Corporate Committee  

Fraudulent and Incorrect Claims for Single Person Discount  

All Wards  

Report authorised by: Executive Director of Finance and Resources: Mike Suarez  

Executive summary  

The Corporate Committee of 17th May 2011 reviewed a report on the Fraudulent and Incorrect Claims for Single Person Discount (SPD) which included details of 74 Lambeth employees which were highlighted by the National Fraud Initiative (NFI) on SPDs as being possibly incorrect.  

Members raised further questions on this report during the next committee held on 29th June 2011, where the Director of Finance and Resources agreed to let the committee know why it was not feasible to collect money beyond the most recent year, from residents who have not let the Authority know that they are no longer entitled to this reduction.  

Following a full review of the process currently used for removing SPD when identified as possibly incorrect, it is proposed that the discount be cancelled back to the date of the last review, rather than the start of the current financial year, as present.  

Summary of financial implications  

The change in date of removal will increase the Council’s Council Tax base and so the amount of money it can collect from Council Tax revenues will increase. This increase in a net collectable debit has the potential of improving the overall position of the Collection Fund.  

The change in date of removal will not result in any increase in resource required to manage and implement this change.  

Recommendations  

(1) To note the proposed change in process set out in this report, whereby overpayments of SPD would be recovered from the date of the previous review or from such date as notified to us by the resident.  

(2) Continue to receive regular reports on the outcomes of all activity aimed at reducing the levels of SPD claimed incorrectly in Lambeth.  

(3) To note the ongoing development and use of sophisticated data matching and data validation techniques to minimise the scope for SPD to be claimed incorrectly
(4) To note the options available to the Authority on further legal action where SPD has been claimed incorrectly and possibly fraudulently and that additional budgetary provision would be required to undertake prosecutions of SPD fraud. It is further noted that where potential SPD fraud is identified when benefit fraud is being investigated, the investigation and any subsequent prosecution would include SPD fraud where sufficient evidence was obtained.

Consultation

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Report history

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Background documents


Appendices

None
Fraudulent and Incorrect Claims for Single Person Discount

1. **Context**

1.1 Single Person Discount is awarded to all Council Tax Payers where there is only one adult living within a property and those receiving this award are reviewed annually.

1.2 Corporate Committee reviewed the findings of the last NFI on the awarding of SPD.

1.3 The Committee raised several questions around the removal of this discount from accounts where it was highlighted by the NFI that the discount may not be eligible.

1.4 The main concern raised was why the Authority only removed the discount from the start of the current year and not earlier.

1.5 Another concern raised was what options the Authority had to start legal proceedings against people who claimed this discount fraudulently.

2. **Proposals and reasons**

2.1 Over the years, the way SPD has been reviewed has changed. Before 2006/07 all reviews were carried out on a negative basis i.e. all those in receipt of the discount were written to and asked to notify the Council if they were no longer entitled to this reduction and if not to supply a date that it should be removed from.

2.2 From 2006/07 the NFI reviewed all recipients of SPD by way of matching them against other databases and highlighted those which possibly may not be entitled to it. The Council then wrote to all of these people asking for them to confirm eligibility and removed the discount from those no longer entitled to it.

2.3 The date used for removal was either the date given by the resident or the start of the financial year.

2.4 This date was used due to the previous high rates of reversals required from those where the discount had previously been removed and had to be re-awarded after later contact by the resident. In fact officers involved in this process have stated that up to 50% of accounts which had the SPD removed had to have it reinstated as the resident contacted the authority and proved they were still entitled.

2.5 In 2009 the Authority changed its annual review to a positive review requiring all residents to confirm eligibility. This created a lot of pressure to resource this change in process but it was felt that this would ensure fraudulent and incorrect claims were reduced, as recipients would be required to positively confirm their entitlement.
2.6 The authority carried out another NFI review in 2010/11 and also required 5% of all the returned positive reviews to be checked via a 3\textsuperscript{rd} party Data Company who are able to supply data confirming SPD eligibility.

2.7 Due to every account being either confirmed by a positive return each year or via an NFI review, the date used for the removal of discount should be the start of the current financial year, as the award would have been reviewed the previous year and not highlighted as "possibly incorrect". This also ensured that the number of reinstatements was kept to a minimum as well as complaints and contact from residents who unfortunately ignore requests for confirmation.

2.8 Since the start of 2011/12, all SPDs are being reviewed via Tracesmart, a 3\textsuperscript{rd} party company which advises as to the risk of an SPD application being true or fraudulent.

2.9 It should be noted that the ability to accurately verify SPD applications has been a developing science, maturing significantly over the past 2 years; with the Audit Commission data matching council tax records with electoral registers, the credit referencing companies are now engineering their datasets to provide dedicated SPD verification services to local authorities.

