

Borough Council of
**King's Lynn &
West Norfolk**



Code of Practice

Obtaining information from employers, contractors and the self-employed

A guide to the powers of Authorised Officers, and their limitations

June 2020

Foreword – Why this code of practice has been issued/referred to you

Benefit and Council Tax Reduction Scheme fraud is estimated to cost the taxpayer at least £2 billion per year. Fraud due to people working whilst claiming income support, jobseekers' allowance, housing benefit and council tax reduction forms a significant part of the overall level of fraud experienced. Obtaining information is necessary if we are to ensure that taxpayers' money goes to those for whom it is intended.

Our powers to obtain information are not intended to place additional burdens on business, but to reduce the overall burden on society. Everyone, therefore, has an interest in providing information to the DWP (Department for Work and Pensions) and local authorities so that we can combat fraud.

This Code of Practice is binding on the activities of local authority staff who operate the procedures under Regulation 3 and 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013. If you are required to provide information to Borough Council of King's Lynn & West Norfolk under the provisions of Regulation 3 and 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013, this code has been given/highlighted to you so that you know what you can expect of the officers making enquiries, and so that you can understand your duties under these powers. It is aimed at encouraging compliance and co-operation. Where the requirements of this code are not met grounds for complaint may arise. Information about how to complain is contained in this code of practice (see paragraphs 24 – 27).

Beating fraud is everyone's business. We must all work together if we are to achieve that aim.

Introduction

1. This Code of Practice explains the powers of Authorised Officers, their limitations and the responsibilities and rights of those from whom we may seek information, as defined in the legislation. Authorised Officers are required to undertake their enquiries in accordance with this code of practice at all times.
2. Authorised Officers of Borough Council of King's Lynn & West Norfolk should issue this Code of Practice to people from whom they require information under Regulation 3 and 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013. It explains the powers of the Council and therefore assists officers in their enquiries. It should be issued/highlighted with written enquiries, and be made available by the Borough Council of King's Lynn & West Norfolk to members of the public who wish to consult it.
3. The obligation to provide information is detailed in Regulation 3 and 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013 (the regulations).

4. These powers are only for use in relation to enquiries for the purposes described within “the regulations”.

Authorised Officers

5. Under Regulation 3 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013, the Secretary of State may authorise an officer of a Local Authority for Council Tax Reduction purposes to exercise these powers. Officers who do not have this authorisation may not make enquiries under these powers.
6. Authorised Officers are required to act reasonably in seeking information from individuals and organisations who hold information necessary to their enquiries. This means that they must act in an appropriate way given the circumstances of the case, and any representations that may be made during their enquiries. The resultant actions taken by Authorised Officers should be ones that would stand up to the scrutiny of a Court, or other independent body.
7. If the course of action undertaken, or proposed, by the Authorised Officer was not considered to be reasonable it should be raised at once with the authorised officer. If this does not satisfy the concerns raised the complaints procedure set out in this code can be applied.

What these powers are used for

8. Authorised officers use Regulation 4 powers to obtain information from certain people, under regulation 4 (1 and 2), to:
 - Ascertain in relation to any case whether a benefit and/or council tax reduction is or was payable in that case in accordance with any provision of the relevant social security and council tax legislation;
 - Investigate the circumstances in which any accident, injury or disease which has given rise, or may give rise, to a claim for Industrial injuries benefit, or any benefit under any provision of the relevant social security legislation, which occurred or may have occurred, or was or may have been received or contracted;
 - Ascertain whether provisions of the relevant social security and local government legislation are being, have been or are likely to be contravened (whether by particular persons or more generally);
 - Prevent, detecting and securing evidence of the commission (whether by particular persons or more generally) of benefit and council tax offences.
9. An Authorised Officer can ask for information about individual named persons or, in certain circumstances, the names and other details of the whole workforce. Requests for information can be made in writing. The following are examples of

the types of information that Authorised Officers might request, for example from an employer.

- names of employees
- wage details
- period of employment
- conditioned hours
- terms of employment (i.e. whether an employee, sub-contractor, or self-employed)
- bank details (e.g. whether wages are paid into a Bank, and its location)
- staff/payroll number
- National Insurance Number
- home address
- date of birth

This list is not exhaustive and there will be circumstances in which Authorised Officers will seek information not specifically listed here, which is relevant to their enquiries, and determined on the circumstances of the investigation.

