

# **New Loss of Benefit changes for Claimant Fraud - offences occurring wholly on or after 1<sup>st</sup> April 2013**

## **Background to the change**

In July 2010 the Prime Minister commissioned a new and comprehensive fraud and error strategy to deliver a step change in performance.

In October 2010 a joint strategy with Her Majesty's Revenue and Customs (HMRC) was launched to tackle fraud and error in the benefits and tax credits system. The strategy provided for significant new opportunities for increased joint working between Department for Work and Pensions (DWP) and HMRC in the run up to the introduction of Universal Credit (UC).

In February 2012 this strategy was refreshed and updated through the joint report with the Cabinet Office and HMRC 'Tackling Fraud and Error in Government: A Report of the Fraud, Error and Debt Taskforce'. The strategy set out an ambitious programme of work to reduce financial loss due to fraud and error in the welfare system.

Part of these measures includes a tougher loss of benefit (LOB) penalty for benefit fraud, to be introduced from 1<sup>st</sup> April 2013.

## **Loss of benefit (LOB) for offences occurring wholly on or after 1<sup>st</sup> April 2013:**

Offences which result in an administrative penalty (Ad pen), or a Local Authority (LAs) offered caution, if cautions remain part of individual LAs fraud policy, will continue to result in a four week loss of benefit penalty. (It is the Department of Work and Pensions (DWP) policy to no longer offer cautions as an alternative to prosecution for welfare benefits frauds that occur wholly after 1<sup>st</sup> April 2012).

The amended rules introduce 5 new LOB levels as follows:

- **Level 1** - Offences which result in an administrative penalty (Ad pen) or LA 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 of 5 years, with the latter offence 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 of 5 years, the last offence resulting in a conviction
- **Level 5** - An immediate 3 year loss of benefit for serious organised and identity fraud cases.

One offence is listed in the Welfare Reform Act 2012; it is a conviction of common law offence of conspiracy to defraud in England and Wales, all other offences will be prescribed in regulations.

- Prescribed offences will have to be accompanied by at least one of the following:
- The criminal court finding an overpayment of £50,000 or more,
- The person receiving a sentence of at least one year's imprisonment (including a suspended sentence).
- This will ensure that only the most serious organised or identify fraud related cases are captured by these provisions.

### **Impact on Local Authorities and Housing Benefit**

For LAs, these changes will apply to cases where there has been a conviction for Housing Benefit (HB) fraud, or where HB falls to be sanctioned as a result of general benefit fraud where it is not a passported benefit case. See *annex 1*.

This will mean that HB will be reduced as now, by 40 per cent (Or 20 per cent if someone in the family is pregnant or seriously ill), but for the longer periods of 13 weeks; 26 weeks; or 3years, as appropriate.

Claimants whose HB has been reduced as a result of the new LOB penalty will not be entitled to a discretionary housing payment to make up the shortfall. Regulation 3(l) of the Discretionary Financial Assistance Regulations 2001 has been amended so that such a payment cannot be made to a claimant who is subject to a loss of benefit for a fraud offence.

The new Council Tax Support being introduced by Local Authorities (LAs) from April 2013 to replace Council Tax Benefit (CTB) is not a Social Security benefit and therefore is not included as a sanctionable benefit within the new LOB changes.

Any offences **not** committed wholly on or after 1<sup>st</sup> April 2013 will need to continue to be considered under the existing LOB provisions (known as one strike and two strike LOB rules). There will be no link between the existing one and two strike LOB penalties and the new LOB regime from 1/4/13.

Linking for the new LOB regime from 1/4/13 has been set as a 5 year time period. For example: Offence A committed on or after 1/4/13 must be within 5 years of offence B for linking and escalation to apply. Similarly offence B must be within 5 years of offence C for further escalation to take place.

The two LOB regimes will by necessity, run in tandem for a number of years.

