

EXECUTIVE CABINET

THURSDAY, 25TH JUNE 2015, 6.00 PM
COUNCIL CHAMBER, TOWN HALL, CHORLEY

The following reports were approved at the above meeting of the Executive Cabinet.

10 **Single Front Office Policies Review (Pages 3 - 24)**

Report of Customer and Advice Services.

GARY HALL
CHIEF EXECUTIVE

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Council Tax Discretionary Hardship Policy



COUNCIL TAX DISCRETIONARY HARDSHIP POLICY**1. INTRODUCTION**

This policy sets out the council's approach to the awarding of discretionary hardship relief in respect of council tax liability. It has been revised during a review of other policies relating to reliefs and discretionary payments to ensure consistency in the decision making process.

2. BACKGROUND

The Local Government Finance Act 1992 (Section 13A (1) (c)) and the Local Government Act 2003 Section 76 give local authorities the discretion to reduce a part or all of the council tax liability where it is satisfied that the council tax payer would suffer hardship if it did not do so.

This policy has been agreed by the council's Executive Cabinet and will be reviewed on an annual basis as required in response to changes in legislation or the corporate priorities of the council.

3. PURPOSE

The purpose of the Council Tax Discretionary Hardship Policy is to set out the guidelines and criteria which the council will consider when assessing applications for relief from paying council tax from customers experiencing severe financial hardship.

This policy enables the council to show that it is fair and consistent in its approach and sufficiently flexible to consider individual circumstances.

4. GENERAL PRINCIPLES

There is no statutory definition of hardship and the granting of relief is wholly discretionary. Each case will be considered on its own merits and the granting of relief will only be considered in the most exceptional cases. The council will consider the interests of council taxpayers and the impact of granting relief if it was to go against the authority's wider objectives for the local area.

The legislation allows the council to grant relief on a case by case basis or to specify a class of case. A class of case is where several people who pay council tax fall into a group because their circumstances are similar.

5. ELIGIBILITY

To be eligible for relief, the council tax payer must fulfil each of the following criteria:

- a. The tax payer is able to satisfy the council that they are not able to meet their full council tax liability or part of their liability.
- b. The tax payer is able to demonstrate that all reasonable steps have been taken to meet their full council tax liability prior to their application
- c. The tax payer can prove that the current circumstances are unlikely to improve in the following twelve months making payment of the council tax impossible
- d. There must be evidence of exceptional hardship or exceptional personal circumstances that justifies a reduction in council tax liability
- e. The tax payer has no assets that could be realised and used to pay council tax
- f. All other reliefs, discounts, exemptions, discretionary payments and valuation office appeals have been considered.

Relief will not be granted:

- a. Where the amount outstanding is as a result of wilful refusal or culpable neglect
- b. To prevent recovery action by the council or to stop bankruptcy or committal proceedings by the council or any other body
- c. Where there is insufficient evidence for an informed decision to be made.

6. APPLICATIONS

Requests for hardship relief must be made in writing by the council tax payer, their appointee or a recognised third party acting on their behalf. The request must set out the exceptional circumstances which have led to the application for relief. Relevant evidence of hardship will be required including details of the applicant's financial circumstances. The council may request any other information it considers necessary to assess the application. No costs will be borne by the council in the provision of this evidence.

The council tax will remain due to be paid whilst an application is pending and recovery action may continue if payments are not made as required.

The application will be considered by the council's Chief Financial Officer.

7. REVIEW OF DECISION

A council tax payer can ask for a review of the decision where:

- a. There is additional relevant information not available at the time of the original decision, or
- b. There is good reason to believe the application or supporting information was not interpreted correctly when the original decision was made

A request for a review must be made in writing within four weeks of the original decision and give the reasons why a review is being requested. Reviews will be considered by the council's Chief Financial Officer.

8. PERIOD OF AWARD

Hardship relief will normally be awarded for a short, fixed period depending on the nature and likely duration of the hardship. All awards shall cease at the end of the financial year if not ceased at an earlier date. The period of an award will be considered on case by case basis.

9. FUNDING

The cost of granting hardship relief is met 100% by the council.

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Debt Management Policy



DEBT MANAGEMENT POLICY

1. INTRODUCTION

The council has a responsibility to collect the income due to it. This helps the council to pay for the services it delivers. This policy is the council's statement on how it will work with customers and partners to raise and collect debt. It outlines what the council will do to help those who are in debt. The policy recognises that it is good practice to maintain a consistent and efficient approach to managing debt. Payment in advance of services being delivered is a key objective for the council. This will help to maximise the collection of income which is vital in providing resources to deliver services.

