

Appendices

1. Updated West Lancashire Borough Council Benefit Fraud Sanction Policy
2. Equality Impact Assessment

Appendix 1: West Lancashire Borough Council Benefit Fraud Sanction and Prosecution Policy

1. Statement of Intent

West Lancashire Borough Council has a duty to administer claims for Housing Benefit and Council Tax Support and a responsibility to prevent and detect benefit fraud. West Lancashire Borough Council is committed to protecting public funds and will consider sanction action against any person suspected of committing benefit fraud pursuant to the Social Security Administration Act 1992 (as amended) and The Welfare Reform Act 2007 and The Welfare Reform Act 2012.

The decision on sanction action to be taken in each individual case will be the responsibility of the Benefits Manager. In the case of prosecutions whilst the Benefits Manager can recommend a case for prosecution the decision to prosecute ultimately rests with the Borough Solicitor or Crown Prosecution Service.

West Lancashire Borough Council will comply with the Code for Crown Prosecutors.

The application of the policy may be varied when it appears that it is not in the best interests of the public, or all parties concerned, or due to comments received from the courts in respect of prosecutions in consultation with the Managing Director (Transformation) and Portfolio Holder.

This may mean that on occasion sanctions may be offered that fall outside the financial guidelines detailed below.

The prosecuting body may prosecute non-benefit fraud offences that arise out of the same circumstances subject to relevant authorisation from the Council's Legal Services section. Variations on the sanction guidelines will be monitored.

2. Guidance for Prosecutions

The test to be applied in respect of prosecutions is the "Full Code Test" as set out in the Code for Crown Prosecutors.

The Full Code Test has two stages. The first stage is consideration of the evidence. If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If the case does pass the evidential stage, it proceeds to the second stage, whether sanction is needed in the public interest.

(a) The Evidential Stage must be satisfied i.e. there is enough evidence to provide a "realistic prospect of conviction" against each defendant on each charge.

A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates or judge hearing a case alone, properly directed in accordance with the law, is more likely than not to convict the defendant on the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of the defendant's guilt.

(b). Public Interest Criteria

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour, or it appears more appropriate in all the circumstances of the case to divert the person from prosecution.

3. Recovery of Overpayments

Regardless of whether or not any sanction action is taken West Lancashire Borough Council will attempt to recover all recoverable overpayments including Civil and Administrative Penalties. Action taken will pursue all available methods of recovering the debt including taking civil action when necessary. The prosecuting body in prosecution cases may apply for compensation/confiscation orders as appropriate.

4. Consideration of Prosecution

Consideration will be given to prosecution in all cases where:

- there is clear and unequivocal evidence of fraud, and
- the amount of fraud exceeds £2,500, and/or
- aggravating features are present irrespective of the amount

5. Consideration of an Administrative Penalty

The application of an Administrative Penalty * will be offered as an alternative to prosecution where:

- the overpayment is less than £2,500, or
- the 'penalty' does not exceed £2,000 within the provisions of the Welfare Reform Act 2012, and
- the customer accepts the overpayment is their responsibility, and
- the Benefits Manager is satisfied that there is no overriding deterrent factor in pursuing prosecution.

* a fixed Administrative Penalty of £350 will be applied where an offence of benefit fraud has been committed, but the fraud is discovered and stopped before any overpayment of benefit is made;

* a minimum penalty of £350 or 50% of the overpayment, whichever is greater (up to a maximum penalty of £2000) will be applied for overpaid benefit wholly after 1st May 2012.

* an individual, either claimant or employer, has 14 days to withdraw their agreement to pay the penalty for overpaid benefit wholly after 1st May 2012.

6. Consideration of a Formal Caution

A Formal Caution as an alternative to prosecution will be considered where:

- the fraud is less than £2,500, and
- the customer has admitted the offence, and
- the Benefits Manager is satisfied that there is no overriding deterrent factor in pursuing prosecution.

When deciding whether prosecution is appropriate, every case should be judged on its own merits.

7. Consideration of a Civil Penalty of £50 when a person:

- negligently makes or gives an incorrect statement in relation to a benefit claim without taking reasonable steps to correct them resulting in an overpayment or
- negligently fails to disclose information or report changes to their circumstances without reasonable excuse resulting in an overpayment.

within stated legislative provisions.

8. Publicity

The Borough Council will have a clear publicity plan to create a strong deterrent effect and to encourage the reporting of benefit fraud.

The aims of the publicity will be to demonstrate:

- the effectiveness of our preventative arrangement,
- sophistication of arrangements to detect fraud
- the likelihood of proportionate sanctions being applied
- the likelihood of losses being recovered
- the ease of reporting fraud through the hotline number and the online referral form.

The Publicity Plan will be delivered by identifying cases and / or campaigns that are suitable and appropriate for publicity, are in the public and council's interest, and will help to achieve the aims of the plan and therefore the current approach/arrangements will continue in this respect.

Appendix 2: Equalities Impact Assessment

<p>1.</p> <p>Using information that you have gathered from service monitoring, surveys, consultation, and other sources such as anecdotal information fed back by members of staff, in your opinion, could your service/policy/strategy/decision (including decisions to cut or change a service or policy) disadvantage, or have a potentially disproportionately negative effect on, any of the following groups of people:</p> <p><i>People of different ages – including young and older people</i> <i>People with a disability;</i> <i>People of different races/ethnicities/ nationalities;</i> <i>Men; Women;</i> <i>People of different religions/beliefs;</i> <i>People of different sexual orientations;</i> <i>People who are or have identified as transgender;</i> <i>People who are married or in a civil partnership;</i> <i>Women who are pregnant or on maternity leave or men whose partners are pregnant or on maternity leave;</i> <i>People living in areas of deprivation or who are financially disadvantaged.</i></p>	<p>None identified</p>
<p>2.</p> <p>What sources of information have you used to come to this decision?</p>	<p>Information contained within relevant legislation, good practice and that gained from experience of the operation of the Borough Council's current Benefit Fraud Sanctions and Prosecution Policy</p>
<p>3.</p> <p>How have you tried to involve people/groups in developing your service/policy/strategy or in making your decision (including decisions to cut or change a service or policy)?</p>	<p>The recommendations in this report are consequential from welfare reform (including the Welfare Reform Act) and the establishment of SFIS. These changes have therefore been the subject of Central Government consultation.</p>
<p>4.</p> <p>Could your service/policy/strategy or decision (including decisions to cut or change a service or policy) help or hamper our ability to meet our duties under the Equality Act 2010? Duties are to:-</p> <p><i>Eliminate discrimination, harassment and victimisation;</i> <i>Advance equality of opportunity (removing or minimising disadvantage, meeting the needs of people);</i> <i>Foster good relations between people who share a protected characteristic and those who do not share it.</i></p>	<p>No</p>
<p>5.</p> <p>What actions will you take to address any issues raised in your answers above</p>	<p>No further action required</p>