

COUNCIL TAX REDUCTION, DISCOUNTS & EXEMPTIONS ANTI-FRAUD POLICY



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**Tonbridge and Malling Borough Council
Council Tax Reduction, Discounts & Exemptions Anti-Fraud Policy**

1. INTRODUCTION

- 1.1 Tonbridge and Malling Borough Council (the Council) is committed to ensuring that the correct levels of council tax liability are collected from its residents and considers that council tax reduction and discounts and exemptions should only be applied to households that meet the necessary criteria. It is important to detect and prevent fraud and error in the first instance and as such the Council seeks to check and verify all original documents and personal circumstances before awarding any reductions, discounts or exemptions, or amending existing reductions, discounts or exemptions.
- 1.2 The Council is opposed to all forms of fraud and corruption. It recognises that fraud and corruption undermine the standards of public service, which it promotes, and reduces the resources available for the good of the whole community. The Council has issued an Anti-Fraud, Bribery and Corruption Policy and a Whistleblowing Policy to encourage prevention, promote detection and support the investigation of allegations of fraud or corruption at a corporate level.
- 1.3 This Council Tax Reduction, Discounts & Exemptions Anti-Fraud Policy is designed to reinforce the Anti-Fraud, Bribery & Corruption Policy specifically in relation to Council Tax Administration and is designed to:
- stop fraudulent applications for reductions, discounts or exemptions from entering our systems
 - find any fraudulent reductions, discounts or exemptions already in the system
 - punish those people who commit fraud
 - recover council tax owed as the result of fraudulently obtained reductions, discounts or exemptions
 - deter people from trying to commit fraud
- 1.4 The Council Tax Reduction, Discounts & Exemptions Anti-Fraud Policy and the associated Sanction & Prosecution Policy will be reviewed at least annually by the Audit and Assurance Manager for approval by the Audit Committee.

2. DEFINITION OF COUNCIL TAX FRAUD

2.1 Council Tax fraud is where a person, dishonestly, or not,

- a) Falsifies a statement or a document; or
- b) Is involved in a failure to notify a relevant change of circumstance; or
- c) Omits relevant information

for the purpose of obtaining a reduction in council tax liability for themselves or another.

3. CULTURE

3.1 The Council is determined that the culture and tone of the organisation will continue to be one of honesty and opposition to fraud and corruption and as such has established a dedicated Fraud Team.

3.2 The Council's staff and Members, at all levels, are an important element in its stance on fraud and corruption and should lead by example. They are encouraged to raise any concerns and can do this in the knowledge that these will be treated in confidence and properly investigated.

3.3 Instances of suspected/alleged Council Tax fraud may be referred for investigation to the Internal Audit and Fraud Team who can be contacted on extension 6337/6101 or through the e-mail system. All staff conducting either investigations and / or interviews should be aware of the Council's procedures for dealing with unacceptable and aggressive behaviour.

4. PREVENTION

Staff

4.1 To reduce the risk of fraud and error it is vital that the qualifications and employment histories of potential recruits are comprehensively checked. Revenues and Benefits staff should also sign an annual declaration covering any interests that may conflict with their work. For example, council tax reduction entitlement or acting as a landlord or agent.

4.2 All individuals within the Internal Audit and Fraud Team are required to act with integrity and follow the **Code of Conduct for Investigation Staff (see Appendix A)**.

4.3 Employees must declare any circumstances where their personal interests (financial and non-financial) may conflict with those of the

Council, e.g. processing a Council Tax Reduction application form for a relative or friend.

- 4.4 Appropriate staff within the Council will receive Fraud Awareness training as part of their induction; thereafter they will receive periodic refresher training. All Fraud Officers will undertake training **as and when required** in order to ensure that they carry out their duties in accordance with recognised standards for Fraud Investigation.

Systems

- 4.5 It is a management responsibility to maintain the internal control system. This includes the responsibility for the prevention of fraud and other illegal acts. By undertaking an agreed plan of work, internal audit will evaluate the adequacy and effectiveness of these controls as a means of assisting management to discharge its responsibilities.
- 4.6 All Council Tax recording systems must be designed in consultation with and to the satisfaction of the Director of Finance and Transformation. Access to data must be controlled by use of passwords with an audit trail kept of transactions.
- 4.7 All staff with access to the confidential details of claimants will be responsible for ensuring the control of physical access to the data and will be responsible for compliance with the Data Protection Act and the Freedom of Information Act. This responsibility requires managers to ensure that the physical access to equipment is restricted, as far as practical, to authorised users only. All individuals must protect their passwords and not keep them written down or 'lend them'.
- 4.8 All manual Council Tax records must be kept securely filed when not in use and access to these files must be restricted to designated officers only.
- 4.9 All valuables, including documentation, must be recorded and tracked through the council tax system until returned to the originator. Where these items are hand delivered a receipt will be given to the originator.
- 4.10 All telephone calls received in relation to Council Tax Fraud will be recorded manually and a note of the content of the conversation will be kept on file.

