Policy for prevention, detection and sanctioning of fraud in Housing Benefit, Council Tax Benefit, Council Tax Support and Council Tax Discount

September 2014
1. INTRODUCTION

1.1 This Policy covers the functions of Housing Benefits, Council Tax Benefit, Council Tax Support and Council Tax Discounts. This policy is an Appendix to the Council’s Corporate Anti-Fraud and Corruption Policy.

1.2 The Council is firmly committed to protecting public funds, specifically the payment of Housing Benefit and the awarding of Council Tax Support which total over £40 million each year.

1.3 The Council is also committed to tackling fraud in the award of Council Tax discounts and exemptions including Single Person Discounts (SPDs) which, if given falsely, represent lost income to the Council, the Police Authority and the County Council.

1.4 Housing Benefit, Council Tax Benefit, Council Tax Discount and Council Tax Exemption Fraud can occur where someone claims financial assistance in one of these areas and is dishonest in order to gain this assistance or deliberately fails to report changes which would have affected their entitlement.

1.5 In pursuit of these objectives, the Council seeks to maximise activities for the prevention, detection and investigation of these frauds. Where such frauds are established, Elmbridge Borough Council is determined to take appropriate action in the form of applying legal sanctions, and ensuring that all debts resulting from the frauds are recovered.

2. USE OF THE COUNCIL’S LEGAL POWERS

2.1 The Council will carry out its duties to prevent, detect, investigate and sanction in accordance with the law. Statutory duties and powers arising in relation to HB, CTS, CTB and Council Tax discounts and exemptions include:


- Local Government Act 1972. The general power to investigate and prosecute offences.

- Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013. In particular Regulations 7 and 8 (False Representation and Failing to Notify a Change in Circumstances).


- Fraud Act 2006, In particular, Section 2, Section 3, Section 4, (False representation, failing to disclose information, abuse of position).

- Theft Act (1968 and 1978 as amended) in particular, Section 17, False accounting. Section 24A, Dishonestly retaining a wrongful credit.

- Proceeds of Crime Act 2002 (POCA). To enable the Council to financially punish those that have benefitted from crime against the authority.
• Criminal Procedure and Investigations Act 1996 (CPIA). To ensure that all investigations are recorded, retained and revealed in a durable form.

• Regulation of Investigatory Powers Act 2000 (RIPA). To ensure that proportionality and necessity are considered when conducting surveillance, i.e. Human Rights are not infringed.
• The Forgery and Counterfeiting Act 1981. In connection with potential Identity Fraud and fabricating false statements and documents.

• Data Protection Act 1998. To ensure that all documents and information received and requested, is kept confidentially and legally.

2.2 These powers will all be applied as appropriate and relevant to the particular offence whilst balancing the requirements of the Human Rights Act and Police and Criminal Evidence Act (PACE) to protect the legal rights of those under investigation.

3. FRAUD PREVENTION & DETECTION

3.1 The Council undertakes a number of activities to assist in the prevention and identification of fraud. These include

• Ensuring that original documents (including passports, driving licences etc) provided by claimants to support their HB and CTS claims are checked for authenticity using Ultra Violet scanners.

• Undertaking extensive matching of data held on benefit or discount claimants with data held elsewhere in the Council and with other agencies and using any discrepancies or anomalies as a basis for possible fraud investigations.

• Use of Royal Mail Do Not Redirect envelopes for all correspondence which is sent out by the council in relation to HB and CTS to minimise opportunities for claimants in receipt of benefit or discounts to fraudulently claim from one address whilst living elsewhere.

• The operation of, and advertising of, a confidential fraud reporting hotline and dedicated email address for members of the public to report potential frauds relating to HB, CTS or CT discounts.

• Running ad hoc campaigns and raising awareness amongst Elmbridge residents to encourage reporting of potential fraud including publicising proven cases of fraud

• Undertaking training amongst council staff and members (in the form of e-learning) of what constitutes fraud and how to make referrals of potential fraud

• Ensuring that information is made available on fraud awareness through a range of outlets including the Council own web site (and dedicated ‘fraud hub’), external publications and press releases
4. HOW FRAUD IS INVESTIGATED

4.1 The Council has a dedicated Benefits and Discounts Fraud Investigation Team that investigates potential fraud. Investigation Officers will have obtained, or be in the process of obtaining, the qualification of Professionalism in Security (PINS) level 1 to 7, or equivalent.

4.2 Benefit Assessment Officers and Council Tax Recovery Officers can also be involved in reviewing potential fraud in some circumstances.

4.3 Reports of fraud are treated as ‘referrals’ and can come from members of the public, from councillors, other agencies or from staff. Potential fraud can also be highlighted as a result of data matching.

