

Subject:	Sanction and Prosecution Policy	Status:	For Publication
Report to:	Cabinet	Date:	13 th October, 2021
Report of:	Head of Customer Services and IT	Portfolio Holder:	Communities
Key Decision:	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception <input type="checkbox"/>	Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required:	Yes	Attached: Yes
Biodiversity Impact Assessment	Required:	No	Attached: No
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1.	RECOMMENDATIONS
1.1	For Cabinet to approve the Council Tax and Council Tax Support Penalty and Prosecution Policy.
1.2	All future minor amendments to the policy to be delegated to the Head of Customer Services and ICT in consultation with the Portfolio Holder.

2. PURPOSE OF REPORT

- 2.1 To seek approval for the introduction of the Council Tax and Council Tax Support Penalty & Prosecution Policy.

3. BACKGROUND

- 3.1 The Council is committed to the prevention, detection and deterrence of fraud and has a responsibility to ensure that Housing Benefit and Council Tax Support are paid correctly and that Council Tax and National Non-Domestic Rates [Business Rates] are billed correctly and that discounts and exemptions are not claimed incorrectly. This is achieved through the implementation of the Sanction and Prosecution Policy.

The Sanction and Prosecution Policy was adopted by Cabinet on 9th March 2016 and is reviewed by Cabinet annually. Since 2016 there have been no changes in national legislation, however there have been significant grant awards made due to Covid which need to be reflected in the policy. The updated policy represents a refresh of existing arrangements with the main additions relating to Covid matters. This is now included at point 9 in the policy.

- 3.2 In 2020/21 the Council was responsible for paying out £13.7 million in Housing benefit and £5.1 million in Council Tax support.
- 3.3 It should be noted that currently there is no legislation which allows the Council to impose sanctions or penalties to be imposed on Businesses.
- 3.4 In respect of Covid however, the government has issued guidelines for Covid related business support grants. These have been incorporated into the revised Sanction and Prosecution policy.
- 3.5 Where recoverable overpayments are created as a result of action undertaken under this policy, customers will be signposted to Citizens Advice or similar debt advice agencies in line with relevant debt recovery protocols.

4. RISK

4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- Failure to approve this policy could result in a continual increase in incorrectly billed properties, falsely claimed discounts and exemptions, and Council Tax Support fraud cases.
- Failure to approve this policy would also leave the Council with no deterrent for false claims.

5. FINANCE

5.1 Financial implications are noted in the report above. Implementation of the policy will be a positive contribution to the Council's Medium Term Financial Strategy.

6. LEGAL

6.1 The Council is required to publish a clear policy as part of its strategy for tackling fraud and corruption. It is needed to vigorously pursue fraudsters and deter others. This policy provides consistency with the policy of the DWP in deciding what action to take following investigation. It has been reviewed and refreshed to include updated actions resulting from the Covid 19 pandemic All other implications are set out in the body of this report. The policy will need to be reviewed in light of any legislative changes and be kept up to date as set out in the policy.

7. POLICY AND EQUALITIES IMPLICATIONS

7.1 The revision of this policy has not resulted in any fundamental changes to the existing policy and as such there are limited implications. Consultation has taken place with the portfolio holder for Communities, the Head of Customer Services and ICT, the Service Assurance Team Manager and also the Head of Legal. An equality impact assessment has been considered as part of the original policy development process and it is considered that no further actions are required due to the limited changes to the policy.

8. CONCLUSION

8.1 To prevent fraud, it is necessary for the Council to have a policy in place to address residents providing incorrect information or claiming benefits which they are not entitled to. There has been no change in national legislation since the original policy was put in place in 2016, however the Council has issued a significant amount of grants relating to Covid. To reflect the increased possibility of fraud in relation to Covid grants, the policy has been updated at point 9.

No background papers.

