

REPORT TO CABINET

Title: **REVISION TO BENEFIT FRAUD PROSECUTION AND SANCTION POLICY**

Date: 25 June 2009

Member Reporting: Councillor Kellaway

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Wards Affected: All Wards

1. SUMMARY

- 1.1 The purpose of this report is to provide a summary of the need for a revision to the financial limit in the current Benefit Fraud Prosecution and Sanctions Policy and to request that Members consider and approve the revision.

2. RECOMMENDATION: That:

- i) **A revision to the financial limit in the Council's Benefit Fraud Prosecution and Sanctions Policy from £3k to £5k be considered and approved ;**
- ii) **The policy and the outcome of prosecutions as part of the Council's zero tolerance in respect of those that attempt to defraud the Council, be promoted.**

What will be different for residents as a result of this decision?
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Residents will have assurances that the Council has robust procedures in place for preventing and deterring benefit fraud, the cost of investigations is proportionate to the benefits and Council monies are used for the purposes intended.

3. SUPPORTING INFORMATION

BACKGROUND

Background

- 3.1 On 13 December 2007, Cabinet endorsed a revised Prosecution and Sanctions Policy for the Council, which sets out the Authority's stance on Benefit Fraud. A Prosecution and Sanctions Policy is required to state the rules governing the sanctions (penalties) that are a consequence of fraudulent action in respect of Housing and Council Tax benefits.
- 3.2 Under the powers laid down by the Social Security Administration Act 1992, prosecution is only one of three possible sanctions, which a local Authority may impose following the investigation and establishment of an offence under the Act.

3.3 The three possible sanctions, which a Local Authority may consider in such cases, are:

- Formal Caution – Following a full and frank admission of the offence, a person may be formally cautioned. A record is then kept by the Borough of the offence for which the caution has been administered. All cautions will be recorded on the Department of Work and Pension's National database.
- Administration Penalty – Local Authorities have the power to levy a financial penalty in the sum of 30% of the fraudulent overpayment of benefits, recoverable over and above that overpayment. This penalty can be offered to the person in question as an alternative to prosecution. The person must accept this alternative in order for the penalty to be implemented.

Failure to accept either of the above options means that an Authority must consider prosecution.

- Prosecution – this is the ultimate sanction available and may be pursued under any suitable Act, with the Borough, the Department for Work and Pensions or the Crown as prosecuting authority.

3.4 The Prosecution Policy, whilst recognising that each case should be judged on its own merits, forms a set of guidelines on what the Authority would usually do in a particular situation rather than defining an absolute course of action.

3.5 One of the accepted recommendations at the December Cabinet meeting was that the financial benchmark for prosecution cases would be raised from £2,000 to £3,000. It was intended that this would reduce the number of minor fraud cases being prosecuted. This is indeed the case and people who commit frauds with a value of less than £3,000 are currently offered either a Caution or Administration Penalty as an alternative to prosecution.

3.6 However, a number of factors have recently resulted in us reviewing the Prosecution Policy level again. These factors are not unique to Windsor and Maidenhead but are national issues. These include: -

- Rent figures of between £150 and £230 per week are being seen much more regularly. This means that a relatively small case spanning even 10 to 15 weeks may result in an overpayment exceeding £3,000.
- Sentences handed down to benefit fraudsters; both locally and nationally, do not seem to be reflective of the offences committed. There are examples of Conditional Discharges being handed down in benefit fraud cases with no award of costs to the Authority.
- The preparation of prosecution cases by Benefit Fraud Investigators is a time consuming process incurring extra costs to RBWM in terms of officer time.

- In previous years, local authorities received sanction reward income from Central Government to encourage them to deal with benefit fraud. This ceased with effect from the 2006/07 financial year. The three types of sanctions are still used as a deterrent against benefit fraud but local authorities only have the power to levy a financial penalty in the sum of 30% of the fraudulent overpayment of benefits, recoverable over and above that overpayment.

3.7 In light of the above and in the opinion of the Head of Audit and Review and the Benefit Fraud Team, it would be prudent to consider raising the financial benchmark for prosecution cases from £3,000 to £5,000. This would reduce costs in terms of officer time and solicitor fees, provide quicker conclusions in cases where we are then able to offer an Administration Penalty or Caution instead of a prosecution, potentially increase income to the Authority from those which are subject to Administration Penalty and free up officer time to deal with other matters. In addition, from a benchmarking exercise, the financial benchmark of £5,000 is in line with that used by other local authorities.

