

**Revenues and Housing Support
Services
SANCTION POLICY**

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Version control

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1. Introduction:

This policy provides a framework to ensure a fair and consistent approach to the use of formal sanctions and penalties in relation to:

- Council Tax Support
- Council Tax Discounts and Exemptions
- Business Rates
- Housing Applications
- Housing Grant Applications
- Housing Benefit

It replaces the Council's previous Housing Benefit and Council Tax Benefit prosecution policy and links in with the Corporate Fraud and Corruption Policy.

As a local authority the Council has a statutory duty to administer and arrange its financial affairs appropriately and in accordance with section 151 of the Local Government Finance Act 1972. It is therefore extremely important that the Council applies an appropriate and effective Policy as part of its administrative duties.

It refers to the criteria which will be taken into account before considering whether the use of a sanction or penalty is appropriate.

2. General Principles:

The Council is committed to the prevention, detection, correction, investigation and where appropriate, the prosecution of fraudulent claims to Council Tax Support (CTS), Council Tax Discounts and/or Exemptions, Business Rate Exemptions, Reliefs, Housing and Grant applications and Housing Benefit.

The aim of this Policy is to prevent offences occurring in the first instance by making it clear to the Council's customers that they have a responsibility to provide accurate and timely information about their claims; to sanction wrongdoing; and to deter offending.

This Policy is intended to provide clear guidance on the options available to the Council to deal with those who either:

- through an intentional act or omission commit Council Tax, CTS, Business Rate, Housing or Grant Application fraud; or
- negligently make incorrect statements; or without reasonable excuse fail to give prompt notification of a relevant change of circumstances affecting a Council Tax Discount, exemption or reduction in Council Tax or Business Rates, or other gainful applications,

and how and when these options should be used.

3. Timescales and outcomes for customers:

Customers who receive a Council Tax or Business Rate discount, exemption, relief or a Council Tax Reductions (known as Council Tax Support) are responsible for advising the Revenues and Housing Support Service of the Council **within 21 days** of a change in circumstances occurring, which affects their entitlement to this reduction.

If a customer receives Housing Benefit they are responsible for advising the Revenues and Housing Support Service of the Council **within 1 calendar month** of a change in circumstances occurring which affects their entitlement to Housing Benefit.

If a customer does not comply with these timescales it will be appropriate to determine the reason for failure to comply, and whether this was a negligent or fraudulent act. The outcome of this will determine what action is appropriate in each individual case.

For those customers who apply for:

- a discount
- an exemption
- a relief
- a grant
- a housing need

and who it is found have made claims that were incorrect from the outset, any enforcement action resulting from such claims will again be determined on the reasons why such incorrect claims were made and any action taken will be based on what is appropriate in each case.

In all cases Council officers will endeavour as quickly and effectively as possible to undertake their investigation in accordance with all statutory regulations and procedural guidance. All officers will have undertaken the appropriate training to carry out such investigations, and will be either Accredited or hold a similar qualification.

In cases of Housing Benefit fraud, the Council will refer the matter to the Department for Work and Pensions Single Fraud Investigation Service who will carry out the investigation.

4. Administration of Sanctions:

Council Tax Penalties for Council Tax Registration, Discounts and Exemptions:

The Council is legally entitled to obtain information from residents, owners or managing agents to help identify the person liable for payment of the Council Tax.

Where a person fails to supply certain information requested by the Council within 21 days of the request for the information or within 21 days of a change which affects Council Tax registration or an entitlement to a discount or exemption, or knowingly supplies inaccurate information in purported compliance with such a request, without good reason, the Council will impose a penalty of £70 on them.

Where a penalty is imposed and a further request to supply the same information is made again and is not properly complied with without good reason, the Council will impose a further penalty of £280, and may do so each time it repeats the request and the person concerned does not promptly comply with it. There is no limit to the number of times this penalty can be imposed.

If a penalty is imposed and the person who has not supplied the information has a Council Tax account the penalty will be added to this account. In all other cases an invoice will be raised for repayment.

A customer can appeal about the decision to impose a penalty to the Valuation Tribunal.

Civil Penalties for Housing Benefit

The Welfare Reform Act 2012 provides for alternatives to prosecution by the imposition of Civil Penalties.

A Civil Penalty (CP) of £50 can be imposed on customers who receive an overpayment of Housing Benefit caused by either:

- negligently making incorrect statements, or
- failing without reasonable excuse to provide information or disclose changes in their circumstances.

This penalty is for cases of claimant error where the overpayment is wholly after the date of commencement of the legislation on 1 October 2012 and where the recoverable overpayment, which results from this negligent act or failure, is above £250.

If the customer is in receipt of Housing Benefit the CP will be recovered by reducing their on-going entitlement to benefit. If there is no such entitlement the CP will be recovered by raising an invoice.

A customer can appeal a decision to impose a CP in the same way as any benefit decision, and within the same timescales as a Housing Benefit appeals. Such appeals are to the Tribunals Service.

Administrative Penalties for Council Tax Support

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows a local authority to offer a financial penalty to a person as an alternative to prosecution for an offence relating to the award of a reduction under the council tax support scheme, or an offence relating to an omission which could have resulted in such an award. The penalty will be applied where an award was made or where an award could have been made (attempt).

The amount of the penalty is 50% of the amount of the excess reduction subject to a minimum amount of £100 and a maximum amount of £1000.