There will be a considerable time lag between the introduction of the legislation in April 2013 and the first cases for which the imposition of a LOB penalty under the new regime is appropriate. It is likely that these cases will not appear until the beginning of 2014 at the earliest. This is due to the fraud

offence needing to be committed wholly on or after 1<sup>st</sup> April 2013, the associated investigation activities, the preparation of the case for referral to the Her Majesty's Courts and Tribunal Service (HMCTS), and the eventual conviction outcome being notified.

LAs may wish to bear this time lag in mind when considering planning activities.

Legislation changes:

- Loss of Benefit powers are contained in the Social Security Fraud Act 2001
- This was recently amended by the Welfare Reform Act 2012
- The above Acts give us regulating powers, the LOB Regs are Social Security (Loss of Benefit) Regulations 2001 / 4022
- The above LOB Regs were recently amended by the Social Security (Loss of Benefit) (Amendment) Regulations 2013 / 385

**Changes to forms and notifications/letters** – Changes will be required to existing LOB forms and notifications to claimants, e.g. we have developed a new form, FPA7 (LOB) for use in new LOB penalties cases. DWP will not be responsible for providing customer letter for LAs. If you have any letters that you issue to your customers to inform them of a loss of benefit, you may want to start looking at them now to consider incorporating changes. We will however provide a sample letter that you may wish to use as a template when developing your own letter(s).

**Changes to existing guidance and learning and development** - The Loss of Benefit Project which sits within the wider DWP Fraud & Error programme has developed generic messages that each LA can then tailor to meet the systems and processes they have in place.

**Changes to IT** – Following consultation with LA IT Software suppliers and LAs, it was decided that no funding would be provided to update the LA systems. Discussions took place with Security Operations Group to explain the decision, and has also been shared with software suppliers.

**Management Information (MI)** - There will be no new burdens placed on LAs with regard to capturing new MI for the updated LOB regime. LAs should continue to capture this information in line with current processes. There will be an amendment to the Single Housing Benefit Extract (SHBE) Guidance to advise that new LOB cases should be captured in line with current processes also.

**Single Fraud Investigation Service (SFIS)** - During the transition to the new joined up working, new process flows have been developed to reflect the differences if the LA is operating under SFIS working practises, as well as detailing the process for those LAs who aren't.

**Key date** - The legislation that supports the tougher Loss of Benefit penalty regime comes into force from 1<sup>st</sup> April 2013.

### **Communications and Publicity**

Discussions on the LOB changes have taken place with various groups and forums representing LA interests, e.g. Local Authority Area (LAA) steering group; LA Security Operations Group (SOG) and LA Practitioners Operational Group (POG) and these, together with information and updates via bulletins etc. have been shared with LAs to deliver consistent messages about the change.

[www.gov.uk](http://www.gov.uk) provides high level generic information on the likely effects on Claimants benefit(s) with regard to benefit fraud.

It will be for individual LAs to consider if and how they wish to publicise the introduction of the new tougher LOB penalties regime.

### **Next Steps**

The DWP Fraud and Error programme Loss of Benefit project team will be providing more information in the near future to help LAs with their planning for the implementation of the new LOB changes via these Bulletins. If however you prefer to have them sent direct to specific contacts within your LA, please forward details to the e-mail below.

In the meantime, if you have any questions or feedback on the content of this factsheet, please email:

[FRAUDANDERROR.LOSSOFBENEFITS@DWP.GSI.GOV.UK](mailto:FRAUDANDERROR.LOSSOFBENEFITS@DWP.GSI.GOV.UK)

## 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.

<b>A</b>	<b>B</b>	<b>C</b>
<b>Benefits/credits that are neither 'disqualifying' nor 'sanctionable'</b>	<b>Benefits/credits that are 'disqualifying' but not 'sanctionable'</b>	<b>Benefits/credits that are both 'disqualifying' and 'sanctionable'</b>
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	Industrial Death Benefit #

	Allowance	
	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.