

# Loss of Benefit Provisions (One Strike and Two Penalties)

## Summary

1. Loss of Benefit Provisions (One Strike and Two Strikes) are designed to be a deterrent against abuses of the benefit system by applying a penalty to those convicted, or who have accepted a caution or an administrative penalty for a benefit fraud offence.
2. First introduced from 1 April 2002 the 'Two Strikes' provision made it possible to impose a penalty by restricting payment of benefit for 13 weeks if a claimant, their partner or a family member was convicted of a second benefit fraud offence, and that second offence was committed:
  - within 3 years of a previous conviction (where 2nd offence committed before 01 April 2008), or
  - within 5 years of a previous conviction (where 2nd offence committed on or after 01 April 2008)
3. From 1 April 2010 a 'One Strike' provision makes it possible to impose a penalty by restricting payment of benefit for four weeks when a claimant, their partner or a family member has been convicted, or has accepted a caution or an administrative penalty for a first benefit fraud offence, when the whole period of the fraud was committed on or after 1 April 2010.
4. Fraud Investigation Service (FIS) issue a determination notice to all relevant benefit processing teams to confirm that a loss of benefit penalty is appropriate and the period of that penalty.

## Introduction

5. A penalty for benefit fraud can be applied to most DWP benefits including, Jobseekers Allowance (JSA), Employment and Support Allowance (ESA), Incapacity Benefit (IB), and Income Support (IS). A penalty can also be applied to more than one benefit at the same time.
6. Depending on the benefit being claimed, different rules apply to how the penalty is applied. Accordingly while some benefits may be reduced others may be withdrawn completely.
7. FIS determine that a Loss of Benefit penalty is appropriate and notify the 'earliest' possible start date of the penalty period.
8. FIS use Form TS2 to notify their determination. Upon receipt of the TS2, your responsibility is to:
  - apply the benefit penalty to the right claimant;
  - apply the benefit penalty at the correct rate; and
  - align the start and end of the disqualification period to the claimants Benefit Week Ending day and apply it for the correct period.
9. More complete and detailed information about the FIS One and Two Strikes process can be found on the Fraud guidance site.

## **Conditions for restriction on payment**

### **First benefit fraud offence**

10. A 'One Strike' penalty applies if the claimant, their partner or a family member is entitled to a benefit that is subject to a penalty at any time within the disqualification period, and:

- is convicted of a first or a further non-linking benefit fraud offence; or
- agrees to pay an administrative penalty in respect of a benefit fraud offence or
- accepts a caution from FIS or the Local Authority (LA) in respect of one or more benefit fraud offences.

Providing that the whole of the offence was committed on or after 1 April 2010.

### **Second benefit fraud offence**

11. A 'Two Strikes' penalty can be applied if the claimant, their partner or a family member is convicted of a second or subsequent benefit fraud offence, where the second offence was committed:

- within 3 years of a previous conviction if it was committed before 01 April 2008, or
- within 5 years of a previous conviction if it was committed after 01 April 2008.

### **Definition of Family Member**

12. Family means the claimant, any partner and any dependent children.

13. A penalty can still be imposed if the offender is the JSA claimant's partner or a family member. However, the penalty should only be applied when directed to do so by FIS.

14. If the offender is the claimant's partner or a family member and they are removed from the JSA (IB) assessment, recalculate the case to remove the penalty.

## **Disqualification period**

### **First benefit fraud offence**

15. The 'One Strike' disqualification period is a fixed period of 4 weeks.

### **Second or subsequent conviction for a benefit fraud offence**

16. The 'Two Strikes' disqualification period is a fixed period of 13 weeks.

## **Impact of a One/Two Strikes penalty on Jobseeker's Allowance**

17. The application of a One/Two Strikes penalty results in the removal of the payability of JSA (Cont and/or IB) during the Disqualification Period.
18. To retain an underlying entitlement to JSA, a claimant must continue to meet all the conditions of entitlement during the disqualification period, e.g. they must be available for and actively seek work. In addition, the claimant must report all changes of circumstances throughout the disqualification period.
19. Following the application of a One/Two Strikes penalty, a claimant can make a claim for JSA Hardship.

