



Factsheet: DWP Administrative Penalties in the Public Authorities (Fraud, Error and Recovery) Bill

What is the current policy?

An Administrative Penalty (Ad Pen) is a financial penalty that DWP can offer as an alternative to a criminal prosecution. It can be offered in cases of benefit fraud where there is clear evidence of criminality.

Ad Pens provide a proportionate and cost-effective alternative to pursuing cases through the court system. Where a person accepts an Ad Pen, they do so without the admission of committing fraud and accept a penalty of 50% of the overpayment value, up to a maximum of £5,000. Where a person accepts an Ad Pen, DWP can also apply a Loss of Benefit for which can stop certain benefits or elements of benefit, depending on which benefits someone remains eligible for¹. If a person does not accept an Ad Pen the case is referred to the Crown Prosecution Service (“CPS”) or Scottish equivalent – the Crown Procurator Fiscal (“COPFS”) to consider prosecution.

Currently, the Ad Pen can only be offered in relation benefit fraud cases. This means that those individuals who commit fraud in relation to non-benefit payments, such as grants, cannot be offered an Ad Pen as an alternative to prosecution. The case must be referred to the CPS or COPFS (Scotland).

Policy intent

This measure will extend the Ad Pen to include non-benefit payments, such as grants. This would bring greater consistency in tackling fraud across the payments DWP makes and ensures there is always an effective alternative to prosecution, so that anyone found to have committed fraud against the social security system can be subject to proportionate and timely consequences. This approach will help avoid putting an excessive burden on the Courts and enable a quicker resolution in cases where lower-level fraud is committed against the social security system, in line with the approach in benefit payment cases.

DWP also wants the system of penalties to be fair and proportionate so that the most serious consequences are focused on the most serious cases of fraud. As such, DWP wants to remove the Loss of Benefit provisions where an Ad Pen is accepted.

How will it work?

The Bill introduces changes that extend the Ad Pen framework to non-benefit payments, such as grants. Where a DWP investigator believes there is sufficient evidence to commence criminal proceedings and takes the view that prosecution may not be in the public interest

¹ [Loss of benefit as a penalty for benefit fraud - GOV.UK](https://www.gov.uk/guidance/loss-of-benefit-as-a-penalty-for-benefit-fraud)



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because of the value involved and the overall circumstances of the claimant, the DWP investigator may offer an Ad Pen as an alternative to prosecution in respect of non-benefit payments. An Ad Pen for a non-benefit payment will operate on the same basis as the current regime. Where an individual accepts an Ad Pen, a financial penalty will be imposed which is set at 50% of the overpayment value, capped at £5,000.

Where a claimant accepts an Ad Pen and continues to be eligible for benefit, DWP will remove the additional penalty of Loss of Benefit. This means the Loss of Benefit penalty will be reserved for cases that result in a conviction. In these cases, the Loss of Benefit would still extend for up to 3 years for the most serious offences.

Where an Ad Pen is not accepted (for benefit and non-benefit payment fraud alike) the DWP will refer the case to the Crown Prosecution Service or the Crown Office and Procurator Fiscal Service (Scotland) for prosecution, as is the case now.

Oversight and safeguards

DWP is committed to ensure these powers are used proportionately and effectively. The following safeguards are included in these measures.

- **Criminal Investigations** - The Ad Pen can only be offered after a criminal investigation has taken place and DWP has sufficient evidence to afford a realistic prospect of conviction. This includes pursuing all reasonable lines of enquiry to prove that fraud has occurred. In addition, the characteristics of claimants which might make them vulnerable, such as mental health difficulties, disabilities and other mitigating circumstances will always be factored in when deciding whether an Ad Pen should be offered.
- **Individual Choice** - There is no obligation to accept an Ad Pen, the individual will always have the choice to accept or decline. If the claimant declines an Ad Pen, the case will be referred for prosecution and the claimant may challenge the evidence before the Courts.
- **Mandatory Reconsideration and First Tier Tribunal** - Individuals can request a mandatory reconsideration of the overpayment decision. If they disagree with the overpayment decision following mandatory reconsideration, they can appeal to the First Tier Tribunal against the overpayment decision.

Key statistics

- The changes are expected to result in a negligible Annually Managed Expenditure (AME) cost for the department as a result of the removal of the Loss of Benefit.



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- In 2023/24, 567 Ad Pens were accepted and fraud investigations teams referred 655 cases to the CPS and COPFS in Scotland for prosecution².

² <https://www.gov.uk/government/publications/dwp-annual-report-and-accounts-2023-to-2024/dwp-annual-report-and-accounts-2023-to-2024-html>