**Sanction
and
Prosecution Policy.**

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SANCTION AND PROSECUTION POLICY

1. INTRODUCTION

The Council is committed to the prevention, detection and deterrence of fraud and has a responsibility to ensure that Housing Benefit and Council Tax Support are paid correctly and that Council Tax and National Non-Domestic Rates [Business Rates] are billed correctly and that discounts and exemptions are not claimed incorrectly.

This policy sets out the Council's approach to prosecution and other sanctions in cases of fraud or misinformation in respect of Council Tax Support, Council Tax and Housing Benefit. There are no powers within National Non-Domestic Rates [NNDR] legislation to apply sanctions or financial penalties.

2. BACKGROUND

Rossendale are committed to supporting residents who are struggling, customers are signposted to Citizens Advice or similar debt advice agencies in line with relevant debt recovery protocols that have been established.

This policy is governed by legislation and DWP guidance including [but not limited to] The Local Government Finance Act 1992, Welfare Reform Act 2012, Police and Criminal Evidence Act 1984, Social Security Administration Act 1992, the Fraud Act 2006, The Data Protection Act 2018 and The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.

This policy has been agreed by the Council's Cabinet and will be reviewed on an annual basis as required, in response to changes in legislation or Department of Communities and Local Government Guidance. However, minor amendments will be agreed with the portfolio holder as necessary.

3. PURPOSE

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The purpose of the Sanction and Prosecution Policy is to set out the action which the Council may take in cases of fraud or misinformation which result in incorrect payment of Housing Benefit, Council Tax Support, the incorrect billing of Council Tax and National Non-Domestic Rates.

It gives the guidelines that will be followed in certain circumstances and clarifies which areas are the responsibilities of the DWP.

Furthermore, in light of the temporary measures the Government introduced via the Department for Business Energy and Strategy [BEIS] to react to the Covid 19 world pandemic, additional measures have been included in this policy to deal with fraud attempts, or fraud committed against the Council, in relation to the National Non Domestic Rates and the various Covid-19 grants paid to assist small businesses during the pandemic.

In deciding on the most appropriate course of action the Council will have regard to the principles set out in this policy and the need to investigate cases lawfully in a way which is -

1. Proportionate – activities will reflect the level of risk to the public and any action taken will relate to the seriousness of the offence.
2. Consistent – The Council will exercise their professional judgement and discretion according to the circumstances of each individual case.
3. Targeted – The Council will be flexible focusing on higher risk cases, whilst reflecting local need, national priorities and where the Council believes its efforts are able to have an impact.

4. AREAS OF RESPONSIBILITY

From 1st May 2015 responsibility for investigation and the application of sanctions lies as follows:

1. Housing Benefit (where overpayment over £3,000 or evidence of fraud) and Council Tax Benefit:
 - a. Investigation is the responsibility of the DWP’s Single Fraud Investigation Service.
 - b. Cautions no longer apply to these cases
 - c. The Council has retained the delegated power to offer an administrative penalty following a recommendation from the DWP
 - d. Prosecution of cases is the responsibility of the DWP
2. Housing Benefit (where overpayment under £3,000 and no evidence of fraud):
 - a. The Council will make enquiries in respect of cases of misinformation or error made by the customer where the value of any overpayment is less than £3,000.
 - b. A civil penalty of £50.00 may be applied.
 - c. Cases where there is evidence of fraud will be referred to the DWP.

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3. Council Tax Support: The Council has retained the responsibility to investigate and sanction or prosecute Council Tax Support cases.
In cases where Housing Benefit and/or DWP benefits are also in payment, the Council can choose to offer joint working to the DWP. The DWP's criminal investigator will work with the Council's Fraud and Compliance Officer throughout the investigation. Any approved penalties will be offered by the DWP and prosecutions progressed through the Crown Prosecution Service [CPS], thus saving the Council court costs.
4. Council Tax: The Council has the responsibility for investigating exemptions and discounts.
5. National Non-Domestic Rates: The Council is responsible for investigating exemptions. Incorrect exemptions will be removed and liability amended. Currently there are no sanctions available in respect of any attempts or fraud uncovered. However, in serious cases, the Council could consider whether to prosecute an offender.

