

Agenda Item No: 7
Report To: **CABINET**
Date: 8 September 2016
Report Title: Updated enforcement policy for Revenues and Benefits
Report Author: Hannah Davies – Corporate Fraud Manager
Portfolio Holder: Cllr Shorter Portfolio Holder for Finance & Budget, Resource Management and Procurement



Summary: This report brings an updated enforcement policy for Revenues and Benefits team for approval. It updates the old policy which focused on Housing and Council Tax benefit and brings the enforcement up to date taking into account changes in legislation and a greater focus on revenues as well as benefits. Following the transfer of the majority of housing benefit investigations to the DWP Single Fraud Investigation Service and the introduction

Key Decision: NO (delete as appropriate)

Affected Wards: ALL

Recommendations: **The Cabinet be asked to:**
i. **approve the updated Revenues and Benefits Enforcement policy (Appendix 1)**

Policy Overview: The Council's five-year corporate plan includes a commitment to ensuring that enforcement powers are used effectively and appropriately hence this update to include updated legislation.

Financial Implications: N/A

Risk Assessment NO - update to existing policy

Equalities Impact Assessment NO - update to existing policy

Other Material Implications: N/A

Background Papers: N/A

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Report Title: Updated enforcement policy for Revenues and Benefits

Purpose of the Report

1. The report seeks Cabinet's endorsement of an updated enforcement policy for Revenues and Benefits taking into account changes in legislation and the introduction of the Department for Work and Pensions' (DWP) Single Fraud Investigation Service.

Overview

2. The Corporate Fraud Team focuses on the provision of a resource available to promote a corporate anti-fraud stance in order to protect the taxpayer and Ashford Borough Council. The Council's corporate five year plan includes a commitment to ensure enforcement powers are used effectively and appropriately. This is highlighted by the introduction of the Policy and Compliance Task Group with a positive agenda to deliver a fair but robust approach to enforcement across the Council.
3. The Corporate Fraud Team's remit includes investigating allegations of fraud against public funds for example revenues fraud against council tax and business rates and tenancy fraud including illegal subletting or fraudulent applications for social housing.
4. There is often a link between tenancy, benefit and revenue frauds and by reviewing the information gathered, a more holistic approach to fraud against public funds can be taken.
5. The team annually reports on performance and results to the Audit Committee (Fraud Investigations and Debt Recovery Annual Report 2015/16 – Audit Committee 30 June 2016)

Background

6. The last time the prosecution policy for Revenues and Benefits was updated was 2009. Whilst a corporate anti-fraud policy already exists, there has always been a further policy for revenues and benefits to take account of specific legislation relating to fraud against these areas. Since 2009 there has been new legislation and therefore it is considered an update of the policy is necessary.
7. Additionally, following on from the adoption of the Council's new Enforcement Policy it appeared to be an opportune time to review and refresh the Council's commitment to fraud committed against revenues and benefits.
8. The previous policy focused on benefit fraud as the local authority was entrusted to investigate housing and council tax benefit fraud. The investigations team within Ashford Borough Council also liaised closely with the Department for Work and Pensions (DWP) in order to jointly investigate

benefit fraud where necessary. However, Council Tax Benefit was abolished in 2013 and Local Council Tax Reduction Schemes were adopted. This saw the introduction of new legislation in order to investigate and enforce this scheme, The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 which need to be incorporated into the policy.

9. Furthermore, in December 2015, the majority of investigations into housing benefit fraud were migrated to the Single Fraud Investigation Service within the DWP although the authority retains responsibility to prevent fraud and error entering the housing benefit system.
10. With the Council Tax Reduction Scheme being a council tax discount, the focus of the policy covers revenues as well as housing benefit.
11. Taking note of the new legislation together with existing legislation such as the Local Government Finance Act and the Fraud Act, this policy will help to ensure that applications and changes in circumstances relating to council tax discounts, exemptions and business rates are completed correctly and are enforced as necessary in cases where people seek to deceive or defraud the Authority in this area.
12. Prevention of fraud entering either the revenues or benefits system will always be the primary task, however, there will be times when fraud will get through and this updated policy will ensure that it can be dealt with appropriately, fairly and robustly as necessary.

Consultation

13. The Revenues and Benefits Manager and Principal Legal Assistant have both been consulted regarding this updated policy

Portfolio Holder's Views

14. To be given at the meeting.

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APPENDIX 1

ASHFORD BOROUGH COUNCIL

REVENUES AND BENEFITS ENFORCEMENT AND PROSECUTION POLICY

1. Introduction.

- 1.1 Ashford Borough Council has an approved Anti-Fraud and Corruption Strategy. The purpose of the Strategy is to clearly state its commitment to prevent, detect and investigate fraud and corruption, and take appropriate action wherever possible. Ashford Borough Council is committed to protecting public funds through its actions on fraud. No discrimination will be made in determining whether to prosecute.
- 1.2 Fraud can be either opportunistic or more organised. Where verification processes assist with limiting the opportunities for fraudsters, sanctions by way of penalties and prosecution action need to be in place in order to punish wrongdoing and deter offending.
- 1.3 Customers need to be aware that they have a responsibility to provide accurate and timely information about their circumstances in order to ensure the correct entitlement is provided from the public purse.

