

Guidance

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Housing Benefit Guidance

On

Housing Benefit Anti Social Behaviour Sanction

For

Local Authorities Participating in the Pilot Scheme

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Anti-Social Behaviour – Housing Benefit Guidance

1. Background

- 1.1. This guidance explains how and when to operate a sanction of Housing Benefit related to anti-social behaviour (ASB).
- 1.2. This measure was introduced by Section 31 the Welfare Reform Act 2007. This Section inserted Sections 130B to 130G to the Social Security Contributions and Benefits Act 1992
- 1.3. This legislation sets out the circumstances under which a Local Authority (LA) can sanction Housing Benefit. These circumstances are:
 - If a household receives a relevant order of possession related to anti-social behaviour and subsequently leaves the property, and;
 - The household is offered help and support and refuses to engage with the help offered, and;
 - The household doesn't comply with conditions within a written warning notice.
- 1.4. **When all of these conditions are met a sanction of Housing Benefit may be imposed.**
- 1.5. The intention is that the possible use of a sanction will encourage households to take up help and support they have previously refused.
- 1.6. It isn't the intention to sanction widely. It is anticipated that very few households will be sanctioned. The main users of this policy will be teams within local authorities that deal with anti-social behaviour.
- 1.7. Detailed guidance on the sanction processes is available in the document "Sanction of Housing Benefit in relation to anti-social behaviour: Guidance for pilot areas".
- 1.8. Given that there will be few sanctions, it is not expected that the sanction policy should have a significant impact on HB administration. **It will be good practice to appoint one or two people within the HB section to administer the sanction.**

2. Pilot Areas

- 2.1. The policy is being piloted in the following 8 LAs. The pilots will run from 1st November 2007 and end on 31st October 2009.
 - **Blackburn with Darwen Borough Council**
 - **Blackpool Borough Council**
 - **Dover District Council**
 - **Manchester City Council**

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- **New Forest District Council**
- **Newham London Borough Council**
- **South Gloucestershire Council**
- **Wirral Metropolitan Borough Council**

2.2. It is important to note that **only** Housing Benefit can be sanctioned in this way. Other benefits, including Council Tax Benefit and discretionary housing payments, can not be sanctioned under this ASB sanction legislation.

3. Relevant Legislation:

3.1. The main primary legislation which covers these arrangements is [Section 31 of the Welfare Reform Act 2007](#), which inserts Sections 130B to 130G to the Social Security Contributions and Benefits Act 1992.

3.2. The supporting secondary legislation is [The Housing Benefit \(Loss of Benefit\) \(Pilot Scheme\) Regulations 2007](#) (SI 2007/2202) and [The Housing Benefit \(Loss of Benefit\) \(Pilot Scheme\) \(Supplementary\) Regulations 2007](#) (SI 2007/2427)

4. Process

4.1. The following events have to occur in order to impose a Housing Benefit ASB sanction:

4.2. The household is served with a relevant Order for Possession. Relevant orders will relate to anti-social behaviour and are:

- An order made under Section 84 of the Housing Act 1985 (secure tenancies) on Ground 2 set out in Schedule 2 to that Act
- An order made under Section 7 of the Housing Act 1988 (assured tenancies) on Ground 14 set out in Schedule 2 to that Act; and
- An order made under Section 98 of the Rent Act 1977 (protected or statutory tenancies) in the circumstances specified in Case 2 in Schedule 15 to that Act

4.3. The court will inform the Department for Work and Pensions (DWP) of the possession order and DWP will retain central records of ASB evictions within the designated pilot areas.

4.4. Each LA should have a designated sanction coordinator, who will be separate from the Housing Benefit administration team. DWP will inform the sanction coordinator that there has been a relevant Possession Order.

4.5. The Possession Orders may be suspended – that is, the household may be entitled to remain in the property for the time being, subject to

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conditions within the Possession Order. A sanction of HB could not be applied in this case because the household has not left the property.

- 4.6. DWP will run monthly scans of future claims of HB against details of members of the household. A new claim at a different address would indicate that a person has left the property on which they received the Possession Order.
- 4.7. The household will be approached by the LA who will encourage the individual(s) to take up a programme of rehabilitation. The intention is that everyone who is evicted is given the opportunity to undertake rehabilitation.
- 4.8. For households that engage with the support offered, there will be no sanction. The household will be warned that if they do not take-up rehabilitation, Housing Benefit *may* be sanctioned.
- 4.9. If the person refuses help or to undertake a suggested rehabilitation programme the LA must decide the appropriate course of action on a case by case basis. A sanction won't be appropriate in every case.
- 4.10. If a decision is taken that a sanction is appropriate, the local authority must issue a written Warning Notice to the household. **At this stage, the sanction coordinator will inform HB administration that a Warning Notice is to be issued and that HB *may* be sanctioned.**
- 4.11. A sanction is imposed when the deadline has passed and the conditions within the Warning Notice have not been met.