2.10 However, in light of the concerns raised by Corporate Committee, the date of removal will be changed to the date of the review carried out in the previous year or the date notified to us by the resident.

2.11 An earlier date is not required as in 2010-11 the account would have been through a positive review (i.e. confirmed correct by the resident) the NFI review and possibly a Tracesmart review.

2.12 If an earlier date is used for those who do not contact us to let us have the correct date, it could result in a large increase in contacts requesting reinstatement and possibly increased complaints.

2.13 As the recipient would have already been through a review showing that they are likely to be entitled to the discount, it is reasonable to only go as far back as that.

2.14 The review currently underway for 2011-12 has so far identified 15,068 accounts where eligibility has not been verified by Tracesmart. Work undertaken by Capita indicates that in the region of 10% of those will likely be incorrect and require removal. With the majority of SPD being claimed in band B and C properties, that equates £375,000 being recharged to the tax payers. The costs of verification at this stage are estimated at £40,000 to £45,000.

2.15 It is clear therefore that a more robust verification process at the customer response stage is cost effective. Indeed from 01 December, under the new contract arrangements, Capita will be undertaking full property reviews when reviewing SPD applications, using data held by Experian, a market leader in data handling. This will provide a data matching service which is the equivalent of the Audit Commission process.
Options for further legal action

2.16 Conducting investigations into potential SPD fraud will be problematical. For the purpose of comparison we should look at benefit fraud investigations into allegations of living together or failure to declare non-dependants, as the objective is to establish someone is living in a particular property. Generally the problem in proving these offences is that the benefit recipient will often argue that their address is being used as a postal address only.

2.17 In order to disprove this we need to establish that the person in question is actually resident at the property. This may be achieved by carrying out surveillance. This is extremely resource intensive and has to be proportionate in order for surveillance to be authorised. Under current legislation it would be difficult to justify this level of intrusion for an offence with such low financial value as SPD (around £300 per annum based on a band D property).

2.18 During the period April 2007 to March 2011 the Benefit Investigation Team at Lambeth carried out 131 investigations into undeclared non-dependant/partner and secured only 5 sanctions, a success rate of 3.8% due to the difficulty in obtaining sufficient evidence to prove fraud. By way of comparison the success rate when investigating cases of undeclared earnings for the same period is 39%. As a result of the poor success rate benefit investigations of this nature are now only conducted where there is significant evidence. We would need to apply the same standards to the investigation of SPD fraud.

2.19 It is of note that the Department for Work and Pensions applies a public interest test when deciding whether to prosecute benefit fraud. Generally only cases involving more than £2000 of benefit are prosecuted. By comparison this equates to 7 years of SPD at band D. It is unlikely that a fraud investigation would be able to gather sufficient robust evidence for a period of this length that would lead to a prosecution with a reasonable prospect of success.

2.20 Lambeth does not have a value threshold for prosecuting benefit fraud. Each case is considered on its merits and a decision is taken whether criminal prosecution, an Administrative Penalty or a Caution is appropriate. If the claimant refuses to accept an Administrative Penalty or a Caution then a criminal prosecution is begun and evidence is then gathered to the criminal standard.

Utilise the Penalty Scheme

2.21 This scheme is used in some other local authorities but has yet to be employed in Lambeth. A penalty of £70 can be added to the account if false information is provided. This can rise to £280 if the liable person continues to provide false information.

2.22 Advantages of this option include

- This may act as a deterrent to those incorrectly claiming SPD, assuming it is publicised.
- The burden of proof on the council is limited to the civil ‘balance of probabilities’ test.
• The facility to administer the scheme is an inherent part of the Academy council tax system.

• The system will be relatively inexpensive to operate as costly investigations will not be required.

• Income will be raised.

• It avoids the need to prosecute and the burden of the costs involved.

2.23 Disadvantages of this option include

• Additional resources will be required to operate the scheme.

• This could be seen as a money making scheme and as such may attract adverse publicity.

• It doesn’t send out a zero tolerance message

• This would cause additional problems recovering the money, given the difficulties collecting council tax without the penalty.

• The decision to levy a penalty is appealable via the Valuation Tribunal Service and ultimately the High Court. It is deemed uncollectable while under appeal.

Prosecute Some Offenders

2.24 This option includes the option to prosecute those who fraudulently obtain or retain SPD. Some cases will be considered for further prosecution. These will be cases where it is discovered that SPD entitlement appears to be fraudulent, and further investigations highlight issues that may suggest that entitlement may have been fraudulent for several years.

2.25 Where the financial level of SPD fraud is unlikely to warrant a prosecution on its own, linking it with other fraud investigations, such as housing and council tax benefit fraud, may produce a case worth pursuing.

2.26 Advantages of this option include

• This option sends out a much stronger message that fraud will not be tolerated.

