

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**FINANCE and PROPERTY ADVISORY BOARD**

**15 May 2012**

**Report of the Director of Finance**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision**

**1 BENEFITS INVESTIGATION UPDATE**

**Summary**

**This report updates Members on the work carried out by the section during 2011/12, work to date in 2012/13 and on developments taking place on the re-organisation of Benefits Investigation in advance of the introduction of the Universal Credit. It also introduces the Business Plan for 2012/13 and requests that Members endorse it.**

**1.1 Outturn 2011/12**

- 1.1.1 There were 120 cases opened during the year and 124 closed. Of the cases that were resolved 36 resulted in some form of penalty.
- 1.1.2 There were 14 Local Authority Cautions given. This is a caution that is recorded by the Council and the Department for Work and Pensions (DWP) and is retained on records for five-years. This can only be given where a person has admitted an offence and is an alternative to a prosecution. If the person reoffends within the five-year retention period then the Caution will be considered when determining the outcome of the future offence and can cited in Court.
- 1.1.3 There were 8 Administrative Penalties accepted as an alternative to prosecution. This is a penalty fixed at 30% of the overpayment determined as fraudulent. The amount of these penalties amounted to £2669.13 and this amount is in addition to the overpayment which is also recoverable.
- 1.1.4 There were 14 prosecutions all of which resulted in a guilty outcome. These cases are reported to Members and cases not previously reported on are included in the attached report. **[Annex 1]** The DWP decided not to prosecute in 3 cases that were joint working.

**1.2 Work to Date 2012/13**

- 1.2.1 At the time of writing this report there have been two Cautions offered and accepted, one Administrative Penalty offered instead of a prosecution at the request of the defence after the overpayment had been repaid in full.

- 1.2.2 There are two Administrative Penalties that have been accepted but still in the 28-day cooling off period. One case was given a warning letter after consideration of the circumstances.
- 1.2.3 There are currently 10 cases that have been recommended for prosecution. These are at various stages of progress either with the Council or DWP.

### **1.3 Housing Fraud**

- 1.3.1 There was one case of a fraudulent housing application that was referred to the section for investigation that resulted in a fraud being proven but no social housing being gained. The outcomes for these cases if proven are limited to a Caution or a Prosecution. In this case the public interest test was applied and the outcome was a Caution.
- 1.3.2 There is one case of a fraudulent housing application that has resulted in a person obtaining social housing, this at present is subject to legal proceedings.
- 1.3.3 The Housing Section is working closely with the Benefits Investigation Section to prevent fraudulent applications being successful.

### **1.4 Single Benefit Investigation Service (SFIS).**

- 1.4.1 Members will be aware that with the introduction of the Universal Credit (UC) that the Government has announced the formation of a Single Benefit Investigation Service (SFIS). This service will encompass investigators from Local Government.
- 1.4.2 The date for introducing this body is April 2013 but Local Authority staff will stay at the Council but will work under powers, policies and priorities. However, they will still be able to investigate Local Authority only cases.

### **1.5 Changes to Penalties**

- 1.5.1 The Welfare Reform Act 2012 and contained a number of changes to penalties that are available to punish fraud and error in the Benefits system. As there is an overlap between the old and new penalties based upon the date of the offence these are explained in the following paragraphs.

### **1.6 Administrative Penalty (Adpen)**

- 1.6.1 A new tougher penalty will be introduced as an alternative to prosecution.
- 1.6.2 The new tougher Adpen will be a minimum of £350 or 50% of the overpayment whichever is greater (up to a maximum of £2,000). The Adpen can also be offered where there is no overpayment (i.e. an offence has been committed but the fraud is stopped before an overpayment occurs). It can be recovered at the higher "fraud" recovery rate.

- 1.6.3 The Adpen replaces cautions as an alternative penalty for benefit fraud offences. The existing loss of benefit sanction for a period of 4 weeks to be applied to all benefit offences that result in the new financial penalty.
- 1.6.4 The offer of a penalty must be accepted in writing and once accepted, the additional 'cooling off' period (14 days) applies, during which the person can reconsider their decision to accept the penalty and seek further independent legal advice.
- 1.6.5 The changes to administrative penalties will be effective from 8 May 2012. Only offences committed wholly on or after 8 May will attract the increased administrative penalty.
- 1.6.6 Cases that take place before 8 May 2012 will still have the 30% Adpen amount charged and will have the 28 day cooling –off period.

## **1.7 Loss of Benefit**

- 1.7.1 The existing loss of benefit regime is being extended to include longer, tougher disqualifying periods and additional benefits/credits, including tax credits, the new universal credit and the personal independence payment.
- The existing loss of benefit sanction period of 4 weeks will be applied to all benefit offences that result in the new financial penalty.
  - All 1st convictions for benefit fraud to be subject to an extended disqualifying period of 13 weeks, except for cases of organised fraud where we propose an automatic 3 year benefit sanction.
  - The existing loss of benefit sanction for people convicted of a 2nd benefit offence within a 5 year period (Two Strikes) to be extended to 26 weeks.
  - A new loss of benefit sanction to be introduced for people convicted of a 3rd or further benefit offence within a 5 year period with a disqualification period of 3 years.
  - The proposed Loss of benefit sanctions also allows for the disqualifying period (except for ad pens) to be escalated based on the number of offences.
  - The offences must be committed within a 5 year time period.
  - This focuses on the number of offences and captures repeated criminality.
- 1.7.2 It is expected that the new loss of benefit provisions is to be effective from April 2013.

