

# 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 responsibilities of SFIS.

### 4. AREAS OF RESPONSIBILITY

From 1st May 2015 responsibility for investigation and the application of sanctions lies as follows:

- 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 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 of may be applied.
  - Cases where there is evidence of fraud 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
  - o Where the offender is mentally ill
  - o Where the offender is a heavily pregnant (within 3 months of confinement)
  - o Where the offender is over 75 years of age or bedridden
  - o 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, information in respect of a claim or payment of benefit, or Failing to notify, without reasonable excuse, a relevant change in circumstances (reasonable	Chorley Council
Council Tax Support	£70		Chorley Council

		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.