5. GENERAL PRINCIPLES IN RELATION TO COUNCIL TAX, COUNCIL TAX SUPPORT & NATIONAL NON-DOMESTIC RATES

In deciding what action to take the Council will consider the following:

1. Each case will be considered on its own merits;
2. There must be sufficient, reliable evidence to justify the action taken;
3. The action taken must be in the public interest;
4. Any mitigating circumstances;
5. The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent;
6. In exceptional circumstances, an alternative to prosecution (caution or financial penalty) may be considered without regard to the amount of the 'overpaid' Council Tax Support.

6. SANCTIONS AVAILABLE

The three courses of action are available where a criminal investigation has been undertaken. These are a local authority caution, financial penalty or a prosecution.

In cases of error or misinformation, a civil penalty may be imposed.

Local Authority Caution

A caution is a verbal warning, which can be given in less serious circumstances. It is offered as an alternative to prosecution, to a person who has admitted to committing an offence. The person must agree to being cautioned. It is intended to be a meaningful

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penalty. If a person declines the offer of a caution, the case will be recommended for prosecution.

A caution will be considered where the evidence indicates that:

- a. There was no planning involved, or
- b. There was no other person involved in the fraud, and
- c. The person's circumstances and demeanour towards the offence indicates that a caution would be the most appropriate action.

In these circumstances the Council will issue the Local Authority Caution. We will also require full repayment of the 'overpaid' Council Tax Support.

Financial Penalty

The Financial Penalty is offered as an alternative to prosecution, usually in circumstances not deemed serious enough to warrant prosecution. However, there must be sufficient evidence to justify prosecution. If a person refuses a Financial Penalty the case will be recommended for prosecution.

A Financial Penalty will be considered where the evidence indicates that:

- a. The person has previously been cautioned within the last 5 years for a similar offence but the offence was minor and the current offence is minor; or
- b. There was no planning involved, or
- c. There was no other person involved, and
- d. The person's circumstances and demeanour towards the offence indicates that a financial penalty would be the most appropriate action.

In most circumstances the Council will make an offer of a Financial Penalty in addition to requiring full repayment of the 'overpaid' Council Tax Support. There is no minimum or maximum 'overpayment'. The penalty will be a minimum of £100, or 50% of the recoverable amount of overpaid Council Tax Support up to a maximum of £1,000.

A Fixed penalty of £70 can be imposed in less serious cases in accordance with Regulation 13 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013. Please refer to section on Civil Penalties below. [This is not in addition to the financial penalty].

Prosecution

A prosecution will be considered in serious cases. Proceedings will only be instigated after the evidential and public interest tests [as detailed in the Code for Crown Prosecutors] are satisfied.

Prosecution will be considered where:

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- a. The fraud has been deliberate and calculated, or
- b. The fraud had continued over a long period; or
- c. The person has failed to attend an interview under caution; or
- d. There were other persons involved in the fraud, or
- e. The person has declined the offer of a Financial Penalty or withdrawn agreement to pay and Financial Penalty; or
- f. The person has declined the offer of an official caution.

The Council will ensure that decisions to prosecute are made in a fair and consistent manner. In exceptional circumstances an alternative to prosecution may be considered. Other factors will be taken into consideration before prosecution is recommended.

