



# **Council Tax Reduction Anti-Fraud Policy**

Richard Davies  
Head of Revenues and Benefits, Torfaen  
Head of Benefits, Monmouthshire  
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## **Section 1**

### **Background**

This document describes the Council's anti-fraud policy in relation to the Council Tax support local scheme. It is intended to inform the public of the anti-fraud policy pursued by the Shared Benefits Service Fraud Investigations Officers.

Local authorities have a statutory duty to administer and arrange their financial affairs appropriately in accordance with section 151 of the Local Government Act 1972. It is therefore extremely important that the Council applies an appropriate and effective anti-fraud process as part of the administration of Council Tax Reduction.

In developing this policy it is the Council's objective to prevent, detect, correct, punish and deter fraudulent activity in relation to Council Tax Reduction.

This policy relates solely to fraud and corruption in relation to Council Tax Reduction.

For information regarding general matters of fraud and impropriety please refer to Council's Corporate Anti-Fraud and Corruption Policy.

### **Legislation and Governance**

All relevant officers are expected to comply with appropriate legislation, codes of practice and corporate policies when executing duties in relation to fraud.

It is imperative that the following codes, legislation and policies are adhered to in order to succeed in executing the fraud process:

- Data Protection Act 1998
- Human Rights Act 2000
- Local Government Finance Act 1992
- The Council Tax Reduction Scheme (Detection of Fraud and Enforcement)(Wales) Regulations 2013
- Welfare Reform Act 2012
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Council's Health and Safety Policy
- Fraud Investigation Procedures
- Shared Benefits Service Memorandum of Understanding
- The Code for Crown Prosecutors
- Code of Conduct for Employees
- Code of Conduct for Investigators

This is not an exhaustive list and therefore all officers should act in accordance with any appropriate legislation, corporate/departmental policies and codes of practice that are relevant to their duties in relation to this policy.

## **Equalities Impact**

Our fraud investigators will always act with respect to pertinent legislation and without prejudice when executing its procedures and policies.

The Shared Benefits Service will ensure that all suspects of fraud will receive clear and understandable correspondence making them aware of their legal rights and informing them of all the possible outcomes to an investigation.

The anti-fraud process will not discriminate for or against any individual according to gender, race, sexuality, gender identity, age, disability or belief.

The Shared Benefits Service will never knowingly release information in relation to an investigation where it is contrary to current legislation or is believed to cause harm or vulnerability to any individual's security or beliefs.

## Section 2

### What is Council Tax Reduction Fraud?

For the purposes of this policy fraud is perceived to be:

Knowingly or dishonestly making a false statement or representation with intent to gaining a financial advantage through a Council Tax Reduction
<b>Or</b>
Knowingly or dishonestly failing to give prompt notice of a change of circumstances, with intent to gaining a financial advantage a Council Tax Reduction

For the purposes of this policy corruption is perceived to be:

The soliciting or accepting of an inducement or reward that may influence the action of a person.
<b>Or</b>
Causing or allowing someone to produce false documents/information or causing or allowing someone in failing to notify a change with intent to gaining a financial advantage through a Council Tax Reduction

The Council approach the investigation of both fraud and corruption in the same manner within the boundaries of their procedures and the constraints of appropriate legislation.

### Anti-Fraud Policy

The following measures are pursued in order to minimise the risk of fraud and to prevent, detect, punish and deter fraud in Torfaen and in Monmouthshire.

### Claim Checking and Verification of Proofs

The Shared Benefits Service maintains a consistent process of claim verification, whereby the local authority obtains original documentation when assessing council tax support. Proof of identity / National Insurance Number is also obtained when the claimant first applies.

### Fraud Investigations

We employ officers who investigate Council Tax Reduction fraud. The Shared Benefits Service is committed to maintaining fraud staff levels and resources, which are proportionate and pertinent to local requirements.

All counter fraud officers receive specific and specialised training in order that they are able to execute their duties in an appropriate and professional manner. Officers will sift and evaluate all referred allegations. All pertinent allegations that pass the risk evaluation will be appropriately investigated for fraud.

