

Oldham Council Audit and Counter Fraud Service

**Council Tax and Council Tax Reduction Scheme
Sanction Policy**

26 March 2024

Version Control

<i>Version</i>	<i>Version Date</i>	<i>Revised by</i>	<i>Description</i>
1	April 2013	Andrew Bloor	New Policy
2	July 2015	Andrew Bloor	Revised Policy
3	June 2019	Andrew Bloor	Revised Policy
4	November 2022	Andrew Bloor	Revised Policy
5	March 2024	John Miller	Refresh and update

Council Tax and Council Tax Reduction Scheme Sanction Policy

1. Introduction

1.1 This policy statement provides the agreed framework for Council officers working on the investigation, sanction and prosecution of cases involving suspected fraud in connection with:

- Reducing the liability for paying Council Tax by inappropriately claiming discounts.
- Inappropriate claims on the Council Tax Reduction Scheme.

The Council is committed to protecting the public funds it administers:

- By making it clear that residents have a responsibility to provide accurate and timely information about claims for reductions, discounts and /or exemptions,
- Through the investigation of suspected fraudulent claims, and
- Through the appropriate sanctioning and prosecution of offenders.

The sanction policy for other areas of fraud can be found in the Counter Fraud, Anti-Bribery Strategy and Counter Fraud Response Plan.

2. Post-Investigation Considerations

2.1 Following the receipt of an allegation, or other indicator of fraud, the Audit and Counter Fraud Team will undertake an investigation in liaison with other relevant investigating Authorities as appropriate. Once the Counter Fraud Officer has completed an investigation, it will be passed to the Assistant Manager – Counter Fraud within the Internal Audit and Counter Fraud Team, who will consider each case on its merits applying the criteria in this policy and in the Code for Crown Prosecutors and any other circumstances relevant to the case.

2.2 The Assistant Manager - Counter Fraud will decide whether there is sufficient evidence to provide a realistic prospect of securing a conviction and if so, whether it is in the public interest to recommend prosecution or an alternate sanction.

2.3 To ensure a consistent and equitable application of sanctions and prosecutions the following guidelines, as set out in the paragraphs below, will normally apply.

3. Cautions

3.1 A Caution is a warning (of which a written record is made), given in certain circumstances to a person who has committed an offence.

3.2 A Caution can only be considered when:

- there is sufficient evidence to justify instituting criminal proceedings;
- the person has admitted the offence during an interview under Caution and agrees to the Caution;

- there are no previous convictions or Cautions for Council Tax Reduction or national benefit fraud, and;
 - there was no other person involved in the fraud.
- 3.3 A Caution can be offered when there is no loss to public funds following the presentation of a false document. For example: a false statement on an initial claim form that was identified prior to payment being made. Although there is no loss of funds, there may be an offence of making a false statement to obtain a reduction in Council Tax liability.
- 3.4 However, a Caution cannot be offered in cases where there is no loss to public funds following a customer's failure to declare a change of circumstances.
- 3.5 If someone refuses a Caution, the Council's policy is to commence criminal proceedings. The court will be informed that proceedings have been brought because the person refused the offer of a Caution.
- 3.6 If the person is subsequently prosecuted for reducing the liability for Council Tax by inappropriately claiming discounts or another Council Tax Reduction Scheme offence, the Caution may be cited in court.

4. Financial Penalties

- 4.1 Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, allows Oldham Council to offer a person the opportunity to pay a Financial Penalty as an alternative to prosecution where certain conditions are satisfied. The Financial Penalty is laid down in the legislation and is 50% of the excess reduction subject to a:
- minimum of £100; and
 - maximum of £1,000.
- 4.2 In cases where an offence has been committed, but the fraud was discovered before any Council Tax liability is reduced, the Financial Penalty as laid down in the legislation is £100.
- 4.3 The offer of a Financial Penalty may be made where there is sufficient evidence to justify the prosecution of an offence, where the offence is not so serious and where the overpayment is low enough that it would not be in the public interest to prosecute.
- 4.4 A Financial Penalty will only be considered when:
- there is sufficient evidence to justify instituting criminal proceedings,
 - the person has admitted the offence during an interview under caution and agrees to the Caution,
 - there are no previous convictions or Cautions for Council Tax fraud,
 - there was no other person involved in the fraud, and
 - it is clear that the offender can afford to pay a Financial Penalty.

5. Civil Penalties – Incorrect Statements

- 5.1 Regulation 12 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows Oldham Council to impose a penalty of £70 where an incorrect statement or representation has been made.

- 5.2 The £70 penalty can only be imposed where a person has not been charged with a Council Tax Reduction Scheme offence or been offered a Caution or Financial Penalty under regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

6. Civil Penalties – Failure to notify change of circumstances

- 6.1 Regulation 13 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) 2013 allows Oldham Council to impose a penalty of £70 where without reasonable excuse; there is a failure to report a relevant change of circumstances promptly.

- 6.2 The £70 penalty can only be imposed where a person has not been charged with a Council Tax Reduction Scheme offence or been offered a Caution or Financial Penalty under regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.

7. Civil Penalties – Council Tax

- 7.1 Schedule 3 of the Local Government Finance Act 1992 allows Oldham Council to impose a penalty of £70 where a person fails to comply with certain requirements as to the supply of information.

- 7.2 A penalty can be imposed on any person who:

- has been requested by the Council to supply information to identify the liable person for Council Tax and has failed to supply this information; or
- has knowingly supplied information, with regard to identifying the liable person, which is inaccurate in a material particular; or
- has failed, without reasonable excuse, to notify the Council that the dwelling will not be, or was no longer an exempt dwelling; or
- has failed, without reasonable excuse, to notify the Council that the chargeable amount is not subject to a discount or is subject to a discount of a lesser amount.

