

TONBRIDGE & MALLING BOROUGH COUNCIL
FINANCE, INNOVATION and PROPERTY ADVISORY BOARD

14 May 2014

Report of the Director of Finance & Transformation

Part 1- Public

Matters for Information

1 FRAUD UPDATE

Summary

This report informs Members of the work carried out by the Fraud Investigation Team during 2013/14, the progress of the Single Fraud Investigation Service and the potential impact on this Council.

1.1 Resources and Performance 2013/14

- 1.1.1 The Council has had a successful investigation team for a number of years. The primary role of the team has always been the investigation of benefit related fraud but in recent years work has expanded into other areas such as the investigation of Council Tax discounts and exemptions and Housing Fraud.
- 1.1.2 A number of changes occurred during 2013/14. Members will be aware that the shared Fraud Manager, James Flannery, left in June 2013 and was replaced by James Larkin in August 2013. In addition to this, one of the full time investigators opted for flexible retirement and took up a compliance role within the team. The team now consists of one full-time investigator, one part-time investigator, a part time compliance officer and a manager shared with Gravesham Borough Council, spending 50% of his time with Tonbridge & Malling.
- 1.1.3 During the year, the team received 392 referrals in relation to various alleged frauds. Of these referrals 218 were accepted for investigation or compliance enquiries dependent on the type of allegation and evidence available. 174 cases were rejected on the basis of insufficient information or because they were more suitable for investigation by the Department for Work and Pensions (DWP).
- 1.1.4 A total of 196 investigations were completed throughout the year. Of these, 121 were concluded with no evidence of fraud having been found. 53 were considered to be customer errors, these being 50 cases where overpayments of benefit were identified and 3 where excess discounts/exemptions were found but further fraud action was not deemed appropriate. It is worth noting that DWP guidance will not allow a benefit case to be considered a proven fraud unless a sanction is applied.

- 1.1.5 A total of 22 Cases were concluded with fraud having been proven and these cases resulted in the issue of 7 cautions, one of which related to a false application for housing, 5 administrative penalties for benefit offences with a total value of £5,137.58, all of which is retained by the authority upon repayment, and 10 successful prosecutions. A list of the prosecution cases is attached. **[Annex 1]**
- 1.1.6 A Civil penalty of £70 was also applied in a case where a person negligently failed to notify the authority of a change in circumstances that affected their entitlement to a Council Tax single person discount. The full value of any such penalties is retained by Tonbridge and Malling.
- 1.1.7 The result of these investigations led to a reduction of £3,775.44 paid out in Housing Benefit (HB) each week and a reduction of £710.50 in Council Tax Reduction Scheme (CTRS) each week.
- 1.1.8 These investigations also resulted in overpayments of £357,683.25 of HB and £50,358.13 of CTB being identified. They also identified additional Council Tax revenue of £3,590.81 through removal of CTRS and fraudulent discounts. The Council receive the same ration of this amount as their element of Council Tax.
- 1.1.9 The full value of additional revenue is believed to be higher but until recently it has been difficult to record relevant figures. Work is underway to record better statistics on such figures in 2014/15 and provide members with a more accurate picture in the future.
- 1.2 National Fraud Initiative Update**
- 1.2.1 Members will be aware that the Council participates in a national data matching exercise undertaken by the Audit Commission every two years. Following the demise of the Audit Commission this role will fall under the Cabinet Office in future.
- 1.2.2 The 2012/13 exercise led to receipt of 974 referrals relating to Housing Benefit and CTRS claims. The current position in relation to this exercise is outlined in the following paragraphs.
- 1.2.3 Approximately 930 referrals have been closed, some rejected because the authority was already aware of the information while others were closed following investigation or other enquiries. 44 referrals remain open with ongoing investigations.
- 1.2.4 Concluded cases have led to weekly HB reductions of £878.45 and weekly CTRS savings of £156.66 and have identified overpayments totalling £56,905.18 for HB and £10,935.89 for CTB. Administrative penalties have been applied as a result of two of these cases and further sanctions are anticipated from the cases still ongoing.