All fraud officers employed by the Shared Benefits Service are designated 'Authorised Officers'. This enables counter fraud officers specific use of authorised investigative powers within the parameters of the law. These powers are to be used only for investigative purposes and not to verify claims.

## **Training**

All relevant frontline staff will be appropriately trained to detect irregularities and possible fraud with respect to claims for Council Tax Reduction. All relevant frontline staff will be given fraud awareness training in order that they are able to identify and refer cases of possible Council Tax Reduction fraud. Refresher training will be given appropriately.

## **Information Sharing**

By law, the Department for Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) will be able to share their information with local authorities in order to corroborate the personal and financial circumstances of an applicant in relation to Council Tax Reduction.

In order to prevent, detect and investigate fraud Council is entitled to obtain information from the DWP and HMRC in relation to a Council Tax Reduction claim. Information supplied by these external agencies may be used as evidence in the investigation and criminal process.

**The Shared Benefits Service will support the investigation of Housing Benefit fraud by supplying information required to the Single Fraud Investigation Service (SFIS). In addition, referrals relating to Housing Benefit fraud will be notified to SFIS.**

## **Intelligence**

The Shared Benefits Service will make appropriate use of intelligence sources through effective and prudent use of data. By maintaining a single point of contact, information and intelligence will be lawfully, consistently and reliably obtained and disseminated to and from internal and external agencies in order to support criminal investigations. Information and Intelligence will be obtained from a number of sources such as credit agencies, financial institutions, government agencies, the police and the public.

## **Fraud Hotline**

Monmouthshire and Torfaen promote the use of a dedicated fraud hotline to assist members of the public in reporting potentially fraudulent activity in the two localities. In addition, contact information for Housing Benefit referrals is also publicised.

## **Communication**

All claimants are provided with documentation written in plain English wherever possible. In addition, information will be written in a clear and understandable format to ensure that claimants are aware of their responsibilities to provide accurate and timely information, in relation to their current circumstances and changes of circumstances. Facilities can be made available for the translation of claim documents into specific languages, when appropriate.

## **Publicity**

The Shared Benefits Service will publicise the results of individual cases, which have resulted in a conviction in the criminal courts. However, details of individuals or individual cases that are not subject to public interest will not be communicated to any third party with respect to pertinent legislation.

## **Section 3**

### **Authorised Officers**

The Shared Benefits Service will appoint officers who are authorised to obtain specific information in relation to Council Tax Reduction investigations. Authorised powers are set out in the Council Tax Reduction scheme (Detection of Fraud and Enforcement) (Wales) Regulations 2013 in accordance with section 14A of the Local Government Finance Act 1992.

An authorised officer is legally entitled to obtain information in order to make relevant enquiries or examine records relating to any person claiming Council Tax Reduction.

In addition and subject to proportionality, the employment and financial records of a person who is related to an investigation by association may also be checked, for example partners of claimants. A local authority can prosecute an employer or any third party that obstructs an authorised officer in executing their duties.

Counter fraud officers employed by the Shared Benefits Service will be appointed as authorised officers in accordance with the law. An authorised officer is able to obtain, when appropriate and proportionate, information regarding the personal details of an individual suspected of or party to an offence relating to Council tax support fraud. Information may be requested from establishments, businesses or institutions in order to obtain the relevant circumstances of an individual suspected of any offences in relation to Council tax support.

### **Directed Surveillance**

All fraud officers are trained to execute appropriate and proportionate use of directed surveillance in accordance with the Regulation of Investigatory Powers Act 2000.

Directed surveillance will be carried out in an investigation where it is deemed appropriate and proportionate in accordance with the RIPA 2000 code of practice.

In addition, officers will observe and comply with corporate surveillance standards as directed by the authorising officers and solicitors as set out in the Council's RIPA 2000 policy.

Authorisation to carry out surveillance for may only be granted by the one of the following officers:

- Richard Davies – Head of Revenues and Benefits
- Peter Williams, Chief Internal Auditor, Torfaen

All surveillance requests, reviews and cancellations must be recorded retained, and signed by the authorising officer.

