
New Forest District Council

Council Tax Support Scheme Prosecutions and Penalties Policy

1. Introduction

New Forest District Council (“The Council”) is responsible for the Council Tax Support Scheme and therefore, has a duty to prevent and detect fraudulent claims as part of its commitment to protecting public funds.

This document has regard to the following legislation:

- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013

There are two main offences under this legislation:

- False representation and
- Failure to notify a change of circumstances

False Representation

Regulation 7 creates an offence where a person makes a statement or representation which he or she knows to be false for the purpose of obtaining a reduction under a Council Tax Reduction Scheme.

It is also an offence for a person to provide or knowingly cause or allow to be provided a document or information which that person knows to be false in a material particular.

Failure to notify a change in circumstances

Regulation 8 creates an offence where there has been a change of circumstances which a person knows affects their entitlement to a reduction, and the person fails to give notice of the change as required by the authority’s scheme.

Regulation 11 of the Council Tax Reduction schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, enables an authority to invite a person to agree to pay a penalty as an alternative to prosecution for an offence relating to the award of a reduction under a Council Tax Reduction Scheme which a person was not entitled to, or an offence relating to an act or omission which could have resulted in such an award.

Regulations 12 and 13 of the Council Tax Reduction schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, enable a billing authority to impose a penalty of £70 on a person in circumstances such as where a person negligently:

- Makes an incorrect statement in connection with an application for a reduction under a council tax reduction scheme or
- Where a person fails to notify a change of circumstances when required to do so under a scheme.

Investigation for suspected fraud

If the council suspects a person of giving them wrong or misleading information, they may be investigated to establish if any fraud offences have occurred. The council could ask them to attend an interview known as an Interview under caution if we suspect an offence may have occurred. The council will give at least 5 days' notice for the interview and the person affected may bring someone to accompany them which could include a legal representative. The Council will decide who can attend the interview.

Following the Interview under caution a decision will be made as to the next steps these could include prosecution, an Administration Penalty or a £70 penalty as detailed below. Each case will be looked at on an individual basis.

Legal proceedings can start at any time within the period of twelve months from the commission of the offence.

2. Council Tax Reduction (CTR) – Penalties and Prosecution

All sanction decisions will be consistent, balanced and fair and relate to the degree and nature of the offence. The Council will decide the degree or type of sanction to be used in each individual case. In coming to any decision many factors will be taken into account including the seriousness of the offence, the value of the overpayment, the length of the fraud, the vulnerability of the claimant, and the health and age of the claimant.

2a. Prosecution

Prosecution is the ultimate sanction available to the Council and will be considered. The matter will be referred to Legal Services to consider whether prosecution is in the public interest, whether the claimant is fit to be prosecuted and whether the evidence has passed the evidential sufficiency test i.e. the Council must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against every defendant on every charge and has been obtained in an appropriate manner.

2b. Administrative Penalties

If Legal Services are satisfied that an offence has occurred we may ask the person to pay a penalty instead of prosecuting them. If the penalty is paid, they will not be prosecuted for that offence. Any penalty paid will be in addition to repaying any Council Tax Reduction they were not entitled to.

The penalty will be 50% of the Council Tax Reduction awarded which the claimant was not entitled to, with a minimum payment of £100 and a maximum payment of £1,000. If a person did not actually get any Council Tax Reduction, for example the person made a false claim, the penalty will be £100.

An Administrative Penalty is appropriate when:

- The Department for Work and Pensions have administered an Administrative Penalty for Housing Benefit which the claimant has accepted.
- The case is suitable for prosecution and satisfies the council's prosecution procedures:
- The case is not so serious that the first option should be prosecution;
- The excess payment of Council Tax Reduction that the person was not entitled to is less than £3,000.00
- The customer has not received a sanction for a Council Tax reduction offence in previous 5 years (the scheme started in April 2013)

There is no requirement for the person to admit the offence before an Administrative Penalty can be offered.

