DRAFT

Sanctions and Prosecution Policy

MALDON

DISTRICT COUNCIL

Document title	Sanctions & Prosecutions Policy 2026
Summary of purpose	To assist in the
Prepared by	Michelle Lamarre
Status	Draft
Version number	1
To be approved by	Strategy and Resources Committee
Approval date	23 July 2026
Date of implementation	23 July 2026
Review frequency	3 yearly or legislative changes
Next review date	July 2029
Circulation	All staff and Members
Published on the Council's website	No

Prosecution Policy

This document is written with reference to:

- The Police and Criminal Evidence Act 1984 (PACE)
- The Local Government Finance Act 1992
- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013
- Prevention of Social Housing Fraud Act 2013
- The Fraud Act 2006

Introduction

Maldon District Council (MDC) is responsible for accurately administering all discounts and exemptions for Council Tax and Non-Domestic Rates as well as the delivery of Housing Benefit (HB)* and Local Council Tax Support (LCTS) to its citizens. Benefits are provided to the most vulnerable in society and all benefits and/or other reductions should be assessed and paid within both government and local guidelines.

*From 1st September 2015 the investigation of alleged Housing Benefit fraud is investigated by the Department for Work and Pensions.

MDC is committed to protecting public funds through its action against fraud and recognises that some people will attempt to obtain LCTS, discounts or exemptions to which they are not entitled. Officers are employed to visit, provide help and to investigate suspected or alleged offences.

Sometimes attempt to obtain reductions to which there is no entitlement is done with planning and intention. Where intention and planning is involved, MDC will consider the circumstances of the case and individual and, where appropriate, will consider further action, including prosecution, under the appropriate section of the relevant statute.

Attempting to obtain LCTS, discounts or exemptions to which there is no entitlement by fraudulent means is a criminal offence. MDC works in partnership with ARP who provide fraud investigation services to them. Trained investigation officers undertake investigations into cases where it appears fraud may have been committed.

Fraud Investigation

An investigation carried out by investigation staff has four important functions.

1. To establish the facts.
2. To gather sufficient admissible evidence to support a sanction.
3. To gather sufficient admissible evidence to support a prosecution.
4. To gather and collate information to enable the correct claiming of subsidy.

Such an investigation will only be considered where it is in the public interest to do so. In the majority of fraudulent cases the fraud investigation will reveal facts that question the validity of the benefit in payment, as a consequence the benefit may be suspended or cancelled. The withdrawal of benefit may be sufficient in itself to conclude the investigation.

Which sanctions can MDC apply?

	Local Council Tax Support	**Council Tax Discounts and Exemptions**	**Social Housing / Housing Applications**
Which Sanction	Prosecution Administrative Penalty Caution Penalty	Prosecution Caution Civil Penalty	Prosecution Caution

Sanction thresholds

In general MDC will apply the appropriate sanction in accordance with the following criteria:

Prosecution.............................. Where the fraudulent financial gain is equal to or exceeds £4,000 and/or other conditions apply to make prosecution the first option.

Alternative to prosecution .... Where the fraudulent financial gain is less than £4000 or other conditions apply which make an alternative to prosecution the first option

Where certain social security benefits administered by the Department for Work & Pensions (DWP) are also in payment the investigation officer make a referral via a SFI LA Referral Form.

Prosecution

Where offences are disclosed by an investigation MDC will consider the circumstances of the case, in accordance with this policy, and apply the appropriate sanctions.

Where an investigation officer has investigated a suspected irregularity and it is considered that sufficient evidence has been obtained to support a prosecution against the

offender, the papers will be referred to the Head of Revenues and Benefits (HoS) or a member of the Senior Leadership Team (SLT) for consideration.
Where it is considered that sufficient evidence exists to support a prosecution but, due to the circumstances of the particular case, it is considered that a sanction other than prosecution is appropriate, the HoS or SLT member will authorise that sanction in accordance with this policy.

Where the evidence obtained, and the circumstances of the case indicate that a prosecution is the appropriate sanction the case Manager will forward the case papers to the MDCs' Prosecuting Agent. A Solicitor will review the evidence and having done so commence proceedings on behalf of MDC. Where the Solicitors consider that an alternative sanction to prosecution is appropriate, they will discuss this with the HoS / SLT member, for further consideration.

MDC is conscious that a decision to prosecute an individual is serious and that, even in a small case, a prosecution has serious implications for all involved. Decisions to prosecute should be fair and consistent.

MDC will use the most appropriate deterrent against future fraudulent activity. This requires each referred case to be looked at on its individual merits making reference to any previous sanctions or convictions, before deciding on any further action.