Once an application for directed surveillance has been counter signed by an authorising officer it must then be presented to a Justice of the Peace for approval. An officer will not be authorised to execute directed surveillance until a RIPA 2000 application has received appropriate approval from the Justice of the Peace.

All surveillance requests are time bound, and all amendments and renewals relating to directed surveillance requests must be appropriately authorised.

Each Council's internal audit section will maintain all records of authorised surveillance accurately and conveniently so that they are readily available for inspection on request for the Commissioner for Surveillance or the Audit Commission.

## **Section 4**

### **Sanctions and Prosecutions**

The power to apply a sanction or prosecute will only be based when appropriate. Fraud investigators will give careful consideration of taking further action against anyone who has committed fraud in order to obtain Council Tax Reduction. The details of each fraud case will be taken into account and measured against the evidential and public interest test stated in the Code for Crown Prosecutors. Any case failing to meet the requirements associated with either test should not be considered suitable for sanction or prosecution.

### **Appropriate Enforcement Action**

In all cases investigated the Fraud Investigator will supply an investigation report to the Head of Revenues and Benefits showing the officer's actions, conclusions and recommendations regarding the investigation. The Head of Revenues and Benefits will then make the final decision as to whether it is appropriate and proportionate to take further enforcement action against the person or persons subject to investigation. Further enforcement action means prosecution or offering an alternative sanction (administrative penalty).

### **Excess Council Tax Reduction Recovery Only**

In certain cases no criminal proceedings will be taken against the person who has committed an offence and caused or could have caused excess Council Tax Reduction to be awarded.

Any excess Council Tax Reduction that has been awarded to a person will be returned to the individual's council tax liability whether it is subject to an offence or not.

No further enforcement action will be taken a person who has committed an offence if it is decided that:

- it is not in the public interest to pursue criminal proceedings or a sanction
- the offence is considered to be so minor it is not proportionate to consider criminal proceedings or a sanction



## Caution

A caution is a non-statutory disposal for offenders aged 18 years or over. It is administered as an alternative to prosecution. A caution can only be considered when there is sufficient evidence to justify instituting criminal proceedings and the offender has admitted the offence during an interview under caution (IUC).

If the offender is subsequently prosecuted for an offence relating to excess council tax the caution may be cited in Court.

Cautioning is based on the principle that no authority is under an obligation to prosecute when offences have been established.

Council procedure for cautioning is based on guidelines issued by the Ministry of Justice for the use of simple cautions by police officers and Crown Prosecutors.

The caution is not maintained on police records and is not required to be declared to any third party by the recipient.

The aims of the caution are:

- To offer a proportionate response to low level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings relating to Council Tax Reduction offences
- To reduce the likelihood of re-offending;

Circumstances where a caution might be appropriate are:

- The person is 18 or over
- The person has admitted to an offence in an interview under caution
- The person has not offended before
- Criminal proceedings are not the first option
- Penalty action is not appropriate

The Shared Benefits Service may consider administering a caution as an alternative to prosecution providing all the following requirements have been met:

- The evidential criteria for prosecution are satisfied.
- A caution is appropriate for the offence and to the person, having given consideration to the offender's previous record relating to similar offences
- The person has fully admitted the offence during an interview under caution (IUC).

The list of considerations and conditions to offer a caution is not exhaustive. The decision to offer a caution rests with the local authority dependent on the individual circumstances of a case.

If an offender refuses to accept a caution the case may be referred to Legal for consideration of prosecution.

## **Penalty as alternative to prosecution**

The legislation governing the use of a financial penalty as an alternative to prosecution where a person has fraudulently claimed Council Tax Reduction is contained in section 14C of the Local Government Finance Act 1992. The conditions by which a penalty might be used are described in regulation 11 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales Regulations 2013).

Penalties may be offered as an alternative to prosecution when a fraudulent claim -

- (i) Caused excess Council Tax Reduction to be awarded
- (ii) Could have caused excess Council Tax Reduction to be awarded.

In accordance with the legislation a penalty offered as an alternative to prosecution will be a minimum of £100 or 50% of the fraudulent excess Council tax support claimed by the offender (rounded down to the nearest penny) whichever figure is greater. A penalty should not exceed £1000.00. A person does not have to accept the penalty.

