

CABINET

9 AUGUST 2016

BENEFIT FRAUD SANCTION POLICY

Portfolio Holder: Councillor Rupert Turpin, Business Management

Report from: Phil Watts, Chief Finance Officer

Author: Jon Poulson, Revenues & Benefits Manager

Summary

This report seeks to establish a policy for the council's approach to prosecution and other sanctions in respect of housing benefit and residual council tax benefit fraud.

1. Budget and Policy Framework

- 1.1 The Council has discretionary powers to apply certain sanctions where benefit fraud has taken place.
- 1.2 The establishment of guidelines as to when to exercise those powers is a matter for Cabinet.

2. Background

- 2.1 The application of sanctions has been shared between the Department of Work and Pensions (DWP) and local authorities for a number of years with many joint prosecutions for more serious cases.
- 2.2 Where a case was considered less serious (generally for a total debt of less than £2,000) but where it otherwise met the standards for prosecution, a caution would be issued.
- 2.3 Since 1 March 2016 responsibility for the investigation and prosecution of all housing benefit (HB) and remaining council tax benefit fraud lies with the Department of Work and Pensions Single Fraud Investigation Service (SFIS).
- 2.4 Following a change in policy nationally the DWP are no longer issuing cautions but instead are turning to administrative penalties (Ad-Pens). This is a financial penalty calculated as a percentage of the total fraudulent overpayment (for example both Income Support and Housing Benefit), which is set at 50% of the total overpayment, with a minimum of £350 and a maximum of £5,000.

- 2.5 If the total amount of the overpayment is between £700 and £4,000 then the Ad-Pen will be 50% of the recoverable overpayment with the DWP and the Council recording 50% of their actual respective overpayments
- 2.6 Where the total debt exceeds £4,000 the Ad-Pen would be split 50/50 between the DWP and the Council.
- 2.7 However, it is at the Council's discretion whether to agree to the imposition of the penalty in respect of the Housing Benefit Ad-Pen which the local authority would then pursue for payment.
- 2.8 It is understood that in a further policy change the DWP will be applying administrative penalties to all cases where the debt is less than £5,000 and only prosecuting cases above that amount.
- 2.9 Irrespective of the imposition of any sanction the council will use every means at its disposal to recover all overpayments considered to be fraudulent.

3. Options

- 3.1 Being a discretionary power the Council cannot operate a blanket policy but needs to consider each case on its own merits. However, this can still be done against a set of guidelines giving officers a framework for decision making.
- 3.2 Without a policy and/or guidelines officers will have no authority with which to make decisions which may become both subjective and subject to challenge.

4. Advice and analysis

- 4.1 An Ad-Pen can only be offered when the DWP is satisfied there are grounds for starting criminal proceedings with the investigation having been conducted to the criminal standard of proof.
- 4.2 DWP guidelines also state that the following conditions must be satisfied before a person is offered the choice of agreeing to pay an Ad-Pen.
- the case is not so serious that the first option should be prosecution
 - there are grounds to start criminal proceedings. This includes the need to ensure that there has been no unusually long or inexcusable delay in the investigating or administration of the case, particularly where this may lead to the case being time-barred
 - in addition, the person must have been notified of the DWP's decision and, where an overpayment exists, their appeal rights on the amount and recoverability of the overpayment
- 4.3 The case must be prosecutable so it would not be appropriate to consider the offer of an Ad-Pen in cases where prosecution has been ruled out (for example due to social or health factors).
- 4.4 An Ad-Pen should not be considered if the claimant has received a fraud penalty for a previous benefit offence that has occurred in the last five years.

- 4.5 Once the DWP has determined that the case does not warrant prosecution and that the above mentioned guidelines have been met it will notify the local authority of any decision to award an Ad-Pen and ask if the Ad-Pen should be applied to any HB or council tax benefit overpayment.
- 4.6 The local authority will then need to review the case and make a determination whether to raise the Ad-Pen or not.
- 4.7 The DWP will then notify the claimant of the Ad-Pen (including any HB element) but the local authority will be left to collect its own part. However, raising an Ad-Pen and actually being able to collect it may be two different matters.
- 4.8 If, for example, a claimant is found to have a fraudulent overpayment of £2,000 Income Support and £2,000 overpaid HB and is still in receipt of benefits, the DWP will deduct their overpayment and administrative penalty at source from his/her state benefit leaving him/her with less income. The Council will have little option other than to deduct the benefit overpayment and administrative penalty from ongoing housing benefit at £18.50 per week. This means it will take 108 weeks to clear the original overpayment before the penalty could start to be collected. In the meantime, the reduced income may lead to the claimant's inability to meet ongoing council tax and rent liabilities.
- 4.9 Where deductions from housing benefit lead to hardship, the Council must consider whether to reduce them. Obviously if this was the case it would extend the repayment period even further.
- 4.10 Where a fraud has been uncovered and the claimant is in employment and/or has capital resources it may appear more appropriate to impose the administrative penalty, as it would act as a deterrent against re-offending.
- 4.11 The DWP have suggested that if local authorities fail to take up administrative penalties, they may begin to reduce investigations into low level fraud. Given their change in policy not to give cautions, this could lead to an increase in low level fraud.
- 4.12 A balance is needed between the desire to create disincentives to perpetrate fraud and sanction wrongdoing with the cost of administration. By changing their policy on cautions and suggesting they will reduce investigations if local authorities are not supportive of administrative penalties, the DWP is in effect moving the burden on to local authorities. This may be a matter to be raised with Medway MPs.
- 4.13 A Diversity Impact Assessment has been carried out on the proposals, as set out in Appendix 2 to the report, which sets out the steps which should help mitigate any effects on those in receipt of low income whilst documenting that the process will provide evidence to inform a review of both the policy and supporting DIA in twelve months' time.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Increase in bad debt	Whilst the imposition of financial penalties leads to an increase in income, it is the collectability of that debt that determines how much	Increasing bad debt provision	A3
Increase in council tax / rent arrears	Reduction of a claimant's disposable income could result in their failure to meet other bills	Making suitable repayment arrangements, directing financial advice	C3