5. DETECTION AND INVESTIGATION

- 5.1 Surveys by the Audit Commission identified that Council Tax Fraud causes significant loss to local government.
- 5.2 Whilst encouraging genuine people to apply for reductions, discounts

and exemptions, the Council has adopted a number of initiatives to detect and prevent fraudulent applications, such as:

- operation of a fraud 'hotline' 01732 876101
- participation in the National Fraud Initiative data-matching exercise **and other local proactive initiatives**
- carrying out joint fraud investigations with other bodies
- publicity of anti-fraud initiatives, the Fraud Hotline number and press releases.

- 5.3 All referrals passed to the Fraud Team will be sifted and vetted for strength of evidence. All cases where the evidence is considered sufficient to investigate will be logged and a case file opened.
- 5.4 The Council's Disciplinary procedures will be used where the outcome of an investigation indicates improper behaviour by an employee.
- 5.5 Members of staff within the Council Tax Section should refer suspected cases of fraud to the Internal Audit and Fraud Team. The Team will give feedback to staff regarding the quality of the fraud referral and the outcome of any resulting investigation as appropriate.
- 5.6 All claims where there is sufficient proof for the Council to believe that a reduction, discount or exemption has been claimed fraudulently will be dealt with under the associated Sanction and Prosecution Policy. The sanctions open to the Council include a Caution, an Administration Penalty (in respect of council tax reduction) or Prosecution.
- 5.7 The Council will take action, including legal recovery, in order to recover all council tax liability that results from fraudulent activity or a person's failure to notify a change of circumstances, regardless of whether sanction action takes place, and may consider imposing a civil penalty of £70 for incorrect statements or negligently failing to report changes in circumstances.

6. REVIEW AND APPROVAL OF THIS POLICY

- 6.1 This Policy is owned by the Director of Finance and Transformation and reviewed by the Chief Audit Executive on her behalf.
- 6.2 The Policy will be reviewed and endorsed at least annually by the Audit Committee at their January meeting. The most recent review was undertaken in January 2019 with the next review due January 2020.

Tonbridge and Malling Borough Council
Council Tax Reduction, Discounts & Exemptions
Sanction and Prosecution Policy

I. STATEMENT OF INTENT

- The Council has a duty to ensure that all applications for Council Tax reduction, discounts and exemptions are correctly awarded and a responsibility to prevent and detect fraud. Tonbridge and Malling Borough Council is committed to protecting public funds and will consider taking prosecution action against any person suspected of committing fraud in order to reduce their council tax liability.
- The Council has decided that its Prosecution Policy should not be entirely related to the monetary value of the offence. This is because Tonbridge and Malling is an area where liabilities vary widely depending on the location and type of property in question. In these circumstances a purely monetary policy would not be appropriate. All cases will be looked at on their own merit and any mitigating circumstances taken into account.
- The recommendation on whether a case is suitable for sanction action lies with the Audit and Assurance Manager. A sanction recommendation will be completed by the investigating officer and then reviewed by the Audit and Assurance Manager in accordance with the sanction policy to determine what course of action, if any, is appropriate. This review will take into account:
 - ❑ The evidential test criteria
 - ❑ The Public interest test criteria
 - ❑ Value and length of the offence
 - ❑ Local prevalence
 - ❑ Social and health factors
 - ❑ Any other mitigating factors
- Prosecution recommendations will be reviewed by Legal Services and the Chief Financial Services Officer for approval. Cases deemed suitable for prosecution may be dealt with in-house by the Authority's legal team. These cases are generally prosecuted under the Fraud Act 2006 or the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013.
- Opinion will be gained from a legal professional either in house or private to ensure a robust case is presented at court.

II. EVIDENTIAL CRITERIA

- The Council may consider sanction action if the case is serious enough to warrant it.
- In order for any Sanctions to be considered the case must meet the evidential criteria. In other words is there sufficient evidence for a realistic prospect of a conviction?
- In making this decision, the following factors will be considered:
 - ❑ How clear the evidence is
 - ❑ If there has been any failure in the investigation
 - ❑ If there has been any failure in administrative process

III. PUBLIC INTEREST CRITERIA

- If the evidential criteria are met then the Council will consider whether or not sanction action would be in the public interest. In making this decision, the following factors will be considered first:
 - ❑ Medical conditions
 - ❑ Other social factors
 - ❑ Financial implications compared with losses
- If these still indicate that a sanction is appropriate then the other Public Interest Criteria as shown in The Code for Crown Prosecutors will be considered in order to decide the appropriate sanction.