The policy will apply to the collection of money owed to the council, primarily:

- a. Council Tax
- b. National Non Domestic Rates (NNDR)
- c. Housing Benefit overpayments
- d. Miscellaneous invoices
- e. Fixed penalty notices for parking and environmental crime
- f. Income from planning application and building regulation fees and land charges

2. BACKGROUND

The council has a legal duty to ensure cost-effective billing, collection and recovery of all sums due. This policy is in addition to existing legislation.

Council Tax recovery procedures are outlined in The Council Tax (Administration and Enforcement) Regulations 1992 and subsequent amendments.

National Non-Domestic Rates recovery procedures are outlined in The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and subsequent regulations and amendments.

Housing Benefit overpayments are reclaimed in accordance with Regulations 99 -107 of The Housing Benefit Regulations 2006 and subsequent amendments. Where Housing Benefit has been overpaid and is no longer in payment the primary legislation governing recovery is obtained from the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992.

Miscellaneous invoices and other payments due are collected in accordance with financial regulations relevant to the type of debt. Where a debt is not covered by legislation, action can be taken in the County Court. For example, parking penalty charges are governed by the Traffic Management Act 2004.

The council may appoint enforcement agents and debt collection agencies where appropriate. Only certificated enforcement agents can be used to remove goods for council tax and NNDR and the fees charged to the debtor are governed by legislation.

The policy has been approved by the council's Executive Cabinet and will be reviewed as required and in response to any relevant changes in legislation or guidance.

3. PURPOSE

The purpose of the Debt Management Policy is to set out the council's approach to the management and collection of debt and also to identify the support and practical help which will be available to customers.

The policy provides an overarching framework which will be incorporated into individual service procedures and practices. It also enables a consistent and sensitive approach to collecting debt whilst

at the same time ensuring that the Council continues to meet its responsibility to collect outstanding amounts.

4. GENERAL PRINCIPLES

The council's approach to income collection will be guided by some general principles:

- a. A professional, consistent and timely approach to collecting debt.
- b. Collection will be in line with legislation
- c. Cost-effective collection of all monies owed to the council.
- d. A co-ordinated approach towards sharing information and managing multiple debts owed to the council.
- e. Where appropriate, the council will refer debtors to advice agencies.
- f. Ensuring that the interests of all council tax payers are protected.
- g. Opportunities for the collection of income in advance are maximised.
- h. Management of debts in accordance with legislative provisions and best practice.
- i. The effective use of online capability wherever possible.
- j. Collection of income will be by the most efficient means e.g., direct debit, via the website or the automated payment line.
- k. All Council bills and invoices will be raised as soon as practicable and will include clear, relevant and full information as to:
 - i. What the bill is for
 - ii. When payment is due
 - iii. How to pay
 - iv. How to contact us if there is a query
- l. A pro-active approach to collection of debt will be maintained where this will maximise income collection.
- m. Recovery action will be mindful of the council's duty to protect its finances and collect all outstanding debts.
- n. Recovery action will be proportionate to the amount of the debt outstanding.
- o. Ability to pay will be considered. The policy promotes positive actions in assisting those who may be unable to pay.

5. HELP AND ADVICE FOR CUSTOMERS

The council will offer help and advice to all customers including those experiencing financial difficulties as it wants to help its customers meet their financial commitments. At the same time the council has a duty to ensure that bills are paid as quickly as possible.

To achieve these objectives the council will:

- a. Make it easier for customers to pay by making sure they know how and where they can pay. This information is included in correspondence with customers and is on the Council's website chorley.gov.uk
- b. Refer customers to advice agencies for help with money management and debt if appropriate.
- c. Require the outstanding amount to be cleared as quickly as the customers circumstances will allow.
- d. Encourage customers to make contact immediately if they are unable to make a payment or if their circumstances change that affect ability to pay.
- e. Assist customers where there are multiple debts outstanding.
- f. Where relevant, ask customers to provide information regarding their finances in order to agree an arrangement
- g. Request payment in advance for services where appropriate

6. THE RECOVERY OF DEBTS

The council will advise debtors of the amounts and the due dates of outstanding payments. The council will also advise debtors what the next action is likely to be if payment is not made as requested.

