

## **Council Tax Penalties and Civil Penalties in Housing Benefit**

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### **Purpose of the Report**

1. To request that the Council approves the application of Council Tax Penalties and Civil Penalties in Housing Benefit with effect from 1 April 2017

### **Public Interest**

2. South Somerset District Council is responsible for the billing, collection and enforcement of Council Tax, the administration of Housing Benefit (on behalf of the Department for Work and Pensions) and the administration of Council Tax Support.
3. There is a wide range of Council Tax exemptions and discounts and the Council has a responsibility to the tax payer to ensure that where a discount, exemption, Housing Benefit or Council Tax Support award has been made that the recipient remains entitled to it.
4. The amount of Council Tax to be charged by each preceptor and the billing authority is determined by reference to the Council Tax base. This determines how much Council Tax each household is charged.
5. It is important therefore to ensure that only those entitled to a discount or exemption continue to receive it to prevent loss of income.

### **Recommendation**

6. That Full Council approves the application of Council Tax and Housing Benefit Civil Penalties with effect from 1 April 2017.

### **Background**

#### Council Tax

7. Currently Council Tax discounts, exemptions and Council Tax Support amounting to £19.7m have been applied to Council Tax accounts for the financial year 2016/17.
8. The recipient of a Council Tax discount, exemption or Council Tax Support award has a legal duty to notify the Council within 21 days if there has been a change in circumstances which affects Council Tax liability or would mean that the discount or exemption no longer applies, or would mean that the amount of their award might be affected, including reducing it to nil.

9. Any reduction that a Council Tax payer continues to receive but is not entitled to is “lost income” to South Somerset District Council, Somerset County Council, Avon and Somerset Police, Devon and Somerset Fire and Rescue Authorities and Parish Councils.
10. Some time ago, the Audit Commission estimated that between 3% and 11% of discounts, reductions and exemptions claimed against Council Tax were either incorrect or fraudulently claimed (Audit Commission 2009).
11. If it is assumed that the current rate of error is 5%, that would represent approximately £985k of lost income across all preceptors in Somerset. The SSDC loss of income on that basis would be approximately £98k.

### Housing Benefit

12. The Council administers Housing Benefit on behalf of the Department of Work and Pensions and it is estimated that approximately £44m will have been paid out in Housing Benefit in the 2016/17 financial year. The Council receives funding from Government for the Housing Benefit it pays out.
13. However where a late or unreported change results in an overpayment of Housing Benefit the council only receives a reduced funding of 40 pence in the pound. At least 60% of any overpayment needs to be recovered in order that the Council does not suffer a financial loss. As with all debt there is a risk of non-collection and therefore financial loss for the Council.
14. The most effective way to minimise potential loss both in Council Tax and Housing Benefit funding is to encourage the timely reporting of changes in circumstance that affects entitlement to discounts, exemptions and Housing Benefit. Penalising those who fail to carry out their legal duty to notify the Council of such changes is designed to bring about future behavioural change.

### **Current compliance regime**

15. The Council has a multifaceted compliance regime across Council Tax and Housing Benefit that identifies unreported changes. This includes:
  - An increased collection team
  - Real Time Information from HMRC
  - Housing Benefit Matching Service referrals
  - National Fraud Initiative data matching
  - Council Tax discount and exemption review programme
  - Council Tax Support and Housing Benefit claim review programme
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16. This compliance work contributes to minimising the loss of income. However with the exception of the Real Time Information from HMRC the rest of the changes identified have normally occurred sometime in the past. Collecting the additional Council Tax due where a discount or exemption is removed for a past period is not always straightforward

and there is an element of risk of some non-collection. Similarly collecting overpaid Housing Benefit carries a risk of non-collection.

