

COUNCIL TAX, BUSINESS RATES AND LOCAL COUNCIL TAX SUPPORT ANTI FRAUD POLICY

1. Introduction

1.1

Uttlesford District Council is committed to protecting the public funds through its action against Local Taxation fraud. This document sets out the Council's policy towards prosecution and other sanctions available for Council Tax, Local Council Tax Support and Business Rates fraud offences. The policy forms an integral part of the Council's overall strategy to prevent, detect and deter fraud promoting high standards of governance and accountability.

1.2

The decision to prosecute is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. This document serves as a policy statement for Members of the Council, and as an operational guide for those involved in the decision making process.

2. Policy Statement

2.1

The Council will not tolerate abuse of the Council Tax/Business Rates & Local Council Tax Support discounts, exemptions or reliefs schemes by council tax payers, business rate payers or internally by staff. The Council will take an active stance against those that abuse the Local Taxation system as this abuse directly increases local taxation for people in the fraudsters own communities and neighbourhoods any reasonable allegations of fraud will be vigorously investigated.

2.2

The Council will seek full redress through the law of any internal or external fraudulent activity perpetrated against it. This redress may be actioned through either the Criminal and/or Civil Courts as deemed appropriate.

2.3

Where suspected cases of fraud have been investigated, and sufficient evidence has been obtained to sustain a prosecution, the Council will seek to impose one of the following sanctions:

- LGFA 1992 Sch3 penalty
- Welfare Reforms Act 2012 Section 116 Civil Penalty
- An Administrative Penalty
- A Prosecution (*The Fraud Act 2006 or The Council Tax reduction schemes (Detection of Fraud and Enforcement) (England) regulations 2013.*)

The Council may also decide to issue a Caution letter in some circumstances where further sanctions are not deemed necessary. This letter explains why the case was considered by the Compliance Team and why a caution was given. It clarifies that any future changes in circumstance must be notified within the prescribed timeframe.

2.4

The Council will continue to work in partnership with other Local Authorities and other agencies to reduce and prevent the incidence of fraud.

Since October 2014 onwards a Single Fraud Investigation Service (SFIS) has taken over the responsibility for the investigation of Housing Benefit fraud. Therefore the Compliance and Fraud Team liaise closely with SFIS regarding the referral. Investigation, and prosecution of fraud cases.

3. General Principles

3.1

Each case must be considered on its own facts and merits. However, there are general principles that must be applied in all cases.

3.2

Officers tasked with undertaking investigations into allegations of fraud must be Accredited Counter Fraud Specialists (ACFS) and have regard to

all legislation and statutory guidance relating to criminal investigations, including the Police and Criminal Evidence Act 1984, the Code of Practice for Crown Prosecutors and the Criminal Procedure and Investigations Act 1996. **Note:** Relevant legislation and guidance can be found on the [Home Office website](#)

3.3

For the purposes of the Human Rights Act 1998 Uttlesford District Council is a public authority. Therefore officers must apply the principles of the European Convention on Human Rights in accordance with the Act. **Note:** Relevant legislation and guidance can be found on the [Home Office website](#)

3.4

Officers must not allow any personal views about ethnic or national origin, disability, sex, religious beliefs, age, political views or the sexual orientation of the alleged offender to influence their decisions.

4. The Decision Making Process

4.1

Where an offence has been committed the Council can consider administering a caution, applying a civil penalty, an administrative penalty or instigating a prosecution. In considering a case for prosecution the Council must be satisfied that the case would qualify for court action on the strength of evidence and the public interest factors. When considering the next step the following guidelines are applied for consideration.

Council Tax & Business Rates cases	
Value of Fraud	Action to be taken
Under £200	No punitive action is taken, A caution is likely to be given in these circumstances
£200 - £1000	A £70 civil penalty is imposed for failure to inform the Council of a change within the 28 day

	timeframe prescribed (Council Tax)
Over £1000	Prosecution will be considered
Local Council Tax Support Cases	
Value of Fraud	Action to be taken
Under £200	No punitive action is taken, A caution is likely to be given in these circumstances
£201 - £500	A £70 civil penalty for Council Tax or £50.00 for Housing Benefit is imposed for failure to inform the Council of a change within the 28 day time frame prescribed
£501 - £1000	Case will be considered for administrative penalty
Over £1000	Prosecution will be considered

The above tables represent guidelines only. Where the Council is considering a prosecution, other factors are also taken into consideration.

Every case is considered individually and on its own merits and circumstance.

5. Decision to Prosecute

5.1

As a general rule, the Council will consider a case for prosecution if one or more of the following criteria are met.

- the person/company concerned occupies a position of trust
- the person/company has demonstrated a clear intention to defraud
- the person has already received a schedule 3 or Welfare reform Act penalty.
- there is evidence of premeditation or organised fraud
- the person/company has assisted or encouraged others to commit offences
- the person has declined an administrative penalty (Local Council Tax Support)

5.2

In all cases the Council must be satisfied that there is a realistic prospect of conviction. Therefore, it is essential that there is sufficient admissible evidence so that a court, properly directed in accordance with the law, is more likely than not to convict the defendant of the alleged offence.

5.3

When deciding whether there is enough evidence to prosecute, the Council must consider whether the evidence can be used and is reliable. This is known as the evidential stage.

