

**TO: THE MONITORING OFFICER  
(TOM CLARK, SOLICITOR TO THE COUNCIL)**

**RECORD OF ACTION TAKEN BY A CABINET MEMBER  
UNDER DELEGATED POWERS**

<b>Subject:</b> To seek member consideration for imposing Council Tax and Benefits financial penalties and as such to agree consultation on the changes.	
<b>Cabinet Member:</b> Councillor Judy Llewellyn-Burke	
<b>Has the Cabinet Member received a report prior to making the decision?</b>	<b>Yes</b>
<b>In the case of a key decision where the Cabinet Member has received a report, please state the date a copy of the report was made available to the Chair of the relevant Scrutiny Committee and placed in the public domain:</b>	<b>N/A</b>
<b>Record of decision taken:</b> It is recommended to:  (i) Agree the implementation of a fixed financial penalty of £70 to Council tax charge payers, who intentionally or knowingly fail to notify the Council of any change affecting Council Tax Liability or Council Tax Support Scheme without reasonable excuse.; (ii) Agree the implementation of a fixed financial penalty of £50 for Benefit recipients who intentionally or knowingly fail to notify the Council of any change affecting Housing Benefit without reasonable excuse.; (iii) Agree the publication of such penalties, advertising an amnesty campaign before the new penalties policy is fully enacted.	
<b>Date of decision:</b> tbc	
<b>Statement of reasons for making the decision:</b> The Local Government Finance Act 1992 (Schedule 3) and The Social Security (Civil Penalties) Regulations 2012 (SI 2012 No. 1990) of 1 <sup>st</sup> October 2012 gives the Council to impose civil penalties to those charge payers who wilfully neglect to inform the Council of changes which affect their Council Tax liability or benefit payments (for example where a person fails to supply the information requested as well as where in purported compliance with a request he knowingly supplies information which is inaccurate). These regulations provide only limited guidance on the administration of the scheme, with each Local Authority having to produce its own policy framework. The reason for this decision is to encourage residents to report their changes more quickly and ease administration and protect the Public Purse. An amnesty campaign is also proposed.	
<b>Alternative options considered and rejected:</b> An alternative to the proposed approach would be for the Authority to undertake a fraud investigation under Detection of Fraud and Enforcement regulations. This course of action would require investigation where it is evident that the behaviour of the charge payer warrants a criminal investigation. In order for these investigations to take place, the Council would need to employ or buy in a specific fraud service, now that Benefit Fraud is largely done by FES. The Authority still reserves the right where	

it is found that the evidence is strong enough for a prosecution, a fine could be imposed of 50% of the excess discount applied to the Council Tax levy, up to a value of £1000. However, the cost of this approach is likely to be in excess of the discount that has been fraudulently claimed and so the approach will not be cost effective in the majority of cases despite the deterrent effect.

In respect of Council Tax liability, in the most serious of cases only, where a person presents information that they know to be false with a view to obtaining a financial benefit to which they are not entitled, the person may be subject to prosecution under the Theft Act 1968 for obtaining a pecuniary advantage by deception. Unrestricted

A fraud investigation or prosecution under the Theft Act would only be used in those cases where it is established that a false statement or negligence by the charge payer justifies this approach.

**Code of Conduct Interest of Cabinet Members?** If yes, please advise on the nature and whether dispensation in place. **No.**

**Is the decision to be protected from call-in?** (i.e if any delay would seriously prejudice the Council's or the public's interest) - see Scrutiny Procedure Rule 14 (M)

**No**

**If so, please state:**

Signed:.....*Andy Hewellyn - Bwae*.....  
Cabinet Member

**This record must be forwarded immediately to the Monitoring Officer (TC) and copied to the relevant Cabinet Member.**

**For Monitoring Officer**

<b>Date of publication of Member Information Service Bulletin</b>	tbc
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<b>Date of decision can be implemented (on the Thursday after publication of the Member Information Service Bulletin, unless already protected from call-in)</b>	Tbc
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## **ADOPTION OF FINANCIAL PENALTIES FOR FAILURE TO NOTIFY OF CHANGE IN CIRCUMSTANCES OF COUNCIL TAX OR BENEFITS**

**REPORT OF:** BUSINESS UNIT LEADER REVENUES AND BENEFITS  
**Contact Officer:** Kevin Stewart, Business Unit Leader Revenues and Benefits  
Email: [kevin.stewart@midsussex.gov.uk](mailto:kevin.stewart@midsussex.gov.uk) Tel: 01444 477229  
**Wards Affected:** All  
**Key Decision:** No  
**Report to:** Portfolio Holder for Finance and Performance  
Date 4th June 2018

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### **Purpose of Report**

1. To seek member consideration for imposing Council Tax and Benefits financial Penalties and as such to agree consultation on the changes.

