

Penalties Policy: In respect of social security fraud and error

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1. Introduction

1.1 This document sets out the policy of the Department for Work and Pensions (DWP) in relation to:

- enforcement action taken when a suspected benefit fraud is brought to its attention. This includes the imposition of penalties and, where appropriate, referral to the Crown Prosecution Service (CPS), or in Scotland the Crown Office and Procurator Fiscal Service (COPFS), with a view to a criminal prosecution;
- the imposition of penalties where an overpayment is incurred as a result of claimant error.

1.2 The benefits to which this policy applies are set out in legislation and include: Jobseeker's Allowance; State Pension; Pension Credit; Universal Credit; Employment and Support Allowance; Personal Independence Payment; Disability Living Allowance; Bereavement Benefits; Maternity Allowance; War Pensions paid by the Veterans Agency¹. This is not an exhaustive list.

1.3 Local authorities are responsible for administering Housing Benefit and Council Tax Reduction Schemes, and dealing with any outstanding issues in relation to past payments of Council Tax Benefit. They are therefore responsible for their own local enforcement policies in these areas.

1.4 HMRC also applies penalties where offences have been committed involving fraud in relation to tax credits (both child tax credit and working tax credit).

1.5 DWP's policy on recovery of overpayments is set out in a separate document <https://www.gov.uk/benefit-overpayments>.

2. General Principles

2.1 DWP is committed to deterring and preventing fraud and error by benefit claimants. We are committed to the detection and investigation of benefit fraud and to the appropriate use of available penalties, including prosecution where appropriate.

¹ The war pension scheme referred to here pays pensions and allowances in respect of former service personnel and their dependants injured as a result of service before 6 April 2005. In addition to the basic war pension, a number of supplementary allowances are payable depending on an individual's care needs. Many of these supplementary allowances have DWP equivalents and a war pensioner cannot claim both. However, the allowances paid under the war pension scheme are paid at a higher rate than DWP's. This scheme was replaced in 2005 by the Armed Forces Compensation Scheme to which this penalties policy does not apply.

- 2.2 We make it clear to our claimants that they have a responsibility to provide accurate and timely information about their claims; that we shall punish wrongdoing; and therefore deter fraud offences against the benefit system.
- 2.3 This policy supports the joint DWP and HM Revenue and Customs (HMRC) strategy 'Tackling fraud and error in the benefit and tax credits system' published in October 2010¹. This was refreshed on 6 February 2012 as part of a wider Government strategy to reduce fraud and error.
- 2.7 HMRC continues to operate its own enforcement policy in respect of tax credits. From September 2012 HMRC may charge a penalty when an intervention is undertaken in accordance with Sections 16, 17, 18, 19 & 20 of the Tax Credits Act 2002 and an overpayment of tax credit of £4,000 or more is identified. For tax credit customers who unreasonably fail to report a change in their circumstances within the required period, a fixed penalty of £300 will be applied.

3. Organisation

- 3.1 Criminal investigations into social security benefit fraud are undertaken by the DWP's Fraud and Error Service (FES). A new single fraud investigation process is rolling out within FES between 2014 and 2016 which will cover all social security and tax credit fraud investigation, currently investigated by local authorities and HMRC. Where we receive information about a potential fraud, an initial assessment takes place to determine whether it should be investigated by DWP's Fraud and Error Service as an allegation of a criminal offence or (if no criminal offence is suspected) referred to one of DWP's local service compliance teams.
- 3.2 Criminal investigations are undertaken by FES in accordance with Departmental policy and all relevant legislative and common law rules. The main legislation is:
- The Social Security Administration Act 1992
 - The Police and Criminal Evidence Act 1984 (PACE) and its codes of practice (England and Wales)
 - The Criminal Procedure and Investigations Act 1996 (CPIA) and its codes of practice (England and Wales)
 - The Criminal Procedure (Scotland) Act 1995.
- 3.3 All criminal investigators and managers within FES work towards Professionalism in Security (PINS) Accredited Counter Fraud Specialist/Manager status. This is in accordance with mandatory criteria set out by Portsmouth University and the Counter Fraud Professional Accreditation board (CFPAB). Additional guidance is

¹ <https://www.gov.uk/government/publications/tackling-fraud-and-error-in-the-benefit-and-tax-credits-systems>

provided by the DWP Fraud Guide (on GOV.UK) which is regularly updated to ensure that:

- investigations are conducted in a legal and professional manner
 - policy and legislation is correctly applied, and
 - approved working methods are applied.
- 3.4 DWP's Fraud Expert Domain, in consultation with FES, provides guidance to investigators on operational policy and technical matters. DWP Legal Services provide operational legal advice to FES.
- 3.5 FES also works closely with local authorities and will investigate social security cases jointly under agreed arrangements, until the full roll out of the new single fraud investigation process is completed.
- 3.6 It may be necessary for FES to work with investigators from other Government organisations where there is a DWP interest. It is recognised that officials in each department or agency have their own distinct legal powers and penalties that they may apply depending on the outcome of an investigation.
- 3.7 Where a case is dealt with by local service compliance teams, the individual will be interviewed and questioned about any allegations made. Further action will depend on the outcome of the interview but the individual will be reminded of their responsibilities and may be advised about future conduct and action that will be taken to rectify their award. A civil penalty may be imposed where a recoverable overpayment is incurred wholly on or after the 1 October 2012 and meets the civil penalty criteria (see paragraph 4.8 below for further information on civil penalties).

