

Freedom of Information Request No. 4875

Environmental Information Regulations Request No. 4875

Received 28/8/2018

Responded 4/9/2018

Request/Response

a) Your specific policy, written or adopted in relation to Council Tax, when a person has deceased.

We do not hold a specific policy but our staff procedure guide contains the information below regarding the passing of a council tax payer.

1. Was the Deceased Liable to Pay Council Tax?

Depending on how many people still live at the deceased person's property there may be a discount or exemption that can be claimed if a resident passes away.

If the deceased was liable to pay Council Tax we require the following details in order to amend the Council Tax account:

- a copy of the death certificate
- whether or not probate is being applied for
- the name and address of the person dealing with the deceased's affairs (this may be a solicitor or executor)
- details of anyone else still living in the deceased's property
- details of what will happen to the property if it is now empty

2. When is a Discount Applicable?

Did the deceased live with one other person?

If the answer is yes, and the remaining occupier is living alone then they will be entitled to a Single Person Discount. In these circumstances we would require a copy of the death certificate along with a request for a Single Person Discount.

If we have been notified by the Registrars list we would normally send a letter enclosing a survey to ascertain whether they require a Single Person Discount.

Is a 25% disregard on the account?

If the deceased lived with one other person with a 25% Disregard on the account, in most cases we will be able to award a SPD or exemption immediately depending on who is disregarded. This is because it has been previously verified that there are only two occupiers in the property for a 25% disregard to be applied.

For example: If the deceased was disregarded then we would then be able to apply a SPD from the date of death for the remaining occupier. OR If the second named liable was disregarded due to them being in a N/H, upon the date of death, they would then get a Nursing Home exemption.

What if there is more than one disregarded person?

If there is more than one disregarded person then it can be more complicated as it depends on why they have been disregarded as to whether they would still qualify for a Single Person Discount or disregard.

For example: If the deceased was disregarded as SMI, the second liable person disregarded as a carer for the deceased and the third having no disregard; from the date of death the second liable would no longer be a carer for the deceased so would lose their disregard status. As there are the second and third liable are now not disregarded, full Council Tax will be payable.

3. When is an Exemption Applicable?

Did the deceased live alone?

If yes, a dwelling is exempt (under Class F) if:

- it has been unoccupied since the former resident's death and;
- the only person liable for the tax on the dwelling would be the deceased personal representative (e.g. no other owners) and;
- no grant of probate or letters of administration have been made.

(The Council Tax (Exempt Dwellings) Orders 1992 No. 558 substituted by SI 1993/150, substituted by SI 1994/539)

The duration of the Class F exemption will depend on whether they owned their home or were renting.

If the deceased owned the property:

1. Any property left unoccupied following the death of the sole owner is exempt from paying council tax until probate has been granted providing the property has not been transferred to a beneficiary or new owner. **This is a Class F exemption.**
 - **This exemption does not apply if the deceased left the dwelling to a beneficiary in their will.** In this case, the beneficiary becomes the tax payer at the date of death, as s/he is deemed to become the owner for Council Tax purposes on that date. However there may be an argument for an exemption if the executor is given any discretion over the dwelling that might affect whether the beneficiary can occupy it. We need to be guarded against automatically holding beneficiary liable under these circumstances. As a general rule, if the beneficiary is to sell the dwelling they have inherited then the Class F is applicable but each case must be judged on its own merits.
 - **If the property becomes occupied for a period,** Article 2(3) to SI 1992/5558 requires you to ignore an occupation of up to six weeks, so the class F exemption is applied as soon as they have left. If they have occupied for longer than 6 weeks the Class F is not applicable.
2. **Once probate or letters of administration have been granted,** the deceased's home will be exempt from paying council tax from this date for a period of six months, after which a charge becomes payable. (Unless ownership of the property is transferred or it becomes occupied)
3. **If the property remains under the control of the estate for more than six months after the date of probate,** the Executor or Administrator will be responsible for making payment of any Council Tax which becomes due. The Executor is not personally liable; the sum may be deducted out of the assets and effects of the deceased (Section 18 of the LGFA 1992).

4. **If a property is transferred to a new owner or becomes occupied** for longer than six weeks the Class F exemption will cease.

Other Things to Consider.

Joint ownership on Land Registry

If a joint owner is listed as proprietor on the land registry title the liability will pass to the surviving owner from the date of death.

Tenants in Common

If owners are tenants in common they own a specific share of the property. This is opposed to sole ownership or joint ownership. If one owner dies, their share DOES NOT automatically pass to the other owner(s). Instead their portion will pass to whoever they have gifted the share to in their Will. If there is no Will, the share will pass according to the rules of intestacy.

