

Appendix 1

Oldham Council

Audit and Counter Fraud

Small Business Grant Fund (SBGF) and Retail
Hospitality and Leisure Grant Fund (RHLGF).

Prosecution Policy

May 2020

Version Control

| Version | Version Date | Revised by | Description |
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| 1 | April 2020 | Mark Stenson | New Policy |
| 2 | May 2020 | Anne Ryans | Reviewed Policy |

SBGF and RHLG Prosecution Policy

1. Introduction

In response to the COVID-19 pandemic the Government has placed a requirement on the Council to administer the grant schemes it has introduced to assist small businesses and retail, leisure and hospitality businesses with cash flow. The Council has been expected to follow the guidance it has produced to aid administering authorities.

Initially, as per the letter to Council's dated 16 April 2020 the responsible Government Department (Business, Energy and Industrial Strategy) has directed that it is important to prioritise the speed of the payments subject to minimal checks. In order to assist these pre-payment checks the Cabinet Office has made available to the Council its Spotlight Tool. This has been utilised by Oldham Council for undertaking pre-payment checks on all submissions for grants.

This policy statement provides the agreed framework for Council officers involved in the investigation, sanction and prosecution following appropriate pre and post payment checks of:

- Small Business Grant Fund (SBGF)
- Retail, Hospitality and Leisure businesses (RHLGF)

The Council is committed under its wider fiduciary duty to protecting the public funds it administers to the COVID-19 pandemic. As such the Council has agreed this policy and thereby to prosecute those who it believes has committed fraud. It supports its approach of zero tolerance to all fraud and loss. It also supports the Government Department which has indicated in the frequently asked questions to support administration (number 63) it "will not accept deliberate manipulation and fraud – and any business caught falsifying their records to gain additional grant money will face prosecution and any funding issued will be subject to claw back, as may any grants paid in error."

2. Risk Assessment of Loss due to Fraud on Grant Payments

The Council, in developing its agreed procedures to administer these grants, is following the direction of the Department of Business, Energy and Industrial Strategy (BEIS). There are several types of organisation who are entitled to these payments including:

- Limited Companies
- Sole Traders who are also the Property Owners
- Sole Traders who are leasing the property from a third party
- Sports and Athletic Clubs

One challenge to the Council in administering these payments is the data quality on its Academy System used to administer Business Rates linked into Small Rates Business Relief. These businesses have not been required to pay business rates since 2017 and as such any contact to amend the records held by the Council on its systems has only occurred when instigated by the business. An added benefit from the payment of these grants is that it will improve the quality of data held for Small Rates Business Relief.

The system therefore adopted by the Council to mitigate this risk of poor data quality has required applicants to complete an on-line form and make an appropriate declaration that they are entitled to receive the grant and provide evidence of a current bank account (preferably in the name of the business) to demonstrate they are currently operating. This has been required as a pre-payment check to demonstrate the business is still operating before payment and businesses will only be paid on the production of such information. A requirement of these businesses where applicable is to include a VAT number, although the provision of such information is not mandatory.

Prior to payment, the Council, in undertaking pre-payment checks, has utilised the Spotlight System provided by the Government. This tool enables a decision to be undertaken on the status of a limited company and whether it was in operation as at 11 March 2020. As such the pre-payment checks for this type of payee give reasonable assurance that it is a reasonable risk to pay the grant. For other organisations such as Sole Traders, Spotlight does not enable such a decision to be made so the specific pre-payment check relied upon by the Council is the submission of bank account details to demonstrate the business is currently operating. In following the government advice to prioritise speed of payment over further checks, a policy decision has been taken not to undertake further checks such as searching Social Media to demonstrate business such as Sole Traders are still operational before the grant payment is made. In doing so the Council has followed the government advice which states "Provided they are an eligible ratepayer with an eligible rating assessment then they will qualify."

