

# Fraud and Error Penalties and Sanctions

Equality impact assessment

October 2011

# Equality impact assessment for Fraud and Error Penalties and Sanctions

## Brief outline of the policy or service

1. The government is concerned that the existing provisions for imposing benefit sanctions or penalties on benefit claimants who commit fraud, are too lenient and neither punish wrong-doing sufficiently, nor deter repeated benefit fraud adequately. More also needs to be done to encourage claimants to take responsibility for their claims to reduce high volumes of claimant error. The annual cost of welfare benefit fraud and error (including Tax Credit) is assessed to be £5.3 billion. The intention is to reduce this monetary loss and to discourage fraud and to discourage negligent behaviour or culpable claimant error within the benefit system.
2. The proposed policy change is to introduce tougher punishments in cases of **benefit fraud**. This will mean:
  - an amended administrative penalty regime, offered as an alternative to prosecution for benefit fraud. Claimants will need to agree to pay a fixed £350 penalty where the overpayment is up to £701, as an alternative to prosecution. Above £701, the penalty will be 50% of the benefit overpayment, subject to a maximum of £2,000. We will retain the existing 4 week loss of benefit payment disqualification for such cases;
  - making the administrative penalty open to claimants who have committed a benefit offence but have not managed to obtain an overpayment of benefit;
  - where fraud is committed, extending the current loss of benefit payment disqualification sanctions for one offence (“one strike”) and for two offences (“two strikes”) and introduce a benefit payment disqualification sanction where three offences are committed within a specific time period (“three strikes”). The increased benefit payment disqualification periods will be 13 weeks for one strike, if resulting in a conviction, 26 weeks for two strikes, where the second offence results in a conviction and 3 years for three strikes where the third offence results in a conviction, this will also apply to cases of Working Tax Credit fraud.
  - introducing an immediate 3 year loss of benefit payment disqualification for a “relevant offence”, which will involve a serious offence of organised or identity fraud relating to benefits or tax credits (including common law conspiracy to defraud and other, prescribed, offences). This 3 year benefit payment disqualification will also apply to cases of Working Tax Credit fraud;

- cautions will no longer be part of the DWP sanctions policy, although any caution offered by a body with the ability to prosecute for benefit offences before the Single Fraud Investigation Service takes on sole responsibility for investigating all benefit fraud, will continue to trigger a 4 week benefit payment disqualification.
3. Entitlement to benefit is preserved and it is payment of benefit that is sanctioned. As at present, some benefits will not be sanctionable, meaning the benefit payment disqualification cannot apply to them. Similarly, as at present, certain income-related benefits that are sanctionable will remain payable but at a reduced rate. Hardship payments will be made to those in greatest need whilst ensuring that the availability of hardship payments does not undermine the deterrent effect of sanctions.
  4. This will mean that in all cases where there is sufficient evidence that benefit fraud has been committed to commence a prosecution but DWP disposes of the case through an alternative to prosecution and this is accepted by the claimant, there would be:
    - Recovery of any benefit overpayment,
    - Payment of an administrative penalty (£350 fixed minimum penalty or 50% of the overpayment, whichever is greater, up to a maximum penalty of (£2,000);
    - A four week benefit payment disqualification.
  5. Where there is an actual conviction for benefit fraud there would be:
    - Recovery of any benefit overpayment,
    - A 13 week; 26 week or 3 year benefit payment disqualification (the period applied will depend on the number of previous benefit fraud offences within a certain timescale). In the case of a relevant offence involving a serious offence of organised or identity fraud related to benefits, the benefit payment disqualification will be an immediate 3 year period,
    - Where appropriate, recovery of assets under the Proceeds of Crime Act.
  6. The penalty and any overpayment will be recovered from benefit payments or through other means if appropriate. The rate of recovery by benefit deduction is and will continue to be set out in regulations<sup>1</sup>. Hardship payments will be available for certain claimants in certain circumstances.
  7. The proposal is to introduce a penalty in cases of **claimant negligence** or **culpable claimant error**. The civil penalty is designed for cases where the claimant has not been fraudulent, but has been negligent in providing incorrect information or has failed, without reasonable excuse, to respond to requests for information or report changes of circumstances and this has resulted in an overpayment of benefit. It is designed to encourage claimants to take personal responsibility and will involve:
    - Recovery of the benefit overpayment;

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<sup>1</sup> The Social Security (Payments on Account etc) Regulations 1988 (SI 1988/664)

- A new civil penalty of £50 will be imposed; and
- Recovery of the overpayment and civil penalty will be made from benefit payments, where appropriate. The rate of recovery by benefit deduction will be set out in regulations.

