

AUDIT COMMITTEE

27 SEPTEMBER 2006

OUTCOMES OF HOUSING BENEFIT COUNTER FRAUD INVESTIGATIONS

Report from: Internal Audit

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1 Summary

1.1 To inform members of progress in investigating allegations of housing and council tax benefit fraud during the period April to August 2006.

2 Decision issues

2.1 According to the Council's recent decision to establish this committee, it is within the remit of this committee to take decisions regarding accounts and audit issues.

3 Background

3.1 Medway Council has had a sanction policy since 2002 following changes to the way benefit investigations should be conducted. These changes resulted in a more rigorous investigative standard being adopted which lead to specific outcomes, known as sanctions. Namely, that local authorities should consider the use of one of the following courses of action following a successful investigation:-

- Prosecution
- Issue of a caution
- Issue of an administrative penalty (fine).

3.2 The current sanction policy is shown at Annex A.

4 Outcome of Benefit Investigations

4.1 In the 2006/07 financial year, the investigations team has identified £195,159 of fraudulent overpayments of Housing and Council Tax Benefit. Since the last report, investigations have resulted in the issue of 25 sanctions (Annex B).

5 Financial implications

5.1 There are no financial implications arising from this report.

6 Legal implications

6.1 There are no legal implications arising from this report.

7 Recommendations

7.1 Members to note progress in investigating alleged benefit fraud in accordance with the approved sanction policy.

8 Background papers

8.1 None.

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Sanction Policy

Medway Council believes that the overwhelming majority of those claiming welfare benefits within Medway are honest law-abiding citizens who the council seek to assist and value within an inclusive society. This policy is directed towards the small minority of people who commit benefit fraud and by their actions steal from the taxpayer, deny others of much needed resources and tarnish the welfare system.

The council seeks to confront benefit fraud with a combination of approaches – Prevention, Detection, Investigation, Sanction and Redress.

Prevention

The council believes that the best means of combating benefit fraud is to prevent its occurrence in the first place. Therefore, all claims for benefit will be verified thoroughly inline with performance standards and guidance issued by the Department for Work and Pensions.

Detection

The council believes that the single biggest deterrent of benefit fraud is the fear of getting caught. Therefore, all legitimate means available will be deployed to detect and expose benefit fraudsters, including the sharing of data with other enforcement agencies, surveillance and the ‘naming and shaming’ of those convicted.

Investigation

The council will proactively search for fraud in whatever areas it has concern, including landlords, agents and employers. The council will reactively investigate allegations of benefit fraud from whatever source they come. Investigators will seek to secure evidence to ensure that the correct amount of benefit has been paid to the correct person, for the correct period and, if appropriate, for taking legal action against offenders.

Sanction

It is the belief of the council that those who steal from the taxpayer should be punished.

Nevertheless, as means of encouraging individuals to take responsibility for their actions and lives, the council undertakes not to prosecute if a person reveals their true circumstance either of their own volition or as part of the verification process. However, any resulting overpayment of benefit will be recovered vigorously.

The decision as to whether the council will take sanction action will depend upon two tests that will be applied to each individual on a case-by-case basis, namely the Evidential Test and the Public Interest Test.

The Evidential Test

In order for a sanction to proceed there must be sufficient evidence to provide a realistic prospect of a conviction for each offence brought. A 'realistic prospect of conviction' is determined to mean that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict. Any final decision of the evidential test lies with the Assistant Director (Legal, Property & Contract Services).

The Public Interest Test

The council accepts the principle of public interest which has been adopted by the English legal system since it was given in a statement by Lord Shawcross in 1951,

'It has never been the rule in this country; I hope it never will be, that suspected criminals must automatically be the subject of prosecution.'

Any final decision of the public interest test lies with the Director (Finance & Corporate Services), normally delegated to the Audit Services Manager.

The council has at its disposal three forms of sanction; - Prosecution, Formal Caution and Administrative Penalty.

Prosecution

The council will consider prosecution having weighed up the following factors:

Factors for prosecution will include -

- If convicted the court is likely to impose a sentence demonstrating that they consider the matter significant enough for them to deal with.
- Taking into account other mitigation the sum involved is of an amount that if not prosecuted confidence in Medway Council by the general public could be undermined.
- The period of the offence is prolonged.
- The individual was in a position of trust - this includes any council employee.
- There is evidence that the offence was premeditated and dishonest.
- There is evidence that there was collusion between two or more people.
- The individual has a previous sanction for fraud/deception.
- The offence would have continued if not caught.
- The offence is widespread in the area.

Mitigation against prosecution will include -

- The offence was committed more in foolishness and misjudgement rather than dishonesty.
- The individual has made a genuine and significant effort to make repayment of the overpayment (but individuals should not avoid prosecution solely by repayment).
- The individual will suffer significant physical and or mental harm if prosecuted.

