



Portfolio Holder Report

The portfolio holder will make a decision on this item after seven days have elapsed (including the date of publication).

Report of:	Portfolio Holder	Date of publication
Mark Billington, Service Director People and Places	Cllr Alan Vincent, Leader and Resources Portfolio Holder	2 November 2017

The introduction of a Civil Penalty Scheme in respect of overpayments of Housing Benefit and Council Tax Support

1. Purpose of report

- 1.1 To seek approval for the introduction of a civil penalty scheme in respect of overpaid housing benefit (HB) and localised council tax support (LCTS).

2. Outcomes

- 2.1 The introduction of a civil penalty scheme in order to encourage benefit claimants to report changes in their circumstances as they occur, and to reduce the level of overpayments being created.
- 2.2 A reduction in the amount of HB subsidy lost to fraud and error.

3. Recommendation

- 3.1 That the proposed Civil Penalty scheme and the revised Sanction Policy be approved.

4. Background

- 4.1 The council currently awards over £30 million per year in HB, and a further £9 million in LCTS. Funding for HB expenditure is provided by the DWP, who reimburse the council in full, via subsidy payments, in respect of correctly paid benefit. The DWP do not normally meet the full cost of any overpayments of HB that have been made however, with the level of subsidy received being determined by the circumstances leading to the creation of the overpayment. In particular, overpayments occurring as a result of fraud or "claimant error" only attract a subsidy rate of 40%.
- 4.2 Funding for LCTS is provided via the DCLG, but does not meet the full cost of the LCTS scheme. As the funding for LCTS is a specified amount, and

is not determined by the amount spent, there is no scheme in place for reimbursing the council in respect of LCTS overpayments. Instead any overpaid amount is simply added to the claimant's council tax account and recovered using the same methods of recovery as those employed to recover other unpaid council tax debt.

4.3 Overpayments of HB caused by fraud or claimant error are recoverable and are normally collected via:

- “Clawback” from ongoing HB entitlement i.e. the claimant remains entitled to a reduced amount of HB, from which a weekly deduction is made.
- Clawback of a claimant's entitlement to HB being paid by another Local Authority, assuming that a) the claimant's forwarding address is known, and b) that the LA is willing to make the deductions.
- Clawback from other social benefits via the DWP.
- The issuing of a sundry debtor account – these are issued to claimants whose circumstances mean that they are no longer entitled to claim HB.
- A direct earnings attachment in cases where the claimant's or debtor's employers are known.

5. Key issues and proposals

5.1 In 2016/17 HB overpayments totalling £727,768 were identified in respect of fraud or claimant error. The council only received £291,107 (40%) subsidy in respect of these overpayments, which means that it needs to recover at least £436,661 of the overpaid HB in order to cover the shortfall in funding. The council is allowed to keep any overpayments it collects over and above the shortfall.

5.2 In August 2015 the DWP took over responsibility for the investigation of suspected fraudulent claims for HB. As a result the council can no longer investigate HB fraud, or “sanction” (issue an administrative penalty or official caution to) fraudulent HB claimants.

5.3 Since August 2015 the numbers of HB fraud investigations and subsequent prosecutions in Wyre has dropped substantially. Recently the DWP announced that the value of overpayment required in order to trigger investigation for HB fraud was to be increased to £3,000 unless there are aggravating circumstances. This means that overpayments of less than that amount would not be considered for investigation, and the DWP would take no action in respect of these cases. Many of the data-matching files the council receive from the DWP result in overpayments being generated of up to £3,000 in value. These cases were previously referred to the DWP to treat as potentially fraudulent claims and investigate. The increases in

the thresholds make it a redundant exercise to refer many of them to the DWP going forward.