For some types of debts the timescales for recovery are governed by legislation. The timing of recovery action will be managed in line with legislation and best practice.

The council will always reserve the right to continue with legal action. This is to protect the council's interests and prevent the debt from becoming statute barred and irrecoverable. During the later stages of recovery, the individual circumstances of cases will be considered when a decision about the most appropriate course of action is taken.

There are a number of steps which the council can take to recover unpaid debt and overdue payments.

Reminder

The council will send a reminder where a payment or an instalment becomes overdue. This reminder will give the debtor a fixed number of days in which to make payment. The council may send more than one reminder in some circumstances.

Final notice

A final notice may be sent where payments are brought up to date but fall behind again. The final notice informs the debtor of the legal enforcement action that may be taken if payments are not received nor a payment arrangement agreed.

Payment Arrangement

The council will offer debtors an arrangement to pay where appropriate. As well as the debtor's ability to pay, the arrangement will depend on factors such as the amount outstanding, the age of the debt and whether there is any ongoing liability. Payment arrangements will be regularly monitored and reviewed. It may not be in the debtor's best interests to have a long term arrangement when liability is continuous, since the level of debt will increase as time goes by and the debtor's situation deteriorate rather than improve

Summons

For some debts, failure to make payments as required may result in a summons being issued by the Magistrate's Court. This will incur further costs payable by the debtor. If payment is made in full before the court hearing date the council will not ask for a liability order which means that no further action will be taken.

Where a debtor cannot pay in full they can pay according to an arrangement as offered by the council. In these cases the council will still ask the court to grant a liability order to secure the debt.

Liability Order

Where the Magistrate's Court grant the council a liability order this will incur further costs payable by the debtor. Where a liability Order is granted the council will take appropriate enforcement action as soon as possible unless a satisfactory payment arrangement is made. If a payment arrangement is not kept to, action can be taken without further notice.

Attachment of Earnings or Benefit

If a debtor is working an Attachment of Earnings Order may be sent to their employer who will be required to make deductions from wages until the debt is cleared. Where a debtor is claiming certain benefits, a request may be sent to the Department of Works and Pensions for deductions to be made from benefit.

Enforcement Agents

Enforcement agent is the new name for bailiffs. Enforcement agents will issue an enforcement notice which will incur further costs payable by the debtor. If payment in full is not received nor a payment arrangement agreed the case will pass to an enforcement agent. Further costs payable by the debtor are added at this stage. The enforcement agent can visit the debtor's home and seize goods to the value of the debt. This action will also incur further costs payable by the debtor. The council may also use an in-house enforcement officer.

Home visits

It may be considered appropriate to carry out a visit to a debtor's home or place of business in order to secure payment of an outstanding amount.

Debt Collection

Some debts may be referred to a debt collection agency. The agency may contact a debtor by telephone or in writing to request payment of a debt.

Tracing

If a debtor leaves their last known address without providing a forwarding address we will use various methods to trace them. This may include professional external agencies as well as council records.

County Court

County Court action may be taken to recover some types of debt. This will involve the issuing of a County Court Claim Form and may result in the debtor incurring court costs and fees as decided by the court.

Bankruptcy and Liquidation

The council may take action to make a person bankrupt or to liquidate a company. A bankruptcy petition is an application to the court for a person's assets to be taken and sold to pay their debts. Bankruptcy proceedings may be instigated when a debtor owes more than £750.00.

Charging Order

This is an order of the court placing a charge on a debtor's property such as their home, a piece of land or stocks and shares. A charging order can be applied for if the council still holds another court order (such as a liability order) against a person and the total amount owing is more than £1,000.

Committal to prison

The council may make an application to the court for a committal to prison. The Magistrates have five options available for cases presented to them:

- a. Commit the defaulter to prison for a period of up to three months
- b. Suspend a prison sentence on the understanding agreed amounts are made
- c. Remit all or part of the debt
- d. Adjourn for a period of time if requested by the LA. The Magistrates may also adjourn the case if they feel they do not have enough evidence to make a decision
- e. Dismiss the case

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Discretionary Housing Payments Policy



DISCRETIONARY HOUSING PAYMENTS POLICY

1. INTRODUCTION

This policy sets out the council's approach to the awarding of Discretionary Housing Payments (DHPs). It has been revised in the light of welfare reform changes and recent case law relating to the award of such payments. The policy will allow flexibility and consistency to be applied to the decision making process.