- The individual has demonstrated genuine remorse and acknowledged what they did was wrong.

Formal Caution

When there is sufficient evidence to prosecute, but the council considers that it is not in the public interest to prosecute, then a Formal Caution will be considered.

For a Formal Caution to be offered the individual must demonstrate remorse and acknowledge what they did was wrong.

The refusal of a Formal Caution does not automatically mean the individual will be prosecuted, but not to prosecute should be rare and supported with good justification

Administrative Penalty

The council will consider an Administrative Penalty having taken into account the following factors:

- The fraud was primarily due to financial difficulties and an Administrative Penalty would increase the debt the individual finds himself or herself in.
- A prosecution or formal caution would not be in the public interest or cause unfair punishment to the individual, for example the loss of employment.
- The individual has the means to pay the Administrative Penalty in one single payment at the time of the Administrative Penalty interview. Should the individual choose to withdraw from the agreement within 28 days the money will be repaid, but a prosecution or formal caution must follow.
- The individual has repaid the overpayment in full (but individuals should not avoid prosecution solely by repayment).

Redress

The council maintains that criminals should not profit from their crimes. Therefore, the council will use every means at its disposal to recover all overpayments considered to be fraudulent. Redress is not to be seen as an additional activity to sanction, but as an integral part of tackling benefit fraud.

Prosecutions completed April 2006 – August 2006							
Investigation Case number/HB Reference	Fraud Type	Fraudulent overpayment £	Court	Court sentence and date	Overpayment o/s as at court sentencing date £	Current Overpayment outstanding £	Comment
8142	Non disclosure of living with partner, marriage and spouse's earnings	6,683	Medway Magistrates Court	18 months Community Rehabilitation Order 20/04/06	£3496.91	£3496.91	Recovery from HB but claim cancelled. Invoice issued
8379	Failure to disclose change of circumstances – job seekers allowance had ceased	2,066	Medway Magistrates Court	Absolute discharge & £100 costs 15/6/06	£2065.50	NIL	Was paying instalments but final payment of £1520.00 was paid 15.08.05
8446	Non disclosure of capital	1,194	Medway Magistrates Court	200 hours community service & £100 costs 13/04/06	£1194.47	£677.87	
8691	Non disclosure of earnings, partner and partner's earnings	5,710	Medway Magistrates Court	60 hours community service & £100 costs 13/07/06	£5957.76	£5835.95	Being recovered from current HB claim.
9116	Linked to case 8691.	0	Medway Magistrates Court	60 hours community service & £100 costs 13/07/06			

Prosecutions completed April 2006 – August 2006							
Investigation Case number/HB Reference	Fraud Type	Fraudulent overpayment £	Court	Court sentence and date	Overpayment o/s as at court sentencing date £	Current Overpayment outstanding £	Comment
8713	Non disclosure of employment	5,096	Medway Magistrates Court	12 months community rehabilitation order & £150 costs. 08/05/06	£5085.89	£4935.79	Claimant did not attend two arranged interview under caution appointments.
8983	Non disclosure of capital	4,663	Medway Magistrates Court	24 months conditional sentence & £150 costs 22/06/06	£4662.72	£4462.72	Making payments of £100.00.

**Cautions, Administrative Penalty Issued
April 2006 – August 2006**

Case Number	Fraud Type	Overpayment £	Comment
7959	Non disclosure of former partner living at property.	3,330	Due to delays outside of the Medway Council's control, prosecution action was ceased and the claimant cautioned.
8052	Working and claiming benefits	210	Joint investigation with DWP. Claimant received administrative penalty.
8441	Non disclosure of spouse's earnings	2,585	Due to health considerations, claimant cautioned
8791	Non disclosure of employment	535	Claimant cautioned
8842	False statement to support claim	0	Claimant cautioned
8870	Non disclosure of partner living at property and partner's earnings.	621	Claimant cautioned
8977	Non disclosure of capital.	1,685	Claimant cautioned.
9002	False rent amount	1,846	Claimant cautioned.
9014	Non disclosure of capital.	2,183	Claimant cautioned.
9022	Non disclosure of non dependent at property	66	Claimant cautioned.
9023	Non disclosure of employment.	1,616	Claimant cautioned.
9030	Non disclosure of earnings	409	Claimant cautioned.
9038	Related to landlord	0	Claimant cautioned.

Case Number	Fraud Type	Overpayment £	Comment
9175	Non disclosure of assets (a property).	0	Claimant cautioned.
9207	Non disclosure of non dependent at property	455	Claimant cautioned.
9260	False document supplied with claim	0	Claimant cautioned.
9294	Non disclosure of partner living at property	1,326	Claimant cautioned.
9344	Non disclosure of earnings	0	Claimant cautioned.