### **Demand reduction**

17. The late or non-reporting of changes in circumstances creates avoidable demand in a number of ways. It increases the volume of reviews that needs to be carried out both on Housing Benefit and Council Tax Support claims and on Council Tax records. A proportion of people will repay the additional Council Tax or Housing Benefit overpayment without requiring intervention. However, those that do not, create avoidable contact. This may involve the sending of reminder notices, the issuing of a summons, monitoring payment agreements, dealing with broken agreements and further enforcement action. There will also be telephone demand associated with this additional work. This all adds to the cost of administering Council Tax and Housing Benefit.
18. Taking steps to encourage people to tell us about changes in circumstance in a timely way will help to reduce avoidable demand as well as reducing costs and minimising loss of income.

### **Reporting changes in circumstance**

19. We take every opportunity to inform people of their duty to tell us about changes in their circumstances. We also make it easy for people to tell us about changes.
20. In addition to reporting changes by phone and in writing, there are a number of on-line forms covering Council Tax and Housing Benefit/Council Tax Support.
21. The Benefits Team has recently launched a photo upload facility which enables people to provide evidence of their change electronically which removes delays in receiving the evidence and reduces demand in the post room and customer service counters.
22. Making it easy to report changes and provide evidence provides further encouragement for timely notification.

### **Penalties**

#### Council Tax Penalties

23. The Council is legally entitled to obtain information from residents, owners or managing agents to help identify the person liable for payment of the Council Tax.
24. Where a person fails to supply certain information we have requested within 21 days of the request for the information, or knowingly supplies inaccurate information in purported compliance with such a request, we may impose a penalty.
25. As mentioned, the recipient of a Council Tax discount, exemption or Council Tax Support award has a legal duty to notify the Council within 21 days if there has been a change in circumstances which affects Council Tax liability or would mean that the

discount or exemption no longer applies, or would mean that the amount of their award might be affected, including reducing it to nil.

26. The law 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 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) fails to provide information requested after a liability order has been obtained
  - f) fails to notify the Council that Council Tax Support should have ended
  - g) fails, without reasonable excuse, to notify the Council that there has been a change in their circumstances which would affect Council Tax Support
27. Where a penalty has been imposed and a further request for the same information is made to that person and is again not properly complied with, the Council may impose a further penalty of £280. A penalty of £280 may be imposed each time the Council repeats the request and the person does not fulfil their statutory obligations.
28. Where the Council possesses a liability order for failure to pay Council Tax, The Council has the right to ask the customer for details of their employment and other income. It is a criminal offence not to supply the information without reasonable excuse, or for a person to knowingly or recklessly supply false information. The matter can be referred back to the Magistrates' Court for a summary conviction and fine to be imposed. These fines would be collected by the Magistrates and paid to the Council.

#### Civil Penalties for Housing Benefit

29. A recipient of Housing Benefit has a legal duty to notify the Council within one month if there has been a relevant change in circumstances which would mean that the amount of their award might be affected, including reducing it to nil.
30. A "relevant change of circumstances", means a change of circumstances that a person might reasonably be expected to know might affect their entitlement to, or the amount of, Council Tax Support.
31. The civil penalty that can be applied in Housing Benefit cases is £50.

#### **Applying a penalty**

32. The Council will align the time allowed to report a change affecting Council Tax before a penalty is applied with that allowed for reporting changes to Housing Benefit i.e. one month.

33. Details regarding the application of penalties, where they will not be applied and how to appeal against a penalty are contained in the attached Appendix A.

### **Relevant Legislation**

34. The following legislation permits the application of Council Tax penalties and Civil Penalties.
- Schedule 3 of the Local Government Finance Act 1992
  - Local Government Finance (England)(Substitution of Penalties) Order 2008 (S.I 2008/981)
  - Regulation 12 & 13 of the Council Tax Reduction schemes (Detection of Fraud and Enforcement)(England) 2013
  - The Council Tax (Administration and Enforcement) Regulations 1992 (S.I 1992/613)
  - The Valuation Tribunal for England (Council tax and Rating Appeals)(Procedure) Regulations 2009 SI 2009/2269
  - The Social Security (Civil Penalty) Regulations 2012 (SI 2012/190)
  - Welfare Reform Act 2012

