

## Council Tax and Local Council Tax Reduction Scheme: Sanction and Prosecution Policy



### Council Tax Support Scheme

Council Tax is a tax on the occupation of a domestic property. It is a system of local taxation used to part fund the services provided by local government. The primary legislation for Council Tax is the Local Government Finance Act 1992. Operationally, the governing regulations are the Council Tax (Administration and Enforcement) Regulations 1992.

Tax payers can apply for various exemptions, discounts and reductions. They are dependent upon the circumstances of the tax payer / the people living in the household and with some being dependent upon the property. It is necessary for Local Authorities to regulate the discounts and reductions to ensure that they are only awarded under the circumstances to which they are eligible to be received.

Council Tax Support Scheme is a means tested Council Tax discount. It is intended to help people on low incomes meet their Council Tax costs. The primary legislation is the Local Government Finance Act 2012. Operationally the governing regulations are:

- For those who have reached the qualifying age for Pension Credit it is the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012.
- For working age claimants, local authorities have been given the power to design their own schemes and accompanying rules.

Local Authorities need to guard against fraudulent applications for Council Tax Support to ensure that only tax payers eligible to receive support with their Council Tax liability actually receive assistance.

### Single Person Discounts

Single person discounts of 25% are available where there is only one adult living within the property. Circumstance changes should be notified in the correct way to ensure correct charges can be levied.

### Prosecution

The most appropriate sanction action will be applied in each case, on their merits. This can range from a Caution, to Civil Penalties, through Financial Penalties to ultimately criminal court prosecutions.

The most appropriate sanction action will be considered by reference to:

- The severity of the offence;
- The value and duration of the overpayment;
- The circumstances of the offender; and
- The public interest test (See Annex A)

## Alternatives to Prosecution

### Cautions

A caution is a warning (of which a written record is made), given in certain circumstances to a person who has committed an offence.

A caution can only be considered when:

- There is sufficient evidence to justify instituting criminal proceedings;
- The person has admitted the offence during an interview under caution and agrees to the caution;
- There are no previous convictions for benefit fraud; and
- There was no other person involved in the fraud

A caution can be offered if there is no loss to public funds following the presentation of a false document. For example: a false statement on an initial claim form that was identified prior to payment being made. Although there is no loss to funds, there may be an offence of making a false statement in an attempt to obtain a reduction in Council Tax liability.

However, a caution cannot be offered in cases where there is no loss to public funds following a customer's failure to declare a change of circumstances.

If the person refuses a caution, the Council's policy is to commence criminal proceedings. The court will be informed that proceedings have been brought because the person refused the offer of a Caution.

If the person is subsequently prosecuted for another benefit offence, the caution may be cited in court.

### Financial Penalties

Council Tax Support came into existence on 1st April 2013 and replaced Council Tax Benefit. Council Tax Benefit was a fully subsidised scheme administered by Local Authorities on behalf of the Department for Work & Pensions. Council Tax Support is a discount awarded against the annual Council Tax liability, by Local Authorities, created by the Local Government Finance Act 2012.

Under amendments to Local Government legislation there are occasions when there is an option to consider financial / administrative penalties as an alternative to prosecution.

Section 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, introduced financial / administrative penalties as alternatives to prosecution in Council Tax Support cases. The penalty amounts to 50% of the gross overpayment

- with a minimum of £100, and
- up to a maximum of £1,000

It can be offered if the following conditions are met:

- There is a recoverable overpayment or excess award of Council Tax Support as defined by the relevant legislation;
- The cause of the overpayment is attributed to an act or omission on the part of the defendant;
- There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which the penalty is based;
- The person offered such a penalty has the ability to repay it within a reasonable timeframe and the imposition of such a penalty will not overburden them if they have existing priority debts; and

- A failure on the part of the customer to accept a Financial / Administrative Penalty will result in the case proceeding to prosecution.

#### Civil Penalties: Incorrect Statements

Regulation 12 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows PCC to impose a penalty of £70 where an incorrect statement or representation has been made.

The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Reduction offence or been offered a Caution or Financial Penalty under Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

#### Civil Penalties: Failure to notify change of circumstances

Regulation 13 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows PCC to impose a penalty of £70 where without reasonable excuse; there is a failure to report a relevant change of circumstances promptly.

The £70 penalty can only be imposed where a person has not been charged with a Local Council Tax Reduction offence or been offered a Caution or Financial Penalty under Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

#### Civil Penalties: Single Person Discount

Schedule 3 of the Local Government Finance Act 1992 allows Councils to impose a civil penalty of £70 in cases where a resident fails, without a reasonable excuse, to supply information (or negligently supplies incorrect information) which affects their liability or entitlement to a council tax discount or exemption. This is in addition to the recovery of the associated discount.