3.8 In considering this recommendation, a review of cases prosecuted in the 2008/09 financial year, which would have been affected by this potential change, identified 7 such cases where the overpayment was between £3,000 and £5,000. Offering alternatives to prosecution in these cases would have potentially saved RBWM £1,500 in solicitor fees for guilty pleas (far in excess for not guilty pleas), plus officer time in terms of case preparation and may have generated an additional £8,300 in Sanction Penalties.

3.9 A copy of the revised Policy, taking account of an increased financial benchmark to £5,000 for prosecution cases is attached as Appendix A to this report. The remainder of the Policy remains unchanged.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	Agree the increase in the Prosecution Policy level from £3,000 to £5,000. This would reduce costs in terms of officer time and solicitor fees, provide quicker conclusions in cases where we are then able to offer an Administration Penalty or Caution instead of a prosecution. In addition, it would potentially increase income to the	LOW RISK	Revenue - reduced costs in terms of officer time and solicitor fees and more quickly conclude cases. Capital – none

	Option	Comments	Financial Implications
	Authority from those which are subject to Administration Penalty and free up officer time to deal with other matters.		
2.	Maintain the Prosecution Policy level at £3,000, which would prove more costly in terms of officer time and solicitor fees and less timely conclusions for cases where we could alternatively be able to offer an Administration Penalty or Caution instead of a prosecution. In addition, it would potentially reducing income to the Authority from those that could alternatively be subject to an Administration Penalty.	MEDIUM RISK	Revenue - more costly in terms of officer time and solicitor fees and less timely conclusions for cases Capital - none

4.2 Risk Assessment

Risk	Uncontrolled Risk	Controls	Controlled Risk
Cost of Officer time and fees involved in pursuing cases at current prosecution level is greater than the amount of revenue recovered.	Medium	Constrained by reluctance of the Courts to impose sentences and costs to the Authority to reflect time/costs of bringing a prosecution for relatively small sums i.e. <£5K	Medium

5. CONSULTATIONS CARRIED OUT

- 5.1 Consultation was undertaken with the Chief Executive, Directors and officers within the Benefit Fraud Team. In addition, a comparison was undertaken with other local authorities and the Department for Work and Pensions regarding the Prosecution and

Sanction policy levels set for their organisations, to ensure that the proposed prosecution policy level for the RBWM is in line with the levels set for those organisations.

6. COMMENTS FROM OVERVIEW AND SCRUTINY PANEL

6.1 The Panel endorsed the recommendation to revise the financial limit in the Council’s Benefit Fraud Prosecution and Sanctions Policy and to promote the policy and the outcome of prosecutions as part of the Council’s zero tolerance in respect of those that attempt to defraud the Council. Two minor additions to the report were requested: -

- a. It was suggested that a benchmarking exercise be undertaken to see whether the proposed policy is similar to other authorities – this had already been undertaken and the wording in para. 3.7 has been amended to reflect this.
- b. Under ‘controls’ in para 4.2 – first control has been removed as wording was misleading.

7. IMPLICATIONS

7.1 The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
Y	Y(1)	Y(2)	N/A	N/A	N/A

(1) The Prosecution Policy seeks to ensure that proper decisions are made in order to affect a deterrent to fraudulent activity in the Borough, thus discouraging crime and disorder.

(2) The Convention Rights relevant to this report are:

- Article 6 – Right to a Fair Trial
- Article 7 – No punishment without law.

Article 6 sets out minimum rights to which everyone is entitled and the basic right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 7 sets out that no one shall be held guilty of any criminal offence on account of any act or admission which did not constitute a criminal offence under national law, intentional law, at the time it was committed and no heavier penalty should be imposed than one applicable at the time the offence was committed.

Both persons directly claiming benefit and those supplying information in support of the claim for benefit may be victims within the meaning of the Act.

Article 14 is the prohibition of discrimination in the enjoyment of the rights and freedoms set out in the Convention.

Any interference with a Convention Right must be proportionate.

Background Papers:

- Benefit Counter Fraud Prosecution Policy
- Benefit Counter Fraud Strategy
- Benefit Counter Fraud Policy
- 2009/10 Benefit Fraud Business Plan