In order to process the payments, the Council took the decision not to wait until the provider of the Academy system developed an automated payment facility. This has enabled the Council in line with government policy to speed up the payment process. It does however incorporate extra risk to the Council which needs to be managed, such as potential duplicate payments for multiple grant applications relating to a single property. It has also added to the Council's routine administration as the payments made will need to be reconciled to both its Academy system and Financial Ledger.

Under the Transparency Agenda the Council will publish grant payments made of £25,000 and £10,000. This will act as an indication of fraud as scrutiny is available by members of the public and will result in some queries.

The Authority has made an assessment of the risk of fraud based upon the agreed level of pre-payment checks undertaken and the need to utilise its Agresso system to make the grant payments. This Risk Assessment is maintained by the Counter Fraud Manager and has been used to determine the post payment checks of the grant payments which are to be undertaken by the Internal Audit and Counter Fraud team. It is acknowledged that these post payment checks result in the risk of not recovering actual losses including those due to fraud as it may not be possible to recover the initial grant payment.

In terms of financing the expected financial loss it is anticipated that any inappropriate payments including those assessed as fraudulent which cannot be recovered will be borne by the Government. Although there may be some risk that some costs have to be financed by the Council. This is despite complying with government direction to speed up the payments and incorporating a lesser pre-payment checking regime.

3. Results from Pre-Payment Spotlight Checks

The Spotlight checks have been carried out by the Council's Counter Fraud Function prior to the payment of the grant and used to identify those organisations registered at Companies House who have been wound up, are in liquidation, are in administration or have not filed their accounts in a timely manner.

The Council has decided the following payments will not be made in line with government guidance:

- Companies identified as dissolved.
- Companies identified as in liquidation.
- Identified as in administration.

It has however been agreed that companies will be paid if they:

- have failed to file their accounts in a timely manner.

As at 18 May 2020 the Spotlight checks had identified it was not appropriate to pay 6.9% of the Company payment requests checked.

Where the business owner has failed to provide a current bank account there are several follow up telephone calls before a rejection letter is issued. Additional emphasis will be given to post payment checks for these grant applications.

4. Other Pre-payment Checks

The Council has agreed to undertake the following pre-payment checks to support the grant payment before it is made for all grant payments:

- a) A daily exercise to identify if any payments have been made for the same property.
- b) A review of commercial property for rent within the Oldham Borough for the months of January, February and March 2020.

5. Post-Payment Review of Grants

The Council will publish the payments made on its over £500 payment listing in accordance with the Freedom of Information Act. It will investigate appropriate communications received whereby it is alleged that the business owner is not entitled to the grant.

In relation to those companies whereby grants were paid following a Spotlight Check, an investigation will be undertaken on 30 of the grant payments as they are considered to be at a lower risk of ineligibility given the pre-payment checks already undertaken on Spotlight.

In relation to those sole traders/ bodies not registered at Companies House that have received a grant following receipt of a web form submission, a check will be undertaken on 10% of grant payments.

6. Certification by the Grant Recipient

By submission of the on-line grant webform the following has been acknowledged by the business:

“Businesses who have manipulated or falsified their position in order to obtain these grants will face prosecution. Any funding issued as a result of fraud will be subject to claw back, as may any grants paid in error. The Government is supporting Local Councils to make the necessary checks to ensure payments can be verified and have been made correctly.

We may check the information you provide, or the information about you which somebody else provides, with other details we hold. We may also receive information from other people or organisations, or give information to them to check the accuracy of records, to prevent or detect crime, or to protect public funds in other ways, if the law allows us”

7. State Aid

By submission of the on-line grant webform the following has been acknowledged by the business in relation to State Aid:

The United Kingdom left the EU on 31 January 2020. Under the Withdrawal Agreement the State Aid rules continue to apply during a transition period, subject to regulation by the EU Commission. Businesses who receive awards of Government grant funding such as Small Business Grants are required to comply with the EU law on State Aid so that overall funding received in respect of State Aid does not exceed the €800,000 an undertaking can receive under the De Minimis regulations.

A review of the payments made indicate a number of grant payments have been made to recipients who are at risk of breaching the limit if support from other local authorities administering the grant scheme is considered.