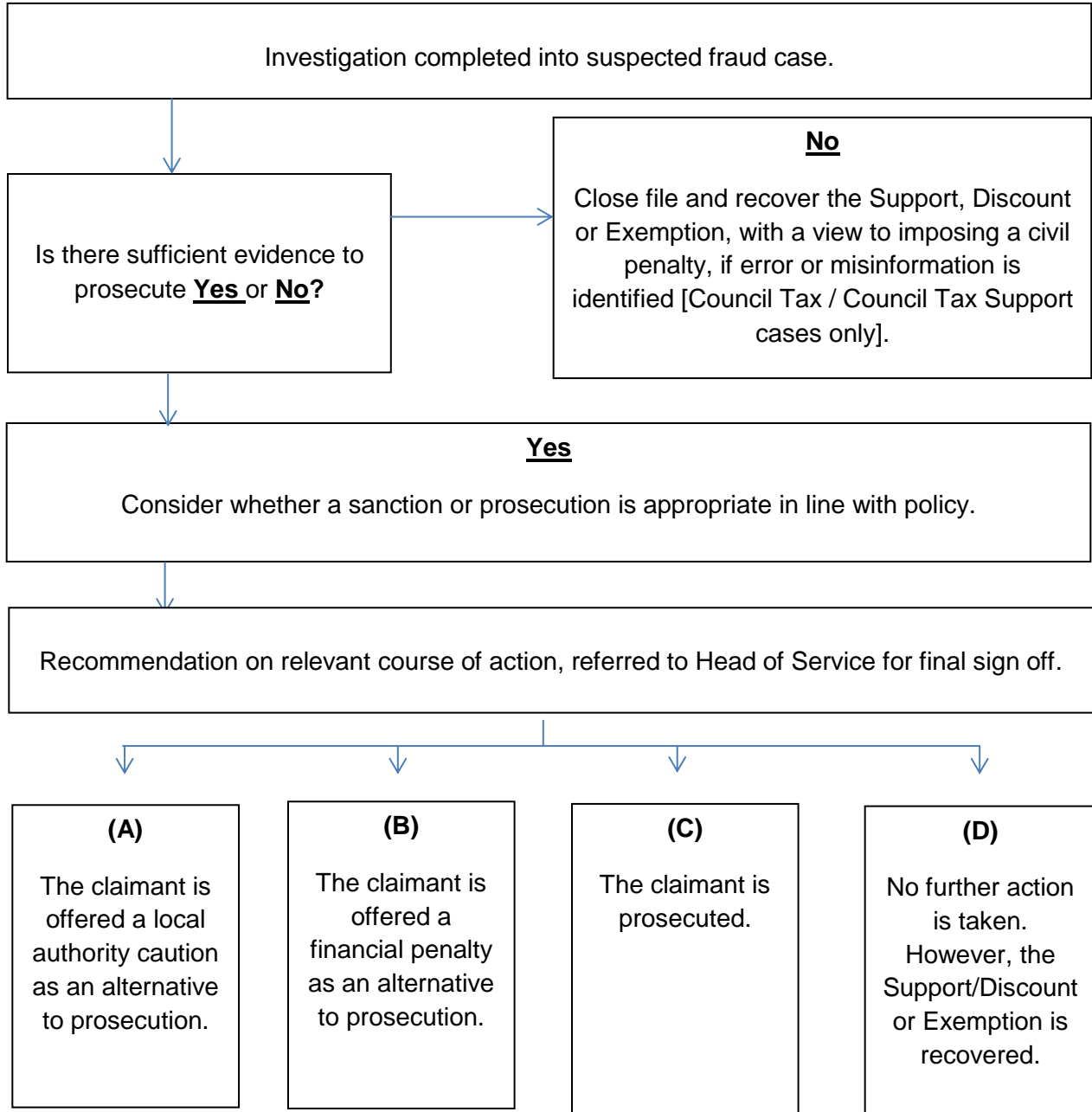
1. **Duration of the Offence:** An offence committed over a long period of time should be a factor towards prosecution. There may have been an opportunity to declare the correct information when the claim was renewed.
2. **Previous Offences:** The Council will make enquiries about any previous offences of a similar nature committed. Where there has already been a caution for deception, a second caution issued by the Council may not be appropriate.
3. **Collusion:** The case may have arisen through collusion, for example with landlords, managing agents or employers. This type of case is considered to amount to serious fraud and will be recommended for prosecution where possible irrespective of the amount of 'overpaid' Council Tax Support involved.
4. **Offenders Physical and Mental Condition:** It would be inadvisable to prosecute in the following cases: -
 - a. Where the offender is seriously ill
 - b. Where the offender is mentally ill
 - c. Where the offender is a heavily pregnant (within 3 months of due date)
 - d. Where the offender is over 75 years of age or bedridden
 - e. Where the offender is hearing or visually impaired
 - f. Where the health of the offender's partner may suffer.
5. **Social Factors:** Consideration must be given to social factors when deciding whether or not to recommend prosecution. Instances in which prosecution may be considered inappropriate include cases where: -
 - a. The Court would set against the offence such personal or mitigating factors that would make prosecution inappropriate e.g. the person was driven to the offence by a tragedy or domestic situation such as bereavement or sickness.
 - b. The offender has already served a prison sentence for benefit fraud and an earlier offence has subsequently been discovered (it is the Court's view that people come out of prison with a 'clean sheet')