5. Warning Notices

- 5.1. If the LA decides to use a Housing Benefit sanction a written warning notice will be sent to the household. The Warning Notice will specify certain action(s) that a member or members of the household must take, and set out a date or dates by which the action(s) must be completed. (leg ref)
- 5.2. The sanction coordinator will inform the nominated HB administration officer whenever a warning notice is issued informing them of the date that it expires to allow them to prepare. They should then, when the warning notice has expired, inform them whether or not the household has complied with the conditions of the Warning Notice.
- 5.3. **It will be good practice to ensure that there are regular communications between the sanction coordinator and the nominated HB administration officer.**
- 5.4. If the person has failed to co-operate without **good cause** (See section 6) their benefit is to be sanctioned.

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- 5.5. The HB administrator should satisfy himself that the necessary conditions have been met for a sanction to be imposed, and on questions of fact. Things to consider should include:
- That a relevant Order for Possession has been made
 - That the household left the property
 - That a written warning notice has been issued
 - That the date for action in the warning notice has passed,
 - That the household did not comply with the requirements of the warning notice without “good cause”
 - That the date of issue of the warning notice was more than 1 week before the date action had to be taken
 - That the warning notice was sent to the correct address
 - That the sanction is being applied to the right person
- 5.6. The sanction coordinator should provide sufficient evidence the above conditions have been met. It is essential that good records are kept throughout the process.
- 5.7. **The HB Administrator should defer to the judgement of the sanction coordinator on the appropriateness of a sanction. That is, he should not refuse to sanction a case because he doesn't agree with the policy. The decision on the appropriateness of a sanction has been taken by the sanction coordinator in discussion with others. A refusal to sanction should only be made on questions of procedure or fact.**

6. Good Cause

- 6.1. Section 5 of [The Housing Benefit \(Loss of Benefit \) \(Pilot Scheme\) Supplementary\) Regulations 2007](#) sets down the matters and circumstances to be taken into account when deciding whether a person has or does not have good cause for failing to undertake action specified in a warning notice. In order to establish good cause the following list provides examples of circumstances which are to be taken into account:
- Action specified in the warning notice which might cause significant harm to the persons health or subject them to excessive physical or mental stress
 - The person was suffering from some disease or mental disablement which has prevented him from taking action as it would put his health at risk or put at risk the health of other persons

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- Whether the person misunderstood the requirement of the warning notice due to the persons learning, language or literacy difficulties or because of misleading information contained in the warning notice
 - Failure to take action in question resulted from a sincerely held religious or conscientious objections
 - If the person has any caring responsibilities which would make it unreasonable to take action
 - If the person had to attend as a party to any proceedings, or as a party to proceedings, witness or juror
 - Person was arranging or attending a funeral of immediate family or close friend
 - The person was required to deal with some domestic emergency
- 6.2. This list is not exhaustive. If a person has been appointed to act on behalf of the tenant, this could add weight to some of the above criteria
- 6.3. **How do claimants (including a person appointed to claim on behalf of the tenant) claim good cause?**
- 6.4. The warning notice should clearly state that the household should inform the local authority if there is a good reason why they cannot carry out the actions contained in the warning notice.
- 6.5. Households should preferably inform the LA – normally the sanction coordinator – in advance if they know they will be unable to carry out an action required by the Warning Notice. If good cause is accepted, the sanction coordinator should inform HB administration of this and arrange for alternative support. A sanction wouldn't be applied in these circumstances.
- 6.6. However, if the household fail to contact the local authority and the deadline for action in the warning notice passes, the sanction coordinator should contact the household to establish if there is good cause for them not engaging with rehabilitation.
- 6.7. Where good cause is claimed retrospectively – that is, a sanction has already started because the conditions in the Warning Notice were not met and good cause hadn't previously been claimed – then the HB administration officer should liaise with the sanction coordinator when considering whether good cause should apply.

7. Who Decides?

7.1. The decision to establish whether good cause has been proven should be a joint decision between the sanction coordinator and the HB administration Officer. Further advice from specific experts may be considered in order to achieve the correct outcome

7.2. What happens if good cause is accepted or not accepted?

7.3. If good cause has been established the person concerned should be notified immediately and alternative arrangements or mechanisms have to be put in place to offer a rehabilitation programme that would take into account any personal circumstances.

7.4. If good cause is accepted retrospectively, the sanction should end and benefit withheld under the sanction should be refunded.

7.5. If good cause has not been proven, then the appropriate local authority will have to notify the person concerned of the decision immediately and take action to continue with the sanction process as set out below.

8. The Sanction

8.1. When all conditions have been met Housing Benefit is to be sanctioned from the first Monday following the expiry of the date on the Warning Notice

8.2. Regulation 4 of the [Housing Benefit \(Loss of Benefit\) \(Pilot Scheme\) Regulations 2007](#) sets rules on how and when to deduct Housing Benefit. Benefit is to be sanctioned in 3 phases:

Phase A

This is the period of 4 weeks beginning on the 1st Monday of the restriction period and during this period Housing Benefit is to be reduced by 10%.

