

Council Tax, Housing Benefit and Council Tax Support Penalty and Prosecution Policy

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1. INTRODUCTION

- 1.1. The Council is committed to the detection of fraud and has a responsibility to ensure that Housing Benefit and Council Tax Support are paid correctly. Council Tax Support is also referred to as the Council Tax Reduction Scheme or Local Council Tax Support Scheme. For the purpose of this Policy it is referred to as Council Tax Support only. Council Tax Support replaced Council Tax Benefit from 1 April 2013.
- 1.2. The Council is also charged with ensuring that Council Tax is billed correctly and that discounts and exemptions are not claimed incorrectly.
- 1.3. 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.
- 1.4. It has been revised in the light of the transfer of Housing Benefit fraud investigation to the Department of Work and Pensions (DWP) in 2015.
- 1.5. This policy does not include specific reference to National Non-Domestic Rates (NNDR) although the Local Authority has the power to obtain particulars of persons interested in land as set out under Section 16 of the Local Government Act 1976. Pursuant to Section 16(2), if a person fails to comply with such requests, they will be guilty of an offence and liable on summary conviction to a fine not exceeding level five on the standard scale.

2. BACKGROUND

- 2.1 This policy is governed by legislation and DWP guidance including The Local Government Act 1972, The Local Government Finance Act 1992, Welfare Reform Act 2012, Police and Criminal Evidence Act 1984, Social Security Administration Act 1992 and The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.
- 2.2 This policy has been agreed by the Council and will be reviewed as required in response to changes in legislation or government guidance.

3. PURPOSE

- 3.1 The purpose of the Penalty and Prosecution Policy is to set out the action which the Council may take in cases of fraud or misinformation in relation to;
 - a) Claims, or attempted claims, for Housing Benefit.
 - b) Claims, or attempted claims, for Council Tax Support.
 - c) Council Tax Discounts and Exemptions.
- 3.2 The Policy provides guidelines that will be followed where applicable and clarifies which areas are the responsibilities of the Council and those which are the responsibility of the DWP.

4. AREAS OF RESPONSIBILITY

- 4.1 Responsibility for investigation and the application of sanctions lies as follows:
- 4.2 Housing Benefit (and Council Tax Benefit for offences relating to the period prior to April 2013) where there is evidence of fraud:

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- a) Investigation is the responsibility of the DWP's Single Fraud Investigation Service and cases will be referred to the DWP in accordance with DWP guidance accordingly.
- 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.

4.3 Housing Benefit where there is no evidence of fraud:

- a) The Council will make enquiries in respect of cases of misinformation or error made by the customer where the overpayment is incurred wholly after 1 October 2012 and the value of any overpayment exceeds £1,000.
- b) A civil penalty of £50 may be applied by the Council in line with regulations.

4.4 Council Tax Support:

- a) The Council has retained the responsibility to investigate and sanction allegations of fraud and abuse in relation to Council Tax Support claims.
- b) A Caution, Penalty or Prosecution may be considered where there is evidence of fraud.
- c) A civil penalty of £70 may be applied where there is no evidence of fraud.
- d) An Authorised Officer within the Local Authority has the power to obtain information as set out under Regulations 4 and 5 of The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013. Pursuant to Regulation 6, if a person refuses or neglects to produce any documentation when required to do so, they will be guilty of an offence and liable on summary conviction to a fine not exceeding level three on the standard scale.
Where a person is convicted of an offence and the refusal or failure continues after conviction, the person shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which it is continued.

4.5 Council Tax:

- a) The Council has responsibility for investigating incorrectly claimed Council Tax exemptions and discounts.
- b) A civil penalty of £70 and an additional civil penalty of £280 may be applied where appropriate – see Table of Civil Penalties on page 6.

5. GENERAL PRINCIPLES

5.1 In deciding what action to take, designated Officers within the Council will consider the following:

- Each case will be considered on its own merits;
- There must be sufficient, reliable evidence to justify the action taken;
- The action taken must be in the public interest;
- Any mitigating circumstances;
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair, proportionate and consistent;
- In exceptional circumstances, an alternative to prosecution (Caution or Penalty) may be considered without regard to the amount of the overpayment.

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6. SANCTIONS AVAILABLE FOR OFFENCES RELATING TO COUNCIL TAX SUPPORT

6.1 The three sanctions available where a criminal investigation has been undertaken are a Caution, a Penalty or Prosecution.

6.2 In cases of error or misinformation, a Civil Penalty may be applied.

6.3 LOCAL AUTHORITY CAUTION

6.4 A Caution is an oral warning given in certain, less serious circumstances as an alternative to prosecution to a person who has committed an offence. It is intended to be a meaningful penalty and deterrent where other actions are not appropriate. The Caution may be a verbal warning but both parties sign the Caution Certificate and a record is kept by the Local Authority.

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

6.6 A caution will usually be considered where the amount of the recoverable Council Tax Support is less than £1,000 where the evidence indicates that:

- a) It was a first offence, or
- b) There was no planning involved, or
- c) There was no other person involved in the fraud, and
- d) The person's circumstances and demeanour towards the offence indicates that a Caution would be the most appropriate action and
- e) The person has admitted the offence in an Interview under Caution.

6.7 In these circumstances the Council will issue an official Local Authority Caution and require full repayment of the recoverable Council Tax Support.