Sanctions will only be considered where it is believed a prosecution could be brought and, where an interview has taken place, it has been conducted in accordance with PACE.

In general terms, the more serious the offence the more likely it is that a prosecution is in the public interest.

A prosecution is likely to be considered where:

- a conviction is likely to result in a significant sentence.
- the accused was in a position of trust or authority.
- the evidence shows that the accused was a ringleader or organiser of the offence.
- there is evidence that the offence was premeditated.
- there is evidence that the offence was carried out by more than one person.
- the previous convictions of the accused or cautions are relevant to the present offence.
- the accused is alleged to have committed the offence whilst under an order of the court.
- there are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct.
- the offence is widespread in the area, although not serious in itself.

A prosecution is less likely where the following applies:

- the loss is described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.

- there has been a long delay between the offence taking place and the date of the trial, <u>unless:</u>
    - The offence is serious.
    - The delay has been caused partly by the accused.
    - The offence has only just come to light.
    - The complexity of the offence has meant that there has been a long investigation.
- A prosecution is likely to have a bad effect on the accused's health – this will be balanced against the seriousness of the offence.
- The accused is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility it may be repeated.

In all cases consideration will be given to the accused offender's frailty, mental health at the time of the offence, and since, and previous convictions (including simple cautions).

As required MDC will advise the Police of all impending prosecutions in accordance with agreed procedures using the prescribed forms. As a consequence, the Police will advise MDC of any previous convictions recorded against the accused in order for presentation to the Court. At the conclusion of the case the MDC will advise the Police of the result, again using the prescribed forms.

In summary:

A prosecution will be considered where the following criteria apply:

1) The overpayment is over £4000, or

    1) The person has declined or withdrawn the offer of an appropriate, alternative sanction; or

    2) other factors make prosecution appropriate such as:
        - The fraud has continued over a long period, or
        - The person has been previously convicted of benefit fraud, or
        - The person has previously been the subject of an Administrative Penalty procedure, or
        - There was planning involved in the process, or
        - The person was in a position of trust (e.g., a member of staff) or
        - There were other persons involved in the fraud, or
        - The case has arisen from a collusive landlord/employer investigation, or
        - Other aggravating factors.

The outcome of prosecutions will be logged with the Police.

Alternatives to Prosecution

The Use of Local Authority Cautions

A Local authority caution is a warning given in certain circumstances as an alternative to prosecution, to a person who has committed an offence. It is a purely administrative function. Before issuing a Local authority caution the following conditions must have been satisfied (as outlined in *R (Wyman) v Chief Constable of Hampshire Constabulary* [2006] EWHC 1904 (Admin):

- there must be sufficient evidence to justify instituting criminal proceedings; and
- the person has admitted the offence; and
- it was a first offence (only in exceptional circumstances will a second caution be delivered for a separate offence).

If a Local Authority caution is offered but not accepted by the offender, then the matter may be referred for criminal prosecution.

Cautions will be administered wherever fraudulent activity has been proven but is at the lower end of the range of benefit fraud. Cautions will only be given where a person is over 18, has committed an offence and:

- There is sufficient evidence to justify criminal proceedings.
- The person has admitted the offence during an interview under caution.
- The person's history of previous convictions has been taken into account.
- The person must sign a document to show they admit the offence.
- The person agrees to the caution and they acknowledge they have been cautioned.
- The person has not been coerced into accepting a caution.

The standard of evidence used for a caution will be the same as required to prosecute. If a caution is refused the case will be put forward for prosecution and the court will be informed of the refusal to accept a caution. Where a person has moved into another Authority's area before the caution can be conducted, the fraud file will be transferred to the relevant authority with a request to continue any caution action. The administration of the caution may be delegated to an investigating officer on the authority of the Fraud and Visits Team Manager / Assistant Manager, but not to the investigating officer in the case.

At the time of the caution being administered the accused will be required to sign a separate statement admitting the offence and accepting the caution.

A caution will in general be considered appropriate if the following apply:

- The offence is minor, the amount of overpayment is under £4,000, and the court is likely to award a minimal sentence.

- The person has not offended before or the person has committed benefit fraud before, but the offence was minor, the person was not cautioned or prosecuted, and the current offence is also minor.
- The person's attitude towards their offence indicates that a caution would be an appropriate punishment – consider:
  - The willfulness with which the person committed the offence; and,
  - Their subsequent attitude, i.e., whether they express genuine regret for what they have done.
  - There is a reasonable expectation that this will curb his/her offending.