2. Revenues and Benefits Fraud

- 2.1 The Borough Council has officers who identify, investigate and prevent cases of revenues and benefit fraud.
- 2.2 This policy should give clear guidance on the options available to deal with those who either
 - Through an intentional act or omission commit fraud in relation to council tax, council tax support, council tax benefit, housing benefit or non domestic rates or
 - Negligently make incorrect statements, or without reasonable excuse fail to give a prompt notification of a relevant change of circumstances affecting their entitlement to a council tax discount, exemption or reduction, non domestic rate relief or their council tax benefit and / or housing benefit entitlement and how and when these options should be used.
- 2.3 Customers who receive a council tax discount, exemption or reduction are required to notify of changes in their circumstances affecting their entitlement to the Revenues and Benefits department within 21 days. Customers who receive housing benefit (or Council Tax Benefit up to 31 March 2013) are required to notify of changes in their circumstances affecting their entitlement to the Revenues and Benefits department within one calendar month. For the purposes of this policy, when determining fraud or taking any sanction action,

the timescale of one calendar month will be used in all cases whether council tax or benefit.

- 2.4 Not all claims deemed to be fraudulent are suitable for prosecution. This is because the test applied for the purpose of whether benefit is cancelled or reduced is different to the test applied in the Court to secure a criminal conviction. Claims and overpayments can be classified as fraudulent not only where there is clear and unequivocal evidence of fraud, but also where it appears to the Authority that on the balance of probabilities a fraud has been committed (as per government's definition of fraud).
- 2.5 Consideration will be given to financial penalties as set out in legislation in respect of cases that are believed to reach the civil burden of proof.
- 2.6 The Borough Council has worked jointly with the Department of Work & Pensions on all investigations that affect their benefits where appropriate. The Department of Work & Pensions have their own Prosecution Policy. As from December 2015 the Department for Work and Pensions Single Fraud Investigation Service has responsibility for investigating the majority of housing and council tax benefit fraud.
- 2.7 An effective system needs to be ensured in order that all decisions on matters relating to prosecutions and sanctions are made only after considering fully the facts and circumstances of each case.

3. Sanctions

- 3.1 Where monies have been paid incorrectly whether through fraud or not, recovery of any overpayment will be pursued as appropriate.
- 3.2 Sanctions may include civil fines, cautions, criminal financial penalties or prosecution.
- 3.3 Civil fines may be applied where a customer fails to notify of a change in circumstances or fails to provide information, in respect of a Council Tax account or Council Tax Support claim.
- 3.4 Civil fines act as encouragement for customers to ensure they notify the authority of appropriate information as soon as possible assisting with administration.
- 3.5 Where there is enough evidence of fraud believed to be beyond reasonable doubt and therefore enough to sustain a prosecution then the council will first consider whether it is in the public interest to undertake the prosecution. They will then consider which sanction is most suitable for the offence.

3.6 The test of “Public Interest”

The Council believes that it is not in the public interest to prosecute in most of the following cases:-

- the person is seriously or terminally ill
- made a voluntary disclosure of the offence before the Authority had any suspicions
- has mitigating factors that the Authority considers are relevant

3.7 Local Authority Caution

The Council may issue an Official Local Authority Caution in most cases where:-

- it was a first offence
- the offence is over a short period of time
- a full and frank admittance to the offence has been made

3.8 Criminal Financial Penalty

The Council may issue a Criminal Financial Penalty in most cases where:-

- it was a first offence, and
- there was no planning involved in the process,
- there were no other persons involved in the fraud;
- the person is not in genuine financial hardship or in need of Social Services assistance,

3.9 Prosecution

The Council seek to prosecute in most cases where:

- it was not a first offence, or
- there were other persons involved in the fraud,
- there is sufficient evidence to do so
- where it is in the public interest to do so
- the offence has continued for some time
- the offence is deliberate
- the offence involves collusion
- anyone who has been offered, and refused, a Criminal Financial Penalty or Caution.
- anyone who has been prosecuted for a similar offence
- anyone who obstructs an investigator in their duties

3.10 Having applied the criteria above, if a case is deemed suitable for prosecution a recommendation, together with admissible evidence shall be presented by the Investigation Officer to the Corporate Fraud Manger for consideration.

Following a review the Corporate Fraud Manager will either refer back to the Investigation Officer or refer for legal advice.

- 3.11 It is noted that some cases will not fall into any category. Every case will be considered on its own merits and a review presented to the Corporate Fraud Manager who will decide upon the appropriate course of action.
- 3.12 The Council will consider any mitigating circumstances, social factors, and the suspect's physical and mental condition.

4. Administrating the Prosecution Policy

- 4.1 When deciding whether to prosecute or not, the Council will consider relevant legislation, such as Fraud Act 2006, The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, Local Government Finance Act 1992, Social Security Administration Act 1992, Theft Act 1978, and the Human Rights Act 1998. Cases considered for prosecution include those where incorrect or incomplete information is provided in order to gain an advantage or cause loss to the Authority and/ or public funds administered by the Authority.
- 4.2 If the prosecution is agreed, proceedings will be initiated in accordance with any statutory limitations, as soon as possible, as unreasonable delays may result in the case failing at Court.
- 4.3 Prosecutions will be pursued by the Investigation staff along with the Corporate Fraud Manager together with appropriate legal services.
- 4.4 Consideration will be given to publicising all successful prosecutions as a deterrent.

5. Fraud by an employee or Member of the Council

- 5.1 Where any such cases are identified, the Corporate Fraud Manager will immediately report the matter to the Head of Audit Partnership.
- 5.2 In addition to the above procedures, an employee may also be subject to the Council's Disciplinary Procedures and a Member referred to the Monitoring Officer (Legal and Democratic) Ashford Borough Council.
- 5.3 A copy of the Council's Anti Fraud and Corruption strategy will be communicated regularly to staff and all staff will hold an up-to-date copy of the Council's current strategy. A copy of the strategy will be issued to new staff and its use and purpose explained to them as part of their induction.