## **Impact of a One/Two Strikes penalty on Joint Claims**

### **Single offender**

20. Payment restrictions apply to an offender who is a member of a joint-claim couple during the disqualification period.
21. In these cases, unless the couple qualify for JSA Hardship, the other member of the couple may receive either:
  - JSA(Cont), if they satisfy the conditions for it; **or**
  - JSA(IB) at a rate equivalent to a single person's applicable amount.

as long as they are not subject to any labour market sanctions.

### **Both offenders**

22. No JSA will be payable to a joint claim couple where:
  - both members of the couple are subject to a penalty for a benefit fraud; or
  - one member is subject to a penalty for a benefit fraud offence and the other is subject to a labour market sanction.
23. However, where both members of a joint claim couple are subject to a penalty and/or a labour market sanction, they can make a claim for JSA Hardship.

## **Impact of a One/Two Strikes penalty on Training Allowance**

24. A One/Two Strikes penalty **cannot** be applied to a training allowance.
25. If a claimant is subject to a One/Two Strikes penalty and then commences training the penalty will stop on the day before the training starts.
26. However if the training finishes prior to the end of the One/Two Strikes Disqualification Period, and a new claim to JSA is received, the penalty can be reinstated.

27. If the claimant is on training when the TS2 is received, **do not** apply the penalty. Access dialogue JA110: Notepad and ensure that the need to impose a penalty is recorded if a further claim to JSA is made.

## **Form TS2 – FIS penalty notification**

28. FIS issue a determination notice on form TS2 to confirm that a loss of benefit penalty is appropriate and the period the penalty is for. The notice includes the 'earliest' possible start date the penalty applies.

29. You must then align the start and end of the disqualification period to the relevant benefit week ending day.

<b>Example</b>	
<b>One Strike</b>	<b>Two Strikes</b>
Claimant is a Thursday benefit week ending day	Claimant is a Monday benefit week ending day
Start date shown on TS2 is 05.07.10	Start date shown on TS2 is 05.07.10
1st day of Disqualification Period is then 09. 07.10	1st day of Disqualification Period is 06.07.10
Last day of Disqualification period is 05.08.10	Last day of Disqualification period is 04.10.10.

30. Upon receipt of the TS2 from FIS, check the claimant details on the form to confirm you have the correct JSAPS claimant record or clerical papers:

- If the claimant details are incorrect return form TS2 immediately to FIS providing any relevant information;
- If benefit is in payment at another office send form TS2 to the new paying office.

## **TS2 received and JSA is not in payment**

31. If a TS2 notification is received from Fraud and JSA is not in payment, ensure that details of the penalty, including the start date (and final date for two strikes penalty only) are recorded in dialogue JA110: Notepad.

## **Penalty start dates**

32. In the case of a One Strike penalty the TS2 notification from FIS includes the 'earliest' possible start date for the fixed 4 week penalty period. These dates are then aligned to the relevant benefit payday and periodicity cycle.

33. In the case of a Two Strikes penalty the TS2 notification from FIS includes the 'earliest' start date for the fixed 13 week penalty period and a final date 5 years and 28 days after the date of the 2<sup>nd</sup> conviction.

34. In the case of a **Two** Strikes penalty, if the claimant is:

- in receipt of JSA the DM determines the fixed 13-week penalty period based on the earliest possible start date given on form TS2. This date is then aligned to the relevant benefit payday and periodicity cycle.
- once the disqualification period has started the two strike penalty period becomes a fixed 13 week period.
- not in receipt of JSA, the start date for the penalty can be at any time a further claim for JSA is made within a period of 5 years and 28 days from the date of the 2<sup>nd</sup> conviction. Therefore, the TS2 notification includes the initial start date for the 13-week penalty period and a final date, 5-years and 28 days later, which is the latest date from which the 13-week penalty period can start. In such cases the start date of the disqualification period is 28 days after the decision to award benefit.

