

Committee: FINANCE AND ADMINISTRATION
COMMITTEE

Agenda Item

Date: January 31, 2008

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Title: ANTI FRAUD POLICY

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Summary

1. On 1 February 2007 the Operations Committee approved an Anti Fraud Policy in relation to housing benefit and council tax benefit. Good practice requires that such a policy should be reviewed regularly. The current policy needs amendment to take account of the change in enforcement procedures and the emphasis being placed on dealing with offenders in ways which avoid prosecutions.

Recommendations

2. Members adopt the revised policy which appears as Appendix A to this report highlighting the amendments from the former policy.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
 - DWP Sanction Policy in respect of fraudulent social security benefit claims published 4/5/2006 available at www.dwp.gov.uk/resourcecentre/policy_strategy.asp
 - Department for Business Enterprise and Regulatory Reform Regulators Compliance Code (Statutory Code of Practice for Regulators available at <http://bre.berr.gov.uk/regulation>)
 - The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 available from HM Stationary Office

Impact

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Communication/Consultation	The Council's Anti Fraud Policy is published on the Council's website.
Community Safety	None.
Equalities	None.
Finance	Administrative penalties are retained by the Council but this is not a factor which should be taken into consideration in determining whether to adopt the proposed revised policy.
Human Rights	None.

Legal Implications	None.
Ward-specific impacts	None.
Workforce/Workplace	The current staff structure is unable to process all cases which are referred and which may merit a prosecution under the current policy. Administrative penalties free the staff from doing the work necessary to prepare cases for court.

Situation

6. The Government guidance as to when prosecution should be considered has not changed since its 2005 policy review. The guidance says that prosecution should be considered in any of the following circumstances:-
 - A gross overpayment of all benefits exceeds £2,000
 - False identities or other personal details have been used
 - False or forged documents have been used
 - Official documents have been altered or falsified
 - The person concerned occupied a position of trust
 - The person concerned assisted or encouraged others to commit offences
 - There is evidence of premeditation or organised fraud
 - The person concerned has relevant previous convictions
 - The customer had previously been convicted of benefit fraud
 - The amount of the adjudicated overpayment is under £2,000 and the offer of an administrative penalty or formal caution is not accepted

7. Since that guidance was published the Government has issued a Regulators Compliance Code under the provisions of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007. This statutory instrument applies to regulatory functions of district councils (e.g. licensing, health and planning) and replaces the now defunct Enforcement Concordat. Whilst it does not strictly speaking apply to benefit fraud investigations it does stress that there needs to be proportionality in enforcement matters and the application of sanctions. This is mirrored by the growing trend towards fixed penalty notices for a growing number of offences.

8. Prosecutions take a considerable amount of resources both within and without the Council. Administrative staff need to transcribe what are often very lengthy tape recordings of interviews under caution. Investigating officers are required to prepare statements of fact, witness statements and exhibit bundles for court proceedings. Legal officers have to spend time in preparing and issuing summonses and attending court. If not guilty pleas are entered then more senior legal officers have to attend trials lasting between a half a day and one day accompanied by the investigating officers and other witnesses. If the defendant has elected trial at the Crown Court then a barrister needs to be instructed and fees paid. Other resources are deployed by the court service in administering the case, providing a bench of magistrates to hear the same and arranging for legal advisers and other court staff to be present. If the defendant is legally represented this is almost invariably funded by the Legal Services Commission at the public expense.

9. Clearly those guilty of fraud should be punished. Where there has been an overpayment of benefit this is usually recoverable from the claimant whether or not

there has been any offence committed. Where there is evidence of an offence the Council may:-

- Take no action
 - Offer a caution if the claimant admits the offence
 - Offer an administrative penalty (a charge of 30% of the amount of the overpayment in addition to repaying that sum) where there is sufficient evidence to secure a conviction if a prosecution was brought
 - prosecute
10. Save in exceptional circumstances it would not be appropriate to take no action where there is evidence of fraud. Whilst a caution is a sanction it does not act as a punishment to the offender although there are clearly cases where a caution would be appropriate to mark the fact that an offence has been committed but where an administrative penalty or prosecution would not be appropriate. However in a large proportion of cases the resources absorbed by a prosecution are wholly disproportionate to the offence and the sentence imposed by the court on conviction.
11. The proposed revised policy suggests a more proportionate approach. It puts forward administrative penalties as the preferred option, recognising that there are cases where such an approach would not generally be suitable but acknowledging that even in cases where a prosecution would appear the best option there may be circumstances where the presumption in favour of a prosecution is usurped. By releasing resources because cases do not have to be prepared for prosecution officers will have more time to investigate other cases thereby apprehending more offenders.
12. Neither an administrative penalty nor a caution can be imposed upon an offender. Each must be voluntarily accepted. There will be cases where the offer of an administrative penalty or caution is not accepted. In such instances the policy makes it clear that a prosecution will follow save for in the most exceptional circumstances.

Risk Analysis

13. The following have been assessed as the potential risks associated with this issue.

Risk	Likelihood	Impact	Mitigating Actions
The Benefit Fraud Team fail to meet their performance indicators.	LOW The performance indicator relates to all forms of sanction and does not distinguish between cautions, administrative penalties or prosecutions. Based on past performance the PIs are easily attainable.	LOW. The Council no longer receives subsidies based upon sanctions administered.	None required.