An Administrative Penalty is not appropriate when:

- The person has been convicted of Council Tax Reduction fraud in past 5 years (the scheme started in April 13)
- The person has accepted an Administrative Penalty in the previous 5 years
- the fraud continued over a long period;
- the fraud was calculated and deliberate, for example the person planned it from the outset by making a false statement on a new or repeat claim form. In these cases, the full circumstances of the case will be considered to enable a balanced judgement to be made to decide whether an Administrative Penalty or prosecution of the person is appropriate.

A person will be requested to attend an interview (except where the council may decide against this where the claimant has accepted an Administrative Penalty for Housing Benefit) if the Council believe an offence may have occurred. The interview will be conducted by an authorised officer from the council.

If a person declines to accept the Administrative Penalty, the case will be submitted for prosecution. The court will be informed that the person refused to accept an Administrative Penalty.

If the person accepts an Administrative Penalty the council will notify the person in writing. The person has 14 days, known as the *cooling off period*, to decline the Administrative Penalty. Where a person withdraws their agreement, which must be received in writing, the case will be submitted for prosecution. If after 14 days, the person has made no contact with the council, the Administrative Penalty will be deemed as accepted.

2c. Paying the Administrative Penalty

An invoice will be issued for the recovery of the Administrative Penalty and a payment plan can be arranged for the payment of the invoice. When agreeing the payment plan the council will consider affordability. Where the penalty is not paid, the Income Recovery Team will recover the debt by any means available to them.

If, after imposing an Administrative Penalty, the council revises the amount of Council Tax Reduction that the person is not entitled to, the council will revise the Administrative Penalty. Where the amount is lower, the person will be repaid any excess sums paid. Where the Administrative Penalty is to be paid in instalments, this should ensure that full payment is to be paid no later than one month before the end of the period to issue a prosecution, so that consideration should be given to whether a prosecution should be issued if the payments are not made.

3. Giving false information to get Council Tax Reduction

The council may prosecute a person if they give wrong information when they apply for Council Tax Reduction.

The council may prosecute if the person claiming deliberately gave wrong information when they applied for Council Tax Reduction. The council might also prosecute a person if they encouraged a claimant to give wrong information on their behalf. For example, a partner, member of the household or someone who assisted in completing a document might be prosecuted if they told the council that they were not working or had no savings when they knew this to be false.

4. Failure to notify a change in your circumstances

If someone is already getting Council Tax Reduction, they might be prosecuted if they do not notify the council about any change in their circumstances which they know affects their entitlement to Council Tax Reduction or the amount they receive. For example, the person should notify the council if they start a job or if a partner comes to live with them. They need to do this promptly. This means notifying the council within 21 days of the date of change, or as soon as possible if unable to notify within 21 days.

A person can also be prosecuted if they deliberately encourage or allow someone else not to notify changes affecting their Council Tax Reduction entitlement.

5. Paying a penalty for giving wrong information or for not notifying the council about a change in circumstances

The council will not always prosecute when a person gives wrong information or fails to notify a change in circumstances. Instead, they may ask the customer to pay a £70.00 penalty. The council may ask a person to do this if they negligently make an incorrect statement in connection with an application or because a person did not notify the Council about a change in their circumstances which they should have known would affect their Council Tax Reduction award.

The council will not ask for the £70.00 penalty to be paid if a person is being prosecuted or if they are being asked to pay an Administrative Penalty as an alternative to being prosecuted.

A person may not have to pay a penalty if they have taken reasonable steps to correct their mistake. Taking reasonable steps might include contacting the council as soon as they realise they had made a mistake.

The £70.00 penalty is in addition to repaying any Council Tax Reduction the customer should not have received.

There is no appeal right of appeal against the penalty. However, if a person successfully appeals a decision about their Council Tax Reduction, which reduces the overpayment to zero, the council may withdraw the penalty.

An invoice will be issued for the recovery of the Penalty and a payment plan can be arranged for the payment of the invoice. Where the penalty is not paid, the Income Recovery Team will recover the debt by any means available to them.

6. Communicating the policy

The council will publish this policy on the website and refer to it on decision notices to all recipients of a Council Tax Reduction and on application forms.

7. Performance Monitoring

The council will monitor:

- the number and type of penalty
- the number of appeals and the outcome

The council will use this information to review procedures and policy where appropriate.

8. Policy Review

The council will review this policy every three years or earlier if there is new legislation.