2. BACKGROUND

The Discretionary Financial Assistance Regulations 2001 make provision for the awarding of DHPs. The Department of Works and Pensions DHP Guidance Manual April 2014 and accompanying good practice guide set out the framework for the scheme. This framework includes the criteria which may be considered, the circumstances under which Local Authorities may consider awarding a payment and also the application process and the administration of the scheme.

This policy sets out the council's approach within these guidelines and will be applied in conjunction with the relevant legislation and guidance. This policy applies to awards to customers in receipt of Housing Benefit and Universal Credit. Any awards in relation to Council Tax Support are covered by the council's Discretionary Hardship Policy.

This policy has been agreed by the council's Executive Cabinet and will be reviewed every two years or as required in response to changes in legislation or Department of Communities and Local Government guidance.

3. PURPOSE

The purpose of the DHP scheme is to provide customers suffering financial hardship with further financial assistance towards certain housing costs.

The scheme is discretionary and each case is considered on its own merits. DHP awards are to help customers when they most need it and may be a short term or one-off payment. The level of payment may cover all or part of a shortfall in rent or assist with the cost of taking up a tenancy.

4. POLICY OBJECTIVES

In deciding when to make a DHP award, the council will consider the following objectives:

- a) Preventing homelessness
- b) Preventing families and young people from living in temporary accommodation
- c) Supporting vulnerable or elderly people in the community
- d) Encouraging and sustaining people in employment
- e) Keeping families together
- f) Supporting young people in the transition to adult life
- g) Sustaining a tenancy whilst other solutions are put in place
- h) Helping those who are taking steps to help themselves
- i) Supporting claimants affected by key welfare reforms of the benefit cap, reductions in local housing allowance and removal of the spare room subsidy in the social rented sector (including disabled people, adoptive parents and foster carers).

5. QUALIFYING CRITERIA

Each application will be dealt with individually and a decision made based on the customer's circumstances. The council may request the customer to provide information and evidence in support of an application and any decision to make a DHP.

To be considered for a DHP, applicants must fulfil the following criteria:

- a) Be in receipt of Housing Benefit or Universal Credit including the housing element (including for any backdated period)
- b) Have a liability to pay rent
- c) Require further assistance with housing costs

DHPs may be awarded for:

- a. Rent in advance
- b. Deposits
- c. Lump sum costs associated with housing
- d. Shortfall in rental liability (except ineligible housing costs)

DHPs cannot be awarded for:

- a. Ineligible service charges
- b. Increases in rent due to rent arrears
- c. To cover any sanctions or reductions in benefit
- d. Council Tax
- e. If Housing Benefit payments are suspended
- f. If applicants only receive Council Tax Support or Second Adult Rebate
- g. Shortfalls caused by housing benefit overpayment recovery

6. PRIORITY CONSIDERATIONS

Any customer who meets the qualifying criteria may apply for a DHP. However, priority will be given to those customers in any of the following circumstances:

- a. Families at risk of losing their home
- b. Where there are dependent children
- c. The applicant has been affected by the benefit cap or the size criteria in the social rented sector
- d. Where there is a threat of homelessness as a result of an emergency such as fire or flood
- e. Where support is required for those who are vulnerable due to any of the following:
 - Drug or alcohol issues
 - Mental health issues
 - Fleeing actual or threatened violence
 - Learning difficulties
 - Leaving the Armed Forces
 - As a result of having been imprisoned
 - Young people leaving care
 - Old age, disability or medical circumstances

7. OTHER FACTORS CONSIDERED

In deciding whether or not to award a DHP the council will consider the following:

- a. The shortfall between the amount of Housing Benefit in payment (or housing element of Universal Credit) and the eligible rent payable
- b. Any non-dependant deductions which DHPs can cover