- 1.2.5 A large number of these cases are included within the performance stats mentioned above but as the exercise commenced in January 2013, some cases may have been concluded prior to the 2013/14 year.
- 1.2.6 The 2014-15 exercise covers suspected council tax fraud, matching the authority's Single Person Discount data against the electoral register. These referrals identify households who receive a single person discount but have more than one person listed on the electoral register.
- 1.2.7 The authority's participation in this exercise is compulsory so the referrals received have to undergo further checks to identify any discrepancies in records. The most recent exercise has led to receipt of 549 referrals relating to single person discount anomalies.

1.3 Single Fraud Investigation Service (SFIS)

- 1.3.1 As part of the move towards Universal Credit the DWP decided to introduce SFIS with the intention of this service investigating all benefit related fraud.
- 1.3.2 Despite the Universal Credit introduction date still not being certain, the DWP have decided to continue with the introduction of SFIS. All Chief Executives were sent a letter in March 2014 stating that there would be an implementation programme for SFIS commencing October 2014 and completing by March 2016.
- 1.3.3 The intention of the DWP is to transfer all local government staff "who are assigned solely or primarily to benefit investigation work" to the DWP under a Cabinet Office Statement of Practice, which will be "TUPE- like" arrangement, following the principles of TUPE as closely as possible. Councils are able to determine whether or not they believe investigators are solely or primarily assigned to benefit related work
- 1.3.4 The letter to Chief Executives was followed up by roadshows where local government representatives were given an outline of the timetable for the transfer and the conditions of transfer. Since the roadshows, the Local Government Association and Unison have queried the legality of this TUPE-like arrangement and discussions are ongoing.
- 1.3.5 According to the information provided at the roadshows, individual LA's will be notified of their month of transfer, during the implementation period, in early May. At the time of writing this report, no confirmation had been received.
- 1.3.6 Under SFIS the DWP will investigate all benefit related fraud, including HB. However, as the DWP do not administer HB, where evidence relating to HB claims is required in relation to investigations, they will make a request to the local authority to supply relevant material.
- 1.3.7 CTRS is not a benefit and therefore SFIS will not include this in their investigation. The DWP announced at the roadshows that they have set up a working party to

explore legislative requirements for joint working and sharing of information. It is anticipated that new legal gateways will have to be drawn up for the sharing of information and that local authorities will be required to investigate CTRS separately, conducting joint interviews where appropriate. There is no indication at this stage how CTRS offences will be treated in terms of criminal prosecution.

1.4 Potential Impact on Local Authority Fraud Teams

- 1.4.1 The local authority has a duty to safeguard public funds as set out under section 151 of the Local Government Act 1972. The investigation of suspected fraud forms part of this safeguarding.
- 1.4.2 All of the investigators employed by Tonbridge and Malling have undertaken formal training and are fully aware of the legislative restrictions and requirements associated with the investigation of criminal offences. The loss of all our investigators to the DWP would seriously affect the ability to investigate any other areas of fraud such as CTRS.
- 1.4.3 Historically, funding for investigation teams has been through the DWP Administration Grant and although this is guaranteed for 2014/15 it is likely to be reduced from 2015/16 onwards, or potentially removed completely. The method of calculating this reduction is under consideration by the DWP but at this stage there is no indication of what factors will be considered for determining this change.
- 1.4.4 All local authorities will still continue to have the need to investigate fraud in other areas. However, the problem for the Council is how this can be funded without becoming a growth item.
- 1.4.5 The Government has announced a fund of approximately £16.6m to be distributed to local authorities during 2014/15 and 2015/16 in order to continue fraud investigation. At the present time there is no indication whether this is a one off amount or how it will be distributed.
- 1.4.6 A number of surveys conducted by the National Fraud Authority and the Audit Commission in recent years have identified a number of key areas where councils are believed to be at risk of fraud and where potential losses far exceed the costs of maintaining a fraud presence. Some of these areas are details in this report and demonstrate where there will still be a need for investigation skills within the Council 'post SFIS'.