The Evidential Stage

5.4

There must be sufficient evidence to provide a realistic prospect of conviction against each defendant on each recommended charge. The Council needs to prove beyond reasonable doubt that an offence has been committed. In considering the evidence the following factors should be considered:

- (i) Any evidence held should be admissible, reliable and sufficient so that a court properly directed in accordance with the law is more likely to convict than dismiss the case against the defendant.
- (ii) Any circumstances and/or evidence made available to the defence, which could cause a doubt in the prosecution's case.

5.5

In deciding the strength of the prosecution case the following factors should be considered:

- (i) The reliability of any admission taking into account the defendant's understanding or lack of understanding of all the circumstances.

(ii) The strength of the evidence of witnesses. The case may be weakened if the defence questions their reliability because of their motive, background, or previous convictions.

(iii) The evidence of the defendant's identity should be strong enough to withstand any questioning by the defence.

5.6

If the case does not pass the evidential stage it is unsuitable for prosecution, no matter how serious the allegations are. If the evidential stage has been satisfied, a decision will be made as to whether or not it would be in the public interest to prosecute. Cases that pass the evidential test will not automatically be prosecuted and various factors should be borne in mind when considering whether or not it is in the public interest to do so.

Public Interest Factors

5.7

The Public Interest factors can increase the need to prosecute or may suggest an alternative course of action. These factors will vary from case to case and not all the factors will apply to each case. It is a matter of common sense which factors are relevant and which does not apply. In making the decision to prosecute all available information must be carefully and fairly considered.

5.8

The Code for Crown Prosecutors should be used as a guide in determining whether or not prosecution is in the Public Interest. The latest copy of the code can be found at www.cps.gov.uk. All cases where the evidential and public interest factors have been satisfied should be considered for prosecution if the relevant criterion is met.

5.9

Failure to consider Evidential and Public Interest factors when reaching a decision on prosecution can have serious consequences. The laying of criminal information when there is insufficient evidence to do so can

amount to an abuse of the process leaving the prosecutor open to legal action by the intended defendant.

6. Alternatives to Prosecution

6.1

Civil Penalty –Council Tax & Housing Benefit

Schedule 3 of the LGFA 1992 & Welfare Reforms Act 2012 Section 116 provides for a system of civil penalties, which can be imposed by the billing authority where a person fails to comply with certain requirements as to the supply of information; including the notification of information relating to entitlement to discounts, exemptions or Housing Benefit Claims. This will be payable in addition to any adjusted liability or via an invoice.

Further information can be found in the separate Council Tax and Housing Benefit Civil Penalties Policy

The Administrative Penalty – Local Council Tax Support

6.2

Regulation 11 of Council Tax Reduction Scheme (Detection of Fraud & Enforcement) (England) Regulations 2013) (ref: www.legislation.gov.uk/uksi/2013/501/regulation/11/made) allows Local Authorities to issue an administrative penalty as an alternative to prosecution where:

- (i) Grounds exist for instituting proceedings
- (ii) Prosecution is possible but not the preferred option
- (iii) The case is not so serious that prosecution should be considered from the outset and:-
- (iv) The offer of an administrative penalty would not cause severe financial hardship placing vulnerable family members at risk

6.3

Administrative Penalties can be issued to:

- (i) Local Council Tax Support Scheme customers who are believed to have committed an offence
- (ii) Employers of Local Council Tax Support claimants who are believed to have committed an offence and where the employer has condoned, hidden or assisted the alleged offender in committing an offence.

6.4

Local Council Tax Support Scheme - Administrative Penalty

This is a financial penalty and can be offered if the following conditions are met:

- (i) A reduction has been given to council tax liability under the Local Council Tax Support Scheme which is greater than that which the customer was entitled, Regulation 11, Council Tax Reduction Scheme (Detection of Fraud and Enforcement) (England) Regulations 2013)
- (ii) The making of the overpayment / excess support was attributable to an act or omission on the part of the defendant.
- (iii) There are grounds for instituting criminal proceedings for an offence relating to the overpayment upon which a penalty is based.
- (iv) It is a first offence where the overpayment is generally below £1000

6.5 If a person declines to agree to pay a penalty, or subsequently changes their mind, the case must then be considered for criminal proceedings unless exceptional circumstances apply.

7. Authority to prosecute

7.1

Where a case has been investigated and the investigator believes the case has been proven, the investigator will make recommendation on the appropriate action to be taken. The subsequent recommendation will be reviewed and either approved or rejected by the Revenues Manager.

7.2

The Head of Legal Services acting for the Council will make the final decision as to whether a case is suitable for criminal proceedings after taking into consideration the Code of Conduct for Crown Prosecutors and this policy.

7.3

The Council will publish details of successful prosecutions on the Council's website.

8. Other methods of redress

8.1

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 under the Proceeds of Crime Act 2002. (for offences prior to 23/03/03 CJA 1998). **Note:** Relevant legislation and guidance can be found on the [Home Office website](#) a restraint order will prevent a person from dealing with specific assets. A confiscation order will enable the Council to recover its losses from assets which are found to be from the proceeds of crime.

8.2 Where an overpayment arising from fraud is identified the Council will take steps to recover the resultant debt, including taking action in the Civil Courts if necessary, this will be in addition to any sanction it or the Criminal Courts may impose in respect of that fraud.

9. Disciplinary

Where a member of staff has received a formal caution, an administrative penalty or has been found guilty by the Court of a benefit fraud offence, the Head of Service will report the matter to Human Resources for consideration of disciplinary action.