IV. NO SANCTION OR PROSECUTION

- The Council may consider closing the case without any sanction or prosecution action if:
 - ❑ To our knowledge the person has never previously offended
 - ❑ The offence is minor
 - ❑ The period over which the fraud has been committed is very short
 - ❑ The value involved is very low
 - ❑ The case does not satisfy the Evidential and Public Interest Criteria
- In cases where no further action is appropriate and an Interview Under Caution has taken place a letter will be issued stating that no further action will take place, however a strong reminder advising of the responsibility to notify changes and provide correct information will be included in the letter.

V. CIVIL PENALTIES FOR INCORRECT STATEMENTS

- Even if it is determined that the Council will not take any sanction or prosecution action in respect of offences committed, they may still consider issuing a civil penalty for making an incorrect statement or failing to notify a change of circumstances. The final decision on whether to apply a civil penalty lies with the Audit and Assurance Manager.
- The Council may consider imposing a penalty of £70 (for a first offence, this may increase for subsequent cases) on a person where:
 - ❑ The Person makes an incorrect statement or representation, or negligently gives incorrect information or evidence in or in connection with an application or in connection with the award of a reduction under the council tax reduction scheme
 - ❑ Fails to take reasonable steps to correct the error
 - ❑ The error results in an award of a discount or council tax reduction which is greater than the amount to which the person was entitled
 - ❑ Without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances
 - ❑ The failure results in an award of a discount or council tax reduction which is greater than the amount to which the person was entitled
 - ❑ The person has not been charged with an offence, or cautioned, or been given an administration penalty

VI. SANCTIONS AS ALTERNATIVES TO PROSECUTION

- Where the Council has reviewed a case and is satisfied that an offence has been committed, mitigating factors may suggest that an alternative form of sanction should be considered in the first instance as a more suitable means of disposal.
- These alternative sanctions take the form of a caution or, in the case of Council Tax Reduction, an administrative penalty.
- **A Caution:**
 - ❑ Acts as a final written warning for the offence committed
 - ❑ Is for council tax administration purposes only
 - ❑ Is not a criminal record and, therefore, does not affect a person's employment prospects
 - ❑ Remains on record for a period of 5 years
 - ❑ Would be cited at proceedings should any subsequent offences be committed within the 5 year period

- The Council may consider issuing a Caution if:
 - ❑ To our knowledge the person has never previously offended
 - ❑ The person has committed fraud before but the offence was minor and the current offence is also minor
 - ❑ There was no planning involved in the process
 - ❑ There was no other person involved in the fraud
 - ❑ The offence is minor
 - ❑ The value of the offence is relatively low
 - ❑ The person has fully admitted the offence during an IUC
 - ❑ The persons subsequent attitude, e.g. whether they express genuine regret for what they have done
 - ❑ Criminal proceedings are not the first option

- **An Administrative Penalty:**
 - ❑ Is a financial penalty calculated as a percentage of the fraudulently obtained council tax reduction, which is set at:
 - 50% of the excess reduction, with a minimum of £100 and a maximum of £1,000
 - ❑ Is for council tax administration purposes only
 - ❑ Is not a criminal record and, therefore, does not affect a person's employment prospects
 - ❑ Remains on record for a period of 5 years
 - ❑ Would be cited at proceedings should any subsequent offences be committed within the 5 year period

- The Council may consider issuing an Administrative Penalty if:
 - ❑ To our knowledge the person has never previously offended
 - ❑ The person has committed fraud before but the offence was minor and the current offence is also minor
 - ❑ There was no planning involved in the process
 - ❑ There was no other person involved in the fraud
 - ❑ A Caution is not appropriate as there has been no admission to the offence
 - ❑ The offence is minor
 - ❑ Criminal proceedings are not the first option

- If a person refuses to accept a caution or administrative penalty, the case will be referred for prosecution.

- Even if the above criteria for Cautions and Penalties was satisfied the Council may decide that a Caution or Administrative Penalty is not appropriate if the person:
 - ❑ Has been prosecuted for a fraud offence in the last 5 years
 - ❑ Has been cautioned two or more times in the past five years

- This is because this would indicate that:
 - ❑ Previous sanctions have not deterred them from re-offending
 - ❑ Their lack of contrition for the offences committed
 - ❑ Their disregard for the legislation
 - ❑ A deliberate and repeated intent to commit fraud
 - ❑ Their apparent belief that these offences are not serious
- Instead the Council may consider referring the case for prosecution.