### **Publicity**

The Council intends to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

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## Annex 1

### Definition of Fraud

Fraud is a wrongful or criminal deception intended to result in financial or personal gain:

- Makes a false statement;
- Produces a false document; and / or
- Fails to promptly notify of a relevant change in circumstances which the person knows will affect the discount / exemption / relief / support they are entitled to / or are in receipt of.

Most local taxation fraud offences are prosecuted under the Fraud Act 2006:

- Section 2 – fraud by false representation
- Section 3 – fraud by failing to disclose information.

Council Tax Support fraud offences can also be prosecuted under section 14(3) of the Local Government Finance Act 1992.

### Culture

The Council has a Compliance Team which is part of Internal Audit within the Resources Department. The team consists of two investigating officers and is line managed by the Chief Internal Auditor.

Cases of suspected Council Tax fraud can be referred to the team by e-mail ([fraud@peterborough.gov.uk](mailto:fraud@peterborough.gov.uk)) they can also be made on-line via the Council's website. They can also be made by letter. In a similar vein this can be used for reporting of any other suspected fraud. Employee investigations are also covered by the team and follow the Employees Code of Conduct and the Disciplinary Code. There is a dedicated fraud hotline **01733 452250** which can be used by either staff members or the general public. Outside office hours there is an answerphone service attached to this number.

Cases of suspected Housing Benefit fraud are now investigated by the Department for Work & Pensions. Local authorities no longer have any powers to either investigate allegations of Housing Benefit fraud or to prosecute instances of proven Housing Benefit fraud. Benefit fraud allegations can be reported on the Department for Work and Pensions National Benefit Fraud Hotline (**0800 854 440**) or via [www.gov.uk/report-benefit-fraud](http://www.gov.uk/report-benefit-fraud).

### Prevention, Detection and Investigation

The Team will investigate allegations of fraud to a criminal standard, i.e. evidence is collated and alleged offenders formally interviewed in accordance with the Police & Criminal Evidence Act 1984 / the Criminal Procedure and Investigations Act 1996. A case will only be deemed suitable for prosecution if it meets the requirements of the Code for Crown Prosecutors. There are two main requirements – The Evidential Test and The Public Interest Test.

Prosecution cases are passed to an in-house Litigation Lawyer. If the case is to be passed to the Police for them to investigate, the case is referred to the Director of Law and Governance.

### Evidential Test

The prosecuting authority must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' on each charge. Consideration should be given to what the defendant's defence may be and how it is likely to affect the prospects of conviction.

A realistic prospect of conviction is an objective test based solely upon the prosecuting authority's assessment of the evidence and any information that the authority has about the defence that the subject of the allegation may put forward. The authority must then decide whether, if properly directed in accordance with law, a jury (or magistrate) is more likely to convict than acquit a defendant of the charge(s) against them.

When deciding if there is sufficient evidence to prosecute the authority will consider:

- Can the evidence be used in court?
- Is it likely that the evidence will be excluded by the court? (For example, is it likely it may be excluded due to the way that it was obtained?)
- Is the evidence hearsay? If so, is the court likely to allow it to be represented under any of the exceptions which permit such evidence to be given in court?
- Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?
- Is the evidence reliable?
- Does the suspect have a credible explanation for their actions?
- Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
- Is the identification of the suspect likely to be questioned?
- Are there concerns over the accuracy, reliability or credibility of any of the evidence of any witness?

### Public Interest Test

When the prosecuting authority has deemed that the case has sufficient evidence to provide a realistic prospect of conviction it must then consider if it is in the 'public interest' for the legal action to progress. Every case is different and many will have mitigating aspects which will influence the authority's decision to either take legal action or refrain from instigating legal proceedings.

The public interest test requires prosecutors to consider wider factors tending for or against prosecution, for example the relative seriousness of the offence. Some common public interest factors tending against prosecution may be:

- The customer's mental or physical health would deter the authority from taking further action;
- The customer has repaid the discount / exemption in its entirety (balanced with the seriousness of the offence);
- It can be established that part or all of the original discount / exemption was awarded in error. It is established whether it is an official error at the start of an investigation – if it was official error then we would not undertake an interview under caution. If part of it was official error but part was customer fraud then consideration would be given to prosecuting the fraudulent element depending upon the amount;
- The investigation process contains unexplained long delays;
- The customer's family circumstances or adverse recent events may deter the authority from taking the person to court.

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