

SEVENOAKS DISTRICT COUNCIL
LOCAL TAXATION/COUNCIL TAX REDUCTION
SANCTION & PROSECUTION POLICY
2016 - 2017

DRAFT

CONTENTS

Section		Page
Local Taxation & Council Tax Reduction Sanction & Prosecution Policy		
1	Local Taxation & Council Tax Reduction	3
2	Definition of fraud	3
3	Culture	4
4	The Counter Fraud & Compliance Team	4
5	Prevention, Detection and Investigation	5
6	Evidential Test	5
7	Public Interest Test	6
8	Alternatives to prosecution (Council Tax Reduction only)	7
9	Publicity	8

Local Taxation & Council Tax Reduction Sanction & Prosecution Policy

1.0 Local Taxation and Council Tax Reduction

1.1 Council Tax is a tax on the occupation of a domestic property. It is a system of local taxation used to part fund the services provided by local government. The primary legislation for Council Tax is the Local Government Finance Act 1992. Operationally, the governing regulations are the Council Tax (Administration and Enforcement) Regulations 1992.

1.2 Tax payers can apply for various exemptions, discounts and reductions (some are dependent upon the circumstances of the tax payer/the people living in the household and some are dependent upon the property) which local authorities need to police to ensure that they are only awarded under circumstances which they are eligible to be received.

1.3 Business Rates are a tax on the occupation of non-domestic property. It is a system of local taxation used to part fund the services provided by local government. The primary legislation for Business Rates is the Local Government Finance Act 1988. Operationally, the governing regulations are the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989.

1.4 Tax payers can apply for various exemptions and reliefs, local authorities need to robustly address the growing issue of Business Rates avoidance and evasion.

1.5 Council Tax Reduction (CTR) is a means tested Council Tax discount. It is intended to help people on low incomes meet their Council Tax costs. The primary legislation for Council Tax Reduction Schemes is the Local Government Finance Act 2012. Operationally the governing regulations are:

- For those who have reached the qualifying age for Pension Credit it is the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012.
- For working age claimants, local authorities have been given the power to design their own schemes and accompanying rules.

1.6 Local authorities need to guard against fraudulent applications for CTR to ensure that only tax payers eligible to receive support with their Council Tax liability actually receive assistance.

2.0 Definition of fraud

2.1 Fraud is where a person, dishonestly, or not, whilst applying for or in receipt of discount, exemption, relief or support:

- makes a false statement,
- produces a false document and/or

- fails to promptly notify of a relevant change in circumstances which the person knows will affect the discount/exemption/relief/support they are entitled to/or are in receipt of.

2.2 Most local taxation fraud offences are prosecuted under the Fraud Act 2006:

- Section 2 - fraud by false representation
- Section 3 - fraud by failing to disclose information.

2.3 CTR fraud offences can also be prosecuted under section 14B of the Local Government Finance Act 1992.

3.0 Culture

3.1 The Council has a zero-tolerance to all forms of fraud & corruption. This message is keenly promoted through the issuing of a trio of joint working policies - Anti-Fraud & Corruption Strategy, Whistleblowing Policy and this policy, the Local Taxation/Council Tax Reduction Sanction & Prosecution Policy.

3.2 This Local Taxation/Council Tax Reduction Sanction & Prosecution Policy re-enforces the Council's commitment to:

- Preventing fraud and error entering its Local Tax/CTR caseloads by having robust internal systems and checking procedures in place.
- Detecting incorrect and fraudulent claims for all discounts, exemptions, reliefs and allowances by running pro-active drives as well as fully participating in all the government led anti-fraud data-match initiatives.
- Correcting incorrect claims quickly and getting back what the Council is owed.
- Issuing sanctions for cases deemed not serious enough for prosecution, but evidence shows that the offender has clearly cheated the system.
- Where appropriate, deter future fraudulent claims by publicising the work of the department and the punishments handed out by courts in prosecution cases.

4.0 The Counter Fraud & Compliance Team

4.1 The Council has established a shared service Counter Fraud & Compliance Team, based in the shared service Revenues & Benefits Department at Argyle Road in Sevenoaks.

4.2 The teams' main role is to work closely with colleagues from Revenues and Benefits to police exemptions, discounts, reductions and reliefs given to tax payers with a view to maintaining/increasing the Tax base. Where called upon, the team will conduct specific enquiries relating to Housing Tenancy fraud and all other external fraud related matters as directed under Section 151 of the Local Government Act 1972. All internal fraud matters will be referred to the shared service Internal Audit Department.

4.3 The Counter Fraud & Compliance Team consists of one line manager and three investigation officers (1 full-time, 2 part-time).

4.4 Cases of suspected Council Tax fraud can be referred to the Counter Fraud & Compliance Team by e-mail (investigations@sevenoaks.gov.uk). There is a dedicated fraud hotline (01732 227299) which can be used by either staff members or the general public. Outside office hours there is an answerphone service attached to this number.

