

**MAIDSTONE BOROUGH
COUNCIL**

**COUNCIL TAX AND
HOUSING BENEFIT
OVERPAYMENTS
CIVIL PENALTIES
POLICY**

1. Introduction

The Council, in carrying out its statutory functions, undertakes the administration of Council Tax, Council Tax Reduction and Housing Benefit.

We understand the majority of residents correctly inform us of changes and this policy is not aimed at those residents, but at targeting and punishing those residents who fraudulently claim discounts and exemptions.

The Council has a duty to protect the public purse and is therefore committed to a proactive approach in preventing and reducing the risks associated with fraud, error and other irregularities in these areas of administration.

In conjunction with this commitment, these guidelines outline when and how civil penalties will be levied against a customer in appropriate circumstances.

These penalties do not apply to case of proven fraud, which will be dealt with separately.

2. Council Tax penalties

Schedule 3 of the Local Government Finance Act 1992 allows local authorities to impose a civil penalty of £70 in cases where a resident fails, without reasonable excuse *, to supply information (or negligently supply incorrect information) which affects their liability or entitlement to a Council Tax discount or exemption.

Where a £70 penalty has been imposed and a further request to supply information is made, additional penalties of £280 may be imposed for each subsequent failure to provide the requested information.

The circumstances in which a penalty can be imposed are where a resident fails to:

- a) Notify the Council that an exemption on a dwelling should have ended
- b) Notify the Council that a discount (including single person discount and Local Council Tax Support discount) should have ended
- c) Notify the Council of a change of address or fails to notify the council of a change in the liable party
- d) Provide information requested to identify liability

*('reasonable excuse' constitutes a 'credible reason or justification' and might include being in a situation of significant stress or suffering ill health; Ignorance of the Law is not a reasonable excuse for not complying with claim

responsibilities. Therefore, simply saying 'I didn't know' will not be considered as a reasonable excuse.)

The offence is committed if a customer fails to notify the Revenues and Benefits Service of a change affecting their Council Tax liability within 21 days of the change occurring.

Where a £70 penalty has been imposed and a further request to supply the same information is made, additional penalties of £280 may be imposed for each subsequent failure to provide the requested information, as long as

- the information is in their possession;
- the authority requests them to supply it in writing;
- it falls within a prescribed description of information.

Information can be requested from anyone who appears to be:

- a resident;
- an owner; or
- a managing agent

Where a penalty is applied, the claimant has a right of appeal against the decision (see Part 5).

3. Council Tax Reduction penalties

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 allows local authorities to impose a civil penalty of £70 in those cases where a claimant fails, without a reasonable excuse, to supply information (or negligently supplies incorrect information) which results in a Council Tax Reduction overpayment.

The circumstances in which a penalty can be imposed are where a resident:

- a) negligently* makes an incorrect statement or representation, or negligently gives incorrect information or evidence. In this situation, a penalty will only be applied if a claimant has failed to take reasonable steps to correct the error.
- b) fails to promptly notify a relevant change in circumstances

*('negligently' constitutes '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')

(‘reasonable excuse’ constitutes a ‘credible reason or justification’ and might include being in a situation of significant stress or suffering ill health; Ignorance of the Law is not a reasonable excuse for not complying with claim responsibilities. Therefore, simply saying ‘I didn’t know’ will not be considered as a reasonable excuse.)

The offence is committed if a customer fails to notify the Revenues and Benefits Service of a change affecting their Council Tax liability within 21 days of the change occurring.

The penalties will be added to the Council Tax account and collected using standard recovery procedures used for Council Tax collection.

Where a penalty is applied, the claimant has a right of appeal against the decision (see Part 5).

Schedule 3 of the Local Government Finance Act 1992

Regulations 12 and 13 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013

The Council Tax (Administration and Enforcement) Regulations 1992 (as amended)

4. Housing Benefit penalties

The Welfare Reform Act 2012 introduced a number of measures to help tackle fraud and error in the benefit and tax credit systems.

Under these measures, local authorities can impose a civil penalty of £50 in cases where a claimant fails, without reasonable excuse, to supply information (or negligently* supplies incorrect information) which results in a Housing Benefit overpayment of more than £65.

*('negligently' constitutes '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)

(‘reasonable excuse’ constitutes a ‘credible reason or justification’ and might include being in a situation of significant stress or suffering ill health; Ignorance of the Law is not a reasonable excuse for not complying with claim responsibilities. Therefore, simply saying ‘I didn’t know’ will not be considered as a reasonable excuse.)