### **Summary**

2. This policy is to ensure that people advise us of any changes in their circumstances so making administration of Revenues and Benefits easier to administer and also protecting the public purse so ensuring the Council can properly help the eligible vulnerable people in the district.

### **Recommendations**

3. **The Portfolio Holder for Finance and Performance is recommended to:**
    - (i) **Agree the implementation of a fixed financial penalty of £70 to Council tax charge payers, who intentionally or knowingly fail to notify the Council of any change affecting Council Tax Liability or Council Tax Support Scheme without reasonable excuse.;**
    - (ii) **Agree the implementation of a fixed financial penalty of £50 for Benefit recipients who intentionally or knowingly fail to notify the Council of any change affecting Housing Benefit without reasonable excuse.;**
    - (iii) **Agree the publication of such penalties, advertising an amnesty campaign before the new penalties policy is fully enacted.**
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### **Background**

4. The Council has powers under the Local Government Finance Act 1992 (Schedule 3) to impose civil penalties to those charge payers who wilfully neglect to inform the Council of changes which affect their Council Tax liability.
5. A Benefit Civil Penalty of £50 can be imposed for cases of claimant error where the overpayment is wholly after the date of commencement of The Social Security (Civil Penalties) Regulations 2012 (SI 2012 No. 1990) of 1<sup>st</sup> October 2012 and where the recoverable overpayment, which results from this negligent act or failure, is above £65.
6. The Council aims to deliver value for money. Introduction of a penalty scheme will encourage customers to inform the Council of changes as soon as possible thus reducing collection costs.
7. These penalties would be applied using a consistent approach.

8. to those already in receipt of Housing Benefit where Civil Penalties are already imposed.
9. A penalty may be applied to a taxpayer or benefit recipient where they do not report a change in their circumstances or provide information requested within one month, and has not provided a reasonable explanation for the delay in reporting the change resulting in excess discount or incorrect Council Tax liability.
10. The penalty could be applied in any of the following circumstances:-
  - Failure to notify the Council that Single Person Discount should no longer apply to the Council Tax charge;
  - Failure to notify the Council that an exemption on a dwelling should have ended;
  - Failure to notify the Council that any other discount applied is no longer applicable;
  - Failure to notify the Council of a change of address within 21 days or as soon as practicable. For Local Council Tax Benefit Scheme 1 calendar month is permissible. The timescale is different to that of Housing Benefit and implementing these changes we will extend this time limit to align with the one calendar month used in Housing Benefit;
  - Failure to notify the Council of a change in liable party;
  - Failure to provide information requested to identify liability, by a third party.
  - Failure to provide information requested after a liability order had been obtained;
11. A false application for Local Council Tax Benefit, or failing to report a change in circumstances which results in the person no longer being entitled to receive the reduction or a reduced amount.
12. Guidelines for the application of penalties and an internal review procedure for dealing with any appeals will be drawn up to ensure consistency between the officers responsible for imposing the penalties for both Council Tax and Local Council Tax Benefit Scheme.
13. When a Council Tax penalty has already been applied and further requests for the same information are made, additional penalties of up to £280 may be imposed.
14. Penalties are payable directly to the authority that imposed them, and can be collected by adding the penalty to the person's Council Tax liability and detailing it on their Council Tax bill.
15. The authority may quash a penalty that it has imposed if it sees fit. It may not impose a penalty in respect of incorrect liability caused by a member of staff having administered the account inaccurately.
16. A charge payer may appeal to the Valuation Tribunal for England if aggrieved by the imposition of a penalty and they are unsatisfied with the council's internal review. An appeal would be dismissed if it is not initiated within two months of the date of service of the penalty notice, unless the tribunal is satisfied the delay was caused by circumstances outside the appellant's control and authorises the appeal to be entertained.

