

Council Tax and Housing Benefits - Application of Civil Penalties

Summary

To seek Executive approval for introducing a policy for imposing Council Tax and Housing Benefit civil penalties.

Portfolio - Finance

Date Signed Off: 28 August 2018

Wards Affected

All

Recommendation

The Executive is advised to RESOLVE to adopt a policy for imposing Council Tax and Housing Benefit Civil Penalties, as set out at Annex A to this report.

1. Resource Implications

- 1.1 There are no resource implications other than the cost of publicising the new policy and the income generated from introducing these charges.

2. Key Issues

- 2.1 The Local Government Finance Act 1992 allows for civil penalties to be imposed for failing to give accurate information or for failing to advise of a change in circumstances in relation to any Council Tax discount, exemption or Council Tax Reduction Scheme.
- 2.2 The Social Security Administration Act 1992 allows for civil penalties to be imposed in relation to Housing Benefit where a person has been negligent in the information they have provided, or where a person has failed without reasonable excuse to tell us about a change in their circumstances.
- 2.3 Legislation does not currently allow for penalties to be applied in respect of Business Rates.
- 2.4 Council Tax fraud is an area of concern. Whilst the Council regularly reviews discounts awarded there is currently incentive for people not to notify a change in circumstances promptly or provide accurate information.
- 2.5 It is envisaged that with suitable publicity, the realisation that a civil penalty can be applied people will realise the importance of giving accurate information to the Authority in a prompt manner. In addition, dependant on the circumstances the individual could be subject to fraud proceedings as outlined in the policy.

- 2.6 The civil penalty for Council Tax purposes is £70 and will be applied to the Council Tax account for collection via the normal billing process. Where a £70 penalty has been imposed and a person still fails to provide information, a further £280 penalty can be imposed for each subsequent failure.
- 2.7 The civil penalty for Housing Benefit purposes is £50 for each offence and will be collected either by deducting the penalty from ongoing Housing Benefit entitlement, or by sundry debtor.
- 2.8 Before imposing a civil penalty, consideration will be given as to whether a person is considered to be vulnerable and therefore whether a civil penalty is appropriate. This exemption will be at the discretion of the Revenues and Benefits manager. There is the right of appeal against the imposition of a civil penalty.
- 2.9 The main driver for the introduction of the civil penalties is to provide an incentive for people to provide accurate and timely information which will ensure that they pay the correct amount of Council Tax and receive the correct level of Support or Housing Benefit.
- 2.10 Civil penalties will bring an additional income stream to the Authority. The amount of additional income will depend upon how many civil penalties are imposed and how many of them are collected. The main driver behind the policy is to provide an incentive for people to provide accurate and timely information and to help protect the public funds we administrate from abuse.
- 2.11 The proposed policy document is shown in Appendix A which gives more detail about the application of the civil penalties and the appeal rights. Once adopted, appropriate publicity will be issued to advise the public of the policy and the penalties that can be imposed.

3. Options

- 3.1 The Executive can accept, reject or amend the proposal.

4. Proposals

- 4.1 It is proposed that the Executive RESOLVES to approve the Policy for the introduction of Council Tax and Housing benefit civil penalties.

5. Supporting Information

- 5.1 Copy of Policy in Annex A

6. Corporate Objectives And Key Priorities

- 6.1 Supports Key Priority 4 by increasing efficiency in that this policy will encourage residents to inform the Council of changes to circumstances enabling records to be kept up to date.

7. Policy Framework

7.1 N/A

8. Legal Issues

8.1 Schedule 3 of the Local Government and Finance Act 1992 give authority to impose a £70 penalty in respect of council tax.

8.2 The Social Security Administration Act 1992, Welfare Reform Act 2012 and The Social Security (Civil Penalties) Regulations 2012 give authority to impose a penalty of £50.00.

9. Governance Issues

9.1 N/A

10. Sustainability

10.1 N/A

11. Risk Management

11.1 There is a risk that penalties are not able to be collected.

11.2 There is also a risk to the Council's reputation if penalties are applied inconsistently or unfairly. This risk can be managed by having a robust policy with clear guidelines to staff who make such decisions as well as allowing an element of discretion in exceptional circumstances.