4. Penalties Policy

- 4.1 DWP has the following enforcement action available in cases of benefit fraud:-
- referral of cases to CPS or COPFS with a view to prosecution
 - administrative penalty
 - administrative caution
 - initiate recovery of the proceeds of crime
 - loss of benefit penalty
 - recovery of the overpayment.

The following enforcement actions are available in cases of claimant error:

- civil penalty
 - recovery of the overpayment.
- 4.2 For fraud investigations relating to tax credit which result in the identification of an overpayment of tax credits only, if HMRC believe

that a criminal offence has been committed, a full investigation will be carried out and the case may be referred to CPS or COPFS for a decision on whether to institute criminal proceedings.

4.2.1 It is HMRC policy to charge a penalty of up to £3000 if the customer has deliberately or negligently given the wrong information on their claim, or when reporting a change of circumstances or when providing information to HMRC as part of their checks. HMRC can also charge a penalty of up to £300 if there is a failure to give them information or tell them about any relevant change of circumstances within 1 month. Further detailed information about tax credit penalties can be found at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367011/wtc7_1_.pdf

4.3 *Prosecutions*

4.3.1 The CPS is the principal prosecuting authority for England and Wales, and makes independent prosecution decisions in criminal cases investigated by the police and other investigative bodies. The CPS:

- Decides which cases should be prosecuted – keeping them all under continuous review;
- Determines the appropriate charges in cases;
- Advises the police and other investigative bodies at the early stages of investigations;
- Prepares cases and presents them at court;
- Provides information, assistance and support to victims and prosecution witnesses.

4.3.2 CPS prosecutors make independent charging decisions in respect of all cases referred to them in accordance with the Code for Crown Prosecutors.

4.3.3 In Scotland, which has a separate judicial system, the decision on whether to institute criminal proceedings rests with the Crown Office and Procurator Fiscal Service (COPFS) in respect of all criminal investigations. The COPFS also make independent charging decisions referred to them in accordance with the COPFS Code.

4.3.4 Where one or more of the following factors are revealed in an investigation, DWP will normally refer the case to the CPS or the COPFS:

- The recoverable overpayment as decided by the decision maker (including Housing Benefit and Council Tax Benefit and tax credits) is £2,000 or more
- False identities or other personal details have been used
- False or forged documents have been used
- Official documents have been altered or falsified

- The person concerned occupied a position of trust
- The person concerned assisted or encouraged others to commit offences
- There is evidence of premeditation or organised fraud
- The person concerned had previously been convicted or received a penalty for benefit fraud
- The offer of an administrative penalty or caution is not accepted.

This list is not exhaustive. DWP reserves complete discretion to refer any case to the CPS or COPFS irrespective of the financial value.

4.3.5 Following review in accordance with the relevant Code the CPS or COPFS may decide that an out of court disposal (i.e. an administrative penalty or an administrative caution) is appropriate as an alternative to prosecution. An out of court disposal will then be offered by DWP where appropriate.

4.3.6 In England and Wales, for offences falling within the remit of local authorities (see paragraph 1.3 above), some local authorities have made arrangements with the CPS to make charging decisions; bring the charge and to institute and conduct criminal proceedings on their behalf.

4.3.7 A copy of the Code for Crown Prosecutors can be obtained either on the CPS website www.CPS.gov.uk or from CPS, Rose Court, 2, Southwark Bridge Road, London SE1 9HS. A copy of the COPFS Code can be obtained either on the COPFS website www.crownoffice.gov.uk or from COPFS 25, Chambers Street, Edinburgh, Midlothian, EH1 1LA.

4.4 *Administrative penalties*

4.4.1 DWP administrative penalties can be offered by law to a person as an alternative to prosecution where an overpayment of benefit has, or (in the case of attempted fraud) would have occurred due to an act or omission by that person and there are grounds for instituting proceedings for an offence against that person. The amount of the administrative penalty for offences committed prior to or spanning 8th May 2012 is set at 30% of the overpayment(s) relating to that offence.

4.4.2 From 8th May 2012 the administrative penalty increased to 50% of the amount overpaid subject to a minimum of £350 and a maximum of £2,000. The administrative penalty is payable in addition to any recoverable overpayment.