Where a penalty is applied, the claimant has a right of appeal against the decision (see Part 5).

5. Appeals for Council Tax Penalties and Council Tax Reduction Penalties

If a customer is unhappy with the Council's decision to impose a penalty, they can appeal to the Head of Revenues and Benefits.

Any appeal must be made within 14 days of the date of the penalty being issued.

The customer must give the reasons for the request that the decision to issue a penalty be reconsidered.

If the penalty is upheld and the customer is unhappy with the Council's decision to impose a penalty they can appeal directly to the independent Valuation Tribunal at:

Valuation Tribunal Office
2nd Floor
120 Leaman Street
London
E1 8EU

Telephone: 0300 123 2035

Facsimile: 020 7481 4891

Email: vtwhitechapel@vts.gsi.gov.uk

Any appeal must be made to the Valuation Tribunal within 28 days of the date of the Penalty Notice.

If a customer lodges an appeal, recovery of the penalty will be suspended until the appeal has been decided.

6. Housing Benefit (Council Tax Benefit) penalties

The law allows the Council to add a £50 penalty to the amount of a recoverable overpayment of benefit of more than £65 to a claimant who, without reasonable excuse,

- a) Negligently makes an incorrect statement or representation, or negligently gives incorrect information or evidence. In this situation, a penalty will only be applied if a claimant has failed to take reasonable steps to correct the error.
- b) Fails to provide information or evidence required in connection with a claim for or award of benefit
- c) Fails to promptly notify a relevant change in circumstances.

(‘negligently’ constitutes ‘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’)

(‘reasonable excuse’ constitutes a ‘credible reason or justification’ and might include being in a situation of significant stress or suffering ill health; Ignorance of the Law is not a reasonable excuse for not complying with claim responsibilities. Therefore, simply saying ‘I didn’t know’ will not be considered as a reasonable excuse.)

The offence is committed if a customer fails to notify the Revenues and Benefits Service of a change affecting their entitlement within one calendar month of the change occurring.

The penalty will be added to the related overpayment of benefit and, where an entitlement still exists, it will be recovered through deductions from ongoing benefit entitlement. If there is no entitlement to benefit it will be recovered using standard recovery procedures.

Where a penalty is applied, the claimant has a right of appeal against the decision (see Part 7). This is in addition to the right of appeal against the decision that any overpayment is recoverable.

A penalty will not be applied where the claimant has, in respect of the overpayment, been charged with an offence, been cautioned or been subject to an administrative penalty as an alternative to prosecution under section 115A of the Social Security Administration Act 1992.

A penalty will only apply to overpayments wholly arising on or after 1 October 2012 and where underlying entitlement has been considered.

The Social Security (Civil Penalties) Regulations 2012

7. Appeals for Housing Benefit (Council Tax Benefit) Penalties

If a customer is unhappy with the Council’s decision to impose a penalty, they can appeal to the Head of Revenues and Benefits.

Any appeal must be made within 14 days of the date of the penalty being issued.

The customer must give the reasons for the request that the decision to issue a penalty be reconsidered.

If the penalty is upheld and the customer remains dissatisfied, the customer can ask the Head of Revenues and Benefits to refer the matter directly to the independent Tribunals Service.

Any request to refer the matter to the Tribunals Service must be made within one month of the reconsideration decision notice.

If a customer lodges an appeal, recovery of the penalty will be suspended until the appeal has been decided.

8. Exceptions on a case by case basis

Allowance may be given in those cases where an individual's circumstances (such as health, age, etc.) have clearly affected their ability to provide accurate information. In such cases the council has the discretion to withdraw the penalty.

Consideration will also be given to cases where the customer has obvious difficulty in understanding, speaking or reading English.

Whilst the council aims to have a high degree of accuracy, where a penalty has been issued in error, the council will withdraw the penalty.

Where it is evident there is hardship to pay a penalty, payments will be considered over time.

9. Decision making

The authority to make decisions on the imposition of Council Tax penalties is delegated to:

- Head of Revenues and Benefits;
- Revenues Manager

The authority to make decisions on the imposition of Council Tax Reduction penalties and Housing Benefit (Council Tax Benefit) penalties is delegated to:

- Head of Revenues and Benefits
- Benefits Manager

The authority to review decisions on the imposition of a penalty on the basis of a person's vulnerability, or before the matter proceeds to the Valuation Tribunal or the Tribunal Service, is delegated to the Head of Revenues and Benefits..