- 5.4** It is anticipated that the recently introduced Verification of Earnings and Pensions (VEP) scheme, which allows for the confirmation of claimant and partner earnings via the Inland Revenue, will initially lead to an increase in the value of HB overpayments identified, before reducing them in the longer-term. Though use of VEP will initially have the impact of increasing the volume of HB overpayments generated, it is important that the council maximise its use at the earliest opportunity as it will still be possible to recover many of the overpayments created from ongoing HB entitlement. As the roll-out of Universal Credit (UC) continues and more of the councils' HB caseload is transferred over to UC, the overpayments of HB will be much harder to recover as the council will be reliant on the DWP making an attachment to UC, which may not be possible if overpayments of other benefits are also being recovered.
- 5.5** With the exception of those overpayments recovered via clawback from ongoing HB entitlement, HB debts are becoming increasingly difficult to recover. There are a number of reasons for this, including the fact that unlike the legal powers the council has to recover unpaid council tax, it holds no such legislative authority in respect of the recovery of HB. Whilst the council can refer debts to the same Enforcement Agents used to collect unpaid Council Tax, these agents can only act as Collection Agents in respect of unpaid HB debt, and they too do not have the same legislative power to enable them to easily collect the debts.
- 5.6** It is important that the council has a mechanism in place that encourages claimants to report changes in their circumstances detrimentally affecting their entitlement to HB and, or, LCTS in a timely manner. It is therefore proposed that in accordance with section 115D of the Social Security Administration Act 1992 as amended by the Welfare Reform Act 2012, the council introduce a Civil Penalty scheme. This would allow for the imposition of a £50 penalty to claimants who fail to report promptly changes in their circumstances detrimentally affecting their entitlement to HB. Similarly a £70 penalty could be imposed in respect of any failure to report a change in circumstances relating to a claim for LCTS. Not only would the imposition of such a penalty offer a deterrent to those who regularly fail to report changes in their circumstances, but it would also provide the "aggravating" circumstances to prompt the DWP to "sanction" persistent offenders.
- 5.7** The imposition of a civil penalty is not dependent on the completion of an investigation, or proving that the claimant deliberately failed to report the change in their circumstances. Instead a penalty could be imposed simply as a consequence of a failure to report a change in circumstances, regardless of the reason for the failure.
- 5.8** To encourage claimants to report changes in their circumstances, the benefits team have for some time been asking those claimants who benefit officers have face to face contact with, to complete a change in

circumstances awareness form. The form provides the claimant with an extensive list of changes that need reporting should they occur. The claimant is prompted to give an example of something they would report and signs to say they understand that they have to report changes in their circumstances. Most working age claimants have now completed and signed at least one of these forms, and many have signed two or more. Before issuing a penalty, officers will give consideration as to whether or not the claimant has been advised of their responsibility to report changes in their circumstances as they occur, and completed a change in circumstances awareness form. The completion of such awareness forms will not be the only factor taken into consideration however, in determining whether or not a penalty should be issued. Officers will also take into consideration other factors such as whether or not the claimant is a persistent offender, the amount of the overpayment, and whether or not the claimant is likely to face any other sanction.

5.9 Any income raised through the imposition of civil penalties can be retained by the council to help offset the administration costs incurred in collecting overpayments.

5.10 The Sanction Policy has been updated to reflect the introduction of the civil penalty scheme, and a copy is attached.

6. Delegated functions

6.1 The matters referred to in this report are considered under the following executive function delegated to the Resources Portfolio Holder (as set out in Part 3 of the council’s constitution): “To determine charges or fees for any relevant services operated within the Portfolio.”

Financial and legal implications	
Finance	The cost of administering and collecting penalties would be minor and therefore there would be no impact on existing budgets. Civil penalties will generate an additional General Fund income but the primary intention of this proposal is for penalties to be used as a deterrent measure, not a regular source of income. Over time it is expected that the revenue generated will decrease as the policy is publicised and those affected make the necessary declarations in good time rather than fail to advise the council late or at all.
Legal	Under section 115D of the Social Security Administration Act 1992 as amended by the Welfare Reform Act 2012, the council is able to introduce civil penalties where there is a failure to report a change of circumstances relating to a claim for LCTS/HB. The Sanction Policy has been updated to reflect the introduction of the civil penalty scheme.

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	✓
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

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List of background papers:		
name of document	date	where available for inspection
None		

List of appendices

Appendix 1 – Investigation, Sanction and Prosecution Policy

arm/ph/re/cr/17/0010pm1

Wyre Council

Investigation, Sanction and Prosecution Policy

Introduction

The council is committed to the detection of fraud and has a duty to ensure that housing benefit (HB) and localised council tax support (LCTS) are paid correctly and that council tax is billed correctly. This policy sets out the action(s) the council may take in cases of fraud or misinformation which result in the incorrect payment of HB, and/or LCTS, and the incorrect billing of council tax.

The investigation and sanction of suspected cases of LCTS fraud

In accordance with the Council Tax Reduction Schemes (Detection and Enforcement) regulations 2013, the council is empowered to investigate suspected cases of the fraudulent claiming of LCTS, and to prosecute, or issue administrative penalties, as appropriate in proven cases of fraud. This function is undertaken by the Compliance team.