17. It is anticipated that the number of appeals, should there be any, will be minimal. This is supported by the practical experience of the current Business Unit Leader for Revenues and Benefits at previous Authorities.
18. Before imposing any penalties the Council will first publish details of the new power and offer an amnesty period.

### **Policy Context**

19. The purpose behind introducing council tax and benefit penalties is to encourage council tax payers and benefit recipients to notify the Council of changes to their circumstances promptly. This will ensure their liability to council tax or their payment of Benefit is correct to protect the public purse.

### **Other Options Considered**

20. An alternative to the proposed approach would be for the Authority to undertake a fraud investigation under Detection of Fraud and Enforcement regulations. This course of action would require investigation where it is evident that the behaviour of the charge payer warrants a criminal investigation. In order for these investigations to take place, the Council would need to employ or buy in a specific fraud service, now that Benefit Fraud is largely done by FES. The Authority still reserves the right where it is found that the evidence is strong enough for a prosecution, a fine could be imposed of 50% of the excess discount applied to the Council Tax levy, up to a value of £1000. However, the cost of this approach is likely to be in excess of the discount that has been fraudulently claimed and so the approach will not be cost effective in the majority of cases despite the deterrent effect.
21. In respect of Council Tax liability, in the most serious of cases only, where a person presents information that they know to be false with a view to obtaining a financial benefit to which they are not entitled, the person may be subject to prosecution under the Theft Act 1968 for obtaining a pecuniary advantage by deception. Unrestricted
22. A fraud investigation or prosecution under the Theft Act would only be used in those cases where it is established that a false statement or negligence by the charge payer justifies this approach.

### **Financial Implications**

23. The purpose behind introducing council tax penalties is to encourage council tax payers or Benefit recipients to notify the Council of changes to their circumstances promptly. This will ensure their liability to council tax or entitlement to benefit is correct. The Council does not expect to use this sanction frequently and it is not considered to be an income generating policy. No additional income should, therefore, be built into the Council's budget at this stage. The amount of income actually generated through penalties, together with changes to council tax income will continue to be monitored on a monthly basis and should sustainable changes to income levels be identified these will be brought forward as future budget proposals

### **Risk Management Implications**

24. There is a potential risk to the Council's reputation should any penalties be applied inconsistently or unfairly, however this risk will be managed by the drafting of a robust policy that will provide clear guidelines to staff making such decisions and allow an element of discretion in exceptional circumstances.

## **Equality and Customer Service Implications**

25. No penalty will be imposed on a disabled, mentally impaired or vulnerable person. For the benefit of this report no penalty will be imposed on those deemed vulnerable for the Council's Council Tax Support Scheme. This policy does not have a negative effect on any group and has been developed to give clarity to ensure that all residents inform the Council of any changes affecting either their liability or their benefit. An equality impact assessment has not been undertaken as we will only issue penalties infrequently and only after careful consideration.

## **Other Material Implications**

26. It is important that any penalty scheme introduced is implemented fairly and consistently, and that information provided to residents on when penalties will be applied is very clear. Digital access channels need to be developed so that residents can notify the Council of changes using their preferred channel, and at a time that is convenient for them.
27. Customers face the prospect of being faced with a total of £120 of penalties across both schemes. This is likely to be a significant incentive to ensure customers inform the Council of changes in a timely way.
28. The Local Government Finance Act 1992 (Schedule 3) and The Social Security (Civil Penalties) Regulations 2012 (SI 2012 No. 1990) of 1<sup>st</sup> October 2012 gives the Council to impose civil penalties to those charge payers who wilfully neglect to inform the Council of changes which affect their Council Tax liability or benefit payments (for example where a person fails to supply the information requested as well as where in purported compliance with a request he knowingly supplies information which is inaccurate). These regulations provide only limited guidance on the administration of the scheme, with each Local Authority having to produce its own policy framework.
29. The policy will be known as the Council Tax and Benefits Financial Penalties Policy.
30. This is a Cabinet Portfolio Holder function.
31. There are no other material implications.