## Applying the penalty

35. Different actions are required to apply the penalty depending on who is named as the offender on form TS2.

36. The following action is required to apply the penalty if the offender named on form TS2:

- is the claimant, **or**
- a member of a joint claim couple; **or**
- is the claimant's partner and is in the same age band as the claimant (ie if the claimant is aged over 25 the partner is also aged over 25)

Step	Action
1	Check if Flat Rate Maintenance (FRM) is in place, or due to be in place, for all or part of the disqualification period. The loss of benefit legislation makes provision for FRM deductions to take priority over One Strike or Two Strikes penalties.
2	Align the start and end of the disqualification period to the relevant benefit week ending day and implement the penalty for the correct period
3	Input a penalty onto the claim on dialogue JA210: Maintain Suspension and Decision Details from the first day of the Disqualification Period using appropriate A/R code: <ul style="list-style-type: none"><li>• FR0003 – One Strike</li><li>• FR0006 – Two Strikes</li></ul>
4	access dialogue JA200: Award and Decision to reassess the claim;
5	access dialogue JA405: Compute Payment, payments are shown as [NIL] for the penalty period;
6	Inhibit the system notification advising the claimant that benefit has reduced/ceased in dialogue JA405: Compute Payment. For New Claims, JSAPS will not allow the user to inhibit notification. In these cases, consider whether a payment will be issued immediately after processing

	<p>the new claim:</p> <ul style="list-style-type: none"> <li>• if no, process the new claim as normal then input the One Strike penalty as a change of circumstances. This will allow you to inhibit the notification in dialogue JA405: Compute Payment.</li> <li>• if yes, consider processing the new claim as a Build from Clerical a couple of days after the TAM date.</li> </ul>
7	access dialogue JA530: Case Controls and set a case control for the end of the penalty.
8	Issue DLJA 824, notifying the claimant that the penalty has been imposed and how long it is for.
9	<p>Access dialogue JA110: Maintain Notepad and record:</p> <ul style="list-style-type: none"> <li>• One Strike or Two Strikes penalty as the reason for the reduction;</li> <li>• who the offender is, for example the claimant, their partner or a family member;</li> <li>• the start and end dates of the disqualification period; and</li> <li>• details of the FIS contact.</li> </ul>

37. The following action is required to apply the penalty if the offender named on form TS2 is the claimant **and** is in a different age band from the claimant (ie the claimant is aged over 25 but their partner is aged 18-24)

Step	Action
1	Check if Flat Rate Maintenance (FRM) is in place, or due to be in place, for all or part of the disqualification period. The loss of benefit legislation makes provision for FRM deductions to take priority over One Strike or Two Strikes penalties.
2	Align the start and end of the disqualification period to the relevant benefit week ending day and implement the penalty for the correct period
3	Access dialogue JA091: Maintain Claim Details and Input Y in the EXCEPTIONAL CONDITIONS field within the checklist and press Enter.
4	<p>To apply the penalty:</p> <ul style="list-style-type: none"> <li>• enter Exceptional Condition Code 15,</li> <li>• the person it applies to</li> <li>• the start and end dates of the penalty period and</li> <li>• V in the Verified field.</li> </ul>
5	<p>Access the CLERICAL COMPONENTS screen within dialogue JA200: Award and Decision to reassess the claim. For each award period the penalty applies to record:</p> <ul style="list-style-type: none"> <li>• Input the appropriate number in the For field</li> <li>• Complete the Amount field. This will be the claimant's normal personal allowance reduced by the appropriate penalty amount.</li> </ul>
6	Press Enter and check the AWARD SUMMARY to ensure the clerical component amount is displayed