## **1.8 Cautions**

- 1.8.1 At present, a caution can be offered for benefit fraud offences as an alternative to a prosecution as long as specific criteria are met, and the case is one the DWP could take to court if the caution was refused. DWP policy is to no longer offer cautions as an alternative to the administrative penalty or prosecution where the offence is committed after 1st April 2012.
- 1.8.2 Local Authorities will still be able to offer cautions, where appropriate, until the introduction of the Single Fraud Investigation Service.

## **1.9 Civil Penalties**

- 1.9.1 The Welfare Reform Act also introduces a civil penalty which can be imposed by DWP and local authorities on claimants who negligently make incorrect statements without taking reasonable steps to correct them, or claimants who fail, without reasonable excuse, to provide information or to disclose changes in their circumstances, in both cases resulting in an overpayment of benefit. It will only apply where the overpayment period falls wholly after the commencement of the provisions and will not apply to cases of benefit fraud.
- 1.9.2 The amount of the civil penalty will be prescribed in regulations at £50. The current intention is to bring the civil penalty into effect from October 2012.

## **1.10 Council Tax Benefit**

- 1.10.1 Members will also be aware that, from April 2013, Local Authorities will be responsible for introducing a localised Council Tax Benefit system. It is not clear yet what powers of investigation will be retained by Local Authorities to deal with any fraud arising from this system. One of the parameters of the system however is to retain a local fraud service for the investigation of Council Tax fraud.

## **1.11 Business Plan 2012/13**

- 1.11.1 One of the requirements under the old Housing Benefits Performance Standards was for the section to prepare an annual Business Plan that was endorsed by Members. Although it these standards are no longer applicable the Housing Benefit Performance Guide recognises the production of an annual business plan as good practice.
- 1.11.2 The BIS Business Plan in conjunction with the BIS Cost Centre Performance Plan met the requirements of the old HBPS. Members will be aware that regular updates are provided to this Board on the outcome of the work of the BIS supported by an annual outturn report.
- 1.11.3 The business plan is updated to take account of changes in working practices as well as resources available and is reviewed annually by the Chief Internal Auditor and the Fraud Manager.

1.11.4 A copy of the draft BIS Business Plan for 2012/13 is attached as **[Annex 2]**.

## **1.12 Legal Implications**

1.12.1 The Section must comply with a strict legal framework within the legislation regarding criminal investigation in order to progress prosecutions for offences under the Social Security Administration (Fraud) Act 1997.

1.12.2 In addition there is a requirement to follow strict legislation in relation to conducting criminal investigations. Failure to comply with this could lead to evidence being deemed an un-admissible in court resulting in unsuccessful prosecutions and a loss of credibility in court with a potential for damages claims.

1.12.3 The Council also have a Prosecution Policy that requires consideration of the “public interest test” in order to avoid any potential inappropriate prosecutions.

## **1.13 Financial and Value for Money Considerations**

1.13.1 The Council has a duty to ensure that the correct benefit is paid to those who are entitled to receive it. A failure to investigate allegations of fraud could result in excess benefit being paid and ultimately to a reduced subsidy payment from central government.

1.13.2 The longer that a benefit claim takes to correct then the greater the overpayment will be. The Council lose 60% of subsidy on overpayments so there is an immediate cost to the Council for overpayments if the Council is unable to collect the debt.

1.13.3 The Council will consider all appropriate action in order to recover any overpayments of benefits.

## **1.14 Risk Assessment**

1.14.1 A failure to have an effective benefit fraud investigation process could lead to a failure to meet external inspection requirements.

1.14.2 In the worse possible scenario a failure to perform well in this area could result in Government intervention in Benefits Administration.

1.14.3 A significant reduction in the level and speed of Benefits Investigation could lead to an increase in fraudulent activity and a long-term increase in overpayments.

1.14.4 As the Council lose subsidy on overpaid benefits then the sooner an ongoing overpayment is stopped then the final overpayment is reduced. The Council policy is to recover all overpayments where possible and the smaller an overpayment is then the less time it takes to recover the debt.

1.14.5 A poor performance in benefit fraud investigation could lead to an increased level of external audit if it were considered to be failing.

## 1.15 Equality Impact Assessment

1.15.1 The investigation of potential benefit fraud is carried out under the Police & Criminal Evidence Act 1984 Guidance. This makes provision for the protection of vulnerable groups. In addition any sanction action arising from an investigation will consider the “public interest test” which also considers vulnerable groups.

1.15.2 All cases are dealt with in accordance with the evidence available and on its own merit using consideration of the safeguards above in order to avoid any impact on any groups.

## 1.16 Recommendation

1.16.1 Members are requested to consider the proposed Benefits Investigation Section Business Plan 2011/12 and to **recommend** endorsement by Cabinet.

Background papers:

contact: David Buckley

Benefit Investigation Section records

Sharon Shelton  
Director of Finance

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision is for acceptance of a business plan that takes into account the Benefits Anti-Fraud Policy which does not impact on any groups.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The Business Plan operates against a Benefits Anti-Fraud Policy that has provision to act in accordance with PACE rules and the public interest test when investigating fraud. Both of these measures provide protection for vulnerable groups.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*