6.8 A Caution is not applicable where the offence is an attempt and there is therefore no financial loss to the Authority or gain to an individual.

6.9 PENALTY

6.10 A Penalty is a financial penalty offered as an alternative to prosecution, usually in circumstances not deemed serious enough to warrant prosecution.

6.11 If a person refuses a Penalty the case will be recommended for prosecution.

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

- a) It was a first offence, or
- b) The person failed to attend an interview under caution, or
- c) 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; and
- d) There was no planning involved, or
- e) The person has not admitted the offence at an Interview under Caution, and
- f) There was no other person involved, and

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- g) The person's circumstances and demeanour towards the offence indicates that a Penalty would be the most appropriate action.

6.13 In such circumstances the Council will make an offer of a Penalty in addition to requiring full repayment of the recoverable Council Tax Support.

6.14 The penalty will be a minimum of £100, or 50% of the recoverable amount of Council Tax Support up to a maximum of £1,000.

6.15 **PROSECUTION**

6.16 Prosecution proceedings will usually be instigated only after the evidential and public interest tests as detailed in the Code for Crown Prosecutors are satisfied, and in line with the Council's own Corporate Enforcement Policy. Prosecution will be considered where:

- a) It was not a first offence, or
- b) The fraud has been deliberate and calculated, or
- c) The fraud had continued over a long period; or
- d) The value of the overpayment or financial gain is significant; or
- e) The person has failed to attend an interview under caution; or
- f) There were other persons involved in the fraud and collusion has been investigated, or
- g) The person has declined the offer of a Penalty or withdrawn agreement to pay and Penalty; or
- h) The person has declined the offer of a Caution

6.17 The decision to prosecute is a serious step and has implications for all concerned. The Council will ensure that decisions to prosecute are made in a fair, consistent and equitable manner.

6.18 The Council will also consider the following:

- a) Offender's physical and mental condition such as illness, disability, age etc.
- b) Social factors such as domestic violence, coercive control, career or employment impact, child care etc.
- c) Voluntary disclosure where the individual makes a full and frank admission without prompting.
- d) Procedural difficulties, delays, failures in the investigation or administrative process.

6.19 **SANCTION RECOMMENDATIONS**

6.20 The recommendation to apply any sanction will be made in the first instance by the Investigating Officer after consultation with an appropriate Senior Officer.

6.21 Recommendations for criminal sanctions will then be referred to the appropriate Legal Department.

6.22 An appropriate Senior Officer will administer Cautions and Administrative Penalties on behalf of the Revenues or Benefits Department.

6.23 **CIVIL PENALTIES**

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6.24 A civil penalty is a financial penalty that that can be imposed where a person has negligently supplied incorrect information or failed to supply information that affects;

- a) The amount of Housing Benefit or Council Tax Support they have been paid or would have been paid or
- b) The amount of Council Tax they have been billed or would have been billed.

6.25 CIVIL PENALTIES APPEAL PROCESS

6.26 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 of the date of their letter in which the civil penalty is issued, and ask for a reconsideration of the decision. The reconsideration will be carried out by a Senior Manager within the Local Authority. The outcome of the reconsideration is final and there is no further appeal process. The customer will need to state and provide evidence where appropriate, why they feel the decision is wrong.

6.27 If a customer is not satisfied with the decision to impose a civil penalty in relation to Council Tax Support, they can write to the Council within one calendar month of the date of their letter in which the civil penalty is issued, and ask for a reconsideration of the decision. The reconsideration will be carried out by a Senior Manager within the Local Authority. If the appeal is not successful, the customer may appeal to the Valuation Tribunal. The customer will need to state and provide evidence where appropriate, why they feel the decision is wrong.

6.28 If a customer is not satisfied with the decision to impose a civil penalty in relation to Council Tax, they can write to the Council within one calendar month of the date of their letter in which the civil penalty is issued, and ask for a reconsideration of the decision. The reconsideration will be carried out by a Senior Manager within the Local Authority. If the appeal is not successful, the customer may appeal to the Valuation Tribunal. The customer will need to state and provide evidence where appropriate, why they feel the decision is wrong.

TABLE OF CIVIL PENALTIES

Service	Amount of penalty	Criteria	Appeal method
Housing Benefit	£50	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 (reasonable excuse = ill health, significant stress)	The Council
Council Tax Support	£70		The Council and then the Valuation Tribunal
Council Tax	£70	1. Failing to supply information following a request from the Council, or 2. Supplied information about a liable person that is	The Council and then the Valuation Tribunal

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		<p>materially inaccurate, or</p> <p>3. Failing, without reasonable excuse, to notify the Council that a dwelling is no longer exempt, or</p> <p>4. Failing, without reasonable excuse, to notify the Council that a level of discount no longer applies (reasonable excuse = ill health, significant stress)</p>	
Council Tax	£280	<p>1. Where a penalty has been imposed and a further request to supply the same information is made again and is not properly complied with, and may do so each time it repeats 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>	<p>The Council and then the Valuation Tribunal</p>

7. STRATEGY AND POLICY REVIEW

- 7.1 The appropriate department will review and amend this Policy as necessary to ensure that it continues to remain compliant and meets legislative requirements and the vision of the Council in consultation with the S151 Officer, the Legal Department and Members.

Responsible Department: Revenues Department / Benefits Department

Policy Author: Counter Fraud Unit

Date: April 2017

Review frequency as required by legislative changes / every three years.