7	<p>Inhibit Inhibit the system notification advising the claimant that benefit has reduced/ceased in dialogue JA405: Compute Payment. For New Claims, JSAPS will not allow the user to inhibit notification. In these cases, consider whether a payment will be issued immediately after processing the new claim:</p> <ul style="list-style-type: none"> <li>• if no, process the new claim as normal then input the One Strike penalty as a change of circumstances. This will allow you to inhibit the notification in dialogue JA405: Compute Payment.</li> <li>• if yes, consider processing the new claim as a Build from Clerical a couple of days after the TAM date.</li> </ul>
8	access dialogue JA530: Case Controls and set a case control for the end of the penalty.
9	Issue DLJA 824, notifying the claimant that the penalty has been imposed and how long it is for.
10	<p>Access dialogue JA110: Maintain Notepad and record:</p> <ul style="list-style-type: none"> <li>• One Strike or Two Strikes penalty as the reason for the reduction;</li> <li>• who the offender is, for example the claimant, their partner or a family member;</li> <li>• the start and end dates of the disqualification period; and</li> <li>• details of the FIS contact.</li> </ul>

### **Clerical cases**

38. If the claimant's case is maintained clerically, calculate the penalty period using the same procedure as for a JSAPS maintained case.

39. In addition, make sure the claimant continues to receive any linked benefits to which they are entitled, for example Housing Benefit and Council Tax Benefit.

40. For clerically maintained claims:

Step	Action
1	complete form JSA14A to show the nil entitlement for the period;
2	cease all payments of JSA to the claimant by completing the 'Payment Record' panel on form JSA14P;
3	continue to record on form JSA14P the cumulative total of days of JSA(C) the claimant claimed;
4	BF the claim for the duration of the penalty;

### **Failure to apply a penalty - Overpayments action**

41. If a penalty is not applied in time and an overpayment of benefit happens treat it as an official error and follow the normal procedures to calculate and record an official error overpayment.

## Action during the disqualification period

### JSA ends before penalty start date

42. If JSA ceases before the penalty start date, access dialogue JA110: Notepad and ensure that the need to impose a penalty is recorded if a further claim is made.
43. This means that if the claimant does not return to benefit within the fixed 4-week period for One Strike the penalty cannot be imposed. However, if the claimant returns to benefit within 5 years and 28 days of the 2<sup>nd</sup> conviction for benefit fraud, a Two Strikes the penalty can still be applied. Entitlement ends during the disqualification period.
44. If the claimant's entitlement ends during the disqualification period:
- ensure dialogue JA110: Notepad has been updated with a record of the disqualification period and how many weeks of the disqualification period have been completed; and
  - Take normal closure termination action.

### Claimant re-claims during the disqualification period

45. If the claimant's entitlement to JSA ended during the disqualification period and they later re-claim within the remainder of the disqualification period:

Step	Action
1	Check any dormant records for form TS2 and dialogue JA110: Notepad for any record of a live or incomplete penalty period.
2	Confirm that the disqualification period goes beyond the new date of claim.
3	Reinstate the penalty for the remainder of the disqualification period.

### Claimant, partner or a family member convicted of a second benefit fraud offence and JSA subsequently awarded

46. Where JSA is awarded following a second conviction and no part of the penalty has been served, the first day of the disqualification period is 28 days after the DM decides to make the award. This cannot be later than 5-years and 28 days after the date of the second conviction.

### Action at the end of the disqualification period

47. When the penalty period ends, case control S098: Entitlement review outstanding appears on the Work Available Report JA72539.
48. When the case control appears:

Step	Action
1	check if any change of circumstance has been reported (Note: a JSA3 is only required for complex change of circumstances);



2	Recalculate the claimant's benefit, making sure it is paid in full from the end of the disqualification period.
3	You do not need to tell FIS if a claimant is overpaid JSA as a result of late or erroneous application of a One Strike or Two Strikes penalty.

## Reconsideration and appeals

### Reconsideration procedures

49. If a claimant asks for a reconsideration of a penalty, check that it was applied correctly and as directed by verifying the details against the TS2 penalty notification.