## Consultation and involvement

8. The proposals were set out in the Government's publication "Tackling fraud and error in the benefit and Tax Credits systems", published on 18<sup>th</sup> October 2010<sup>2</sup>. Chapter 5 of the Universal Credit White Paper<sup>3</sup> covers fraud and error.
9. The Department has well-established mechanisms for engaging with organisations that work with and represent its claimants. Briefly, these comprise:
  - the quarterly DWP Policy & Strategy Forum, which is used as a vehicle for consulting with policy officers of key national organisations that work with and represent our claimants, as we develop our thinking and our policies; organisations represented include Citizens Advice, Local Government Association, Age UK, and a wide variety of disability organisations and those that work with our most disadvantaged claimants;
  - the Equality Schemes Customer Reference Group which helps the Department involve claimants specifically on equality matters and acts as a consultation group for the Department's Equality Schemes. The Group usually meets twice a year and has representatives from each of the equality areas;
  - our Customer Representative Forum programme – three larger-scale events (the Annual Forum in London, Welsh Annual Forum in Cardiff and Scottish Annual Forum in Edinburgh/Glasgow) that are designed to allow engagement with representatives of the frontline organisations that work with our claimants at regional and local level; these include a wide variety of advice and support organisations from the voluntary sector, as well as health and social services.
10. In addition to these standing consultation arrangements the Department regularly holds discussions with key stakeholders about current issues and new initiatives. In advance of the Chancellor's statement on 20 October 2010 on the Spending Review, the Department published a consultation paper '21<sup>st</sup> Century Welfare' seeking views on the future of the benefit and tax credit system [21st Century Welfare - DWP](#). Further consultation papers have been published since 20 October 2010 on Disability Living Allowance reform [Disability Living Allowance reform - DWP](#) and child maintenance [Strengthening families, promoting parental responsibility: the future of child maintenance – public consultation - DWP](#). Full details of public consultation papers are given at [Consultations - DWP](#).

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<sup>2</sup> <http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf>

<sup>3</sup> <http://dwp.gov.uk/docs/universal-credit-full-document.pdf>

11. Further engagement with both internal and external stakeholders about the measures proposed in the Bill has also taken place since 20 October, 2010. For example, the Policy & Strategy Forum on 16 November 2010 considered a number of Spending Review measures, including the Disability Living Allowance Mobility Component measure, as did the Scottish Annual Forum on 4 November, 2010. The Equality Schemes Customer Reference Group considered Disability Living Allowance reform on 7 October, 2010. The DWP Stakeholders' Forum met on 7 September 2011 where the new fraud sanctions and civil penalty were discussed. There are also regular discussions between DWP and Local Authority representative bodies.

## Impact of the Fraud and Error Penalties and Sanctions

12. The policy will apply to all claimants who commit an offence of benefit fraud which results in acceptance of the new administrative penalty; conviction, loss of benefit sanction or those who receive a civil penalty for claimant negligence or culpable claimant error, regardless of disability; race; gender; age; gender reassignment; religion or belief; sexual orientation; marriage and civil partnership.

13. In cases of prosecution, all cases are subject to consideration under the Code for Crown Prosecutors in England and Wales and the Prosecution Code in Scotland; mitigation factors such as serious illness or disability will be considered under the public interest test, but the decision whether to prosecute depends on the individual circumstances of each case.

14. There is also guidance for DWP fraud investigators which states that if a significant mental or physical condition is suspected at any stage of the investigation which suggests that prosecution or an alternative sanction is undesirable, the case should be referred to a senior officer to decide whether to:

- continue with the investigation;
- refer for customer compliance action<sup>4</sup>;
- close the investigation and record the appropriate outcome.

15. Offences against certain DWP benefits trigger the application of benefit sanctions (these are called disqualifying benefits). A disqualifying benefit will only be

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<sup>4</sup> Customer Compliance is the term used for action intended to address risks in benefit cases where a full criminal investigation is not deemed appropriate but where substantial action is needed to:

- Find incorrectness;
- put it right and;
- ensure future claimant compliance with their notification responsibilities.

affected if it is also a sanctionable benefit<sup>5</sup>, but where a benefit offence is committed against a disqualifying benefit, any sanctionable benefits to which the person is entitled would be sanctioned.