Written requests for information

10. Regulation 4 (1) allows an Authorised Officer to write to (or e-mail) any of the persons defined in regulation 4 (2), listed below to obtain information. These people are:

- Any person who is or has been an employer or employee;
- Any person who is or has been a self-employed earner;
- Any person who, under existing legislation, is treated as an employer, employee, or self-employed earner;
- Any person who is carrying on, or has carried on, any business involving the supply of goods for sale to the ultimate consumers by individuals not carrying on retail businesses from retail premises;
- Any person who is carrying on, or has carried on, any business involving the supply of goods or services by the use of work done or services performed by persons other than employees of his;
- Any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to others, of persons available to do work or to perform services;
- Any local authority acting in their capacity as an authority responsible for the granting of any licence;

- Any person who is or has been a trustee or manager of a personal or occupational pension scheme;
 - Any person who is or has been liable to make a compensation payment or a payment to the Secretary of State under section 6 of the Social Security (Recovery of Benefits) Act 1997 (payments in respect of recoverable benefits); and
 - The servants and agents of any person as described above.
11. An Authorised Officer will only write to any of those persons defined above for information if they have reasonable grounds to suspect that benefit fraud is being, or has been, committed. They will provide a written notice that sets out:
- Who they are;
 - Their address;
 - What information they need;
 - The format in which they would like the information provided in; and
 - When they would like the information by.
12. They may ask for original documents, photocopies of documents or extracts of documents (e.g. computer printouts etc.) to be produced. However, they will only request the information they need and will take account of the burden this would place on the business, as well as their own needs.

The legal duty to provide information required under a written notice

13. If an Authorised Officer writes to ask for information recipients are legally obliged, under Sections 6 of Regulation 3 and 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013, to provide it, in the form it has been requested and within the time specified.
14. Regulation 5 allows an Authorised Officer power to require electronic access to information where it appears to a billing authority that electronic records are kept by the person whom the request is made to. Where those electronic records contain or are likely to contain, from time to time relevant information and they can be accessed or provided, the Authority may require that person to allow an Authorised Officer access to those records. The Authorised Officer shall not seek any information other than information which:
- Relates to a particular person, and could be the subject of any such requirement as may be imposed.
 - An Authorised Officer who is allowed access to electronic records is entitled to make copies of, and take extracts from, any records containing information which they are entitled to make the subject of a requirement.

15. If a recipient of such a request has difficulty meeting any part of a request for information, they may contact the Authorised Officer to explain why, and make alternative arrangements for the provision of the information.
16. The legal duty to provide information is not discharged until this has been done.

The statutory duty to provide information

17. No one is required to provide any information (whether documentary or otherwise) that tends to incriminate them, or, if they are married, their spouse
18. Otherwise, where a request by an Authorised Officer is made in writing, there is a statutory duty to provide that information, including any documentation that is requested.
19. Under Regulation 6 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013, it is an offence to intentionally delay or obstruct Authorised Officers in the exercise of their powers or to refuse, or neglect, to
 - answer any questions
 - furnish any information
 - produce any documents

When required to do so by an Authorised Officer. Obstruction includes circumstances where false or inaccurate information is provided in response to enquiries.

20. The General Data Protection Regulation and the Data Protection Act 2018 will not be contravened by providing the information requested by Authorised Officers. Schedule 2, Part 1 (5) of the Act explains that where you are required by an enactment to disclose personal data, the non-disclosure provisions do not apply, such as Regulation 4 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013, requires the supply of information.
21. Failure to meet in full requests for information could result in criminal proceedings being instigated. The maximum penalty is a maximum fine, fixed at level 3, with a continuing penalty of £40 per day (under Regulation 6 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations (SI 501) 2013).
22. If information is not provided the Authorised officer should explain the local authority statutory powers, and the potential consequences of non-compliance.

At the end of Authorised Officer enquiries

23. Where an Authorised Officer has made enquiries and obtained information, notification of any further action that is being taken will be made as soon as

possible. When the enquiry has been concluded notification of that action will also be made.

Complaints

24. If you have grounds for any complaint about how Authorised Officers have used their Regulation 4 powers, or the reasonableness of their actions when obtaining information, please write to the: Assistant Director Resources, Borough Council of King's Lynn & West Norfolk, Kings Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX.
25. Most complaints can be settled by contact with the manager in this way. If however, you are not satisfied with the reply, you may contact the Executive Director Finance Services, address as above. At any stage you can contact your local councillor who will be pleased to take up your complaint on your behalf.
26. Independent legal advice may be sought at any time. The local Citizens Advice Bureau, Hanse House South Quay, Kings Lynn, Norfolk, PE30 5GN, telephone 03444 111444 can assist in deciding whom to contact.
27. This does not affect your right to seek assistance from the Local Government Ombudsman. He/she is an independent investigator who looks into certain complaints made against local authorities. You may contact the Local Government Ombudsman at any time, although he/she would normally expect you to have contacted the Council first to allow us to try to resolve the problem for you quickly. The contact address is –

The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

Disclaimer

Please note this Code of Practice gives general guidance only and should not be regarded as a complete and authoritative statement of the law. If you do not understand any of the contents of the code you may wish to seek independent advice.