



## **Revenues Penalty and Prosecution Policy**

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## **1. INTRODUCTION**

The administration of Council Tax and Council Tax Support are statutory local government functions.

Council Tax administration requires tax payers to advise the Council on issues relating to liability, discounts, and exemptions.

Failure to provide this information can result in the imposition of a penalty(s), or in more serious cases, prosecution action. Penalties and prosecutions can act as a deterrent to fraudsters.

When deciding whether a penalty or prosecution is appropriate, each case should be judged on its own merits.

The purpose of this document is to set out Newcastle under Lyme Borough Council's policy on administering penalties and undertaking prosecution action in circumstances where the tax payer has delayed or failed to advise the Council of a change in circumstance when they have been awarded a discount, exemption and/or Council Tax Support or the tax payer has failed to provide information in respect of liability matters; or when there is sufficient evidence to suggest fraudulent activity.

This policy seeks to clarify when such actions may be appropriate and how the Council will deal with those who either:

- Knowingly make incorrect statements, or without reasonable excuse fail to give a prompt notification of a relevant change in circumstance affecting their entitlement to a Council Tax discount, exemption or Council Tax Support (reduction); or
- Through an intentional act or omission commit Council Tax, or Council Tax Support fraud.
- Fail to respond to requests for information.

## **2. FINANCIAL PENALTIES**

### **COUNCIL TAX LIABILITY AND COUNCIL TAX EXEMPTIONS and DISCOUNTS (Including Council Tax Support)**

#### **Supply of information to a billing authority**

A person who appears to the Council to be a resident, owner or managing agent of a dwelling must, on written request supply information to the authority. It must be supplied if it is in the person's possession or control and the authority has requested it in order to identify the person who is, or would be, liable for a specified period in relation to the dwelling, including persons jointly and severally liable. The information must be provided within 21 days of the authority's written request and in any form which is specified by virtue of the provisions of the Local Government Finance Act 1992 (Schedule 3 Penalties)

The Council possesses similar powers in respect of dwellings which appear to it to be exempt or that the chargeable amount in respect of it is subject to a discount. In

such instances the owner or managing agent must provide information for the purposes of identifying the liable person or persons for any specified period, or the person or persons who would be liable if the dwelling had not been exempt/receiving a discount for that period.

Where the Council has assumed that a dwelling is exempt, or that the chargeable amount in respect of it is subject to a discount, and it has informed the liable person (or the person who would be liable if a dwelling were not exempt) of that assumption, that person must inform the authority within 21 days of his having reason to believe that the assumption did not, or will not apply. This includes cases where a discount should not apply, or a smaller discount should be made, and where a dwelling is not exempt or is exempt for a shorter period than assumed by the authority.

A billing authority may impose a fine of £70 on a person who fails without reasonable excuse to notify it of such information.

Where the Authority has imposed a penalty and a further request for the same information is made to that person and is again not properly complied with, the Authority may impose a further penalty of £280. A penalty of £280 may be imposed each time the Authority repeats the request and the person does not fulfil their statutory obligations.

A penalty must be paid to the billing authority that imposed it. It may be collected as part of a person's ordinary council tax liability or may be demanded by notice served on the person requiring payment within a specified period (not being less than 14 days). An Authority may quash a penalty that it has imposed.

The Council may not impose an administrative penalty if the decision has been made to prosecute a person in the Magistrates Court and this has led to them to being convicted of an offence.

A person may appeal to the Valuation Tribunal for England if he is aggrieved by the imposition on him of a penalty. The appeal must be initiated by serving on the Tribunal a written notice of appeal containing the grounds on which the appeal is made and the date of service of written notice of the imposition of the penalty.

### **3. PROSECUTION – COUNCIL TAX EXEMPTIONS and DISCOUNTS**

The Fraud Act 2006 provides general powers to authorised Investigating Officers to investigate Council Tax Discounts and Exemptions (Non CTR Discount).

#### **DECIDING IF TO PROSECUTE**

The Officer in charge of the case will set out the facts of the investigation for review by the Revenues Manager or in their absence the Revenues Officer. The Revenues Manager or Revenues Officer will then recommend what action is to be taken (subject to advice from the Councils Legal department).