8. Investigation of Suspected Inappropriate Grant Payments

All allegations of suspected inappropriate grant payments will be investigated by the Audit and Counter Fraud Function who will produce a report with a recommendation of whether to prosecute or not in relation to fraud. The standard of the investigation will enable a criminal prosecution to be undertaken. This will be reviewed by the Head of Corporate Governance who will agree the decision on whether to prosecute or not.

9. Prosecution

Prosecutions relating to this policy following the review of the investigation are to be pursued by Oldham Council’s Director of Legal Services and involve cases where someone who has committed an offence in order to receive either a SBGF or RHLG. The presumption of the Council, given the value of the grant payments, is to prosecute in all cases.

Prosecution of an inappropriate grant claimant will take place in a Magistrates or Crown Court.

10. Suitability of Offenders for Prosecution

When considering whether it is appropriate to instigate proceedings, consideration will be given as to whether there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

The following paragraphs outline factors that will be considered, to ensure consistent and equitable treatment of those accused of fraud.

Evidential Test

In making a decision to prosecute, the local authority must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction'. A realistic prospect of conviction is an objective test meaning that a jury, magistrate or judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence. Evidence must be able to be used in a court of law. It must have been gathered appropriately, in accordance with the law and be from a reliable source.

If a case does not pass the 'evidential test' it must not go ahead no matter how important or serious the offence seems. If the case does pass the evidential stage, then it should move on to the second stage to decide if a prosecution is appropriate in the public interest.

Public Interest Test

Oldham Council will always consider public interest judiciously and will balance the factors for and against prosecution objectively. In making the decision whether it is in the public interest to prosecute, the following factors will be considered.

Financial Limits

Careful consideration will be given to commencing a prosecution where the fraudulent activity has not resulted in 'significant financial gain' to the offender, for example the amount of the grant in this case is a minimum of £10,000.

Physical / Mental Factors

Consideration will be given to varying factors, when deciding whether to prosecute. Officers will consider whether there are significant personal or mental problems that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the claimant or partner or a third party (for example a child) would be severely affected by the action. Other remedies are available to the Council where prosecution is deemed unsuitable.

Voluntary Disclosure

It may not be appropriate to prosecute those, whose disclosure of their own free will, has led to the identification of a fraud of which the Council was unaware. Admissions made after enquiries or an investigation had commenced do not constitute voluntary disclosure.

Previous Incidence of Fraud

Any evidence of previous benefits-related fraudulent activity would form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

Social Factors

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these would be fully evaluated. (The fact that an individual was in debt or has limited assets would not in itself meet this requirement.)

Adequacy of Evidence

Substantive evidence is essential to secure any conviction. Proceedings would not be sought if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of benefit regulations and that it was committed with the clear and deliberate intention to obtain property by deception. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

Failure in Investigation

It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration would also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

Failure in Administration

Full account will be taken of poor administration or fault on the part of authority that has contributed to the processing of the fraudulent claim and subsequent award of the grant.

11. Authorisation of Prosecution

Cases being referred for prosecution will be authorised by the Head of Corporate Governance. Cases involving Council Members or employees will also be referred to the Group Solicitor or appropriate Head of Service so that any standards issues can be addressed.

Cases may also refer to the police where it is considered that the nature of the offence, or the procurement of evidence require them to undertake or assist in the investigation.

12. Proceeds of Crime Act 2003

The Council will refer all suitable cases for financial investigation with a view to applying to the courts for restraint and/or confiscation of identified assets. A restraint order prevents a person from dealing with specified assets. A confiscation order enables the Council's agents to seek to recover its losses from assets found to be the proceeds of crime.

13. Recovery of Debt

In addition to any criminal proceedings or sanction it may impose in respect of offences committed, the Council will use all methods available to vigorously recover any overpayment arising from fraud, including taking action in the civil courts if necessary.

14. Publicity

Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

15. Review of Policy

In addition to an annual review, the policy will be reviewed in the light of any legislative changes; trends or other factors that impact on the effectiveness of the policy.