16. If a sanctionable benefit is not an income-related benefit (for example entitlement is based on National Insurance contributions), payment of that benefit ceases completely for the period of sanction, but the person might become eligible for an income-related benefit instead.
17. Where a sanctionable benefit is an income-related benefit, in principle payment ends for the period of sanction but certain income related benefits remain payable at a reduced rate.
18. Hardship payments will be available to those in greatest need whilst ensuring that the availability of hardship payments does not undermine the deterrent effect of sanctions.
19. In the case of a **civil penalty** for claimant negligence or claimant error there will be a right of appeal against the overpayment, including a right of appeal against the imposition of the penalty, and appropriate guidance for compliance and benefit processing staff for dealing with the civil penalty will be introduced.

## Age

20. Our proposals apply equally to all claimants whatever their age, both in terms of whether a sanction applies and also the possibility of mitigating the effects of sanctions. It is to be noted that State Pension is not a sanctionable benefit.
21. Data on age has until recently been unavailable, this was because age was not recorded on the operational data system used by the fraud investigation system (designed to manage cases) and no data linking information, such as the National Insurance number, is made available on the analytical copy of the operational data in order to produce information on protected groups.
22. Following the introduction of the “one strike” loss of benefit sanction (loss of benefit for up to 4 weeks) from April 2010, we have updated the legacy benefit systems for Jobseeker’s Allowance; Income Support; Pension Credit and Employment Support Allowance to record loss of benefit sanction applied against those benefits. For other benefits the sanction is applied and recorded clerically. However, as “one strike” sanctions can only be applied to offences committed on or after 1 April 2010 and the IT enhancements were staggered, with the most recent phase only being implemented in September 2011, there is still insufficient evidence to inform this Equality Impact Assessment. The intention is to enhance

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<sup>5</sup> Disqualifying and sanctionable benefits are listed under Section 6A of the Social Security Fraud Act 2001 and may also be listed in regulations made under section 10(1) of that Act. Joint-claim Jobseekers Allowance is listed in section 6A as not being sanctionable but is subject to specific payment disqualifications under section 8 of the 2001 Act and under the Social Security (Loss of Benefit Regulations) 2001.

this to allow for the recording of the new loss of benefit sanctions allowing for better overall evaluation of its impact against this category.

23. The policy will apply to all claimants who commit an offence of benefit fraud which results in the new administrative penalty; conviction, loss of benefit sanction regardless of age. It will apply to all those who receive a civil penalty for claimant negligence or culpable claimant error, regardless of age.
24. For those cases of fraud where the revised administrative financial penalty is offered and accepted or those cases of claimant negligence or claimant error where a civil penalty applies, the intention is for information to be available from the debt management system to enable us to evaluate the impact against this category.

## **Gender, including pregnancy and maternity**

25. Our proposals apply equally to either gender, both in terms of whether a sanction applies and also the possibility of mitigating the effects of sanctions. Hardship payments will be available to those in greatest need whilst ensuring that the availability of hardship payments does not undermine the deterrent effect of sanctions.
26. Data on the gender split of those committing fraud has until recently been unavailable, for the same reasons as outlined above under "Age". The intention is to enhance the recent IT changes to allow for the recording of the new loss of benefit sanctions allowing for better overall evaluation of its impact against this category. We, therefore, intend to evaluate the impact of the fraud sanctions on gender through the same methods described above under "Age".
27. Our proposals on civil penalties apply equally to either gender where they meet the criteria for the civil penalty.

## **Disability**

28. Data on disability that might be available would include limited administrative data, based on whether a person was in receipt of a benefit related to disability, although not receiving such a benefit would not be considered conclusive that a person did not have any disability. Claimants are encouraged to complete an equal opportunities form when making a claim for benefit, however, this is not required as part of the benefit claim and is therefore voluntary. Data that would be available might also include this survey data indicating the number of claimants who, when completing the equal opportunities monitoring form, identify a disability. Survey data would be anonymised, meaning that it is not recorded in relation to individual claimants. It is therefore not possible to disaggregate what the position is for a specific individual who has claimed benefit. This limits the extent to which such survey data could be used to monitor whether or not individuals committing benefit fraud have a stated disability.
29. Our proposals apply equally to all claimants, both in terms of whether a sanction applies and also the possibility of mitigating the effects of sanctions.