You will be able to tell that the owners are tenants in common because on Land Registry there will be a restriction registered in Section B Proprietorship Register that states: RESTRICTION: NO DISPOSITION BY A SOLE PROPRIETOR OR THE REGISTERED ESTATE (EXCEPT A TRUST CORPORATION) UNDER WHICH CAPITAL MONEY ARISES IS TO BE REGISTERED UNLESS AUTHORISED BY AN ORDER OF THE COURT

Other properties that the deceased has owned

For a class F exemption, there is no requirement that a property was ever a main home for the owner, only that it has been unoccupied since the date of death (ignoring periods of six weeks or less). So any properties benefit from the Class F exemption as long as they meet the criteria above.

Visits and monitoring probate

Visiting officers will periodically check the status of the property to monitor any change in status. We can also monitor the progress in terms of when the property becomes unfurnished, the date of probate and sale/transfer details by sending out "Late Probate" letters in the correspondence list or carrying out Land Registry searches. You should initially send out a letter requesting this information "when known". Which probate letter you send depends on whether we already hold executors/solicitors details. It is important to find out these details as it will effect when a charge becomes payable and whether future unfurnished discounts can be awarded.

Arrears

Where a person dies owing council tax for which they were liable under section 6, 7, 8 or 9 of the LGFA 1992, or where they have not paid a penalty imposed on them under schedule 3 of the LGFA 1992, his executor or administrator is liable to pay the amount outstanding, including any relevant costs, such as costs shown in a liability order, or costs relating to a distress warrant, or to a warrant for commitment to prison. The sum may be deducted out of the assets and effects of the deceased (Section 18 of the LGFA 1992).

Enforcement

A sum payable is enforceable as a debt of the deceased's estate and the liability of the executor or administrator is in his capacity as such. No liability order need be applied for in respect of such a sum.

In relation to council tax liability of a deceased person, his executor or administrator may initiate, continue or withdraw proceedings, whether by way of appeal under section 16 of the LGFA 1992 or otherwise.

Overpayments

Where an overpayment of Council Tax was made before the deceased person's death, his executor or administrator is entitled to the amount of excess.

4. The Deceased as a Tenant

If the deceased rented their home then we will need to know when their tenancy officially ended. This may be a few weeks after the date of death to allow for furniture or personal effects to be removed from the property or a landlord may hold them liable until the end of the tenancy. The Council Tax account should be closed from the tenancy end date. We will require the name and address of the landlord so that we can make them responsible for the Council Tax.

The property will be exempt from paying council tax from the date of death until the date the tenancy ends (Under Class F). Or from date of death until six months after probate has been granted (whichever is soonest).

b) How you handle that persons name when they have deceased and there are 2 people listed on the property one of which is still living.

If by "listed on the property" this means that there is still a resident in the property and we have received a death certificate:

- If married/civil partners we would generally remove the deceased's name from the account and leave the surviving occupier as liable for Council Tax. Further information can be found in section 2 above regarding a Single Person Discount.
- If there is a Direct Debit on the account solely in the deceased's name then generally we would set up the surviving occupier on a new Council Tax account and refund any credit back into the bank account the Direct Debits came from.

We judge each case on its own merits but generally the above is adopted in those circumstances.

c) Your specific policy in relation to non-payment of Council Tax where one of the people on the property demand has deceased leaving a widow or widower in a period of 3 or 6 months following being notified of the persons death.

There is no specific procedure as again we judge each case on its merits however if we are notified of financial difficulty following the death of a partner we would generally offer to send out a Council Tax Reduction form and place a recovery hold on the Council Tax account for a month or so to allow for application or to seek financial advice.

If we are not informed of any difficulties in paying or otherwise then generally we would follow the normal recovery process if payments are not made in accordance with the bill (Reminder, Final Notice, Summons etc.).

d) Your policy when you have been notified of probate.

Probate is only really relevant if the deceased was the sole owner of the property and the property is unoccupied. The below is contained in section 3 of our staff procedures.

Under The Council Tax (Exempt Dwellings) Orders 1992 No. 558 (as amended), providing the property has not been transferred to a beneficiary/new owner or become occupied the Class F exemption applies for a period of six months after probate has been granted, after which Council Tax becomes payable.

If the property remains under the control of the estate for more than six months after the date of probate, the Executor or Administrator will be responsible for making payment of any Council Tax which becomes due. The Executor is not personally liable; the sum may be deducted out of the assets and effects of the deceased (Section 18 of the LGFA 1992).