**Decisions will be made based on the following criteria:**

- a) The amount of money obtained. If the total amount of the overpayment is greater than £2,000 and the duration of offence is greater than 6 months then prosecution action should normally be taken.
- b) Overpayments of less than £2,000 may still be subject to legal proceedings which may include the use of formal cautions and or prosecution action.
- c) The person has previous convictions or cautions for similar offences.
- d) Whether there is evidence that the defendant is involved in organised fraud.
- e) Whether there are grounds for believing that the offence is likely to be continued or repeated.
- f) Whether the offence, although not serious in itself, is widespread in the area where it is committed.
- g) Whether the defendant has put right the loss or harm caused (suspects must **NOT** avoid prosecution simply because they can repay).
- h) Where the suspect is pregnant and confinement is either due within three months, or she is not in good health, it may be appropriate to defer consideration of a sanction until after the birth.
- i) It may not be in the public interest to prosecute suspects if they are elderly, or at the time that they committed the offence they were suffering from significant mental or physical ill health unless the offence is serious or there is a real possibility that the offence may be repeated. It will be incumbent on the suspect to provide medical evidence to support their physical and or mental condition.
- j) Is there sufficient evidence to realistically expect a conviction?
- k) Is a prosecution in the public interest or would a simple caution be appropriate?
- l) What would be the deterrence value of any publicity?

**4. COUNCIL TAX SUPPORT - FRAUD**

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulation 2013 make provision for powers to require information, the creation of offences and powers to impose penalties in connection with Council Tax Reduction schemes.

## **THE OFFENCES WHICH CAN BE CONSIDERED ARE:**

**Delay, obstruction, refusal or failure to comply with requests for information from an Authorised Officer of Newcastle-under-Lyme Borough Council.** When found guilty of such an offence, the tax payer will be liable to a fine not exceeding level 3 on the Magistrates Court standard scale and where they are convicted and the taxpayers refusal or failure to comply continues, they will be guilty of a further offence and liable on summary conviction of a fine not exceeding £40.00 for each day on which it is continues.

**False representations for obtaining a reduction** – If a taxpayer, for the purpose of obtaining council tax reduction makes a false statement or representation which the tax payer knows to be false; or provides, or knowingly causes or knowingly allows to be provided, any document or information which they know to be false in a material particular, they shall be guilty of an offence. A taxpayer guilty of such an offence shall be liable, on summary conviction to a fine not exceeding level 4 on the Magistrates Court standard scale, or to imprisonment for a term not exceeding 3 months, or to both.

**Failure to notify a change of circumstances** - If a person who is entitled to a reduction and has a change in circumstances which they know changes their entitlement to a reduction and fails to give prompt notification of that change if found guilty of this offence will be liable on summary conviction to a fine not exceeding level 4 on the Magistrates Court standard scale, or to imprisonment for a term not exceeding 3 months, or to both.

**Penalty as alternative to prosecution** - As an alternative to prosecution where there are grounds for instituting proceedings against a tax payer the Council may write to the person inviting them to agree to pay a penalty instead of prosecution action starting.

The amount of the penalty is to be 50 per cent of the amount of the excess reduction of Council Tax Reduction which has been overpaid to the customer subject to:

- A minimum amount of £100; and
- A maximum amount of £1,000.

If the penalty is accepted by the customer and an agreement for repayment is made no further action will be taken against the customer for this offence.

The customer can withdraw their acceptance within 14 days of their agreement.

## **DECIDING IF TO PROSECUTE**

The same protocols as detailed in bullet paragraph 3 shall apply to Council Tax Support Fraud.

## **5 RELATED POLICIES/STRATEGIES, PROCEDURES and LEGISLATION**

- Local Government Finance Act 1992.
- Welfare Reform Act 2012
- Social Security Administration Act 1992.
- Social Security (Civil Penalties) Regulations 2012.
- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.
- Criminal Justice Act 1982
- Police and Criminal Evidence Act 1984
- Criminal Procedures and Investigation Act 1996
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 1998
- Theft Act 1968
- Fraud Act 2006
- Human Rights Act 1998
- Paragraph 1 of Schedule 3 to the Local Government Finance Act 1992 (c. 14) (“the Act”), which has effect by virtue of section 14 of the Act.
- The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 – Regulations 2, 3, 11, 12, 16 & 29
- The Local Government Finance (England) (Substitution of Penalties) Order 2008 SI 2008/981
- The Valuation Tribunal for England (Council tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269