## **Background Papers**

- The Council Tax and Benefits Financial Penalties Policy



## **MID SUSSEX DISTRICT COUNCIL**

### **Mid Sussex District Council**

## **The Council Tax and Benefits Financial Penalties Policy**

### **Introduction**

1. Failure to notify a change of circumstances or provide information for Council Tax billing is an offence. The same applies to Council Tax Reduction. The offence is committed if the customer fails to notify the Council of a change affecting their liability to pay Council Tax within 21 days of the change occurring or if they fail to notify of a change affecting their entitlement to Council Tax Reduction within one calendar month. Relevant Legislation is: -  
Schedule 3 of the Local Government Finance Act 1992; Regulations 12 & 13 of the Council Tax reduction schemes (Detection of Fraud and Enforcement)(England) 2013.
2. A Benefit Civil Penalty of £50 can be imposed for cases of claimant error where the overpayment is wholly after the date of commencement of The Social Security (Civil Penalties) Regulations 2012 (SI 2012 No. 1990) of 1<sup>st</sup> October 2012 and where the recoverable overpayment, which results from this negligent act or failure, is above £65.
3. For practical purposes the Council will not impose a financial penalty if the customer notifies us, or provides the requested information, within one calendar month of the date of the change.

### **Council Tax Penalties**

4. The law allows Councils to impose a £70 penalty to any person who: -
  - a) failed to notify the council that an exemption on a dwelling should have ended;
  - b) failed to notify the council that a discount should have ended;

c) failed to notify the council of a change of address or fails to notify the Council of a change in the liable party;  
d) failed to provide information requested to identify liability;  
e) failed to provide information requested after a liability order has been obtained;  
f) failed to notify the Council that Council Tax Reduction should have ended;  
g) failed to notify the Council that there has been a change in their circumstances which would affect Council Tax Reduction.

5. Where a penalty has already been imposed on a Council Tax account and a further request to supply the same information is made, in certain cases 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.

6. Where a penalty has already been imposed on a Council Tax account and a further request to supply the same information is made, in certain cases 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.

7. An example of when a further penalty may apply would be a landlord or Estate Agent who continually fails to notify the Revenues Service of new tenants moving in to their property

8. Once a decision has been made to impose a penalty, customers will be issued with a written decision notice. This will set out the reasons why the penalty has been imposed and information on how to appeal should they disagree with the decision.



## **Council Tax Penalty Appeals**

9. If a customer disagrees with the imposition of a Council Tax penalty they may ask the Council to review the decision.
10. The request must be delivered in writing (this can be done electronically) to the Council within one calendar month of the written decision regarding the imposition of the penalty and must include a copy of the decision notice. If the taxpayer appeals, recovery of the penalty in accordance with the law will be suspended until the appeal is decided.
11. Once an appeal is received the case will be reviewed and where appropriate, officers will explain the penalty decision to the applicant by telephone, by email, at interview or in writing and will seek to resolve the matter.
12. Customers have the right to appeal directly to the Independent Valuation Tribunal if they remain unsatisfied with the outcome of the Council's internal review process. They have two months in which to appeal after a penalty is imposed.
13. There is no right of appeal to a higher court if the customer disagrees with the Independent Valuation Tribunal's decision.

## **Housing Benefit Civil Penalty**

14. A Civil Penalty (CP) of £50 can be imposed on customers who receive an overpayment of Housing Benefit caused by either:-
  - negligently making incorrect statements, or
  - failing without reasonable excuse to provide information or disclose changes in their circumstances.
15. In the case of a joint claim only one penalty will apply. Either member of the couple might receive the penalty, subject to limitations. In the case of a negligent statement it will not apply to the person who did not make the statement if that person could not reasonably have been aware of the other person's negligence in making the incorrect statement.
16. A customer can appeal about the decision to impose a Civil Penalty in the same way as any benefit decision, and within one month and up to a maximum of 13 months for Housing Benefit or at any time for Council Tax Support appeals, with appeals being dealt with by the Tribunals Service.

## **Exceptions**

17. Penalties will not be applied to taxpayers with relevant mitigating family/personal circumstances, e.g. death or illness, or other reasonable excuse from the imposition of financial penalties.
18. Council Tax payers or benefit recipients who are severely mentally impaired are also excluded from the financial penalty scheme.