

## REVENUES & BENEFITS SERVICE

## PENALTY AND PROSECUTION POLICY

## Contents

Introduction	3
Course of Action	3
Evidential Test	4
Public Interest Test Criteria	4
No Penalty or Prosecution	5
Local Authority Caution	5
Penalty as an alternative to Prosecution – Council Tax Reduction Scheme	5
Prosecution	6
Financial Penalties	7
Failure to supply information –Council Tax Liability, Exemptions and Discounts	7
Council Tax Liability	7
Council Tax Exemptions and Discounts	7
Incorrect Statements – Council Tax Reduction Scheme	8
Failing to notify a change in circumstances – Council Tax Reduction Scheme	8
Proceeds of Crime Act 2002 (POCA)	8

## **1. Introduction**

Daventry District Councils Revenues and Benefits Service is responsible for the billing and collection of Council Tax and Non-Domestic rates in respect of approximately 34,000 dwellings and 2,500 hereditaments respectively, and the administration of the Council Tax Reduction Scheme to around 4,500 claimants.

The vast majority of people using the Revenues and Benefits Service do so properly and honestly, however, it is acknowledged a minority of people commit fraud against the Council with the intention of obtaining money to which they have no entitlement to.

This policy outlines the action which the Council may take in cases of fraud or misinformation, which result in the incorrect payment of Council Tax Reduction or the incorrect billing of Council Tax and Non-Domestic Rates

**Fraud against the Council is not acceptable in any form and the Council will investigate and take appropriate action counter any fraudulent actions perpetrated against it.**

## **2. Course of Action**

The Council is committed to protecting public funds through the prevention, detection, deterrence and investigation into cases of Council Tax Reduction Scheme fraud, Council Tax Discounts / Disregards / Exemptions and Non-Domestic Rates Reliefs and Exemptions.

Where an investigation has identified that an offence has been committed, the Council will consider whether a criminal prosecution or an alternative action such as a financial penalty or caution should be applied.

The initial recommendation on what appropriate action may be taken lies with the Investigations Officer who will submit a report to the Revenues and Benefits Manager and Chief Finance Officer for their consideration. If legal advice is required this will be sought from District Law. Each case will be considered on its own merits to determine the most appropriate course of action, taking into account the following criteria::

- The evidential test
- The public interest test
- Value and length of the offence
- Social and health factors

- Other mitigating factors.

If it is approved the report will be counter signed by the Revenues and Benefits Manager. If it is not approved the Revenues and Benefits Manager and the Investigation Officer recommending the course of action will review the case together to discuss what action, if any, is appropriate.

Cases deemed suitable for prosecution will be passed to the Council's Legal Department to deal with. These cases are generally prosecuted under the Fraud Act 2006 or the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

**The Council will seek recovery of all overpayments identified during the investigation process, irrespective of any further sanction or prosecution action.**

**Where an organisation is involved in the fraud the Council will also make referrals to the relevant governing body i.e. Charities Commission, Registrar of Companies.**

### **3. The Evidential Test**

The Evidential Test must be applied in all cases regardless of the method of sanction chosen.

The Code for Crown Prosecutors, revised in January 2013, lays out how this test must be applied. Prosecutors must be satisfied there is sufficient evidence to provide a realistic prospect of conviction against each suspect on charge; they must consider what the defence case may be, and how it is likely to affect the prospects of a conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

### **4. Public Interest Test Criteria**

Where there is sufficient evidence to justify a prosecution or to offer on out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.

The Code for Crown Prosecutors lays out the public interest factors which can increase the need to prosecute or may suggest an alternative course of action. The factors will vary from case to case. Not all the factors will apply to each case and there is no obligation to restrict consideration to the factors listed. In making a decision to prosecute, all available information must be carefully considered.

The Council Officers will refer to the latest Crown Prosecution Service guidance and Best Practice when considering the public interest test.

The more serious the offence, the more likely it is that prosecution will be required in the public interest.

Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

## **5. No Penalty or Prosecution**

In certain cases no criminal proceedings will be taken against the person who has committed an offence and caused or could have caused excess Council Tax Reduction to be awarded.

No further enforcement action will be taken against a person who has committed an offence if it is decided that;

- It is not in the public interest to pursue criminal proceedings or a sanction
- The offence is considered to be so minor it is not proportionate to consider criminal proceedings or a sanction

In these circumstances the Council will issue a warning letter to remind the individual / organisation of their responsibilities and the implications of a failure to comply with Council policies, procedures or relevant legislation, which will be kept on record in line with retention guidelines for reference if further matters came to light about the same person in the future.