1.5 Council Tax Reduction Scheme

- 1.5.1 Although the CTRS scheme replaced CTB it is not a benefit and SFIS will not investigate any suspected fraudulent cases.
- 1.5.2 The main beneficiary of any successful investigation will be the County who are the main precept authority. Unlike CTB, any overpayment will not result in a loss

of subsidy to Tonbridge & Malling but will be debited directly to the taxpayers' CT account and, in the event that the overpayment cannot be collected, the 'burden' will be shared between the precept authorities according to their share of Council Tax.

- 1.5.3 Unlike the other discounts and exemptions relating to Council Tax, CTRS has specific legal powers of investigation under new legislation set out in the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013. These powers give LA's the ability to obtain relevant information from financial institutions, educational bodies and utility companies as well as a number of other sources.
- 1.5.4 These new regulations have also introduced criminal offences relating to false statements for CTRS claims and for failing to report changes in circumstances. The taxpayer is now required to report any change of circumstances with 21 days of them happening.
- 1.5.5 The authority has the option to apply a civil penalty where a person negligently fails to report a change affecting their CTRS entitlement, regardless of whether this is considered fraud. However, if a person is found to have committed an offence, the authority may prosecute. The authority also has the option to offer a Caution or Administrative Penalty as an alternative to a prosecution. It is worth noting that any civil or Administrative Penalty is retained by the Borough Council in full.
- 1.5.6 The Council has approximately 7,000 CTRS cases and during 2013/14, 344 of the referrals received and 169 of the completed investigations were connected to CTRS claims. Cases where discrepancies were identified led to a weekly reduction in CTRS of £710.50.
- 1.5.7 The average life of a benefit claim was estimated to be 32 weeks. While CTRS is not a benefit, applying this same calculation to the savings identified in 2013/14 could mean potential revenue of £22,736 in future years in total for which the Council would benefit to the same ratio of their Council Tax share. As this is no longer covered by subsidy received from central government, the losses fall directly on the authority and its residents.

1.6 Council Tax Discounts and Exemptions

- 1.6.1 Historically, where discounts and exemptions were found to be incorrect they were removed with any monies owed as a result being added to the taxpayer's council tax account.
- 1.6.2 Where a single person discount is claimed incorrectly the authority has the power to impose a fixed penalty if the taxpayer has provided incorrect information or changes in circumstances have not been reported promptly. These fixed penalties are set at £70 and are retained by the Borough Council in full.

- 1.6.3 False statements or failing to report changes in circumstances relating to discounts and exemptions are criminal offences and the authority does have the power to instigate proceedings against those found to have committed offences.
- 1.6.4 The Audit Commission report, Protecting the Public Purse 2013, reported that based on the annual fraud survey issued to local authorities, it was estimated that anywhere from 4%-6% of single persons discount claims could be fraudulent.
- 1.6.5 Tonbridge and Malling currently has approximately 14,497 council tax accounts with 25% single person discounts. The average 25% discount, taking into account the total council tax charge, is £450pa. This means that based on the estimates of 4%-6%, the authority could identify additional council tax of approximately £260,946 to £391,419 per annum.
- 1.6.6 While Kent County Council (KCC) would be the main beneficiary of any additional council tax revenue identified through fraud as they are the largest precept authority, Tonbridge and Malling could still receive additional income of £31,313 to £46,970 per annum.
- 1.6.7 KCC are currently exploring options for targeting resources towards the investigation of this type of fraud.

1.7 Housing

- 1.7.1 As Members are aware, the Council has a duty to ensure that housing applications are not fraudulent. TMBC was the first in Kent to successfully prosecute for a fraudulent housing application.
- 1.7.2 The Investigations Section work closely with the Housing Section and provides an advisory and investigation function for any applications that require reviewing.
- 1.7.3 The Housing Section makes a contribution to the cost of the Investigations Section in relation to this work.
- 1.7.4 New legislation has recently been introduced that has introduced criminal offences relating to the sub-letting and non-occupation of social housing. Part of this new legislation enables Local Authorities to undertake prosecutions for these offences on behalf of social landlords.
- 1.7.5 It is intended to approach a number of our social landlords with a view to exploring their interest in the authority providing an investigative service and/or undertaking prosecutions on their behalf.
- 1.7.6 One of the larger Housing Associations was approached to gauge their interest, and although no formal meetings took place it was felt that the costs may be the issue deterring them from entering into any arrangement for services to be provided.