4.4.3 On the 8th April 2014 the Government announced the intention to increase the maximum administrative penalty to £5,000, with the new limit being introduced in April 2015 subject to Parliamentary approval.

4.4.4 It is DWP policy to offer administrative penalties where the case is deemed not to be so serious that prosecution should be considered in the first instance (see paragraph 4.3.4 above). The offer of an administrative penalty will generally be made as an alternative to referring cases to the CPS or COPFS for the consideration of criminal proceedings. No admission of guilt is required from the individual concerned before offering an administrative penalty, although there is a statutory requirement for investigators to ensure that there are grounds for instituting criminal proceedings for an offence and that the individual is provided with a written notice concerning the offer of the penalty and its operation. The individual has the option to accept the administrative penalty and a period of 14 days to reconsider their decision.

4.5 *Administrative Cautions*

4.5.1 Except as mentioned in paragraph 4.5.2 below, DWP has ceased offering administrative cautions for offences committed wholly on or after 1 April 2012. Instead, consideration is given to offering an administrative penalty. Individual Local Authorities may continue to offer administrative cautions until the roll out of the single fraud investigation process in that Local Authority.

4.5.2 However, in exceptional cases where the CPS decides that a caution is suitable, DWP may administer an administrative caution. This can be an appropriate disposal where the criteria set out in the Ministry of Justice guidance on Simple Cautions for Adult Offenders (See <http://www.justice.gov.uk/downloads/oocd/adult-simple-caution-guidance-oocd.pdf>) are met. If the individual is subsequently prosecuted for another benefit offence, the administrative caution may be cited in court.

4.5.3 In Scotland, an administrative caution cannot be cited in court but may be referred to in a report submitted to the procurator fiscal for consideration of prosecution of any subsequent offence.

4.6 *Recovering the Proceeds of Crime*

4.6.1 In the event of a conviction for benefit fraud, DWP has a proactive policy of referring all suitable cases for financial investigation with a view to recovering monies or property obtained as a result of benefit fraud. When appropriate, the DWP will apply or support applications to the courts for restraint orders in order to freeze and stop the offender from dissipating assets. The DWP will seek to recover assets by means of supporting confiscation order proceedings under the Proceeds of Crime Act 2002 or the Criminal Justice Act 1988, and the Proceeds of Crime (Scotland) Act 1995 or the Criminal Justice (Scotland) Act 1987.

4.7 *Loss of Benefit Penalty*

- 4.7.1 The Loss of Benefit Penalty is designed to be a deterrent against the abuse of the benefit system by applying a benefit penalty against those who commit benefit fraud.
- 4.7.2 The Social Security Fraud Act 2001 gave DWP powers to apply a loss of benefit penalty in the form of a fixed 13 week benefit payment disqualification period where a person is convicted of benefit fraud in two separate sets of proceedings, which have been committed within a five year period. The provision was extended in the Welfare Reform Act 2009 to include a new 4 week loss of benefit penalty for all offences of benefit fraud which result in a sanction (convictions, administrative penalties or cautions).
- 4.7.3 Benefit payment is either withdrawn completely, with access to hardship payments, or reduced by a set amount during the payment disqualification period. The level of reduction will depend on the benefit in payment.
- 4.7.4 The Welfare Reform Act 2012 provided for tougher loss of benefit penalties from April 2013 enabling a 13 week disqualification from benefit upon an offender's conviction for a first benefit fraud offence, a 26 week disqualification for a second offence, where that results in a conviction, and a 3 year disqualification for a third offence, where that results in a conviction, within a set period of time, or for any conviction for a serious or organised benefit fraud (the particular offences are set out in section 118 of the Welfare Reform Act 2012 and prescribed in the Social Security (Loss of Benefit) Regulations 2001). A 4 week loss of benefit penalty will still apply for offences where an administrative penalty (or caution) is the outcome.
- 4.7.5 From April 2013 new loss of benefit provisions following conviction applied to tax credits under changes to the Tax Credits Act 2002.

4.8 *Civil Penalties*

From October 2012, DWP introduced a civil penalty to help tackle claimant error. A £50 penalty may be imposed where an individual incurs an overpayment as a result of their negligence in failing to provide accurate information as part of their benefit claim or in connection with an award of benefit, and have not taken reasonable steps to correct the error. A £50 penalty can also be imposed where an individual fails, without reasonable excuse, to notify a change of circumstances or provide required information in connection with a claim or award of benefit, and that failure results in an overpayment of benefit. A civil penalty cannot be imposed if the individual has already been charged with an offence or cautioned, or accepted an administrative penalty, in respect of the overpayment. Each case is considered individually in accordance with these criteria set out in the legislation and against guidance in the DWP Decision Makers Guide Chapter 9 (sections 09420 to 09451) (see GOV.UK). The civil penalty

will be added to any recoverable overpayment and recovered in the same way.
