

<b>TITLE</b>	<b>Legislative changes to Prosecution and Sanctions Policy due to the introduction of the Council Tax Reduction Scheme</b>
<b>FOR CONSIDERATION BY</b>	Audit Committee on 25 September 2013
<b>WARD</b>	None Specific
<b>STRATEGIC DIRECTOR</b>	Julie Holland, Interim Head of Business Assurance and Democratic Services

### **OUTCOME / BENEFITS TO THE COMMUNITY**

Wokingham Borough Council remains compliant with legislation.

### **RECOMMENDATION**

The Audit Committee is asked to consider proposed amendments to the Prosecution and Sanctions Policy and recommend these for approval and inclusion in the Council's Constitution to Council, via the Constitution Review Working Group.

### **SUMMARY OF REPORT**

On 1 April 2013 Council Tax Benefit was replaced by The Council Tax Reduction Scheme 2013. As a result of this change Wokingham Borough Council cannot obtain information for, or impose sanctions on cases of Council Tax Reduction fraud under the current Housing and Council Tax Benefit underpinning legislation (Social Security Administration Act 1992).

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 are made under Sections 14A to 14C of the Local Government Finance Act 1992. The Regulations make provision for the creation of offences and power to impose penalties in connection with Council Tax Reduction Schemes.

### **Background**

Shared Legal Solutions have offered guidance on the Regulations and as such the Prosecution and Sanctions Policy has been updated to reflect these legislative changes. The offences that have been identified are; false representations in order to obtain a reduction and failure to notify a change in circumstance.

Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 details penalties to be given as an alternative to prosecution.

The legislative changes are attached in the amended policy, with changes highlighted in grey as Appendix 1.

## Analysis of Issues

The key points are as follows:

- Personal information in relation to Council Tax Reduction fraud cases can now be obtained under Regulation 3 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 by an Officer authorised by the Council's Section 151 Officer.
- Under Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, the Council can consider whether to administer an administrative penalty in lieu of prosecution in Council Tax Reduction Fraud cases, which is already in existence under the Social Security Administration Act 1992 for Housing and Council Tax Benefit Fraud cases.
- The amount of the administrative penalty is 50% of the amount of the excess reduction (rounded down to the nearest penny). This penalty can be a minimum of £100 and a maximum of £1000.
- There is an option for a fine of £100 for individuals if there are ground for instituting proceedings; or if the act or omission could have resulted in the amount of Council Tax the person is liable to pay being reduced under the Council Tax Reduction Scheme by an amount greater than the amount of reduction to which the person was entitled to under the scheme.

## FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

### Other financial information relevant to the Recommendation/Decision

N/A

### Cross-Council Implications (how does this decision impact on other Council services and priorities?)

The other service that this change impacts on is Revenues and Benefits and close

working continues with the relevant teams. This does not require any significant changes to service delivery or Council priorities.

**Reasons for considering the report in Part 2**

N/A

**List of Background Papers**

Prosecution and Sanctions Policy.

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## CHAPTER 9.8 - PROSECUTION AND SANCTION POLICY

### 9.8.1 Introduction

Wokingham Borough Council will prosecute any person who commits a criminal offence against systems administered by the Council, including cases of welfare benefit fraud; and/or assaults or threatens any member or employee of the Council, if there is sufficient evidence and if, in the opinion of the council, it is in the public interest to do so.

#### 9.8.1.1

When deciding if it is in the public interest, all officers of the Council will be guided by the Code for Crown Prosecutors. Whenever it is appropriate, the Council will consider offering other sanctions as an alternative to prosecution.

#### 9.8.1.2

The Council will consider each case on its own merits before deciding whether or not to prosecute. If payments in excess of benefits entitlements are shown to have been made, the Council will (where appropriate) take action to stop further payments/ recover any overpayments.

### 9.8.2 Alternative Sanctions - Cautions

We will consider a caution where:

- a) the offender has made a voluntary disclosure of the offence or otherwise admits the offence; or
- b) the offence is a very minor or technical one; and
- c) the offender has no unspent previous convictions, cautions or other penalties.