In cases where an overpayment of LCTS has occurred as a consequence of a recipient's failure to report a change in their circumstances, the council may choose not to investigate the alleged fraud, but instead to use the powers it has been granted under section 115D of the Welfare Reform Act 2012, and issue the recipient with a civil penalty of £70. The issuing of such a penalty is not dependent on proving that the recipient deliberately failed to report a change in their circumstances detrimentally affecting their entitlement to LCTS, but instead that the overpayment has occurred, regardless of the reasons why, and that more than one calendar month has elapsed since the date the change in the recipient's circumstances occurred.

If it is deemed appropriate to issue a civil penalty, then the amount of the penalty (£70) will be added to the recipients council tax account and recovered in line with standard council tax recovery procedures.

In cases of proven LCTS fraud, the action taken will be determined by the circumstances leading to the overpayment occurring, the amount of the overpayment, the length of time the overpayment has occurred over, and the recipient's knowledge and previous history of reporting changes in their circumstances.

Having regard to the Code for Crown Prosecutors, the council will consider prosecuting, or offering an administrative penalty as an alternative to prosecution, in cases where there is considered sufficient evidence (proving beyond a reasonable doubt) that CTS fraud has been committed.

However, the council considers it is less likely that a prosecution is required if the following circumstances apply, unless the alleged offence is not the first one, is likely to be repeated or is considered to be very serious and premeditated:

- Where there is evidence that the alleged offender is suffering from any significant mental or physical ill health
- Where the amount concerned is not material and recovery would constitute an inefficient use of public funds
- Where the alleged offender was misled, and it is considered, acted in ignorance
- Where extenuating social circumstances exist, and the set of circumstances is so exceptional that it is not considered that a prosecution is reasonable or appropriate
- Where it is not in the public interest

Cases where prosecution would be considered to be more appropriate than an administrative penalty:

- Where the recoverable overpayment caused by the alleged offence is substantial. It is considered that an overpayment of over £1,500 would normally be too serious to offer an administrative penalty as an alternative to prosecution.
- Where the alleged offence/fraud continued over a long period (this council considers a long period to be over 6 months).
- Where the fraud was calculated and deliberate (planned from the outset).
- Where the person has previously been convicted of Social Security or Local Authority fraud.
- Where a simple caution or administrative penalty has already been agreed for a previous fraudulent claim.
- Where the alleged offender was in a position of trust (e.g. a member of staff).

Cases where an administrative penalty will be considered as an alternative to prosecution:

- Where, it is determined that there is a recoverable overpayment as a result of an act or omission on the part of the alleged offender, and grounds exist for instituting criminal proceedings for the alleged offence. This applies whether or not the person admits the offence, and where the overpayment is over £200, but under £1,500.
- Where prosecution is a possibility, but not the preferred option, with regard to the individual merits of the case.

Any administrative penalty issued will be for 50% of the value of the total overpayment generated as a consequence of the fraud, for example a total fraudulent overpayment of LCTS of £1,000 would result in the issue of an administrative penalty of £500.

An administrative penalty will not be offered, if a prosecution is not being instigated because it is considered unlikely to succeed in court. Any action under these guidelines must first satisfy the principle that there is sufficient evidence to prove the case beyond reasonable doubt.

The lists above are not exclusive or exhaustive and each case will be considered on its own merits.

If an administrative penalty is appropriate, and is to be offered to, and agreed by, the alleged offender, then it will be recovered via the sundry debtor system. The council will use every method at its disposal to effect recovery.

The offer and acceptance of an administrative penalty will not give immunity from criminal proceedings for a different offence.

Housing Benefit Fraud

Reviews of HB entitlement are also undertaken by the Compliance team. However, cases where HB fraud is suspected are referred to the Department for Work and Pensions (DWP) to investigate.

In cases where information has come to light that has already resulted in the re-calculation of a claimants entitlement to HB, then instead of referring the matter to the DWP to consider for

investigation/sanction, the council may instead choose, in accordance with section 115D of the Welfare Reform Act 2012, to issue the claimant with a civil penalty of £50. The issue of such penalties is not dependent on proving that the claimant deliberately failed to report a change in their circumstances detrimentally affecting their entitlement to HB, but instead only that the overpayment occurred, regardless of the circumstances, and that more than one calendar month has elapsed since the change occurred.

The issue of a civil penalty will not normally be considered appropriate if:

- The claimant has previously been prosecuted for benefit fraud, or issued with an administrative penalty
- The amount of the overpayment is in excess of £3,000 (the minimum overpayment amount the DWP will take into account before considering the issue of an administrative penalty).
- A maximum of two civil penalties for failing to report an HB change in circumstances have previously been issued.
- The claimant is mentally or terminally ill

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