


FYLDE COUNCIL – COUNTER FRAUD		
Topic	Council Tax Reduction Scheme - Sanctions Policy	

1. Introduction

- 1.1 This document sets out the Council’s policy for applying sanctions to persons and organisations external to the Council who commit Council Tax Reduction Scheme fraud against it.
- 1.2 The principle guiding the policy is that the Council is committed to protecting public funds through its investigations into cases of Council Tax Reduction Scheme fraud and will seek to prosecute or apply other appropriate sanctions to perpetrators. Consequently any person or group of persons who commits Council Tax Reduction Scheme fraud against the Council can expect to be sanctioned accordingly.
- 1.3 In recognition of the Council’s stated aim and its status as a responsible steward of public funds this Policy aims to enable fraud to be effectively countered and deterred. Its specific objectives are to:
 - ♦ ensure that fraud is punished through effective sanctions
 - ♦ assist in the selection of the most appropriate sanction
 - ♦ ensure that sanctions are successfully applied
 - ♦ maximise the deterrent effect of successful sanctions
 - ♦ help obtain adequate recompense where necessary
 - ♦ maintain and generate public confidence in and respect for the Council, by helping to ensure that justice is seen as being done
- 1.4 In **all** cases where a fraud is identified in respect of the Council Tax Reduction Scheme, the Council will seek to recover the debt from the fraudulent party.

2 Scope and Definitions

- 2.1 For the purposes of this Policy, fraud means: ‘the intentional distortion of financial statements or records by any persons which is carried out to conceal assets or otherwise for gain’.
- 2.2 This meaning also includes making financial gain, or an attempt to make financial gain, by knowingly failing to advise of changes to information previously supplied.
- 2.3 This Policy covers only Council Tax Reduction Scheme fraud against the Council by external persons or organisations. This may include, amongst others benefit claimants, landlords and agents
- 2.4 The Policy sets out:

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- ♦ the sanctions which are available
- ♦ the criteria for deciding which sanction to apply
- ♦ the effects and implications of applying each available sanction
- ♦ voluntary disclosure
- ♦ publicity and reporting
- ♦ keeping the Policy timely and relevant

3 Sanctions Available

There are four sanctions available:

- 3.1 Prosecution - Criminal proceedings may be brought against alleged offenders and the case heard in Court with a view to obtaining a criminal conviction and an appropriate sentence.
- 3.2 Simple Caution - A simple caution may be given where there is evidence of a criminal offence but the public interest does not require a prosecution. A simple caution is a statement by an authorised person that is accepted in writing by the claimant, that the claimant has committed an offence for which there is a realistic prospect of conviction. A simple caution may only be used where a prosecution could be properly brought.
- 3.3 Penalty - For the Council Tax Reduction Scheme, Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, allows the Local Authority to apply a Penalty of 50% of the amount of excess reduction (rounded down to the nearest whole penny) subject to a minimum of £100 and a maximum of £1000 as an alternative to prosecution. The Penalty is levied in addition to the amount of excess reduction. Upon accepting the Penalty the person has 14 days in which to change their decision.
- 3.4 Overpayment Recovery and Civil Court Action - A strict requirement to repay monies fraudulently obtained is in itself another major deterrent to fraud, and may be additional to any other sanctions that are applied. Recovery may also include Civil Court action. In **all** cases where a fraud is identified in respect of the Council Tax Reduction Scheme, the Council will seek to recover the debt from the fraudulent party.

4 Criteria For Deciding Which Sanction To Apply

- 4.1 The Council is committed to protecting public funds through its investigations into cases of Council Tax Reduction Scheme fraud. Where it is suspected that a claimant or landlord has committed fraud against the Council, and enough evidence has been gathered to sustain a prosecution, the Council must decide what course of action to follow. Consideration will be given to any overpayments of Council Tax Benefit or National Benefits when considering the appropriate sanction.

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- 4.2 The initial decision about what action may be most appropriate lies with the Fraud Manager or Senior Fraud Officer who will submit a report to the Director of Resources or his/her nominated representative making recommendations on the appropriate sanction, taking into account the factors outlined further in this policy. If approved the report will be counter signed. If it is not approved, a case conference will take place to discuss what action, if any, is appropriate.
- 4.3 It must be understood that all frauds will be treated rigorously and prosecution will be considered in every case
- 4.4 However, where the evidential requirement for prosecution is satisfied but the excess reduction/overpayment is less than £2,000, it will often not be in the public interest to prosecute and in those circumstances a simple caution or a penalty may be offered.
- 4.5 Even in cases with excess reduction/overpayment of more than £2,000, circumstances may exceptionally lead to a conclusion that it is not in the public interest to prosecute. In such cases it may nevertheless be judged appropriate to offer a simple caution or a Penalty, having considered all of the factors of the case. The reasons for this must be documented by the officer making the sanction decision and agreed by the Director of Resources or his/her nominated representative.
- 4.6 A simple caution can only be given to someone who accepts one. If a claimant declines to accept a simple caution (because they deny the offence or for some other reason), the alternative sanction will normally be prosecution.
- 4.7 It may be appropriate to prosecute a person who has not been paid any benefit or received a Council Tax Reduction but where the attempt to defraud was so serious as to justify a prosecution.

5. Prosecution

- 5.1 In cases where the excess reduction/overpayment identified is over £2,000, or if the person has refused to accept a simple caution or penalty the Council will normally seek to prosecute. The decision on whether to refer a case for prosecution lies with the Senior Fraud Officer/Fraud Manager and the Director of Resources or his/her nominated representative.
- 5.2 In making this decision the following tests will be considered in accordance with the Code for Crown Prosecutors:

- ♦ **Is there sufficient evidence for a realistic prospect of a conviction?**

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In making this assessment, the decision-makers will follow advice from the council's lawyers and will have regard to whether the evidence can be used in court, whether it is credible and whether it is reliable.