• The deterrent factor may be invaluable and may reduce money lost to Lambeth in the form of SPD.

• Lambeth will be at the forefront of fraud investigation and prosecution of SPD fraud.

2.27 Disadvantages of this option include:

• There would be cost involved in identifying which cases where SPD entitlement is in question should be forwarded for investigation.
• Additional resources will be required to conduct investigations into potential SPD fraud.

• Investigations to establish sufficient evidence to establish and prove fraud are costly. An average benefit investigation costs around £900 - £1000.

• The costs of prosecution are wide ranging:
  Guilty plea (uncontested) £480.00
  Magistrates court trial £1100.00 - £1600.00
  Crown Court trial £3,000.00 - £4,000.00

• There has been a significant reduction in resources provided for benefit fraud investigation in 2011/12 as a result of the savings requirements placed on the Council by government and in light of the Department for Work and Pensions plans to create an integrated fraud investigation service from 2013. The Benefit Investigations team are focusing their remaining investigation resource in investigating benefit fraud where there is a high value and where intelligence indicates a higher likelihood of obtaining a successful outcome. Undertaking investigations into potential cases of SPD fraud would require additional budgetary resources to be provided to the team. However, where potential SPD fraud is identified during the course of investigation of benefit fraud, this will be taken into account as part of the investigation and any subsequent prosecution.

• Cases would be prosecuted under the Fraud Act. These are either way offences; the defendant has the right to request trial by jury. The burden of proof is the criminal test of ‘beyond reasonable doubt’, requiring the council to build an unassailable case. Costs would likely outweigh the recovered council tax.

• Although costs are fully recoverable in law, the reality is that the courts may only award a proportion and subsequent collection may require further enforcement action. This has the potential to leave the council with significant bad debts.

• The cost of the investigation would outweigh the loss in SPD obtained fraudulently. It may be seen as not in the public interest to pursue.

• Lambeth may be criticised by the courts.

Prosecute All Offenders

2.28 This option sets out a ‘zero tolerance’ policy, in that all identified occurrences of SPD fraud, no matter what level of overpayment, is taken to prosecution.

2.29 Advantages of this option include:

• This option sends out a clear and unequivocal message that persons committing SPD fraud will be prosecuted.

• The deterrent factor may significantly reduce the burden on Lambeth of discounting in the form of SPD.

2.30 Disadvantages to this option include:
There is no risk assessment to identify cases where investigations may be unsuitable and resources may be expended on cases where there is no prospect of a successful outcome.

Significant additional resources will be required to conduct investigations into potential SPD fraud.

Investigations to establish sufficient evidence to establish and prove fraud are costly. An average benefit investigation costs around £900.00 - £1000.

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Lambeth would be criticised by the courts.

**Tackle the Problem Retrospectively**

2.31 This option aims to look at cases where SPD has been awarded incorrectly in the past and deal with those deemed to have made false claims.

2.32 The first aspect is when to cancel entitlement from. As stated above the current practice, where no additional information is known, is to cancel the award from the preceding 1st April. The cases already identified could be reviewed and all liable persons who have had their entitlement ceased may be written to in order to ascertain the actual date that entitlement should have ceased.
2.33 The implementation of a full ‘s29’ search with a credit reference agency such as Experian may provide sufficient information for a full retrospective reassessment of discount entitlement.

2.34 Once this exercise has been carried out the cases could be reviewed and a decision made regarding whether the case should be prepared for prosecution.

2.35 Advantages of this option include:

- This option sends out a strong message that fraud will not be tolerated.
- It may assist in preventing future occurrences due to the deterrent value.

2.36 Disadvantages of this option include:

- There would be a substantial cost in writing to all relevant liable persons for the information. Many would probably not reply.
- There would be further cost, for which there is no current budget provision, in assessing which cases should be progressed and in conducting investigations.
- There would be potential pitfalls if cases were taken to court as the review forms appear to have been issued sporadically, and those we have don’t contain warnings of the possibility of court action.
- Cases would be prosecuted under the Fraud Act. These are either way offences; the defendant has the right to request trial by jury. Costs would be astronomical.
- The cost of the investigation would outweigh SPD obtained fraudulently and may be seen as not in the public interest to pursue prosecution.
- Lambeth may be criticised by the courts.

3. **Finance Comments**

3.1 Any increase in the Council Tax Collectable debit has the potential of improving the overall position on the Collection Fund, depending on collection performance.

3.2 There is no additional expenditure required as a result of this proposal and the removal of any Single Person Discount will be implemented and managed from within the existing budget.