8. Prosecution

- 8.1 Prosecutions relating to this policy are pursued by the Director of Legal Services and involve cases where an individual has committed an offence either to receive Council Tax Reduction inappropriately or reducing the liability for Council Tax by inappropriately claiming a discount.

- 8.2 The Council is likely to prosecute a Council Tax Reduction scheme offence in the following circumstances where:

- the alleged offence involves a flagrant breach of the law;
- the excess Council Tax Reduction exceeds £2,000;
- there is a history of similar offences.
- the offender refuses to accept a Council Tax Reduction scheme penalty or Caution.

A Council Tax Reduction scheme offence means:

- making a false statement to obtain a Council Tax Reduction, or:
- knowingly failing to give a prompt notification of a change in circumstances affecting Council Tax Reduction.

8.3 Prosecution of an offender will take place in a Magistrates or Crown Court.

9. Suitability of Offenders for Prosecution

9.1 When considering whether it is appropriate to instigate proceedings, consideration will be given as to whether there is sufficient admissible evidence to justify bringing a prosecution and if the prosecution is in the public interest.

9.2 The following paragraphs outline factors that will be considered, to ensure consistent and equitable treatment of those accused of fraud.

Evidential Test

9.3 In making a decision to prosecute, the Local Authority must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction'. A realistic prospect of conviction is an objective test meaning that a jury, Magistrate or Judge hearing a case which, is properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence. Evidence must be able to be used in a court of law. It must have been gathered appropriately, in accordance with the law and be from a reliable source.

9.4 If a case does not pass the 'evidential test' it must not go ahead no matter how important or serious the offence seems. If the case does pass the evidential stage, then it should move on to the second stage to decide if a prosecution is appropriate in the public interest.

Public Interest Test

9.5 Oldham Council will always consider the public interest judiciously and will balance the factors for and against prosecution objectively. In making the decision whether it is in the public interest to prosecute, the following factors will be considered.

(a) Financial Limits

Careful consideration will be given to commencing a prosecution where the fraudulent activity has not resulted in 'significant financial gain' to the offender, for example the amount of the reduction or discounts overpayment is less than the cost of proceedings.

Where there is no significant financial gain, a prosecution could still be considered if it is considered that the fraud was a deliberate attempt to gain (if, for example, the fraud has been discovered after a relatively short space of time and a significant financial gain has not yet occurred), or in the case of a persistent offender or any other case where prosecution would be warranted.

(b) Physical / Mental Health Factors

Consideration will be given to the defendant's mental and physical condition (including age) when deciding whether to prosecute. The Counter Fraud Officer will consider whether there are significant personal or mental health

concerns that may have contributed to the reasons for committing the offence. In addition, due consideration will be given where there is any evidence to suggest that the claimant or partner or a third party (for example a child) would be severely affected by the action.

(c) Voluntary Disclosure

It may not be appropriate to prosecute those, whose disclosure of their own free will, has led to the identification of a fraud of which the Council was unaware. Admissions made after enquiries, or an investigation had commenced do not constitute voluntary disclosure.

(d) Previous Incidence of Fraud

Any evidence of previous benefits-related fraudulent activity would form part of the overall "prosecution assessment", regardless of whether any previous offences resulted in prosecution.

(e) Social Factors

If it is considered that the defendant's failure to declare the correct circumstances has been caused by significant extenuating social or financial factors these would be fully evaluated (the fact that an individual was in debt or has limited assets would not in itself meet this requirement).

Adequacy of Evidence

- 9.6 Substantive evidence is essential to secure any conviction. Proceedings would not be pursued if there is any doubt that the required evidence is not available. It must be clear that the fraudulent act was actually committed, that it was committed in the full knowledge of Council Tax Reduction regulations and that it was committed with the clear and deliberate intention to obtain Council Tax Reduction by deception. Satisfying the requirements of the Code for Crown Prosecutors Evidential Test will ensure that evidence is of the standard required by the courts.

Failure in Investigation

- 9.7 It should be evident on the case file that all appropriate procedures have been adhered to with regard to satisfying the requirements of the Police and Criminal Evidence Act 1984, Criminal Procedures and Investigations Act 1996 and other relevant legislation. Particular consideration would also be given to any delay in the course of enquiries, which may be considered as unacceptable by the court.

Failure in Administration

- 9.8 Full account will be taken of poor administration or fault on the part of Authority that has contributed to the processing of the fraudulent claim and subsequent award of discount or reduction in liability.

10. Authorisation of Prosecution

- 10.1 Cases being referred for prosecution will be authorised by the Head of Audit and Counter Fraud. Cases involving Council Members or employees will also be referred to the Monitoring Officer or appropriate Head of Service so that any standards issues can be addressed.

- 10.2 Cases may also be referred to the Police where it is considered that the nature of the offence, or the procurement of evidence, require them to undertake or assist in the investigation.

11. Proceeds of Crime Act 2003

- 11.1 The Council will 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 prevents a person from dealing with specified assets. A confiscation order enables the Council's agents to seek to recover its losses from assets found to be the proceeds of crime.

12. Recovery of Debt

- 12.1 In addition to any criminal proceedings or sanction it may impose in respect of offences committed, the Council will use all methods available to vigorously recover any overpayment arising from fraud, including taking action in the civil courts if necessary.

13. Publicity

- 13.1 Press releases will be issued in suitable cases to seek to maximise the deterrent effect and raise the level of public fraud awareness. Consideration will be given to the amounts involved, the nature of the offence, public interest and the deterrent value of publicising a particular case.

14. Review of Policy

- 14.1 The policy will be reviewed in the light of any legislative changes; trends or other factors that impact on the effectiveness of the policy.