- c. Any steps taken by the customer to reduce the rental liability, for example whether the customer has tried to find cheaper accommodation
- d. Whether the customer is taking long term action to help their problems in meeting housing costs
- e. Where affected by the social sector size criteria rules, whether the customer has approached their landlord requesting accommodation with fewer bedrooms, considered taking in a lodger to help with housing costs or tried to find cheaper more suitable accommodation
- f. Whether the customer made enquiries regarding the Local Housing Allowance before moving into the property and what steps they put in place to meet the shortfall
- g. Rent arrears may be paid where there is evidence that the customer is taking steps to improve their financial circumstances or move to a better situation such as alternative accommodation or into employment
- h. The financial circumstances of the customer. When considering income, disregarded income for benefit purposes can be taken into account. Expenditure above basic living requirements can affect the amount of an award. A DHP is not intended to enhance a customer's lifestyle
- i. The council will decide which income is to be taken into account when deciding if it is appropriate to award a DHP. For example, income from Disability Living Allowance will be disregarded.
- j. Access to any savings or capital held by the customer or their family or household
- k. Other financial support which has been explored such as rent deposit schemes and local emergency support
- l. The medical circumstances of the customer and members of the household
- m. Any special reasons that make it necessary for the customer or the household to live in a particular property or area
- n. Any special or exceptional circumstances declared by the customer

8. APPLICATIONS

Applications must be made by completing the council's application form.

Applications may be made in advance.

The council may require further supporting evidence and information and will place a time limit on providing it.

9. APPEALS

There are no rights of appeal regarding a DHP decision. However, a customer may request that the decision is reviewed once by the council. This request must be made within a calendar month of the original written decision notice. This review decision is final and there is no further right of appeal.

10. PERIOD OF AWARD

DHP awards are not intended to support customers indefinitely but are to provide short-term financial support to allow the alternative solutions to be found. There is no limit on the length of an award period. This will be decided on a case by case basis and will be dependent upon the customer's circumstances and the time needed to resolve the problem. Awards will only be backdated where there has been an entitlement to Housing Benefit or Universal Credit for that period.

11. CONDITIONS OF AN AWARD

The following conditions apply to the awarding of a DHP:

- a. The customer must notify the council of any change in circumstances during the period of the award. A failure to do so may result in further action being taken and may include prosecution.
- b. In many cases the council will insist that any award is conditional upon the customer undertaking debt, housing or benefit maximisation advice.

- c. The customer must take proactive steps to improve their circumstances and conditions upon which each award is made will be detailed in the award letter.

12. PAYMENT OF AWARDS

A DHP can be paid to someone other than the customer if the council considers it reasonable to do so. Payment will normally be made to the landlord where it is a one-off payment or housing benefit is paid direct to the landlord. Payment will be made by electronic bank transfer.

13. OVERPAYMENT AND WITHDRAWAL OF AWARDS

When deciding whether or not to recover an overpayment of a DHP, the council will consider the reasons for the overpayment. The council can choose to recover in full, in part, or not at all.

The council may decide to withdraw an award in some circumstances, for example where there is a change in circumstances that means that the customer no longer qualifies for a DHP.

14. FUNDING

Funding for the scheme is provided on an annual basis by the Government and is cash limited. The awarding of DHPs is subject to available funding and the Council will not make awards when this funding has been fully allocated.

15. PUBLICITY FOR THE SCHEME

The council promotes the scheme in the following ways:

- a. Advice to customers on the scheme and how it can help them
- b. Information to external organisations that give advice such as Welfare Rights
- c. Making landlords aware of the scheme
- d. Information on the council's website
- e. Through the council's Housing Options advice and personal budgeting advice

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Sanction and Prosecution Policy



SANCTION AND PROSECUTION POLICY

1. INTRODUCTION

The council is committed to the detection of fraud and has a responsibility to ensure that housing benefit and council tax support are paid correctly and that council tax is billed correctly. This policy sets out the council's approach to prosecution and other sanctions in cases of fraud or misinformation in respect of council tax support, council tax and housing benefit. It has been revised in the light of the transfer of housing benefit fraud investigation to the Department of Work and Pensions (DWP) Single Fraud Investigation Service (SFIS) from 1st May 2015.

This policy does not include National Non-Domestic Rates (NNDR) as there are no powers within NNDR legislation to apply sanctions or financial penalties.

2. BACKGROUND

This policy is governed by legislation and DWP guidance including The Local Government Finance Act 1992, Welfare Reform Act 2012, Police and Criminal Evidence Act 1984, Social Security Administration Act 1992 and The Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013.

This policy has been agreed by the council's Executive Cabinet and will be reviewed as required and in response to changes in legislation or Department of Communities and Local Government Guidance.

3. PURPOSE

The purpose of the Sanction and Prosecution Policy is to set out the action which the council may take in cases of fraud or misinformation which result in incorrect payment of housing benefit or council tax support and incorrect billing of council tax.