12. Equalities Impact

12.1 The majority of Council Tax payers do provide accurate information in a timely manner, but there are a minority who will seek to gain financially by providing inaccurate or late information. There are no specific groups of people who will be affected and a civil penalty could be applied to anyone who is a Council Tax payer and/or a tenant in receipt of Housing Benefit. However, a civil penalty will only be imposed in cases where a person has deliberately sought to deceive the Council for their own financial gain.

12.2 The decision to impose a civil penalty is discretionary and the circumstances of each case where a civil penalty is being considered will be evaluated first. A civil penalty will not be imposed when a person is deemed to be vulnerable or there are other circumstances which leads the Council to believe that a civil penalty is not appropriate.

12.3 An Equalities Impact Assessment has been completed and no adverse impacts have been identified as the policy provides for discretion to be applied in such cases.

13. PR And Marketing

13.1 Residents will need to be informed that the policy is in place, why it has been introduced and the possible consequences of not complying

14. Officer Comments

14.1 This policy should be seen as a further tool to encourage Council Tax payers and Benefit claimants to comply with the regulations regarding informing the Council of changes.

Annexes	Policy for the Application of Civil Penalties
Background Papers	None
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Consultations, Implications And Issues Addressed

Resources	Required	Consulted
Revenue	✓	
Capital		
Human Resources		
Asset Management		
IT		

Other Issues	Required	Consulted
Corporate Objectives & Key Priorities	✓	✓
Policy Framework		
Legal		
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment	✓	✓
Community Safety		
Human Rights		
Consultation		
P R & Marketing		



Council Tax & Housing Benefits

Policy for the Application of Civil Penalties

(Failure to Notify or Supply Information)

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Part 1 Introduction

- 1.1 Failure to notify a change of circumstances or provide information for Council Tax billing or Housing Benefit purposes is an offence. The offence is committed if the customer fails to provide information within 21 days of its request, fails to notify us of a change affecting their liability to pay Council Tax within 21 days of the change occurring or if they fail to notify us of a change affecting their entitlement to Housing Benefit within one calendar month.
- 1.2 For practical purposes the Council will not impose a penalty if the customer notifies us, or provides the requested information, within one calendar month for both Housing Benefit and Council Tax. Please note there is currently no penalty scheme for Business Rates.
- 1.3 Where a penalty has already been imposed on their Council Tax account and a further request to supply the same information is made, a further penalty of £280 may be imposed for each subsequent failure, provided:
 - the information is in the debtor's possession.
 - the authority requests him to supply it.
 - it falls within a prescribed description of information.
- 1.4 An example of when a further penalty may apply would be a large landlord or Estate Agent who continually fails to tell us about a new tenant moving in to their property.
- 1.5 The additional penalty will only be imposed with the agreement of the Revenues and Benefits Manager.

Part 2 Council Tax penalties

- 2.1 Schedule 3 of the Local Government Finance Act 1992 allows Councils to impose a £70 penalty to any person who;
 - a) fails to notify the council that an exemption on a dwelling should have ended
 - b) fails to notify the council that a discount (including single person discount and Local Council Tax Support) should have ended
 - c) fails to notify the council of a change of address or fails to notify the council of a change in the liable party
 - d) fails to provide information requested to identify liability
 - e) deliberately provides false information . In addition to the power to impose a penalty, the provisions of the Theft Act apply to Council Tax as they do in other situations. Where any person presents information which they know to be false with a view to obtaining a financial benefit they may be subject to a prosecution for obtaining a pecuniary advantage by deception.

Part 3 Housing Benefit penalties

- 3.1 A Housing Benefit civil penalty can be imposed in accordance with the Social Security Administration Act 1992 and sections of the Welfare Reform Act 2012. A civil penalty of £50 can be added to the amount of an overpayment of benefit if the overpayment (after underlying entitlement) is more than £100 and where the claimant is viewed as being at fault.
- 3.2 A civil penalty cannot be applied where the claimant has, in respect of the overpayment, been charged with an offence, been cautioned or been subject to a penalty as an alternative to prosecution under section 115A of the Social Security Administration Act 1992.
- 3.3 A penalty applies where there has been an overpayment of Housing benefit of more than £100 after underlying entitlement. A £50 civil penalty can be added in the following circumstances:

1. Where a person has been overpaid as a result of negligently making an incorrect statement or representation, or negligently giving incorrect information or evidence.

