

TO: EXECUTIVE
11th March 2014

**INTRODUCTION OF CIVIL PENALTIES IN RELATION TO CHANGES OF
CIRCUMSTANCE FOR BENEFIT CLAIMS SOCIAL SECURITY CIVIL PENALTY
REGULATIONS 2012**

Director of Adult Social Care, Health and Housing

1 PURPOSE OF REPORT

- 1.1 To introduce a scheme of fixed civil penalties for households who negligently fail or fail without reasonable excuse to inform the Council of a change in circumstances that leads to an overpayment of housing benefit.

2 RECOMMENDATION

2.1 Executive is asked to:

Agree to introduce a scheme from the 1st April 2014 to impose a fixed civil penalty of £50 for overpayment of Housing Benefit that exceeds £250 due to the claimant negligently not informing the Council of a change of circumstance or failing to inform the Council without any reasonable excuse.

3 REASONS FOR RECOMMENDATION

- 3.1 Executive agreed that consultation should take place on the introduction of a Fixed Civil Penalty Scheme where an overpayment of benefit has arisen due to a customer failing to inform the Council of a change in circumstance without good cause or through negligence. This supports the Council's Medium Term Objective to: Provide value for money and to work with our communities and partners to be efficient, open, transparent and easy to access and to deliver value for money.
- 3.2. The Council has been given the ability to levy a fixed penalty of £50 if failure to notify a change of circumstance leads to an overpayment of benefit due to the introduction of the Social Security Penalty Regulations 2012. Similar penalties will be part of the Universal Credit regime when it is introduced.
- 3.3. The Council is redesigning the Benefit and Housing Service and the new service aims to maximise household income and independence. Overpayments of benefit should be avoided and designed against in the new service offer. The fixed penalty fine will be available for the Council to apply if there is clear evidence that the claimant has negligently failed to tell the Council or has no reasonable excuse for not telling the Council where a change of circumstance has led to an overpayment of benefit.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could decide not to implement the fixed penalty proposals. Given that customers will be confronted with the fixed penalties when they move to Universal Credit there is a risk that they will not be prepared and will incur penalties thus impacting on their income.
- 4.2. The Department of Works & Pensions (DWP) recommends that the fixed penalty could be applied for overpayments of £65. In Bracknell Forest this could often be less than one week Housing Benefit payment and therefore it is suggested the level of overpayment is set at £250.

5 SUPPORTING INFORMATION

- 5.1 The Social Security (Civil Penalty) Regulations 2012 came into force on the 1 October 2013 and provides councils the ability to impose a £50 Fixed Penalty Fine in cases where a person has been negligent in the information they have provided or where the person has failed without reasonable excuse to tell the Council about the changes in their circumstances. The DWP is suggesting that the fixed penalty should only be imposed in those circumstances where the overpayment exceeds £65. The penalty is for non-fraudulent offences. Where overpayments exceed £1,000 the Council's present approach is to investigate as fraudulent activity. There would be no intention to change the Council's approach to detecting and prosecuting fraud. However, the DWP has signalled that it intends to set up a Single Fraud Investigation Service and the Council's staff would be transferred to that new service when set up. Therefore, in future it may not be the Council undertaking the fraud investigation for larger amounts of overpayment of Housing Benefit. Customers will not receive a fixed penalty and be prosecuted for fraud.
- 5.2 Customers have the obligation to inform the Council of any change of circumstance as soon as practicable. Benefit entitlement is recalculated back to the day the change occurred. Customers will be liable to a fixed penalty charge for each time they fail to inform the Council of a change in their circumstances that has generated an overpayment of housing benefit of more than £ 250. The overpayment level of £ 250 is recommended based on consultation responses and also that the average weekly housing benefit paid is in the region of £ 130 so it will equate to two weeks payments.
- 5.3 The sort of changes that customers should inform the Council of are as follows:
 - Changes in income and entitlement to state benefits;
 - Changes where a young person or child ceases to be a member of the family;
 - Changes in rent charged;
 - Changes affecting the residence or income of any non-dependent;
 - Absences exceeding or likely to exceed 13 weeks;
 - Changes affecting any child living with the claimant who might affect the amount of Housing Benefit.