The Council cannot impose an Administrative Penalty, it must be offered and if rejected or ignored, prosecution may be pursued. If a person agrees to pay, then no proceedings will be instituted.

The customer can withdraw their acceptance within 14 days of their agreement. After this period expires there is no right of appeal. If the customer does withdraw their acceptance prosecution will then be considered

Failure to repay the penalty or default on instalments will result in the customer facing civil proceedings for recovery.

Prosecution

Prosecutions relating to this Policy are undertaken by the Council's Legal Services Section and involve the unlawful claiming of:

- Council Tax Support
- Council Tax Discounts/Exemptions
- Business Rate Discounts/Exemptions/Reliefs
- Grant or Housing Applications

Prosecution will be considered against any person who has committed an offence in order to receive a financial gain or a gain of another nature.

A Service Manager will consider if it is appropriate to prosecute an offender subsequent to carrying out an evidential and public interest test. In making any decision the Service Manager must refer to The Code for Crown Prosecutions as a guide to establishing the value of prosecuting offenders by referring to the evidential and public interest tests. This decision making process will be documented on an appropriate form. If it is decided that prosecution is the most effect means of dealing with an offence, the Service Manager in agreement with the Joint Head of Revenues and Housing Support Services will forward the file to the Council's Legal Service Section. The Legal Department will make the final decision based on the evidence in the case and advise of if there is enough evidence to pursue a prosecution and also if it is in the public interest to prosecute. The Legal Services Section will provide an outline of reasons why a case is to be pursued or rejected and will forward these to the Service Manager.

Evidential Test

In making a decision to prosecute, the Council 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, a magistrate or judge hearing the 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 cases do not pass this 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 on to the second stage to decide if a prosecution is appropriate and in the public interest.

Public Interest Test

The Council will 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:

- the seriousness of the offence;
- a conviction is likely to result in a significant sentence;
- the defendant was in a position of authority or trust;
- there is evidence that the offence was premeditated;
- there is evidence that the defendant instigated and organised the fraud
- there is a previous incidence of fraud;
- there are grounds for believing that the alleged offence is likely to be continued or repeated based on any history of recurring conduct;

- the alleged offence, irrespective of its seriousness, is widespread in the area it is or was committed;

Some Public Interest Factors against prosecution are:

- the court is likely to impose a nominal penalty;
- the offence was committed as a result of a genuine mistake or misunderstanding (factors balanced against the seriousness of the offence);
- the impact of any loss of funds can be described as minor and was the result of a single incident, particularly if it was the result of misjudgement;
- there have been long and avoidable delays between the offence taking place and the date of the trial, unless:
 1. the offence is serious
 2. the delay is caused in part by the defendant
 3. the offence has only recently come to light
 4. the complexity of the offence has caused a long investigation
- the defendant is elderly or is, or was at the time of the offence suffering from significant mental or physical illness, this is balanced against the seriousness and complexity of the offence;
- the defendant has put right the loss that was caused (although defendants must not avoid prosecution purely on the basis that they have cleared a debt or paid compensation);
- any voluntary disclosure;
- social factors such as domestic abuse, or substance abuse

The various reasons listed above both for and against prosecution are not exhaustive. The factors that apply will depend on the facts in each individual case.

5. Alternative Action

Sanctions are broadly based on financial losses that have been incurred as a result of fraud.

In exceptional cases the Service Manager may decide that none of the sanction options set out in the Policy is appropriate. In such cases where it is considered that any sum which has been overpaid is insufficient to warrant a sanction and there is little or no evidence to suggest that the commission of the offence was negligent or deliberate the Service Manager may consider as alternatives:

- an informal caution sent by letter; or
- no further action be taken

6. Publicity

It is the Council's intention to positively promote this Policy as well as the outcome of any prosecutions; which should deter others from such activity.

The Policy represents a commitment to protect public funds and to ensure that services are delivered only to those who have a true entitlement to them.

Whilst the Council appreciates that the majority of customers are honest, it will continue to fight abuse of its systems by those who falsely claim any advantage to which they are not entitled to.

This Policy will be reviewed annually and in line with any changes to legislation

Relevant Acts and Legislation

The relevant officers has regard to and will sanction under any relevant legislation or common law rules including, but not exclusive to the following Acts:

- The Theft Act 1968
- Criminal Law Act 1977
- The Theft Act 1978
- Magistrates' Courts Act 1980
- Forgery and Counterfeiting Act 1981
- Criminal Attempts Act 1981
- Police and Criminal Evidence Act 1984
- Criminal Justice Act 1987
- Criminal Justice Act 1991
- The Social Security Administration Act 1992
- Criminal Justice and Public Order Act 1994
- Proceeds of Crime Act 1995 (c.11)
- Criminal Procedures and Investigations Act 1996
- Crime & Disorder Act 1998
- Regulation of Investigatory Powers Act 2000
- Proceeds of Crime Act 2002
- The Fraud Act 2006
- The Local Government Finance Act 1992
- Prevention of Social Housing Fraud Act
- Social Security (Civil Penalties) Regulations 2012
- The Council Tax Reduction Schemes (Detection of Fraud & Enforcement) (England) Regulations 2013

Further reference to these ACTS can be found on the Website by inserting the required ACT, or you can contact the Compliance Team for copies of any relevant legislation.