It gives the guidelines that will be followed in certain circumstances and clarifies which areas are the responsibility of SFIS.

4. AREAS OF RESPONSIBILITY

From 1st May 2015 responsibility for investigation of all housing benefit fraud lies with SFIS. However, some cases will not meet the DWP criteria for criminal investigation. These will normally be those where the overpayment is below £2,000. The Council will retain control of these cases and carry out informal interviews where appropriate.

To summarise:

- a. Housing Benefit (where overpayment over £2,000 or evidence of fraud) and Council Tax Benefit:
 - Investigation is the responsibility of SFIS.
 - Cautions no longer apply to these cases
 - The Council has retained the delegated power to offer an administrative penalty following a recommendation from SFIS.
 - Prosecution of cases is the responsibility of SFIS
- b. Housing Benefit (where overpayment under £2,000 and no evidence of previous fraud):
 - The council will make enquiries in respect of cases of misinformation or error made by the customer where the value of any overpayment is less than £2,000.
 - A civil penalty may be applied.
 - Cases where fraud is suspected will be referred to SFIS.

- c. Council Tax Support: The council still has the responsibility to investigate and sanction council tax support cases.
- d. Council Tax: The council still has the responsibility for applying civil penalties in respect of council tax.

5. GENERAL PRINCIPLES

In deciding what action to take the Council will consider the following:

- a. Each case will be considered on its own merits
- b. There must be sufficient, reliable evidence to justify the action taken, and
- c. The action taken must be in the public interest
- d. Any mitigating circumstances
- e. The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.
- f. In exceptional circumstances, an alternative to prosecution (caution or administrative penalty) may be considered without regard to the amount of the overpayment.

6. SANCTIONS AVAILABLE

The three formal sanctions available are a Caution, an Administrative Penalty and Prosecution. The council will only apply a formal sanction where there is sufficient evidence that an offence has been committed.

To ensure consistency in the council's sanction and prosecution process and to remain in line with the policy adopted by the DWP, the following guidelines will apply:

Local Authority Caution

A caution is an oral warning given in certain, less serious circumstances as an alternative to prosecution to a person who has committed an offence. It is intended to be a meaningful penalty and deterrent where other actions are not appropriate. If a person declines the offer of a caution the case will be recommended for prosecution.

A caution will be considered where the amount of the overpayment is up to £2,000 where the evidence indicates that:

- a. It was a first offence, or
- b. There was no planning involved, or
- c. There was no other person involved in the fraud, and
- d. The person's circumstances and demeanour towards the offence indicates that a caution would be the most appropriate action.

In these circumstances the council may issue an official Local Authority Caution and require full repayment of the overpayment.

Administrative penalty

An Administrative Penalty is a financial penalty offered as an alternative to prosecution, usually in circumstances not deemed serious enough for prosecution. However, there must be sufficient evidence to justify prosecution. If a person refuses an Administrative Penalty the case will be recommended for prosecution.

An administrative penalty will be considered where the evidence indicates that:

- a. It was a first offence, or

- b. The person has previously been cautioned within the last 5 years for a similar offence but the offence was minor and the current offence is also minor; and
- c. There was no planning involved, or
- d. There was no other person involved, and
- e. The person's circumstances and demeanour towards the offence indicates that an administrative penalty would be the most appropriate action.

In these circumstances the Council may make an offer of an Administrative Penalty in addition to requiring full repayment of the overpayment. There is no minimum or maximum overpayment. The penalty will be a minimum of £100, or 50% of the recoverable amount of overpaid council tax support up to a maximum of £1,000.

Prosecution

Prosecution proceedings will usually be instigated only after the evidential and public interest tests are satisfied as detailed in the Code for Crown Prosecutors.

Prosecution will be considered where:

- a. It was not a first offence, or
- b. The fraud has been deliberate and calculated, or
- c. The fraud had continued over a long period; or
- d. The person has failed to attend an interview under caution; or
- e. There were other persons involved in the fraud, or
- f. The person has declined the offer of an Administrative Penalty or withdrawn agreement to pay and Administrative Penalty; or
- g. The person has declined the offer of an official caution

In these circumstances the council may prosecute. There will be no requirement to repay the overpayment. The council may prosecute using our own legal service, the police or other agency solicitors who will all adhere to The Code for Crown Prosecutors.