6. Financial implications

- 6.1 Of the 6 applications received so far, the Ad-Pens in respect of HB and therefore payable to Medway Council would have totalled approximately £3,000.
- 6.2 The amount of income raised will be dependant not only any guidelines established by members but also by the number of cases referred to the local authority by the DWP. Given the fact that it is early days there is little to base estimates on, either of the total amount that could be raised or level of bad debt provision necessary.
- 6.3 However, during 2015/16 fifteen cases of fraud were identified totalling £128,000 of which £12,000 has been recovered. Of these fifteen cases, ten would have been prosecuted leaving five that potentially could have received Ad-Pens. The total overpayment in these 5 cases is £5,000 of which £1,000 has been collected so far. The Ad-Pens would have totalled approximately a further £3,000 of which at least £2,000 would still be outstanding as the overpayment is still being collected.

7. Legal implications

- 7.1 The benefits sanction policy will be governed by legislation and DWP guidance including the Local Government Finance Act 1992, Welfare Reform Act 2012, Police and Criminal Evidence Act 1984, Social Security Administration Act 1992 and The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.
- 7.2 It is proposed that delegated authority be given to the Revenues and Benefits Manager to determine the award of administrative penalties. This would require an amendment to the Employee Delegation Scheme, as set out in the Constitution. The following proposed delegation will be added to the Chief Finance Officer's schedule of delegations. Paragraph 1.4 of the Employee Delegation Scheme allows for matters which are the responsibility of

Directors, Deputy Directors and Assistant Directors to delegate matters to the appropriate level to maintain the balance between efficiency and control.

6.20 Benefit Fraud Sanction Policy: To determine the award of administrative penalties in accordance with the criteria outlined in the Benefit Fraud Sanction Policy.	Leader/Cabinet
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8. Recommendations

- 8.1 The Cabinet is asked to agree the Benefit Fraud Sanction Policy as set out in Appendix 1 to the report.
- 8.2 The Leader is asked to agree that the Employee Delegation Scheme be amended as set out in paragraph 7.2 above.

9. Suggested reasons for decision

- 9.1 Approval of the Policy will allow the Council to award administrative payments in respect of the overpayment of housing benefits and council tax.

Lead officer contact

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Appendices

Appendix 1 – Draft Benefit Fraud Sanction Policy
Appendix 2 – Diversity Impact Assessment

Background papers

None

Appendix One

Medway Council – Draft- Benefit Fraud Sanction Policy

- 1.1 An Administrative Penalty is a financial penalty calculated as a percentage of the fraudulent overpayment and may be offered as an alternative to prosecution where offences have been committed. This penalty is set at;
- 30% of the total overpayment, or
 - for offences committed wholly after 8th May 2012, but before 1st April 2015, 50% of the total overpayment, with a minimum of £350 and a maximum of £2,000, or
 - for offences committed wholly after 1st April 2015, 50% of the total overpayment, with a minimum of £350 and a maximum of £5,000,
 - Is for benefit administration purposes only,
 - Is not a criminal record and therefore, does not affect a person's employment prospects,
 - Is recorded centrally by the Department for Work and Pensions
 - Remains on record for a period of 5 years,
 - Would be cited at proceedings should any subsequent offences be committed within the 5 year period
- 1.2 While the decision to prosecute those found to have committed offences lies with the Department for Work and Pensions, Medway Council will have the final decision on whether an Administrative Penalty is appropriate in relation to housing/council tax benefit overpayments.
- 1.3 Medway Council has decided that its decision process should not be entirely related to the monetary value of the offence. This is because Medway is an area where rents vary widely depending on the location and type of property in question. In these circumstances a purely monetary policy would not be appropriate. All cases will be looked at on their own merit and any mitigating circumstances taken into account.
- 1.4 The decision on whether the authority will authorise an administrative penalty lies with the Revenues & Benefits Manager. This decision process will be documented and will demonstrate considerations for;
- the evidential test criteria,
 - the Public interest test criteria,
 - the value and length of the offence,
 - local prevalence,
 - social and health factors,
 - previous history of offending

- ability to repay a penalty, and
- any other mitigating factors

1.5 Medway Council reserves the right to decline the offer of an administrative penalty where it is clear that the offender would not be in a position to repay as it would therefore have no deterrent value to future offending.