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- c. The claimant is young (under 21), immature and would appear to the Court as someone who could have been dealt with effectively without proceeding. Youth does not automatically exclude the possibility of prosecution. That said, prosecution may be desirable where the offender already has a criminal record.
 - d. It is known that a prosecution would have a damaging effect upon the defendant's employability i.e. the offender would not only lose their job but would not be able to get similar employment if prosecuted successfully by the Local Authority.
6. Voluntary Disclosure: Voluntary disclosure is where a claimant of his or her own free will reveals a fraud. In this case prosecution would not be appropriate. However, a disclosure is not voluntary if: -
- a. The admission is not a complete disclosure of the fraud; or
 - b. It was apparently prompted by the expectation that the fraud would be discovered e.g. they knew the Council was making enquiries of their employer etc; or
 - c. The claimant admits all the facts as soon as they are challenged; or
 - d. The claimant discloses the fraud as a result of being required to complete a review form.
7. Procedural Difficulties/Delays/Failures in the Investigation/Administrative Process: Closure of the case, without prosecution will be the only course of action where: -
- a. The investigation has been deficient and has failed to obtain all the evidence available; or
 - b. Internal checks which should have revealed the offence did not do so e.g. benefit paid on incomplete or inadequate information, failure to observe flaws in a statement or document.

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Investigation Process Map



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7. Civil Penalties

The civil penalty is a financial penalty that can be imposed where a person has negligently supplied incorrect information or failed to supply information that affects their Housing Benefit and/or Council Tax Support entitlement, or the Council Tax billed. [The Council made the decision to impose civil penalties from the 1st April, 2016].

Table of Civil Penalties			
Service area	Amount of penalty	Criteria	Appeal method
Housing Benefit	£50	<ol style="list-style-type: none"> 1. Negligently or carelessly giving incorrect information, or 2. Failing to provide without reasonable excuse*, information in respect of a claim or payment of benefit, or 3. Failing to notify, without reasonable excuse*, a relevant change in circumstances. <p><i>By causing any of the above, a civil penalty will automatically be applied, if either/or occurs –</i></p> <ol style="list-style-type: none"> A. An overpayment in excess of £1,000 is raised, or B. The period of the overpayment is 16 weeks or more. 	Rossendale Borough Council
Council Tax Support	£70	As the Council no longer issues notification letters automatically on CTS only claims, a civil penalty will only be applied at the request of the Fraud & Compliance Officer, following an investigation.	Rossendale Borough Council
Council Tax	£70	<ol style="list-style-type: none"> 1. Failing to supply information following a request from the Council, or 2. Supplying information about a liable person that is materially inaccurate, or 3. Failing, without reasonable excuse*, to notify the Council that a dwelling is no longer exempt, or 4. Failing, without reasonable excuse*, to notify the Council that a level of discount no longer applies. <p><i>By causing any of the above, a civil penalty will automatically be applied.</i></p>	Valuation Tribunal
Council Tax	£280	<ol style="list-style-type: none"> 1. Where a penalty has been imposed and a further request to supply the same information is made but is not properly complied with. Following this, each time we repeat the request and the person concerned does not properly comply with it... There is no limit to the number of times this penalty can be imposed. <p><i>By causing the above, a civil penalty will automatically be applied.</i></p>	Valuation Tribunal

* Criteria for reasonable excuse includes [but is not limited to] those with cancer, long term debilitating illness or a terminal illness, those who have had a close family member pass away recently, those who are SMI, have learning difficulties or have someone with power of attorney

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who is managing their financial affairs, someone who has recently been a victim of domestic violence or other malicious crime. Each case will be considered on its own merits.