- 5.4 An example where a customer has been negligent in not informing the Council of change in circumstance would be that they have started work but do not inform the Council of that fact until a month after they started and still continued receiving housing benefit during that period as if they were still out of work. An example of a situation whereby it could be reasonable for a customer not to inform the Council of a change in circumstance is where they are prevented from doing so due to illness. Each situation will need to be considered on the facts. The decision to impose a fixed penalty will not require interviews under caution and will be made by the officer assessing the claim / change of circumstance. The customer has the ability to appeal the decision. The appeal rights and treatment will be the same as the current rights in relation to overpayments. Customers will be given the right to appeal a decision to impose a fixed penalty within 28 days of notification and the appeal will be considered by an officer senior to the officer who made the original fixed penalty decision who was not involved with the customer in question.
- 5.5 The intention will be to recover the fixed penalty from on-going benefit wherever possible. The maximum amount of on-going benefit that can be deducted to recover the penalty is £10.65 a week. The fixed penalty is recovered before the overpayment. The Council will have the ability to vary that amount downwards where financial hardship can be demonstrated.
- 5.6 It is intended by the DWP that the Council retains the power to apply a fixed penalty until the customer moves onto Universal Credit.
- 5.7 The amount recovered by the Council due to the penalty will be in addition to any subsidy claimed for the benefit payment. Therefore, the penalty fee will be a net income for the Council.
- 5.8 The level of fixed penalties for overpayments will decline up until 2017 as customers transfer from receiving housing benefit to receiving Universal Credit.
- 5.9 The Council intends to introduce electronic notification of changes of circumstances for customers so their ability to inform the Council of a change is increased. Customers will be able to telephone or email changes of circumstance to their caseworkers and provide necessary evidence to substantiate the claim within four weeks. Failure to substantiate the change will lead to suspension of the benefit payment.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 No further comments

Borough Treasurer

- 6.2 It is not possible to be certain how much income would be raised from this measure, as it depends on predicting in advance the actual numbers of people who fail to inform the Council of a change in circumstances without reasonable excuse. However, the budget proposals for 2014/15 incorporate an estimate of £40,000 income in the first year of operation, declining by £10,000 per year in each of the subsequent two years. The existence of the policy should act to minimise overpayments arising from claimant negligence

and thus contain costs. The actual level of these overpayments, and income raised, will be monitored.

Equalities Impact Assessment

- 6.3 An equality impact screening was included in the original report to Executive in April 2013. The consultation responses show no discernible impact on any of the protected groups.

Strategic Risk Management Issues

- 6.4 There are no strategic risks generated from the recommendation in this report.

7. CONSULTATION

Principal Groups Consulted

- 7.1 Consultation took place with benefit customers and also agencies directly involved in supporting those customers such as CAB, Bracknell Forest Homes.

Method of Consultation

- 7.2 Via consultation questions on Council's website, correspondence and meetings.

Representations Received

- 7.3 The Council received 22 response to the on line questionnaire.
- 7.4 In terms of the level of over payment that would trigger a fixed penalty the following response were give:

| | % Total | % Answer | Count |
|----------------------------|----------------|-----------------|--------------|
| Number of Responses | 95.45% | - | 21 |
| | | | |
| £65.00 | 31.82% | 33.33% | 7 |
| £100.00 | 4.55% | 4.76% | 1 |
| £150.00 | 9.09% | 9.52% | 2 |
| £200.00 | 9.09% | 9.52% | 2 |
| £250.00 | 40.91% | 42.86% | 9 |
| [No Response] | 4.55% | - | 1 |
| Total | 100.00% | 100.00% | 22 |

- 7.5 The breakdown of gender of response is as follows:

| | % Total | % Answer | Count |
|----------------------------|----------------|-----------------|--------------|
| Number of Responses | 95.45% | - | 21 |
| | | | |
| Male | 59.09% | 61.90% | 13 |
| Female | 36.36% | 38.10% | 8 |
| [No Response] | 4.55% | - | 1 |
| Total | 100.00% | 100.00% | 22 |

7.6 The ethnic origin of respondents was found to be:

| | % Total | % Answer | Count |
|--|----------------|-----------------|--------------|
| Number of Responses | 86.36% | - | 19 |
| | | | |
| Any other White background | 9.09% | 10.53% | 2 |
| English/Welsh/Scottish/ Northern Irish/British" | 68.18% | 78.95% | 15 |
| Indian | 4.55% | 5.26% | 1 |
| Irish | 4.55% | 5.26% | 1 |
| [No Response] | 13.64% | - | 3 |
| Total | | | |

7.7 The age profile of respondents was found to be:

| | % Total | % Answer | Count |
|----------------------------|----------------|-----------------|--------------|
| Number of Responses | 90.91% | - | 20 |
| | | | |
| Under 18 | 0.00% | 0.00% | 0 |
| 18-34 | 27.27% | 30.00% | 6 |
| 35-49 | 36.36% | 40.00% | 8 |
| 50-64 | 22.73% | 25.00% | 5 |
| 65-79 | 4.55% | 5.00% | 1 |
| 80+ | 0.00% | 0.00% | 0 |
| [No Response] | 9.09% | - | 2 |
| Total | 100.00% | 100.00% | 22 |

7.8 Of those responding the following stated they had a disability:

| | % Total | % Answer | Count |
|----------------------------|----------------|-----------------|--------------|
| Number of Responses | 81.82% | - | 18 |
| | | | |
| Yes | 9.09% | 11.11% | 2 |
| No | 72.73% | 88.89% | 16 |
| [No Response] | 18.18% | - | 4 |
| Total | 100.00% | 100.00% | 22 |

7.9 There are no discernible impact generated from the consultation responses from protected groups.

Background Papers

The Social Security (Civil Penalties) Regulations 2012

Contact for further information

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