

Local Authority Loss of Benefit Generic Guidance

The following guidance provides information relating to the new Fraud & Error Loss of Benefit regime.

Please note that this guidance relates to Standard Housing Benefit (HB) cases only. Any HB that is passported is not sanctionable, and therefore a Loss of Benefit penalty cannot be applied in passported HB cases.

1. Summary

- 1.1 The Loss of Benefit (LOB) Provisions are designed to be a deterrent against abuses of the benefit system by applying a benefit reduction penalty to those who are convicted, or who have accepted a caution or an administrative penalty for a benefit fraud offence.
- 1.2 First introduced from 1 April 2002 the 'Two Strikes' provision made it possible to restrict payment of benefit for 13 weeks if a claimant, their partner or a family member had been convicted of a second benefit fraud offence and that the offence was committed:
 - within 3 years of a previous conviction where the second offence was committed before 1 April 2008, or
 - within 5 years of a previous conviction where the second offence was committed on or after 1 April 2008.
- 1.3 From 1 April 2010 a 'One Strike' provision made it possible to impose a restriction of benefit payment for 4 weeks when a claimant, their partner or a family member had been convicted, or had accepted a caution or an administrative penalty for a first (or non-linking) benefit fraud offence, when the whole period of the fraud was committed on or after 1 April 2010.
- 1.4 From 1 April 2012, it is DWP policy to no longer offer cautions in respect of welfare benefits as an alternative to prosecution for frauds that occurred wholly on or after 1 April 2012. However, individual Local Authorities (LA) can continue to offer a caution if cautions remain part of their fraud policy.
- 1.5 To further deter against fraud, the LOB regime is being strengthened to make the penalties tougher for those convictions where the offence has been wholly committed on or after 1 April 2013.

- 1.6 For repeated benefit fraud longer loss of benefit periods will apply where repeated offences have been committed within a set 5 year linking period and those offences have been committed wholly on or after 1 April 2013. This means that where three offences A, B and C, have occurred offence B must be within 5 years of A, and C within 5 years of B. Penalties following a conviction will also escalate based on the *number* of previous offences (including penalties as an alternative to prosecution).
- 1.7 The amended rules introduce 5 new LOB levels as follows:
- **Level 1** - Offences which result in an Administrative Penalty (Ad Pen) or caution will continue to result in a LOB penalty of 4 weeks
 - **Level 2** - For a first benefit fraud conviction the LOB Penalty duration will increase from 4 to 13 weeks
 - **Level 3** - Where there are two offences, within a set time period, with the latter resulting in a conviction the LOB Penalty will be for a period of 26 weeks
 - **Level 4** - A 3 year LOB penalty will be introduced where there are three offences within a set time period the latter resulting in a conviction
 - **Level 5** - An immediate 3 year loss of benefit for serious organised and identity fraud cases.
- 1.8 The Fraud Investigation Service (FIS) or Single Fraud Investigation Service (SFIS) determines the appropriate level of penalty following a fraud offence or repeated fraud offences.
- 1.9 Benefit offences that begin before 1 April 2013 will be liable for One Strike/Two Strike penalties regardless of when the case is discovered; investigated; or convicted, or a penalty as an alternative to prosecution is accepted. For example an offence that may have begun on 30 March 2013, be discovered in March 2014 and eventually convicted in 2015, will result in a liability for a One Strike/Two Strike penalty as appropriate. Therefore there will be a significant period of time when both the One /Two strike penalties and the new 5 level LOB penalties regime will run in parallel.

2. Introduction

- 2.1 A penalty reduction for benefit fraud will be applied to all sanctionable Department for Work and Pensions (DWP), Local Authority (LA), Her Majesty's Revenue & Customs (HMRC) and Service Personnel and Veterans Agency (SPVA) benefits as listed in Annex 1. A penalty reduction can be applied to more than one benefit at the same time at the rate applicable to each benefit.

- 2.2 Depending on the benefit being claimed, different rules apply to how the penalty reduction is applied. Accordingly while some benefits may be reduced others may be withdrawn. Each benefit area is responsible for ensuring that they action each FIS/SFIS determination notice that advises that a penalty reduction is required and is applied to the benefit they are responsible for, if it is in payment (or is claimed) during the disqualification period.
- 2.3 FIS/SFIS will issue a determination notice to all relevant benefit processing teams to confirm that a LOB penalty is appropriate and the length of that penalty. For all benefits other than HB, form LOB1 will be issued; for HB, form FPA7 (LOB) will be used in all cases to notify the determination. Please note form TS2 will continue to be issued by FIS/SFIS to notify Local Authority processors of a one/two strike LOB.
- 2.4 The role of the **DN: LA's to insert their own terminology** benefit processor is to apply the appropriate penalty applicable to that benefit for the duration of the relevant disqualification period.