## **6. Local Authority Caution**

The Authority may consider issuing a Local Authority Caution if:

- To the Council's knowledge the person has never previously offended.
- The person has fully admitted the offence in an interview under caution, It cannot be issued if the person refuses or denies the allegation.
- The offence is minor
- The value of the offence is relatively low.

A Local Authority caution will be recorded where appropriate. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Local Authority caution is issued to an individual (rather than a corporation) it may have consequences, if that individual seeks certain types of employment.

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

## **7. Penalty as an alternative to Prosecution – Council Tax Reduction Scheme**

As an alternative to prosecution under Regulation 11 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) regulations 2013 where there is sufficient evidence for instituting proceedings against a person, Daventry District Council may write to the person inviting them to agree to pay a penalty instead of prosecution action being taken.

A penalty as an alternative to prosecution will be considered if;

- It was a first offence
- There was no planning involved
- There was no other person involved
- The person's circumstances and demeanour towards the offence indicate that this would be the most appropriate action.

The amount of penalty is 50% of the amount of the excess reduction (rounded down to the nearest whole penalty) subject to:

- A minimum amount of £100; and
- A maximum amount of £1000

The penalty is payable in addition to the overpayment and recoverable by the same methods as those by which the overpayment is recoverable.

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

The person can withdraw their acceptance within 14 days of the agreement.

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

## **8. Prosecution**

In cases where the fraudulent excess reduction identified is over £2000, the Council will normally prosecute.

The Council may consider taking prosecution action where the fraudulent excess reduction is less than £2,000. For example where the person concerned occupies a position of trust or for repeat offenders.

In making this decision the following additional factors will also be taken into consideration;

- Whether there is evidence that the person was a ring leader or an organiser of the alleged offence
- Whether there was planning in the process
- Whether the claim was false from inception
- Whether there are grounds for believing that the offence was likely to be continued or repeated, based on the person's previous history
- Whether the offence is widespread in the area where it was committed
- Any abuse of position or privilege
- The person has refused to accept a Local Authority Caution or Penalty
- The person shows no remorse for their actions

In the event of a successful prosecution details will, if appropriate, be released to the press for the purpose of raising public awareness in order to deter and prevent future fraud.

## **9. Financial Penalties – Council Tax and Council Tax Reduction Scheme**

### **Failure to supply information – Council Tax Liability, Exemptions and Discounts**

Schedule 3 of the Local Government Finance Act 1992 allows a billing authority to impose a penalty of £70.00 where a person fails without reasonable excuse to supply or notify it of such information.

#### **Council Tax Liability**

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 to identify the person who is, or would be, liable for a specified period in relation to the dwelling, including persons jointly or severally liable.

This information must be provided within 21 days of the authority's written request.

#### **Council Tax Exemptions and Discounts**

The resident, owner or managing agent must provide information for the purpose of identifying the liable person(s) for any specified period, or the person(s) who would

be liable for that period 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 a dwelling 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 their reason to believe that the assumption did not, or will not apply. This also includes cases where a discount should not apply, or a smaller discount should be made, and where a dwelling is not exempt for a shorter period than assumed by the authority.

Where a penalty has been imposed and a further request is made for the same information again and it is not complied with, the authority may impose a further penalty of £280.

A penalty must be paid to the billing authority that imposed it. It may be collected as part of the person's council tax liability, or may be demanded by serving a separate notice on them requiring payment in not less than 14 days.

A person may appeal to the Valuation Tribunal if they are aggrieved by the imposition of the penalty. The penalty cannot be recovered if it is subject to an appeal.

### **Incorrect Statements – Council Tax Reduction Scheme**

Regulation 12 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013 allows Daventry District Council to impose a penalty of £70.00 where an incorrect statement or representation has been made.

The £70.00 penalty cannot be imposed where a person has been charged with an offence or been offered a Local Authority Caution or Financial Penalty under Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

### **Failing to notify a change in circumstances – Council Tax Reduction Scheme**

Regulation 13 of the Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013 allows Daventry District Council to impose a penalty of £70.00 where without reasonable excuse; there is a failure to report a relevant change of circumstances promptly.

A notification of a change is prompt if, and only if, it is given within a period of 21 days beginning with the day on which the change occurs, or as soon as reasonably practicable after the change occurs.

The £70.00 penalty cannot be imposed where a person has been charged with an offence or been offered a Local Authority Caution or Financial Penalty under Regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.



### **Proceeds of Crime Act 2002 (POCA)**

In addition to the actions set out in this policy, the Council reserves the right to refer all suitable cases for financial investigation with a view to applying to the courts for restraint and / or confiscation of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order enables the Council to recover its losses from assets that are found to be the proceeds of crime.