### 9.8.3 Alternative Sanctions - Other Penalties

We may offer an alternative penalty where:

- a) the case does not involve factors that make prosecution the only realistic option (such as collusion, abuse of position, deliberate commission); and
- b) the offender has no unspent previous convictions, cautions or penalties; and
- c) such an alternative sanction is available for the offence by law.

### 9.8.4 Code for Crown Prosecutors – The Evidential Test

When making a decision on whether to prosecute, the Council will first consider whether there is sufficient evidence:

- a) is there sufficient evidence to provide a realistic prospect of conviction? And
- b) is the evidence reliable and able to be used in court?

### 9.8.5 Code for Crown Prosecutors – The Public Interest Test

Once the Evidential Test has been satisfied, the Council will then consider whether the Public Interest Test is satisfied. The Public Interest Test will be assessed following the

guidance in the “Code for Crown Prosecutors” to ensure that any prosecution is in the public interest.

## **9.8.6 Policy Guidelines**

### **9.8.6.1 Introduction**

This policy identifies the procedures for referring fraud cases for sanction and potential prosecution to the Council’s Sanction Panel, to ensure cases are dealt with in a fair and equitable manner. This policy applies to all areas of investigation, including Housing and Council Tax Benefit Investigations and Council Tax Reduction.

### **9.8.6.2 Procedure**

On completion of the investigation, the Investigating Officer will complete a Sanction Panel Referral report. The report will include:

- a) a summary of the relevant facts of the case;
- b) a list of supporting evidence;
- c) a summary or transcript of any interviews;
- d) the specific legislation and/or council policy that has been breached; and

The report will then be passed to the Sanction Panel for a decision. The Sanction Panel consists of the Head of Transactional Finance, the Corporate Counsel and the Strategic Director of Resources. In the event of any potential conflict of interest, the Council’s Monitoring Officer will be consulted.

### **9.8.6.3 Decision Criteria**

In arriving at the decision of the appropriate sanction, the following general principles will be taken into account. Each case will be considered on its own merits and with regard to the Code for Crown Prosecutors.

- a) the decision must be fair, independent and objective;
- b) no personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness will influence the decision;
- c) the Sanction Panel must not be affected by improper or undue pressure from any source;
- d) the Council must always act in the interests of justice and not solely for the purpose of obtaining a conviction; and

- e) the Council will have regard to its obligations under equality legislation, the Human Rights Act 1998 and the Criminal Procedure Rules currently in force.

#### **9.8.6.4 Code For Crown Prosecutors - The Evidential Stage**

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. The evidence must be reliable and be able to be used in court. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

#### **9.8.6.5 Code For Crown Prosecutors - The Public Interest Stage**

The Sanction Panel must consider whether it is in the public interest to prosecute. Each case will be considered on its own facts and merits and an overall assessment will be made. The Code for Crown Prosecutors should be referred to for further information.

#### **9.8.6.6 Alternatives To Prosecution - Cautions**

A simple caution may be offered to an offender as an alternative to prosecution. It is a serious matter and can be recorded by the Police and may be cited in any subsequent court proceedings.

The aims of a caution are:

- a) to deal quickly and simply with less serious offenders;
- b) to avoid unnecessary appearance in the criminal courts; and
- c) to reduce the chances of them re-offending.

In order to safeguard the offender's interests, the following conditions must be met before a caution can be administered:

- a) there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- b) the offender must admit the offence; and
- c) the offender must understand the significance of the caution and give informed consent to being cautioned.

A caution will be considered where:

- a) the offender has made a voluntary disclosure of the offence or otherwise admitted the offence; or
- b) the offender is a juvenile or is elderly; or
- c) the offence is a very minor or technical one; and
- d) the offence has caused only a small loss to funds; and
- e) the offender has no unspent previous convictions, cautions or other penalties.

A caution should be administered in person by the Senior Investigations Officer, Investigations Manager or the Business Assurance Manager. The significance of the caution must be explained:

- a) that a record of the caution will be kept by both the Council and the Department for Work and Pensions (if the matter relates to a welfare benefit offence);
- b) the existence of the caution will influence the decision whether or not to prosecute if the person should offend again;
- c) that it may be cited in any subsequent court proceedings;
- d) the Council will still take steps to recover any overpayments; and
- e) if the offer of a caution is declined the Council may instigate criminal proceedings.