- 1.7.7 Other Local Authorities have already started to undertake such work on behalf of Social Landlords and rather than charge a fee for investigation, they are carrying out the investigations for free in return for nomination rights on properties recovered through investigation. This is, potentially, an avenue to explore.
- 1.7.8 The Audit Commission estimates that nationally, the average cost to house a family in temporary accommodation for a year is approximately £18,000. As a result, any property recovered that enables a person to be taken out of temporary accommodation therefore saving the authority £18,000.
- 1.7.9 In Tonbridge and Malling the average cost for temporary accommodation is approximately £60 per night. This equates to just under £22,000 per year. If the authority were to undertake investigations on behalf of local social landlords, the nomination rights on any properties recovered would represent a £22,000 saving.

1.8 National Non-Domestic Rates

- 1.8.1 The Council had, in the past, simply been the collecting authority for these rates on behalf of central government. The new retention scheme, which came into effect in April 2013, gives the Council a direct financial interest in resolving fraudulent claims for discounts and exemptions in increased collections.
- 1.8.2 Recent surveys by the Audit Commission have identified this as an area of emerging trend in fraud and error, and have promoted the idea of increased investigation into this area.
- 1.8.3 Any fraudulent claims can be investigated using the offences under the Fraud Act 2006 and any costs awarded for successful prosecutions are retained by the Borough Council.

1.9 Internal Fraud

- 1.9.1 Recent national surveys have also suggested that, during a period of recession, there is a trend for internal fraud to increase and this is estimated to be approximately 1% of expenditure. The Council has a zero-tolerance policy towards fraud and has recently provided on-line fraud awareness training to staff. As Members are aware, any suspicions or concerns can be raised under the Council's Confidential Reporting Code (Whistleblowing).
- 1.9.2 Historically, there has been minimal internal fraud at this Council and there were no internal fraud allegations reported during 2013/14.
- 1.9.3 This low level of fraud could be partially due to the sound internal controls in place and the anti-fraud culture of the organisation. However, if there are any reported suspicions of internal fraud, these would require trained investigators to carry out an investigation in line with the legislative framework. Investigators can also support Internal Auditors in maintaining sound internal controls through specialist fraud prevention and detections skills.

1.10 Summary of Future Needs

- 1.10.1 The Council will continue to require a level of investigation skills in the future in order to safeguard public money and comply with the requirements of Section 151 Local Government Act 1972. I am currently in the process of considering what that level should be, how this is to be supplied and how it can be financed. Anticipated savings achieved through successful investigation could potentially make this a 'self-financing' initiative. I shall report back to Members again once I have 'firmed up' on the potential way forward.
- 1.10.2 The details in this report outline the potential losses to fraud that could be saved through investment in future investigation and, longer term, there is the possibility of the County Council setting up a fraud hub in the form of a 'data warehouse.' This would involve a shared database to allow potential fraud to be identified at an early stage through data matching with the suspected frauds identified being passed on for investigation at a local level.
- 1.10.3 Kent Financial Officers are currently reviewing the whole position of fraud resources county-wide, and as part of this work discussion is taking place with KCC and the other major preceptors as to how funding or resources for Council Tax work could be secured.

1.11 Legal Implications

- 1.11.1 The Council has a legal duty under s151 of Local Government Act 1972 and the Accounts and Audit Regulations to ensure that there are appropriate systems in place to prevent and detect fraud.

1.12 Financial and Value for Money Considerations

- 1.12.1 An embedded anti-fraud culture helps to prevent and detect fraudulent activity. The latest figures, supplied by the National Fraud Authority, suggests that local government has £1.9 billion of undetected fraud beyond the £207m identified.

1.13 Risk Assessment

- 1.13.1 National statistics suggest that if fraud is investigated with the results being published on a regular basis including local press then this will act as a deterrent to other potential offenders.

Failing to have an efficient and effective fraud resource would lead the authority to be open to an increased level of fraud resulting in possible significant losses.

Background papers:

contact: James Larkin

Nil

Sharon Shelton
Director of Finance & Transformation