4.5 Cases of suspected benefit fraud are now investigated by the Department for Work & Pensions. Local authorities no longer have any powers to either investigate allegations of benefit fraud or to prosecute instances of proven benefit fraud. Benefit fraud allegations can be reported on the DWP National Benefit Fraud Hotline (0800 854 440) or via www.gov.uk/report-benefit-fraud.

5.0 Prevention, detection and investigation

5.1 This Local Taxation/Council Tax Reduction Fraud & Compliance Strategy 2016-2017 outlines the Council's underlying principles in respect of policing the Tax base, including the imposition of penalties and the prosecution of tax payers found to have fraudulently obtained discounts, exemptions etc.

5.2 Where deemed necessary the Counter Fraud & Compliance Team will investigate cases to a criminal standard, i.e. evidence is collated and alleged offenders formally interviewed in accordance to the Police & Criminal Evidence Act 1984/the Criminal Procedure and Investigations Act 1996.

5.3 When an investigation is finalised the case will be thoroughly reviewed by the Counter Fraud Manager to decide whether further sanction action is appropriate (prosecution or administrative penalty (CTR only)). If further action is deemed necessary the Counter Fraud Manager will refer the case to the appropriate departmental manager - Billing & Collection Team Manager, Revenues Manager or the Benefits Manager for ratification of the decision. All decisions taken to prosecute will be further ratified by the Head of Revenues & Benefits.

5.4 A case will only be deemed suitable for prosecution after it has been thoroughly reviewed and confirmed that it meets the requirements of the Code for Crown Prosecutors. There are 2 main requirements - The Evidential Test and The Public Interest Test.

6.0 Evidential Test

6.1 The prosecuting authority must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' on each charge. Consideration should be given to what the defendant's defence may be and how it is likely to affect the prospects of conviction.

6.2 A realistic prospect of conviction is an objective test based solely upon the prosecuting authority's assessment of the evidence and any information that the authority has about the defence that the suspect may put forward. The authority

must then decide whether, if properly directed in accordance with law, a jury (or magistrate) is more likely to convict than acquit a defendant of the charge(s) against them.

6.3 When deciding if there is sufficient evidence to prosecute the authority will consider:

- Can the evidence be used in court?
- Is it likely that the evidence will be excluded by the court? (For example, is it likely it may be excluded due to the way that it was obtained?)
- Is the evidence hearsay? If so, is the court likely to allow it to be represented under any of the exceptions which permit such evidence to be given in court?
- Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?
- Is the evidence reliable?
- Does the suspect have a credible explanation for their actions?
- Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
- Is the identification of the suspect likely to be questioned?
- Are there concerns over the accuracy, reliability or credibility of any of the evidence of any witness?
- Do any of the witnesses have previous convictions or out-of-court disposals which may affect their credibility?

7.0 Public Interest Test

7.1 When the prosecuting authority has deemed that the case has sufficient evidence to provide a realistic prospect of conviction it must then consider if it is in the 'public interest' for the legal action to progress. Every case is different and many will have mitigating aspects which will influence the authority's decision to either take legal action or refrain from instigating legal proceedings.

7.2 The public interest test requires prosecutors to consider wider factors tending for or against prosecution, for example the relative seriousness of the offence. Some common public interest factors tending *against* prosecution may be:

- The offence committed can be proven to be the result of a genuine mistake or misunderstanding on the customer's part.
- The customer's age would deter the authority from taking further action.
- The customer's mental or physical health would deter the authority from taking further action.
- The customer has repaid the discount/exemption in its entirety (balanced with the seriousness of the offence)

- It can be established that part or all of the original discount/exemption was awarded in error.
- The investigation process contains unexplained long delays.
- The consequences of the claimant receiving a criminal record may far outweigh the benefits of the authority taking the action.
- The customer's family circumstances or adverse recent events may deter the authority from taking the person to court.

8.0 Alternatives to prosecution (Council Tax Reduction only)

8.1 CTR came into existence on 1st April 2013 and replaced Council Tax Benefit (CTB). CTB was a fully subsidised scheme administered by local authorities on behalf of the Department for Work & Pensions. CTR is a discount awarded against the annual Council Tax liability, by local authorities, created by the Local Government Finance Act 2012.

8.2 Under amendments to Local Government legislation there is sometimes an option to consider financial/administrative penalties as an alternative to prosecution.

8.3 Section 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement)(England) Regulations 2013, introduced financial/administrative penalties as alternatives to prosecution in CTR cases. The penalty amounts to 50% of the gross overpayment (with a minimum of £100, up to a maximum of £1000) and can be offered if the following conditions are met:

- There is a recoverable overpayment or excess award of CTR as defined by the relevant legislation
- The cause of the overpayment is attributed to an act or omission on the part of the defendant
- There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which the penalty is based
- The person offered such a penalty has the ability to repay it within a reasonable timeframe and the imposition of such a penalty will not overburden them if they have existing priority debts

8.4 Financial/Administrative penalties should not be confused with civil penalties which can be imposed in addition to any administrative penalty or legal action.

9.0 Publicity

9.1 The Council intends to positively promote this policy as well as the outcome of any prosecutions, which will deter others from fraudulent activity.

DRAFT