50. If the penalty has not been applied correctly take the following action:

Step	Action
1	Revise the decision.
2	Take any necessary corrective action.
3	Pay any arrears that are due.
4	Notify the claimant of the outcome.

51. If the penalty has been applied to the wrong claimant take any necessary action to apply the penalty to the correct person and take any necessary corrective action.

52. If the reconsideration request relates to any other aspect of a penalty:

Step	Action
1	Record the details in dialogue JA120: Event Maintenance or the claimant's clerical papers and forward the reconsideration request urgently to the DM.  <b>Note.</b> FIS should only be consulted if the DM believes that information on the TS2 is incorrect, this could include: part of the offence was prior to 1 April 2010 or the disqualification period is incorrect.  Do not stop any penalties at this stage.
2	After the DM has completed their reconsideration action record the reconsideration details in dialogue JA120: Event Maintenance or the clerical papers.
3	If a penalty is no longer applicable: <ul style="list-style-type: none"> <li>• revise the assessment to remove it; and</li> <li>• pay any arrears that are due.</li> </ul>
4	Notify the claimant of the decision. See Disputes and Reconsiderations for further information

## Appeals procedures

53. There is no right of appeal against a decision that benefit is not payable or is to be reduced following criminal penalties for benefit fraud offences where the only ground of appeal is that any of the convictions was wrong or that the offender did not commit the benefit offence in respect of which there has been agreement to pay an administrative penalty or a caution has been accepted.

## Conviction quashed

54. If a court quashes or sets aside a conviction, the decision to impose a penalty must be revised and arrears paid.

55. FIS will usually notify you if a court quashes a conviction. However, the claimant may provide evidence of the quashed conviction before FIS notifies you.

56. If a claimant provides evidence that a court has quashed their conviction:

Step	Action
1	Send the evidence to FIS.
2	Do not pay any benefit arrears until instructed to do so by FIS.

57. When FIS receives the evidence, they will reconsider the determination that a loss of benefit penalty applies and notify you of the outcome.

58. When FIS notifies you of the outcome of their reconsideration:

Step	Action
1	If the penalty is still applicable: record the reconsideration details in dialogue JA110 or on the case papers
2	If the penalty is no longer applicable, revise the original decision and notify the claimant of the outcome by letter using DLIS 902
3	Take any corrective action as appropriate to pay arrears or record an overpayment.

## Appendix 1 -Benefits/credits classification

Benefits that are not 'disqualifying' or subject to a penalty	Benefits that are 'disqualifying' but not subject to a penalty	Benefits that are both 'disqualifying' and subject to a penalty
For both One and Two Strikes purposes, disregard these benefits/credits /payments.	An administrative penalty, caution or conviction for a benefit fraud offence involving these benefits/credits could result in either a One or Two Strikes penalty against those benefits/credits in Column C. However, these benefits/credits will not have a penalty applied to them.	An administrative penalty, caution or conviction for a benefit fraud offence involving these benefits/credits could result in either a One or Two Strikes penalty. These benefits/credits would also be subject to either a One or Two Strikes penalty as a result of offences against any

		benefits/credits in Columns B & C.
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 Pension	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 #
Working Tax Credit	Guardian's Allowance	Widows Pension/Bereavement Allowance#
Child Tax Credit	Social Fund Payments	Widowed Mothers/Parents Allowance #
Pneumoconiosis (Workers' Compensation) 1979	Christmas Bonus	Industrial Injuries Disablement Pension #
2008 Diffuse Mesothelioma Scheme	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*	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	

## Notes

\* The Social Security Fraud Act 2001 does not specify these benefits/credits. However, the Social Security (Loss of Benefit) Regulations 2001 specify that these benefits/credits are not subject to a penalty. SI2001/4022

# These benefits/credits will be withdrawn for the duration of the penalty but the claimant will be able to claim/apply for either:

- IS / income-related ESA at a reduced rate,
- Pension Credit at a reduced rate, or

- JSA on grounds of hardship

\*\* The member of the couple who isn't the offender can receive JSA as a single person without having to apply for hardship payments.