### **Management Information & Reporting**

35. For at least the first 12 months the Council will produce management information covering all penalties imposed. This will enable the Council to determine the effectiveness of the policy, identify areas for improvement in decision making and processes.
36. Management Information to be recorded will be:
- Volume of penalties & reasons for the imposition
  - The volume and value of penalties recovered
  - The volume and value of penalties written off
  - The type and effectiveness of action taken to recover each penalty
  - The volume of complaints made and upheld
  - The volume of appeals made against a penalty and reasons for appeal
  - The volume of cases going to Valuation Tribunal and the volume of successful appeals
  - The volume and reason for exemption from a penalty where one would otherwise have been imposed

### **Publicising Council Tax Penalties and Civil Penalties in Housing Benefit**

37. The Council already includes a warning about the right to impose penalties on Council Tax bills and other documentation.

38. We have included a flyer reminding people of their duty to notify the Council about relevant changes affecting entitlement to discounts, exemptions, Council Tax Support and Housing Benefit with all annual Council Tax bills and Housing Benefit award letters. A copy of this is shown in Appendix B.
39. The intention is to publicise the introduction of the application of Council Tax and Civil Penalties through a wide range of channels including a press release, social media and our website.
40. While the use of penalties is planned to come in to effect from 1 April 2017 it would be appropriate to allow some time between the publicity taking place and the commencement of penalty imposition. It is proposed therefore that any changes relating to a past period reported up to and including 30 April 2017 will not attract a penalty.

### **Policy review**

41. This policy will be reviewed periodically and at least every three years to ensure it is, and remains fit for purpose. This policy will also be updated at the time relevant legislation changes.

### **Financial Implications**

42. There are no adverse financial implications associated with this report. It is not possible to estimate the value of penalties that might be applied and collected during 2017/18. All penalty income collected does not form part of the collection fund and remains with SSDC. The management information collected during the year will enable a decision to be made as to how much should be added to the Medium Term Financial Plan for future years.

### **Council Plan Implications**

None associated with this report

### **Carbon Emissions and Climate Change Implications**

None associated with this report

### **Equality and Diversity Implications**

None associated with this report

### **Privacy Impact Assessment**

None associated with this report

### **Background Papers**

None

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# Appendix A

## **How penalties will work**

Penalties are payable directly to the authority that imposed them (the billing authority), and can be collected by adding the penalty to the person's Council Tax liability and detailing it on their Council Tax bill.

A penalty request memo will be completed by a member of the Revenues and Benefits Team and must be approved by a Revenues or Benefits Team Leader or the Revenues and Benefits Manager before being applied.

Once the penalty has been applied to the account a letter will be sent to the person(s) in all cases advising of the application of the penalty and the reason for it. The letter will also set out the right of appeal.

A revised Council Tax bill will also be issued showing the penalty which has been applied on a separate line.

Where a penalty is imposed where the person who has not supplied the information does not have a Council Tax account an invoice will be raised for repayment.

In the case of Housing Benefit the Civil Penalty will be recovered by raising an invoice.

## **Exceptions**

The Council will exclude taxpayers and Housing Benefit recipients from the imposition of a penalty where they have relevant mitigating family/personal circumstances, for example recent bereavement or serious illness. Council Tax payers or benefit recipients who are severely mentally impaired are also excluded from the penalty scheme.

Exclusion from a penalty will also 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, and hearing/sight/speech problems, learning difficulties or frailty due to old age.

All identified exceptional cases will be passed to a Revenues or Benefits Team Leader or the Revenues and Benefits Manager for a decision to be made.

## **Appeals**

Where the Council's decision to impose a penalty is disputed an appeal can be made to a Valuation Tribunal. Before making an appeal the appellant will first ask the Council to review its decision.

Where a penalty is imposed on a person and he alleges that there is no power in the case concerned to impose a penalty of the amount imposed, he may appeal against the imposition.

Where the imposition of a penalty is subject to an appeal, no amount shall be payable in respect of the penalty while the appeal is outstanding.

The Council has the power to quash a penalty that it has imposed.