4.4 An electronic, risk based scoring system operates to assess and prioritise referrals of potential fraud. The scoring system ensures that investigation staff time is used to best effect and where necessary that only those cases that are most likely to be fraudulent are worked on. The factors used to assess referrals include:

- Source of referral
- Type of potential fraud
- Quality of information the forms basis of the referral

4.5 All fraud referrals are recorded electronically. The results of assessments are reviewed by a Senior Officer.

4.6 Fraud referrals that fail to meet the appropriate risk score for investigation are referred to other staff within either the Benefits Team or the Local Taxation Scheme where other visits or reviews might be necessary and recovery work put in place to recover any overpaid benefit or rebill Council Tax.

4.7 Referrals which proceed to investigation are recorded methodically, with a specific, securely held document case file.

4.8 Investigation work is carried out strictly in accordance with the relevant legal requirements and can include:

- obtaining and gathering a range of information and evidence about the alleged or potential fraud.

- taking formal witness statements. These are carried out following best practice and lawfully in accordance with PACE and PINS training requirements.

- obtaining specific information and evidence from employers or financial institutions. This is done by an officer formally authorised by the Council to use such powers under PINS 9 and 9A or equivalent.

- Interviews Under Caution (IUCs). These are carried out strictly in accordance with PACE.
Investigations involving working with, and sharing information with, external partner agencies are carried out within the remit of formal partnership working agreements. These agencies include the National Anti-Fraud Network (NAFN), the Department for Work and Pensions (DWP), the Police, Registered Social Landlords (RSLs). These operate within the framework of a data sharing protocol.

4.9 All cases under investigation are carefully monitored by a Senior Officer and appropriate supervision given to the Investigating Officer where necessary. All investigations are concluded either with a recommendation for no further action or with a recommendation for sanction action. Investigators prepare closure reports with recommended action and these are approved by a Senior Officer.

5. SANCTIONS WHERE FRAUD IS ESTABLISHED

5.1 The Council is committed to use of Sanctions to punish those who are responsible for fraudulent benefit claims or making fraudulent claims for Council Tax discounts and exemptions.

5.2 Prior to applying a sanction a prima facie offence will have been established/proven through investigation. Sufficient evidence will have been gathered to substantiate the fraud, falsification, guilt or intent. Sanctions used by the Council will take the form of:

- Criminal court prosecutions,
- Administrative Penalties (Fine) as an alternative to prosecution or
- Formal Cautions,

...together with full recovery of any overpaid benefit or removal of any discount and recovery of discount already given.

5.3 The most appropriate sanction action will be considered by reference to an internal sanction decision making framework. This will ensure a consistent approach to decisions taking into account factors including:

- the severity of the fraud,
- the value and duration of the overpayment,
- the circumstances of the offender, and
- the public interest test.

5.4 The most appropriate sanction will be recommended by the Team Leader for Investigations and approved by a Senior Manager from the Benefits Team (in accordance with the framework) although Formal Caution can only be considered where the offence has been admitted.

5.5 An internal Prosecution Panel will meet when required to consider and approve all cases where prosecution is recommended to ensure that such action (representing the most severe form of penalty) is applied in a fair and consistent manner. The panel is constituted by the Head of Housing, a representative of the Head of Legal Services and a Manager from the Benefits Team. The Team Leader for Investigations will bring and present cases to the panel. These will be assessed on a case by case basis, having due regard to evidential and public interest tests, and in full accordance with the overarching Prosecutions Policy.
administered by the Council’s Legal Services Team. The Prosecutions Policy affirms the general principles applying to decisions to prosecute, including the requirements of the Equality Act 2010, the Human Rights Act 1998, the Attorney General’s prosecution guidelines and the Criminal Procedure Rules. The Policy particularises the evidential and public interest tests referred to above, addressing the admissibility and reliability of evidence and considering the seriousness of the offence, the level of culpability of the suspect and the degree of harm caused to the wider community.

6. **RECOVERY OF PROCEEDS FROM FRAUDULENT ACTIVITY**

In addition to prosecution, where substantial sums of money have been gained through fraudulent activity, the authority will seek to take action to recover these monies via the Proceeds of Crime Act 2002 (POCA.)

7. **USE OF CIVIL PENALTIES**

The Council may issue financial penalties to those who delay in providing information relating to a benefit or discount or provide false information. Penalty charges can increase if claimants further delay in providing information requested.

8. **POLICY REVIEW & MONITORING**

8.1 A review of the effectiveness of the fraud referral risk assessment and the sanctions decision making framework will be carried out at least annually by a Senior Officer and appropriate changes will be made where necessary.

8.2 Performance measures will be set each year relating to fraud referrals, Investigations and outcomes. Performance will be closely monitored and the Council will keep under review the appropriate level of resources required to prevent, identify and sanction HB, CTS, CTB and CT discounts and exemptions fraud.