30. Benefits that are paid as a contribution towards the extra costs of disability, for example Disability Living Allowance and Attendance Allowance are not sanctioned although they are disqualifying benefits (meaning a benefit fraud offence against either of these benefits would trigger a loss of benefit sanction in relation to any sanctionable benefit). Hardship payments will be available to those in greatest need whilst ensuring that the availability of hardship payments does not undermine the deterrent effect of sanctions.
31. In cases of prosecution all cases are subject to consideration under the Code for Crown Prosecutors in England and Wales and the Prosecution Code in Scotland; mitigation factors such as serious illness or disability will be considered under the public interest test, but the decision whether to prosecute depends on the individual circumstances of each case.
32. There is also guidance for Investigators which states that if a significant mental or physical condition is suspected at any stage of the investigation which suggests that prosecution or an alternative sanction is undesirable, the case should be referred to a senior officer to decide whether to:
- continue with the investigation,
  - refer for customer compliance action<sup>6</sup>,
  - close the investigation and record the appropriate outcome.
33. The proposals for the civil penalty and the circumstances in which it will be imposed for claimant negligence or claimant error will take into account whether was caused wholly or in part by a physical or mental condition.
34. Subject to the limits explained in paragraph 28 we intend to evaluate the impact of the fraud sanctions and civil penalties on disability through similar methods described above under “Age”.

## Race

35. The Department does not hold administrative data about the race of individual claimants. Claimants are encouraged to complete an equal opportunities form when making a claim for benefit, however, this is not required as part of the benefit claim and is therefore voluntary. Data obtained is survey data and anonymised, meaning it cannot be identified in relation to individual benefit

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<sup>6</sup> Customer Compliance is the term used for action intended to address risks in benefit cases where a full criminal investigation is not deemed appropriate but where substantial action is needed to:

- Find incorrectness;
- put it right and;
- ensure future customer compliance with their notification responsibilities.

claimants. The Department therefore does not hold data about the race of individual claimants who have committed benefit offences or who have committed culpable claimant error or been negligent.

36. The policy for dealing with benefit fraud, including the imposition of benefit payment disqualifications applies and will in future apply equally to all claimants, irrespective of a person's race. Similarly the potential for these to be mitigated would also apply in an equal way. The policy for civil penalties will apply equally to all claimants, irrespective of race.

## **Duty since April 2011**

37. With the exception of gender and age the Department has not routinely collected certain data on all of the groups covered by the new public sector duty taking effect from 5 April 2011. As a result we cannot use existing administrative data to identify the impacts of individual bill measures on some of these groups.

## **Gender reassignment**

38. The Department does not currently collect information on gender reassignment. The policy for dealing with fraud, including the imposition of benefit payment disqualifications applies and will in future apply equally irrespective of whether a person has undergone gender reassignment. Similarly the potential for these to be mitigated would also apply in an equal way. The policy for civil penalties will apply equally to all claimants irrespective of whether they have undergone gender reassignment.

## **Religion or belief**

39. The Department does not hold information on its administrative systems on the religion or beliefs of claimants only survey data. Based on our knowledge of the policy design for sanctions and civil penalties and of the claimant group this will cover, the Government does not envisage an adverse impact on these grounds. The policy for dealing with benefit fraud, including the imposition of benefit payment disqualifications applies and will in future apply equally irrespective of a person's religion or belief. Similarly the potential for these to be mitigated would also apply in an equal way. The policy for civil penalties will apply equally to all claimants irrespective of a person's religion or belief.

## **Sexual orientation**

40. The Department does not hold information on its administrative systems on the sexual orientation of claimants. The Government does not envisage an adverse impact on these grounds.

## **Marriage and Civil Partnership**

41. The Department does not hold information on its administrative systems on the civil partnership status of claimants. Based on our knowledge of the policy design

for sanctions and civil penalties and of the claimant group these will both cover, the Government does not envisage an adverse impact on these grounds.

## Monitoring and evaluation

42. The material in this Equality Impact Assessment covers the equality groups currently covered by the equality legislation, i.e. age, disability, gender, transgender, ethnicity, religion, sexual orientation, pregnancy/maternity, marriage and civil partnerships. The Department is committed to monitoring the impacts of its policies and we will use evidence, where available, from a number of sources on the experiences and outcomes of the protected groups.

43. In addition to the specific information from the operational benefit systems, described in detail in relation to the category headed “Age” above:

- We will use administrative datasets (drawn from DWP benefit systems) to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit sanctions and civil penalties imposed. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. However we will use the data provided through the labour market system, in cases of working age claimants – where fraud and claimant error is highest - to monitor trends on disability and race.
- We will use of qualitative research, where appropriate, and feedback from stakeholder groups to assess whether there are unintended consequences for the protected groups, and whether the policy is result in adverse consequences for particular groups.
- We will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of appeals and complaints in order to assess the broader impact of the policy.
- We will draw on broader DWP research where appropriate, as well as any research commissioned specifically as part of the evaluation of the measures.

## Next steps

44. This policy will be introduced in 2012, monitored and then reviewed after 12 months of introduction and then on a regular basis to ensure no unforeseen adverse impacts have occurred.

## Contact details

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