♦ **The public interest**

A prosecution will usually take place unless the decision-maker is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. Relevant factors in assessing the public interest will include the seriousness of the offence, the level of culpability of the suspect, and whether prosecution is a proportionate response.

6. **Penalty**

- 6.1 For the Council Tax Reduction Scheme, Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, allows the Local Authority to apply a Penalty of 50% of the amount of excess reduction (rounded down to the nearest whole penny) subject to a minimum of £100 and a maximum of £1,000 as an alternative to prosecution. The Penalty is levied in addition to the amount of excess reduction. Upon accepting the Penalty the person has 14 days in which to change their decision.
- 6.2 A Penalty may be offered in cases of attempted fraud as an alternative to prosecution, where an offence of Council Tax Reduction Scheme fraud has been committed but the fraud is discovered and stopped before any award of Council Tax Reduction is made. In these cases the amount of the Penalty would be £100.
- 6.3 Where an overpayment of Council Tax Benefit or National Benefits is also being considered for the offer of a Penalty these will also be dealt with under the existing provisions of the Social Security Administration Act 1992.
- 6.4 If a Penalty is not accepted or it is withdrawn the Authority must consider whether to prosecute, therefore all cases must be prepared up to prosecution standard.
- 6.5 The offer of a Penalty should happen at a special interview. The person should be told at the interview that:
- ♦ It is not an interview under caution
 - ♦ In light of the evidence available, it is believed there are grounds for instigating criminal proceedings for the alleged offence
 - ♦ It has been decided to offer them the alternative of agreeing to pay a Penalty instead of their case being referred for prosecution

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- ♦ They will be expected to make a decision on whether to agree to pay a Penalty, by the end of the interview
- ♦ Acceptance of the Penalty is not an admission of guilt
- ♦ Recovery of the Penalty will occur in the same way as recovery of the overpayment
- ♦ They have 14 days in which to change their mind should they accept the Penalty
- ♦ Failure to repay the Penalty or default on instalments will result in them facing civil proceedings for recovery

6.6 The officer who conducted the interview under caution will not conduct the special interview.

6.7 The Council may consider issuing a Penalty if:

- ♦ To the Council's knowledge the person has never previously offended
- ♦ The person has not admitted the offence during an interview under caution
- ♦ The excess reduction/overpayment is under £2,000
- ♦ A simple caution is not appropriate
- ♦ The person is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished

If the person refuses the Penalty, the case will usually be referred for prosecution.

7. Simple Caution

7.1 The Council may consider issuing a simple caution if:

- ♦ To the Council's knowledge the claimant has never previously offended
- ♦ The person has fully admitted the offence in an interview under caution. A caution cannot be issued if the claimant refutes or denies the allegation
- ♦ Criminal proceedings are not the first option
- ♦ A Penalty is not appropriate

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- ♦ The offence is minor
- ♦ The fraud has continued for a relatively short period, normally no longer than 12 months
- ♦ The overpayment/excess reduction is under £2,000
- ♦ An additional factor that will be taken into account is the person's subsequent attitude e.g. genuine expression of remorse for their actions
- ♦ The claimant is elderly or suffering from either significant mental or physical ill health, but their fraudulent act is considered too serious to go unpunished, and they have admitted the offence

If the person refuses the caution, the case will usually be referred for prosecution

8. Overpayment Recovery and Civil Court Action

- 8.1 Regardless of what criminal proceedings or other sanctions have been deemed appropriate in accordance with this Policy, the amended amount of Council Tax will remain payable and subject to recovery by the Council Tax team.
- 8.2 Civil Court Action may also be considered as a means of recovering any amounts deemed to be lost due to fraud or corruption. Such action shall be conducted under arrangements approved by the Director of Resources.

9. Voluntary Disclosure

- 9.1 This will occur when claimants, of their own free will, reveal a fraud of which the Council has been unaware. It does not apply to cases where, for example:
- ♦ The disclosure is prompted by a belief that the fraud would have been discovered
 - ♦ The claimant has discovered that they were already being investigated
 - ♦ The disclosure was prompted by, for example, a visit

Any voluntary disclosure will be taken into consideration when the decision on appropriate action is taken.

- 9.2 Each case arising from voluntary disclosure will be considered on its own merits to determine the most appropriate course of action. In all cases considered for sanction, it is essential that each case is subject to scrutiny on the basis of its own particular details. The

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circumstances of each individual case will ultimately determine the eventual sanction route.

10. Publicity and Reporting

- 10.1 Since a principal objective of this policy is to deter fraud, then any successful prosecutions or other sanctions should be suitably publicised where appropriate.
- 10.2 While any successful prosecution result will be considered for publicity, particular attention will be given to frauds that are large in value and/or where the offender has received a significant sentence. Only when damage to the Council's reputation is threatened, will publicity not be considered.
- 10.3 Following a successful prosecution the Fraud Manager shall arrange with the Council's Public Relations and Communications Officer for a suitably worded message or press release to be prepared.
- 10.4 Use shall be made of the Council's intranet and internet website to report results both to the public and to staff.
- 10.5 Other publicity may be considered from time to time, regardless of particular recent cases, such as reports of sanctions applied over a period.

11. Review

- 11.1 The Director of Resources or his/her nominated representative shall review the Policy. This will include:
- ♦ monitoring its effectiveness,
 - ♦ taking account of any relevant changes in legislation and government guidance,
 - ♦ taking account of any structural changes either within the Council or between the Council and external organisations,
 - ♦ reviewing its relevance in view of changes in technology,
 - ♦ reviewing it in the light of comments received both inside and outside the Council.

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