



Committee and date

Audit Committee

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Item No

20

Public

REQUEST FOR APPROVAL OF A PROSECUTION POLICY

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Summary

The Department of Work and Pension's good practice guidance recommends that members approve the Local Authorities Prosecution Policy.

The Prosecution Policy represents a commitment by Shropshire Council to implement a robust anti-fraud regime in order to protect public funds and to ensure that benefits are delivered to those who have a true entitlement to them.

When intention and planning of benefit fraud is involved, then Shropshire Council, through its delegated investigation officers, will consider the circumstances of the individual and, where appropriate, will consider prosecution.

Recommendations

Members are asked to approve the prosecution policy contained within this report.

Report

Background

1. Shropshire Council is committed to protecting public funds through its action against fraud. Where evidence that a customer of Housing and, or Council Tax Benefit has been involved in perpetrating a fraud against the Council and, sufficient evidence exists to sustain a prosecution with a realistic prospect of conviction, then the Fraud Team Leader will consider, on behalf of Shropshire Council, whether it is in the public interest to undertake a prosecution.

The Public Interest Test

2. Shropshire Council may consider the option of prosecution **more** likely if:
 - The offence was deliberate and not caused by a genuine mistake or misunderstanding.
 - There is evidence of collusion.
 - The defendant was a 'ringleader' or organiser of the alleged offence.
 - The defendant was in a position of trust or authority.
 - The defendant has previous convictions for similar offences.
3. Shropshire Council may consider the option of prosecution **less** likely if:
 - The financial loss was minor.
 - There was no planning involved in the process.
 - There was, is a significant delay in the offence being committed and the prosecution being brought (unless its complexity has warranted a lengthy investigation, or the delay has been caused by the defendant).
 - Consideration will also be given to the personal circumstances of the defendant such as physical and mental health due to age or disability and, or the financial situation of the customer.
 - The above criteria are not exhaustive and do not cover all situations.

Formal Cautions

4. Shropshire Council may use cautions as an alternative where it is felt prosecution is not in the public interest for cases such as:
 - The customer has no history of benefit related fraud.
 - The amount involved was insufficient to merit a prosecution in the public interest.
5. A caution will only be administered where there is sufficient evidence to sustain a prosecution and where there is a full admission of guilt by the offender.
6. Shropshire Council will consider prosecution if the defendant refuses to accept a formal caution.
7. Formal cautions are not recorded as a criminal offence.

Administrative Penalties

8. Shropshire Council may use Administrative Penalties as an alternative to prosecution in such cases as:
 - It was the first time the customer had caused a fraudulent overpayment.
 - There was no planning in the process.

9. There must be grounds for criminal proceedings and sufficient evidence to justify court action, but prosecution is not considered the most appropriate action. However, an Administrative Penalty cannot be offered where it is considered that a prosecution would be unlikely to succeed.
10. An Administrative Penalty is a financial sanction equivalent to 30% of the benefit overpayment. This is in addition to the total overpayment of benefit which is also recoverable.
11. Shropshire Council cannot impose an Administrative Penalty and the customer is under no obligation to accept it. However, once a customer has accepted a penalty he, she has 28 days in which to withdraw their decision.
12. Once a person accepts a penalty he, she is then immune from criminal proceedings on that particular charge. If the penalty is not paid, the customer will be pursued through action in the County Court.
13. Administrative Penalties are not recorded as a criminal offence.
14. Department for Work and Pensions (DWP) Guidance: Although no monetary value has been stated within the policy above or below regarding which sanctions will be considered, guidance will be sought from the relevant DWP thresholds at the time a decision is being made.

Investigation of Cases

15. During the course of an investigation all staff will routinely:
 - Establish the facts in every alleged or suspected case.
 - Gather sufficient admissible evidence.
 - Remain impartial to every investigation and conduct the investigation with fairness, tact and discretion.
 - Operate in accordance with the provisions of the Police and Criminal Evidence Act 1984, The Criminal Procedures and Investigations Act 1996, the European Convention of Human Rights 1998 and the Regulation of Investigatory Powers Act 2000.
 - Record all activity via a QB50 and file their investigation work safely and securely.
 - Comply with all statutory Data Protection requirements and treat all findings, records and documentation securely and confidentially.
 - Operate in accordance with the provisions of any relevant Council regulations, policies and codes of conduct.
 - Act at all times in accordance with this policy.
16. This policy along with the anti-fraud strategy will be reviewed annually as part of the Benefits Service Review process.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
DWP Good Practice Guide Checklist 6

Human Rights Act Appraisal

Environmental Appraisal

Risk Management Appraisal

The presence of a Prosecution Policy allows the Council to implement a robust anti fraud regime, protect the public purse whilst respecting customer rights.

Community / Consultations Appraisal

Cabinet Member

Keith Barrow, Leader of the Council and Brian Williams, Chairman of Audit Committee

Local Member

Appendices

None