#### **9.8.6.7 Alternatives to Prosecution - Administrative Penalties**

Under Section 115 of the Social Security Administration Act 1992, the Council can consider whether to administer an administrative penalty in lieu of prosecution in Housing and Council Tax benefit fraud cases.

In considering this option, the case in question must still fulfil the criteria for a prosecution. If the case meets the criteria for prosecution, a fine of 30% of the overpaid benefit can be offered for overpayments accrued before April 2012. For overpayments fully accrued after April 2012, a fine of 50% of the overpaid benefit can be offered up to a maximum of £2,000.

An administrative penalty will be considered where:

- a) the case does not involve factors that make prosecution the only realistic option (such as collusion, abuse of position, deliberate commission); and
- b) the offence has caused only a small loss to funds; and
- c) a caution is not appropriate; and
- d) the offender has no unspent previous convictions, cautions or penalties.

An administrative penalty should be administered in person by the Senior Investigations Officer, Investigations Manager or the Business Assurance Manager. The significance of the administrative penalty must be explained:

- a) there is a 28 day cooling off period in which agreement to accept the administrative penalty can be withdrawn;
- b) that a record of the penalty will be kept by both the Council and the Department for Work and Pensions;
- c) the existence of the administrative penalty will influence the decision whether or not to prosecute if the person should offend again;

- d) the Council will still take steps to recover any overpayments in addition to the administrative penalty; and
- e) if the offer of an administrative penalty is declined (or withdrawn during the cooling off period) the Council may instigate criminal proceedings.

Under Regulation 11 of The Council Tax Reduction Schemes (detection of Fraud & Enforcement) (England) Regulations 2013, the Council can consider whether to administer an administrative penalty in lieu of prosecution in Council Tax Reduction fraud cases.

Regulation 11 deals with alternative penalties to be given to avoid prosecution.

The regulation applies where:

- a) Liability to pay Council Tax has been reduced under the Council Tax Reduction Scheme;
- b) the amount of Council Tax reduced is greater than the amount entitled under the scheme;
- c) the award of the reduction was attributable to an act or omission on the part of a person; and
- d) there are grounds for instituting proceedings against a person for an offence (under these Regulations or any other enactment) relating to the award of the excess reduction.

Where Regulation 11 applies the local authority may give the individual written notice to invite them to pay a penalty and inform them that if they agree, no proceedings will be instituted against them.

The amount of the penalty is 50% of the amount of the excess reduction (rounded down to the nearest penny). It can be a minimum of £100 or a maximum of £1000. To be calculated on a daily basis beginning on the first day in respect of the excess reduction was awarded and ending with the day on which the authority knew or ought reasonably to have known that an excess had been awarded.

Regulation 11 also applies where it appears to a billing authority that –

- a) there are grounds for instituting against a person for an offence (under these Regulations or any other enactment) relating to an act or omission on the part of P the person in relation to a Council Tax Reduction Scheme; and
- b) the act or omission could have resulted in the amount of Council Tax the person is liable to pay being reduced under a Council Tax Reduction Scheme by an amount greater than the amount of reduction to which the person was entitled to under the scheme.

The amount of penalty in a case falling into the above category is £100.



#### **9.8.6.8 Other Civil Penalties**

Under the Regulatory Enforcement and Sanctions Act 2008, other civil sanctions may be imposed as appropriate. These will be imposed in accordance with the relevant service's specific procedures i.e. Planning, Environmental Protection, Licensing, Trading Standards, Antisocial Behaviour. Civil action may also be taken in relation to a person's criminal activity. Examples of civil action include:

- a) Recovery of money owed by the defendant;
- b) claims for damages where property has been stolen;
- c) damages for losses incurred through the defendant's fraudulent activity;
- d) claims for damage to property;
- e) claims for non-payment of rent lawfully due; or
- f) Claims for any loss incurred as a result of the defendant's criminal activity, such as clean up or repair.