For example bank statements show that there is another bank account or job that has not been disclosed on the claim form and no action has been taken to tell the Authority about it. In this situation the penalty will only be applied if the person also fails to take reasonable steps to correct the error. The Department for Work and Pensions (DWP) definition of 'negligently' means 'acting carelessly, not paying sufficient attention to the task in hand, or disregarding the importance of what is required to be done in relation to the claim or an award.

2. Where a person has been overpaid as a result of failing, without reasonable excuse, to provide information or evidence required in connection with a claim for, or award of benefit. The DWP defines 'reasonable excuse' as a 'credible reason or justification' and might include being in a situation of significant stress or suffering ill health;

For example, the claimant starts work or moves and, as a result of their failure to supply new evidence of earnings or rent, a negative inference has to be taken (eg a zero rent or £999 income is assumed).

3. Where a person has been overpaid as a result of failing, without reasonable excuse (see above), to notify a relevant change of circumstances.

In cases where the Authority becomes aware of a change of circumstances which the claimant has not notified to the Authority.

Part 4 Appeals

- 4.1 If a Customer disagrees with the imposition of a Council Tax penalty then they may challenge it using the Council's complaints procedure. They also have the right to appeal directly to the Valuation Tribunal. They have two months in which to appeal after a penalty is imposed. If a penalty is imposed, we must advise the customer why we have imposed a penalty and provide them with information about how to appeal and the date by which any appeal should be made. If an appeal is made then recovery of the penalty will be suspended until the appeal is decided.
- 4.2 Penalties applied to a Council Tax account are recovered as part of the normal recovery process.
- 4.3 Housing Benefit penalties may be appealed as part of an appeal against the overpayment decision. The decision can be reconsidered by the Authority, and if unsuccessful, the appeal can be considered by The Tribunals Service.

Part 5 Exceptions

- 5.1 Exclusion from a penalty should be considered in cases where:

The customer or their partner:-

- has a significant degree of physical or mental infirmity, such as a terminal illness, severe clinical depression, hearing/sight/speech problems, learning difficulties or frailty due to old age.
 - has made a voluntary disclosure of the alleged offence before the Council had any suspicions regarding the validity of their entitlement to a Council Tax discount or exemption, Local Council Tax Support Reduction Scheme or their Housing Benefit entitlement
 - was driven to commit the offence by a difficult domestic situation (for example domestic violence or fire)
 - could be dealt with more effectively without redress to a penalty, for example due to age or immaturity, although youth in itself is not a good enough reason not to instigate proceedings.
- 5.2 Where a taxpayer is in receipt of Council Tax Support (LCTS) care must be taken not to impose a penalty twice for the same offence, where neither Council Tax, nor Benefits, was notified of the change.
 - 5.3 Where a civil penalty would otherwise be imposed, exceptions can be agreed following discussion and approval with the Revenues and Benefits Manager.

Part 6 Application of the penalty.

- 6.1 The Council Tax bill clearly shows the award of discounts, exemptions and/or Local Council Tax Support. It makes clear that the taxpayer must tell the Authority straight away about any change in their circumstances that could affect their bill or a penalty could be imposed.
- 6.2 The Benefit decision letter also clearly states that failure to advise the Authority of changes in circumstance that may affect their entitlement to Housing Benefit may result in an overpayment and the imposition of a penalty.
- 6.3 A Council Tax penalty will be collected by applying the penalty to the Council Tax account for collection via the normal billing process.
- 6.4 A Housing Benefit penalty will be recovered either from ongoing Housing Benefit entitlement or by sundry debtor.
- 6.5 A letter will be sent in all cases advising of the application of the penalty and the reason.
- 6.6 Where the penalty relates to an overpayment of Housing Benefit, no penalty will be applied until one month after the notification of the overpayment has been issued. This allows for a period where further information can be provided and an underlying entitlement award considered.

Part 7 Recovery of the penalty

- 7.1 Council Tax and Council Tax Reduction Scheme penalties will be added to the debt and incorporated within the instalments. Therefore failure to pay will result in the same recovery process as accounts without a penalty.
- 7.2 A Housing Benefit penalty will be recovered either from ongoing Housing Benefit entitlement or by sundry debtor.