3. Standard Housing Benefit Penalty Rates

- 3.1 The amount of benefit payable will normally be reduced by 40% of the HB single claimant's personal allowance rate during the disqualification period if they or a member of the offender's family member is subject to no work requirements for the purposes of Section 11D of the 2007 Welfare Reform Act.
- 3.2 The penalty rate may be reduced to 20% rate during the disqualification period, but only if the claimant, their partner or a family member is pregnant or seriously ill.
- 3.3 In the case of couples, the calculation of the penalty reduction during the Disqualification Period is decided according to the rate of the personal allowance appropriate to the age of the person named as the offender on the FPA7 (LOB).
- 3.4 Where the offender is the partner the single person's personal allowance rate, according to age, may be different from that of the claimant.
- 3.5 For example; if the claimant is 24 and the partner is 26 and the partner is named on the FPA7 (LOB) as the offender, the penalty rate would be 40% (or 20%) of the aged 25 and over HB personal allowance rate. If the claimant is 26 and the partner is 18 and the partner is named on the FPA7 (LOB) as the offender, the penalty rate would be 40% (or 20%) of the under 25 personal allowance rate.

- 3.6 Pregnancy - You must be sure the claimant, their partner or a family member is pregnant before applying the 20% reduction. If you have any doubts that a woman is pregnant, ask the claimant to produce evidence, such as a certificate of the expected date of confinement. Where doubts that a woman is pregnant exist, apply the penalty reduction at 40% until confirmation of the pregnancy is received.
- 3.7 Seriously ill - Give the term “seriously ill” its normal everyday meaning of being an important, significant or severe illness. The Decision Maker (DM) will decide if an illness is serious at the time the penalty reduction is being applied, or date of a request for revision of the penalty rate. If the DM has doubts about a person being seriously ill, ask the claimant for evidence.

4. Applying the reduction to the Disqualification Period

- 4.1 The earliest date a penalty can be applied to HB is 29 days **after** the determination date, i.e. the earliest date a penalty can be applied is from the 30th day. (For all other benefits it is 28 days and 29th day, respectively)
- 4.2 The determination date is the date the FIS/SFIS fraud officer determines that a LOB penalty applies. This will then determine the earliest start date for the disqualification period which the benefit processor(s) will then require to decide as detailed in Paras. 4.4.1 and 4.4.2.
- 4.3 FIS/SFIS will issue a determination notice on form FPA7 (LOB) to confirm that a loss of benefit penalty is appropriate and the length of period the penalty is for. The notice will instruct the processor to apply a LOB from the ‘earliest’ possible start date, i.e. the 30th day, from which the processor will calculate the actual disqualification period.

4.4 DQ day for Standard HB

- 4.4.1 The first day of the disqualification period is known as DQ day. If no benefit is in payment on the determination day then the DQ day is the 30th day. If benefit was in payment on the determination day but ceases to be in payment before the start of the disqualification period, then the DQ is the 30th day.
- 4.4.2 HB is paid in arrears and the DQ day is the day following the first pay day after the end of the 28 days beginning with the first day after the determination day on which the Secretary of State is notified by the relevant authority. DQ day therefore begins from the 30th day.

DN: LAs to amend as appropriate to fit HB payment cycles

4.4.3 For example: Claimant is a Tuesday payday, paid fortnightly in arrears. Last benefit payment made on 16/07/13, next payment due on 30/07/13. The 30th day is 26/07/13. Therefore benefit will be reduced from 31/07/13 which is due for payment on 13/08/13.

4.5 Overpayment recoveries

4.5.1 If there is insufficient benefit in payment to continue an overpayment recovery, contact the appropriate recovery team/area to advise them about any change to or termination of the recovery.

4.6 Rounding

4.6.1 Where some benefit remains in payment after applying the relevant reduction rate, the reduction of benefit will be:

- rounded down to the next multiple of five pence if the calculation comes to two and half pence, or otherwise
- rounded to the nearest multiple of five pence.

5. New Claims to Standard Housing Benefit

5.1 On any new claim to Standard Housing Benefit the benefit processor should always check the Customer Information System (CIS) to identify if there is a current Loss of Benefit penalty in existence. This can be found in the 'Interests screen' within CIS and will always display as 'One Strike', regardless of the length or duration of the penalty. See screen print below for an example of a dummy case:

System/Clerical Interest History Details

Interest	Interest Type	Start Date	End Date	Interested Parties	Maintenance Data
Housing Benefit	System	11-Oct-2010		Interested Parties: Y	Maintenance Data
One Strike	System	11-Oct-2010		Interested Parties: Y	Maintenance Data
Income Support	System	04-Oct-2010		Interested Parties: Y	Maintenance Data
Job Seekers Allowance	System	04-Oct-2010		Interested Parties: Y	Maintenance Data

CRL Interest History Details
The account has no CRL interest data.