Therefore, a caution may be considered where the requirements for prosecution have been fulfilled and the overpayment is under £4000 and any of the following criteria apply:

- It is a first offence.
- It is not a first offence, but previous offences comply with the above criteria.
- Criminal proceedings are not recommended in this case.

In the event of the claimant declining to accept a caution, criminal proceedings will always be considered.

Council Tax Reduction Scheme - Penalties as an alternative to Prosecution

The Regulations regarding the Penalties as an alternative to Prosecution are laid out in Regulation 11 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013. In summary:

- there must be grounds for instituting proceedings against a person for an offence relating to an act or omission on the part of the person in relation to the Council's Council Tax Reduction Scheme; and
- The act or omission did result in or could have resulted in an excess reduction
- The person must be invited to agree to pay a penalty
- If the person agrees to pay a penalty, then no proceedings will be instigated against them for the offence
- Where an excess reduction has been made, the amount of the penalty is 50% of the amount of the excess reduction subject to a minimum amount of £100 and a maximum of £1000.
- Where an excess reduction would have been made, the amount of the penalty is £100.

The Council will consider a Council Tax Reduction Scheme penalty as an alternative to prosecution where:

- it was a first offence; and
- in the opinion of the Council, the circumstances of the case mean it is not overwhelmingly suitable for prosecution; and
- there is a strong likelihood that the excess reduction plus penalty will be repaid

It is important to note that the person need not have attended or admitted the offence at an interview under caution for a penalty to be offered.
If a penalty is offered but not accepted by the offender, then the matter may be referred for criminal prosecution.

Civil Penalties

Council Tax Reduction Scheme – Penalties

The Regulations regarding the penalties for incorrect statements or failing to notify changes of circumstances are laid out in Regulations 12 & 13 of The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013. In summary:

The Council can impose a penalty of £70 on a person where:

- they negligently make an incorrect statement or representation, or negligently give incorrect information or evidence—
    - in or in connection with an application; or
    - in connection with the award of a reduction under a council tax reduction scheme
        - the person fails to take reasonable steps to correct the error.
        - the error results in an award of a reduction under a council tax reduction scheme which is greater than the amount to which the person was entitled (an "excess reduction"); and
        - the person has not been charged with an offence or cautioned, or been given a notice under regulation 11, in respect of the excess reduction (see section… below)

The Council can impose a penalty of £70 on a person where—

- The person, without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances to the authority in accordance with requirements imposed on the person under its council tax reduction scheme
- the failure results in an award of a reduction under a council tax reduction scheme which is greater than the amount to which the person was entitled (an "excess reduction"); and
- The person has not been charged with an offence or cautioned or been given a notice under regulation 11 (see section …. below), in respect of the excess reduction.
- In this regulation, "relevant change of circumstances", in relation to the person, means a change of circumstances which the person might reasonably be expected to know might affect the person's entitlement to, or the amount of, a reduction under the authority's scheme.

- A notification of a change is prompt if, and only if, it is given within a period of 21 days beginning with the day on which the change occurs, or a soon as reasonably practicable after the change occurs, whichever is later.
- The Council will consider the application of a penalty in all suitable cases.

Council Tax – Penalties

Under Section 14(2) and Schedules 2 & 3 of The Local Government Finance Act 1992, the Council may impose a penalty of £70 where a person:

- fails to notify the authority, without reasonable excuse, on any matter which affects entitlement to discount.
- fails to notify that their dwelling is no longer an exempt dwelling.
- fails to notify the Authority that they are jointly liable for the tax.
- fails to supply relevant information requested in order to establish liability.
- fails to supply relevant information requested after the issue of a Liability Order has been obtained. Failure to supply could lead to a criminal prosecution and a fine.

Where a penalty has been imposed under (5) and a further request to supply the same information is made, a further penalty of £280 may be imposed for each subsequent failure, provided:

- it is in the debtor's possession.
- the authority requests him to supply it.
- it falls within a prescribed description of information.

Appeals against the imposition of penalties are to the Valuation Tribunal. Penalties are recovered in the Magistrates court.

The Council will consider the application of a penalty in all appropriate circumstances; however, it may not impose a penalty in respect of conduct by a person that has led to his being convicted of an offence

General considerations

It is acknowledged that there will be cases that do not fall within any of the aforementioned categories or possess aggravating factors. All cases will be considered on their merits and the action considered appropriate taken in each case.

Conclusion

This policy outlines the main areas MDC will consider when dealing with potentially fraudulent actions.

MDC supports the firm and vigorous pursuit of fraud but recognises that this should be done in a reasonable and professional manner that respects the innocent, deals appropriately with offenders, and protects the safety of every member of staff.