Agreeing to accept the penalty will give offenders immunity from prosecution for identified offences relating to Council Tax Reduction.

An offender who has agreed to pay the penalty is entitled to withdraw their agreement within 14 days of signing the original agreement. If an agreement is withdrawn the local authority will be legally entitled to prosecute the offender.

Any case considered appropriate for a penalty must also be suitable for prosecution.

Factors considered in deciding whether to offer an administrative penalty as an alternative to prosecution are:

- The evidential criteria for prosecution are satisfied
- Any known previous offences for fraud
- The prospect of timely payment.

A penalty is offered to an offender at a specially arranged interview.

The penalty will be added to the appropriate person's council tax liability.

All conditions relating to the penalty will be stated at the point of notification.

Refusal to accept a penalty or withdrawal from an agreement to accept a penalty will result in an offender losing immunity to prosecution for a Council Tax Reduction offence

## **Prosecution**

Prosecution will be considered against someone who has committed an offence in order to receive Council Tax Reduction. The Shared Benefits Service will administer the sanction it deems appropriate with respect to the individual circumstances of each case.

The Fraud Investigator will decide if it is appropriate to recommend prosecution of an offender subsequent to carrying out an evidential and public interest test. An appropriate enforcement action form is completed which, conveys the decision making process. The Head of Revenues and Benefits will consider each decision and approve as appropriate.

Normally, prosecution will only be considered where the financial value of the claim exceeds £2,000.

If it is decided that prosecution is the most effective means of dealing with an offence, the service will instruct the appropriate legal section to examine the evidence of a case for suitability in order to pursue or reject legal proceedings.

The legal service will provide reasons why a case is to be pursued or rejected to the Fraud Investigator.

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

### **The Decision To Prosecute**

When a Fraud Investigator has established an offence relating to Council Tax Reduction the investigation file will be passed to the Head of Revenues and Benefits. A report will set out the officer's conclusions and recommendations regarding the investigation. The Head of Revenues and Benefits will make the final decision with respect to appropriate enforcement action.

As part of the fraud process the Fraud Investigator may refer to The Code for Crown Prosecutors as a guide to establishing the value of prosecuting offenders by referring to the evidential and public interest tests. The Code for Crown Prosecutors states that a case worthy of prosecution must pass an evidential and public interest test.

### **Evidential Test**

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.

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**

The Shared Benefits Service will always consider 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:

### **Some Common Public Interest Factors In Favour Of Prosecution**

- The seriousness of the offence;
- a conviction is likely to result in a significant sentence;
- the defendant was in a position of authority or trust;
- there is evidence that the offence was premeditated, e.g. the Council tax support claim was false from its inception;
- there is evidence that the defendant instigated and organised the fraud;
- there is previous incidence of fraud;
- there are grounds for believing that the alleged offence is likely to be continued or repeated, based on any history of recurring conduct;
- the alleged offence, irrespective of its seriousness, is widespread in the area it is or was committed;

### **Some Common Public Interest Factors Against Prosecution**

- the court is likely to impose a nominal penalty;
- the offence was committed as a result of a genuine mistake or misunderstanding (factors balanced against the seriousness of the offence);
- the impact of any loss of funds can be described as minor and was the result of a single incident, particularly if it was the result of misjudgment;
- there have been long and avoidable delays between the offence taking place and the date of the trial, unless:
  - (i) the offence is serious
  - (ii) the delay is caused in part by the defendant
  - (iii) the offence has only recently come to light
  - (iv) the complexity of the offence has caused a long investigation;
- the defendant is elderly or is, or was at the time of the offence suffering from significant mental or physical illness, this is balanced against the seriousness and complexity of the offence
- the defendant has put right the loss that was caused (though defendants must not avoid prosecution purely on the basis that they have cleared a debt or paid compensation);
- Any voluntary disclosure;
- Social factors such as domestic abuse, or substance abuse

The various reasons listed above both for and against prosecution are not exhaustive. The factors that apply will depend on the facts in each individual case.