Diversity

impact assessment – Appendix 2

TITLE	Benefit Fraud Sanction Policy
DATE	26 July 2016
LEAD OFFICER	Jon Poulson, Revenues & Benefits Manager BSD

1 Summary description of the proposed change

The application of sanctions has been shared between the Department of Work and Pensions (DWP) and local authorities for a number of years with many joint prosecutions for more serious cases.

Where a case was considered less serious (generally for a total debt of less than £2,000) but where it otherwise met the standards for prosecution, a caution would be issued.

Since 1 March 2016 responsibility for the investigation and prosecution of all housing benefit (HB) and remaining council tax benefit fraud lies with the Department of Work and Pensions Single Fraud Investigation Service (SFIS).

Following a change in policy nationally the DWP are no longer issuing cautions but instead are turning to administrative penalties (Ad-Pens).

However, it is at the Council's discretion whether to agree to the imposition of a penalty in respect of Housing Benefit fraud which the local authority would then pursue for payment.

2 Summary of evidence used to support this assessment

The number of expected cases is believed to be fairly low at this point in time (approximately 20 per year based on current referrals) but will be driven by referral from the DWP, something over which the council has no control. Similarly, the service user profile will be determined by the referrals from the DWP. The common factor will be that the DWP is satisfied that they have a case capable of prosecution for fraud. It is likely that those in receipt of administrative penalties will remain on benefits and as such any penalty will reduce disposable income.

Given the relatively low numbers expected, it is proposed that all cases are closely monitored and a review carried out in 12 months time.

Diversity impact assessment – Appendix 2

3 What is the likely impact of the proposed change?

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age	✓		
Disability	✓		
Gender reassignment	✓		
Marriage/civil partnership	✓		
Pregnancy/maternity	✓		
Race	✓		
Religion/belief	✓		
Sex	✓		
Sexual orientation	✓		
Other (eg low income groups)	✓		

4 Summary of the likely impacts

Any financial penalty will reduce the disposable income of the recipient and any such reduction may put their ability to pay other council related charges such as rent and/or council tax at risk.

As state benefits and housing benefit are available to people of all protected characteristics, they are all likely to be adversely affected by their application, albeit only those who commit fraud. However, the majority of persons to whom this policy will apply are likely to be from low income groups, being the reason they were on benefits to begin with.

Diversity

impact assessment – Appendix 2

5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

The policy states that the decision on whether the authority will authorise an administrative penalty lies with the Chief Finance Officer. This decision process will be documented and will demonstrate considerations for

- the evidential test criteria,
- the Public interest test criteria,
- the value and length of the offence,
- local prevalence,
- social and health factors,
- previous history of offending
- ability to repay a penalty, and
- any other mitigating factors

Furthermore, Medway Council reserves the right to decline the offer of an administrative penalty where it is clear that the offender would not be in a position to repay as it would therefore have no deterrent value to future offending.

Where it is determined that an Ad-Pen is appropriate, the Council will signpost financial advice and debt counselling services such as Stepchange and Christians Against Poverty.

These steps should help mitigate any effects on those in receipt of low income whilst documenting the process will provide evidence to inform a review of both the policy and supporting DIA in twelve months time.

6 Action plan

Action	Lead	Deadline or review date
Monitor & record all requests to apply an Ad-Pen	J Poulson	Ongoing
Monitor & record all Ad-Pen applied	J Poulson	Ongoing
Review policy & DIA	J Poulson	July 2017

Diversity impact assessment – Appendix 2

7 Recommendation

To continue with implementation of policy and follow action plan leading to a review in 2017.

8 Authorisation

Assistant Director

Date

Contact your Performance and Intelligence hub for advice on completing this assessment

RCC: phone 2443 email: annamarie.lawrence@medway.gov.uk

C&A: (Children's Social Care) contact your normal P&I contact

C&A (all other areas): phone 4013 email: chrismckenzie@medway.gov.uk

BSD: phone 2472/1490 email: corppi@medway.gov.uk

PH: phone 2636 email: david.whiting@medway.gov.uk

Send completed assessment to the Corporate Performance & Intelligence Hub (CPI) for web publication
(corppi@medway.gov.uk)