Interested Parties History Details

Interested Office Type	Service Delivery Office	Office Code	Contact Number	Benefit System	Start Date	End Date	Maintenance Data
Broadcast	GLASGOW CITY COUNCIL	04570		JSAPS	11-Oct-2010		Maintenance Data
Broadcast	GLASGOW CITY COUNCIL	04570		ISCS	11-Oct-2010		Maintenance Data
Broadcast	BLACKPOOL BOROUGH COUNCIL	00520		ISCS	11-Oct-2010	11-Oct-2010	Maintenance Data
Broadcast	BLACKPOOL BOROUGH COUNCIL	00520		JSAPS	11-Oct-2010	11-Oct-2010	Maintenance Data

Account Summary

NINO	NMD13536A
NINO Status	
Surname	WILDE
Forename(s)	LINA
Sex	F
Date of Birth	01-Jan-1980
Date of Birth Verification Type #1	Verified to Level 2
Date of Death	
Date of Death Verification Type #1	
Preferred Language	

- 5.2. As stated above the 'One Strike' marker in CIS may refer to any length of penalty (both one/two strike rules or the new 5 levels of LOB) and therefore the processor should check if a FPA7 (LOB) is held to obtain the correct duration or make contact with FIS/SFIS to confirm the correct LOB period.
- 5.3 A CIS update is expected in October 2013 when the 'One Strike' marker will change to 'Loss of Benefit Criminal Penalty'.

Annex 1 - List of benefits / Credits and whether they are disqualifying or sanctionable

Some benefits are disqualifying but not sanctionable (Column B) and others are both disqualifying and sanctionable (Column C).

Accordingly, an offence may be committed against a disqualifying benefit but the sanction would be imposed on a different but sanctionable benefit.

Most benefits are disqualifying, meaning that fraud against them would trigger the loss of benefit sanction to all sanctionable benefits the claimant is receiving.

Some benefits are disqualifying but not sanctionable. The reason for this tends to be the reason why the benefit is paid – for example if paid to meet the extra costs of disability or retirement pension. The Department sees these benefits as falling in categories of extra need, for the benefit of others, or protecting claimants that might be especially vulnerable to hardship.

A	B	C
Benefits/credits that are neither 'disqualifying' nor 'sanctionable'	Benefits/credits that are 'disqualifying' but not 'sanctionable'	Benefits/credits that are both 'disqualifying' and 'sanctionable'
Maternity Allowance	State Pension	Income Support
Statutory Maternity Pay	Jobseeker's Allowance (Joint claim couples) *	Jobseeker's Allowance (single person and non joint claim couples) #
Statutory Sick Pay	Graduated Retirement Benefit	Standard Housing/Council Tax Benefit**
Statutory Adoption Pay	Disability Living Allowance	Incapacity Benefit #
Statutory Paternity Pay	Attendance Allowance	Carer's Allowance #
Health in Pregnancy Grant	Child Benefit	War Pensions #
Pneumoconiosis (Workers' Compensation) 1979	Guardian's Allowance	Widows Pension/Bereavement Allowance#
2008 Diffuse Mesothelioma Scheme	Social Fund Payments	Widowed Mothers/Parents Allowance #
	Christmas Bonus	Industrial Injuries Disablement Benefit #
	Industrial Injuries (inc. Old Cases) Constant Attendance Allowance	Industrial Death Benefit #
	Industrial Injuries Exceptionally Severe Disablement Allowance	All other Industrial Injuries Scheme Benefits not covered elsewhere in the table #
	War Pensions Exceptionally Severe Disablement Allowance	State Pension Credit
	War Pensions Constant Attendance Allowance	Employment and Support Allowance (contributory)#
	War Pensions Mobility Supplement	Employment and Support Allowance

		(Income Related)##
	Bereavement Payment	Severe Disablement Allowance #
	Linked Housing Benefit/Council Tax Benefit	Working Tax Credit
	Child Tax Credit	Universal Credit ##
	Personal Independence Payment	

* Section 8 Social Security Fraud Act 2001 – effect on joint claims applies

** Whilst CTB remains a sanctionable benefit, as CTB will no longer exist from 1/4/13 and the new LOB levels come into force from 1/4/13, CTB will not be sanctioned following the introduction of the new Council Tax Support (referred to in DWP as Council Tax Local Scheme)

Payment withdrawn completely (other benefits are a reduced payment)

For claimants, partners or family members in receipt of ESA (IR) or UC their benefit may be completely withdrawn or reduced depending on the conditions for receipt of those benefits. See benefit specific guidance for further details.