

Oldham Council Audit and Counter Fraud Service

Covid Business Grants Prosecution Policy

26 March 2024

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Covid Business Grants Prosecution Policy

1. Introduction

- 1.1 In response to the COVID-19 pandemic the Government placed a requirement on the Council to administer the grant schemes it introduced to assist small businesses and retail, leisure and hospitality businesses with cash flow during the pandemic. The Council was expected to follow the guidance produced by Central Government to aid administering Authorities in administering the grants.
- 1.2 Initially the Department for Business, Energy and Industrial Strategy (BEIS) directed Local Authorities to prioritise the speed of the grant payments, subject to minimal pre-payment checks.
- 1.3 In order to assist in undertaking pre-payment checks, the Cabinet Office made available to the Council its Spotlight Tool. This was utilised by Oldham Council for undertaking pre-payment checks on all applications for business grants.
- 1.4 This policy statement provides the agreed framework for Council officers involved in investigation, sanction and prosecution following appropriate pre and post payment checks of the:
 - Small Business Grant Fund
 - Retail, Hospitality and Leisure Grant Fund
 - Local Authority Discretionary Grant Fund
 - Restart Scheme
 - Local Restrictions Support Grant
 - Additional Restrictions Grant Fund
 - Omicron Hospitality and Leisure Grant scheme

The range of Business Grants regimes ran from March 2020, with the last payments made in March 2022.

- 1.5 The Council is committed under its wider fiduciary duty to protect the public funds it administers. As such the Council has agreed this policy which supports the Council's approach of zero tolerance to all fraud and loss.
- 1.6 Central Government indicated in the "frequently asked questions" section of the available guidance (number 63) that 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

- 2.1 The Council, in developing its agreed procedures to administer these grants, has followed the direction of the Department of Business, Energy and Industrial Strategy (BEIS). There were several categories of organisation/individual entitled to these payments including:
 - Limited Companies.
 - Sole Traders who were also the Property Owners.

- Sole Traders who were leasing the property from a third party.
- Sports and Athletic Clubs.

- 2.2 One challenge to the Council in administering these payments was the initial data quality on its Academy System used to administer Business Rates linked into Small Rates Business Relief. These businesses had 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 only occurred when instigated by the business. An added benefit from the payment of these grants is that it has improved the quality of data held to support the administration of Small Business Rate Relief.
- 2.3 The system therefore adopted by the Council to mitigate this risk of the initial poor data quality required applicants to complete an on-line form and make an appropriate declaration that they were entitled to receive the grant and provide evidence of a current bank account (preferably in the name of the business) to demonstrate they were currently operating. This was required as a pre-payment check to demonstrate the business was still operating before payment and businesses would only be paid on the production of such information. A further requirement (where applicable) was to include a VAT number, although the provision of such information was not mandatory.
- 2.4 Prior to payment, the Council, in undertaking pre-payment checks, utilised the Spotlight System provided by the Cabinet Office. This tool enabled a decision to be made on the status of a limited company, and whether it was in operation during the relevant period. As such the pre-payment checks for this type of payee gave reasonable assurance that it was a reasonable risk to pay the grant. For other organisations, such as Sole Traders, Spotlight did not enable such a decision to be made so the specific pre-payment check relied upon by the Council was the submission of bank account details to demonstrate the business was currently operating. In following the Government advice to prioritise speed of payment over further checks, a policy decision was taken not to continue to undertake further checks, such as searching social media, to demonstrate businesses such as Sole Traders were still operational before the grant payment was made. In doing so the Council has followed the Government advice which stated "Provided they are an eligible ratepayer with an eligible rating assessment then they will qualify."
- 2.5 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 enabled the Council to act in line with Government policy to speed up the payment process. It did however present extra risks to the Council which needed to be managed, such as potential duplicate payments for multiple grant applications relating to a single property. It also added to the Council's routine administration as the payments made needed to be reconciled to both its Academy system and Financial Ledger.
- 2.6 Under the Transparency Agenda the Council published grant payments in excess of £500. This allowed further fraud scrutiny by members of the public.
- 2.7 The Authority 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 was maintained by the Counter Fraud Manager and was used to determine the post payment checks of the grant payments undertaken by the Internal Audit and Counter Fraud team.
- 2.8 It is anticipated that any inappropriate payments, including those assessed as fraudulent, which cannot be recovered will be borne by Central Government.

3. Investigation of Suspected Inappropriate Grant Payments

- 3.1 All allegations of suspected inappropriate grant payments will be investigated by the Audit and Counter Fraud Function. Following investigation, a report is produced with a recommendation of whether to prosecute or not in relation to fraud. The standard of the investigation enables a criminal prosecution to be undertaken if appropriate. This will be reviewed by the Head of Audit and Counter Fraud who will agree the decision on whether to prosecute or not.

4. Prosecution

- 4.1 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 one or more of the Covid Business Rates Grants. The presumption of the Council, given the value of the grant payments, is to prosecute in all cases.
- 4.2 Prosecution of an inappropriate grant claimant will take place in a Magistrates or Crown Court.

5. Suitability of Offenders for Prosecution

- 5.1 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.
- 5.2 The following paragraphs in Section 6 outline factors that will be considered, to ensure consistent and equitable treatment of those accused of fraud.

Evidential Test

- 5.3 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, if 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.
- 5.4 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

- 5.5 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

- 5.6 Careful consideration will be given to commencing a prosecution where the fraudulent activity has not resulted in 'significant financial gain' to the offender.

Physical / Mental Health Factors

- 5.7 Consideration will be given to varying factors when deciding whether to prosecute. Officers will consider whether there are significant personal or mental health issues 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

- 5.8 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

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

Social Factors

- 5.10 If it is considered that the 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.)

Failure in Investigation

- 5.11 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

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

6. Authorisation of Prosecution

- 6.1 Cases being referred for prosecution will be authorised by the Head of Audit and Counter fraud. Cases involving Council Members or employees will also be referred to the Director of Legal Services or appropriate Head of Service so that any standards issues can be addressed.

- 6.2 Cases may also be referred 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.

7. Proceeds of Crime Act 2003

- 7.1 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.

8. Recovery of Debt

- 8.1 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.

9. Publicity

- 9.1 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.

10. Review of Policy

- 10.1 The policy will be reviewed in the light of any legislative changes; trends or other factors that impact on the effectiveness of the policy.