The decision to prosecute is a serious step and has implications for all concerned. The council will ensure that decisions to prosecute are made in a fair, consistent and equitable manner. In exceptional circumstances an alternative to prosecution may be considered. Other factors will be taken into consideration before prosecution is recommended.

- a. **Duration of the Offence:** An offence committed over a long period of time should be a factor towards prosecution. There may have been an opportunity to declare the correct information when the claim was renewed.
- b. **Previous Offences:** The council will make enquiries about any previous offences of a similar nature committed. Where there has already been a caution for deception, a second caution issued by the Council may not be appropriate.
- c. **Trust:** Consideration will be given to whether or not the person was in a position of trust, for example a member of staff or a Councillor.
- d. **Collusion:** The case may have arisen through collusion, for example with landlords, managing agents or employers. This type of case is considered to amount to serious fraud and will be recommended for prosecution where possible irrespective of the amount of overpayment involved.
- e. **Offenders Physical and Mental Condition:** It would be inadvisable to prosecute in the following cases: -
 - o Where the offender is seriously ill

- Where the offender is mentally ill
 - Where the offender is a heavily pregnant (within 3 months of confinement)
 - Where the offender is over 75 years of age or bedridden
 - Where the offender is deaf or visually impaired
 - Where the health of the offender’s partner may suffer.
- f. **Social Factors:** Consideration must be given to social factors when deciding whether or not to recommend prosecution. Instances in which prosecution may be considered inappropriate include cases where: -
- The Court would set against the offence such personal or mitigating factors that would make prosecution inappropriate e.g. the person was driven to the offence by a tragedy or domestic situation such as bereavement or sickness.
 - The offender has already served a prison sentence for benefit fraud and an earlier offence has subsequently been discovered (it is the Court’s view that people come out of prison with a ‘clean sheet’)
 - The claimant is young (under 21), immature and would appear to the Court as someone who could have been dealt with effectively without proceeding. Youth does not automatically exclude the possibility of prosecution. Prosecution may be desirable where the offender already has a criminal record.
 - It is known that a prosecution would have a damaging effect upon the defendant’s career or employment i.e. the offender would not only lose their job but would not be able to get similar employment if prosecuted successfully by the Local Authority.
- g. **Voluntary Disclosure:** Voluntary disclosure is where a claimant of his or her own free will reveals a fraud. In this case prosecution would not be appropriate. However, a disclosure is not voluntary if: -
- The admission is not a complete disclosure of the fraud
 - It was apparently prompted by the expectation that the fraud would be discovered e.g. they knew the Council was making enquiries of their employer etc
 - The claimant admits all the facts as soon as they are challenged
 - The claimant discloses the fraud as a result of being required to complete a review form.
- h. **Procedural Difficulties/Delays/Failures in the Investigation/Administrative Process:** Closure of the case, without prosecution will be the only course of action where: -
- The investigation has been deficient and has failed to obtain all the evidence available
 - Internal checks which should have revealed the offence did not do so e.g. benefit paid on incomplete or inadequate information, failure to observe flaws in a statement or document.

7. CIVIL PENALTIES

A civil penalty is a financial penalty that that can be imposed where a person has negligently supplied incorrect information or failed to supply information that affects the amount of housing benefit or council tax support paid or council tax billed.

Table of Civil Penalties			
Service	Penalty Amount	Criteria	Appeal Method
Housing Benefit	£50	Negligently or carelessly giving incorrect information, or Failing to provide without reasonable excuse,	Chorley Council
Council Tax Support	£70		Chorley Council

		information in respect of a claim or payment of benefit, or Failing to notify, without reasonable excuse, a relevant change in circumstances (reasonable excuse = ill health, significant stress)	
Council Tax	£70	Failing to supply information following a request from the Council, or Supplied information about a liable person that is materially inaccurate, or Failing, without reasonable excuse, to notify the Council that a dwelling is no longer exempt, or Failing, without reasonable excuse, to notify the Council that a level of discount no longer applies (reasonable excuse = ill health, significant stress)	Valuation Tribunal

8. RECOMMENDATIONS OF SANCTIONS

The recommendation to apply any sanction will be made in the first instance by the investigating officer after consultation with the service manager.

Recommendations for sanctions will be referred to the Head of Service

Recommendations for prosecutions will be referred to the Chief Executive.