VII. PROSECUTION

- The final decision on whether to refer a case for prosecution lies with the Audit and Assurance Manager. This decision will then be reviewed by Legal Services and the Chief Financial Services Officer for approval.
- Once a decision to prosecute has been made, the case will be presented to the Council's Legal Team, who will provide an opinion on the evidential and public interest test.
- If the evidential and public interest tests have been satisfied, the case will be authorised by the Legal Team and passed for prosecution. If the Legal Team consider the evidential and public interest test has not been met the case will be referred back to the Fraud Team with a recommendation.
- In addition to the Evidential Criteria and Public Interest Criteria outlined above the following will also be taken into consideration:
 - ❑ Whether the application for reduction, a discount or exemption was false from inception
 - ❑ The change in circumstances was intentionally withheld
 - ❑ Whether there was planning in the process
 - ❑ Whether the suspect was a ring leader or an organiser of the offence
 - ❑ Any previous incidence of fraud
 - ❑ Whether there has been any abuse of position or privilege
 - ❑ The amount of the excess reduction in liability
 - ❑ The duration of the alleged offence
 - ❑ Whether there are grounds for believing that the offence was likely to be continued or repeated, based on the person's previous history
 - ❑ Whether the offence is widespread in the area where it was committed and so prosecution may act as a deterrent
 - ❑ Whether the person has refused to accept a Caution or Administrative Penalty

VIII. COLLECTION OF COUNCIL TAX

- Regardless of whether or not any Sanction action is taken, the Council will attempt to collect all Council Tax owed as the result of false applications for reductions, discounts and exemptions. This action is taken by the Revenues Team who will pursue all available methods of recuperating the debt including taking civil action when necessary.

CODE OF CONDUCT FOR STAFF INVESTIGATING FRAUD

Code of Conduct & Good Practice for Staff Investigating Fraud

This Code applies to all officers engaged in carrying out duties involving the investigation of Fraud.

The Code should be read in conjunction with the legal requirements of the post and current staff rules.

The Audit and Assurance Manager will deal with a breach of The Code of Conduct and Good Practice.

Inefficiency is a breach of this Code, and falls short of the expected standard and may require remedial training.

General Conduct

Officers of the Council will not:

- Exceed their actual authority or hold them out as having any authority not provided by legislation.
- Act in any way, benefit or gain, which exceeds the limits of their powers.
- Misuse their official position for any benefit or gain for themselves or another.

Legislation

- Officers must pursue all reasonable lines of enquiry even if it points away from a suspect's guilt.
- Ensure that all material that is gathered during the investigation is recorded and retained and that all relevant material is revealed to the prosecutor in accordance with The Criminal Procedure and Investigations Act and the Codes of Practice.
- Ensure that the Codes of Practice are observed in accordance with The Police and Criminal Evidence Act.
- Ensure that applicable provisions of The Regulation of Investigatory Powers Act and the Codes of Practice and guidance in relation to directed surveillance are adhered to.
- Observe all other applicable legislation and internal and external guidance.

Evidence (witness and suspects)

Officers to whom the Code applies must not under any circumstances:

- Conceal or fabricate evidence or knowingly allow any evidence to be concealed or fabricated.
- Discriminate or exercise any bias on the grounds of race, sex, marital status, sexual orientation, or disability.
- Accept or offer any inducement, bribe or other advantage from or to any witness or suspect.
- Use any information gathered in the course of their duties for personal gain or coercion or otherwise misuse such information.
- Do or fail to do anything that may result in a miscarriage of justice.

Disclosure of Interests

- Officers must declare any circumstances or interests which may affect their ability to conduct an investigation objectively.
- Any relationship to or with a suspect or witness or informant.
- Any personal interest in the outcome of an investigation or other civil or criminal Proceedings.
- Their dependency on alcohol or drugs other than those prescribed.
- Officers should disclose to their line manager if they are or have been subject to any summons, charge, or arrest.

Information

- Officers must treat all information gathered for evidential purposes during an investigation as confidential and, must not deliberately or negligently disclose such information to an unauthorised third party, or reveal the source of the information to an authorised third party.

Personal Injury and Damage to Property

- Officers, must exercise all reasonable care to prevent injury to the person, loss or damage to the public and private property, and must not forcibly enter public or private property except to save life or prevent serious injury or on the invitation of the occupier or other responsible person, deliberately or negligently destroy or damage any property, seize or retain any property without lawful authority, or use threatening physical violence towards a colleague or member of the public.