3.3 There are no capital implications arising as a direct result of this proposal.

4. **Comments from Director of Governance and Democracy**

The Council has a statutory duty to collect council tax that is due and to ensure the prompt application and verification of all available exemptions and discounts.
4.2 Section 11 of the Local Government Finance Act 1992 provides for a discount of 25% from the amount of council tax payable in respect of any chargeable dwelling, where the household (disregarding certain excluded categories, such as students and people who are severely mentally impaired) is comprised of a sole resident over 18. This is commonly referred as Single Persons Discount (SPD).

4.3 Residents falsely claiming SPD, or receiving it for longer than they should, are liable to civil and criminal penalties and these are set out below.

**Civil penalties**

4.4 Under Regulation 16 of The Council Tax (Administration and Enforcement) Regulations 1992 (the 1992 Regulations), a person who has been informed in a demand notice of an assumption as to single person discount made in his case, has a duty to inform the Council in writing if he has reason to believe that his entitlement to that discount has changed and must do so within 21 days of his first having such a belief.

4.5 Schedule 3 of the Local Government Finance Act 1992 (the Act) provides the Council with a power to impose a civil penalty [currently £70] where a recipient of SPD fails, without reasonable excuse, to notify the council that the discount no longer applies. Further penalties (of £70 or £280) may also be imposed if the recipient is requested to supply or resupply information in connexion with his claim and either fails to do so or knowingly supplies information which is inaccurate in a material particular. The recipient has a right of appeal to the Valuation Tribunal when such a penalty is levied.

4.6 Schedule 3 of the Act and the 1992 Regulations further provide that a penalty:

- can be quashed by the authority;
- can be collected either as council tax or as a 'sundry debt';
- cannot be enforced whilst an appeal is ongoing; and
- cannot be levied if a person is convicted for the same offence

4.7 The power to impose a penalty is discretionary and the council has to decide whether to exercise its powers under this Schedule and must then establish collection and recovery methods in accordance with Regulation 29 of the 1992 Regulations. All money collected in this way must be applied to the General fund.

**Criminal proceedings**

4.8 It may be possible to pursue a Fraud Act 2006 prosecution where there is evidence that a person has made a false claim to SPD or failed to notify of a material change of circumstances affecting his continued entitlement to it. The relevant offences are set out at Sections 2 and 3 of the Fraud Act 2006.

**False Claims – Sections 1 and 2 of the Fraud Act 2006**
4.9 Section 2 provides that a person commits a fraud if he dishonestly makes a false representation and intends by making the representation to make a gain for him or another or to cause loss to another or expose another to risk of loss.

4.10 A false representation means any representation as to fact or law which is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading.

4.11 The meaning of dishonesty, for these purposes, is provided by the two stage test set out in the case of R v Ghosh 1982. The first test is whether the Defendant's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. Assuming the answer to be in the affirmative, the second test is then whether the Defendant was aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people.

4.12 If a person submits a claim for SPD and provides information that is false and known to be false by that person and if he does so dishonestly and if he intends by providing that information to make a gain for himself (i.e. in order to receive SPD to which he is not entitled), then he will be guilty of fraud within the meaning of Sections 1 and 2 of the Fraud Act 2006.

Failing to declare changes in circumstances – Sections 1 and 3 of the Fraud Act 2006

4.13 Section 3 of the Fraud Act 2006 provides that a person commits a fraud if he dishonestly fails to disclose information which he is under a legal duty to disclose and intends by this failure to make a gain for himself or another or to cause loss to another or expose another to a risk of loss.

4.14 If a person dishonestly (per the Ghosh test above) fails in accordance with Regulation 16 of the 1992 Regulations to disclose information relevant to his continued receipt of SPD and intends by his failure to make a gain for himself (i.e. in order to receive SPD to which he is not entitled), then this would potentially constitute a Fraud under Sections 1 and 3 of the Fraud Act 2006.

4.15 A person who is guilty of fraud is liable on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both) or on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

5. Results of consultation

5.1 Other London Boroughs were consulted via the London revenues group to find out what current practise was across London.

5.2 Most of those who were spoken with followed very similar practise as Lambeth.

6. Organisational implications

6.1 Risk management:
The failure to tackle incorrect or fraudulent single person discount claims impacts of funding available to Lambeth and is not compatible to a zero tolerance approach to fraud.

6.2 **Equalities impact assessment:**

6.2.1 The practice potentially impacts all taxpayers claiming a discount and the stage 1 assessment produced low or no relevance impact ratings. There is no evidence to suggest that any group will be adversely affected. We will ensure that any person can access communications about the change in the policy and will have the same repayment opportunities if found to be fraudulently claiming a council tax discount. Where low impact has been identified, in the race and disability strands of the assessment, processes are in place within the council tax operation to alleviate adverse effects.

6.3 **Community safety implications:**
None

6.4 **Environmental implications:**
None

6.5 **Staffing and accommodation implications:**
None.

6.6 **Any other implications:**
None

7. **Timetable for implementation**

7.1 This has already been implemented.

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