Appeal process

If a customer is not satisfied with the decision to impose a civil penalty in relation to Housing Benefit, they can write to the Council within one calendar month to appeal the decision, stating their reasons why. The case is reviewed internally [reconsideration] and the decision is notified in writing. If the customer is still not happy with this decision, they can write requesting a tribunal. A tribunal's decision is final.

If a customer disagrees with the decision to impose a civil penalty in relation to Council Tax Support, they can appeal the decision in writing within one calendar month. The case is reviewed internally [reconsideration] and the decision is notified in writing. If the customer is still not happy with this decision, they can write to the Valuation Office [VO] requesting a hearing. The Valuation Office will arrange and oversee a hearing, notifying both parties and a panel of impartial representatives. On the day of the hearing both parties are invited to present their case. The VO representatives will make the decision. There is no further right of appeal.

If a tax payer disagrees with a Council Tax civil penalty decision, the process is similar to that of the Council Tax Support penalty, however there is a mediation stage in the middle. Once any appeal is received by the Valuation Office, they can act as a mediator before any hearing is arranged. If no mediation is required or it is unsuccessful, the case proceeds to a hearing, as per the above.

Civil Penalty Recovery

A Housing Benefit civil penalty is recovered via on-going deduction from their benefit entitlement [if they are still entitled] or an invoice is issued. Council Tax civil penalties will be added to the tax payers Council Tax account and recovered as part of the current year's debt.

8. RECOMMENDATIONS OF SANCTIONS

The recommendation to apply any sanction [with the exception of civil penalties] will be made in the first instance by the investigating officer after consultation with the Service Assurance Team Leader.

Recommendations for sanctions will be referred to the Head of Customer and ICT Services.

Recommendations for prosecutions will be referred to the Legal Department.

The Legal Department will administer the issuing of Local Authority Cautions and Financial Penalties.

9. COVID 19

The Covid-19 pandemic has meant that the way we work has temporarily changed. The government had to react swiftly to the needs of the country, with national lockdowns and local tiers being imposed periodically. Local businesses were forced to temporarily close or operate differently, therefore a number of financial measures were introduced to help them survive

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financially, which Local Authorities had to quickly invite applications for and award funding to, including -

1. £10,000 Small Business Rates Grants applicable to local businesses who qualified for small business rate relief, with RV's of under £15,000.
2. £25,000 Retail, Hospitality and Leisure Grants with RV's between £15,001 and £51,000.
3. Discretionary Grants for local businesses who do not fit into any of the aforementioned categories.
4. Local Restrictions Support Grants [Open]
5. Local Restrictions Support Grants [Closed]
6. Additional Restrictions Grants.
7. Restart Grants

As with any opportunity or incentive where there is financial gain, there is a risk of fraudulent activity occurring. The Council has involvement with pre and post payment checks relating to attempts of and the investigation of actual fraud committed against the grants.

To date BEIS has given direction regarding the fraudulent grants, advising that fraud investigations need to be undertaken. BEIS have directed that all fraud uncovered whether attempts or actual must be reported to the National Anti-Fraud Network [NAFN], who in turn will refer the information to the police's National Intelligence Service [NATIS]. NATIS will in the main investigate the organised and cross boundary grant fraud, [both attempts and actual fraud]. Otherwise local authorities are being tasked with investigating the grant fraud, they may also refer cases to the local police for their consideration. BEIS have indicated that cases of actual fraud identified, should result in the prosecution of offenders.

There are no sanctions currently available under legislation, [such as civil or financial penalties] for offenders of grant fraud.

10 PUBLICITY

The Council intends to positively promote this policy, as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

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