Phase B

This is the period of 4 weeks beginning on the Monday following the last day of Phase A and during this period Housing Benefit is to be reduced by 20%.

Phase C

This is the remainder of the restriction period and begins on the Monday following the last day of Phase B. During this period benefit is to be reduced by:

- i. 100%; or

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- ii. 30% where the former occupier is a person in hardship under Regulation 5 (meaning of “person in hardship”). For further details see Section 9 - “Hardship”.
- 8.3. All households should go through the 10% and 20% bands regardless of hardship status – this only changes the final rate of 100% or 30%.

Example

You are told by the sanction coordinator that a Warning Notice was issued 7 January 2008, and that the claimant was required to take specified action by 28 January 2008. You are subsequently informed on 29 January that the conditions within the Warning Notice were not met. Good cause has not been claimed. After checking the facts, you should sanction HB from the following Monday – 4 February 2008.

The sanction would be

4 Feb – 2 Mar:	a 10% sanction of HB
3 Mar – 30 Mar:	a 20% sanction of HB
31 Mar - ...	a sanction of 100%, or 30% if hardship is claimed and granted.

9. Calculating ASB-Sanction Deductions

- 9.1. Each Local Authority who is participating in the ASB Sanction will have different ways on how to put on the deductions on their Housing Benefit Administration systems.
- 9.2. The sanction rate of 10%, 20%, 30% or 100% is to be applied to the amount of HB that would in normal circumstances be paid to the claimant. The exception to this is where an overpayment of benefit is being deducted from the HB. In these circumstances, the sanction is applied to the gross amount of HB prior to overpayment deductions being factored into the actual amount paid.

Example

Applicable amount (say)	£58	
Maximum HB	£80	(takes account of non ineligible charges such as fuel charges, and NDDs)
Income	£0	
HB due	£80.	

With a 30% sanction HB to be paid would be £56 (£80 less 30%).

If an overpayment was being collected at £2 per week, the 30% reduction would still be applied to the £80. It is your decision whether to continue to collect the overpayment from the £56 “gross” HB.

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- 9.3. How you operate the sanction to arrive at the correct level of HB is for you to decide. It has been suggested that one way of doing so will be to reduce the applicable amount. An Excel tool is available to enable you to calculate the level of applicable amount to apply where HB is to be reduced by 10%, 20% or 30%. See Annex A.
- 9.4. Those being sanctioned should still report changes of circumstance that might affect their underlying entitlement to HB. When any changes are notified they should be processed in the normal way. It will be necessary to recalculate the new level of gross HB and the new level to be paid as a result of the sanction.
- 9.5. This may create over or under payments.

Example of an under payment:

Mr Smith is earning a low-income wage and is in receipt of £56 HB after a 30% ASB sanction deduction. On 1st June he reports a change of circumstance, which confirms that he is no longer in receipt of income after his temporary employment had finished on 30th April. His HB has been recalculated and an increase in HB has occurred from 30th April. This means that an underpayment of benefit occurred from 30th April to 4th June and therefore the ASB sanction deduction has to be re-calculated and the adjustments have to be deducted from 4th June to reflect the correct amount.

Previous maximum HB Total was £80

30% deduction of £80 = £56

ASB weekly deduction £24

From Monday 4th June

New Maximum HB Total is £110

30% deduction of £110 = £77

ASB weekly Deduction £33

In the 5 weeks between 30th April and 4th June there has been an HB underpayment of (5x 30) £150. The sanction should have been £33 for these 5 weeks but has been £24. So the sanction is underpaid by (5x9) £54

When HB is next paid the underpayment of £150 HB should be paid, less the £54 by which the sanction has been underpaid.

Example of an Overpayment:

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Mr Smith notifies the local authority on 31st August that his circumstances have changed from 1st August, which has led to an overpayment of HB.

Prior to 1st August:

Mr Smith HB Total was £110

30% sanction deduction of £110 = £77

ASB weekly deduction £33

From 1st August Mr Smith should have been entitled to £80 maximum HB and after 30% ASB deduction the total weekly benefit is £56 with a £24 sanction.

HB maximum total £80

30% of deduction of £80 = £56

ASB weekly deduction £24

The gross overpayment is (4x30) £120. However the sanction has been overpaid by (4x9) £36. **The actual HB overpayment that LAs should record and consider recovering is (£120 less £36) £84.**

9.6. **When any changes of circumstance are received for a household being sanctioned you should liaise with the sanction coordinator to see if the change has a material affect on the application of the sanction.**

10. Hardship

10.1. Hardship may be claimed by households who face a sanction. **Claims to hardship must be made in writing.** A form for this purpose has been drafted and can be issued to the household.

10.2. There are a number of matters that circumstances in which hardship must be granted. These are set out in Section 5 of [The Housing Benefit \(Loss of Benefit\) \(Pilot Scheme\) Regulations 2007](#). A former occupier is a "person in Hardship" if:-

- She is pregnant
- A member of the family is pregnant
- He is a single person aged less than 18 or
- He is a member of a couple and both members are aged less than 18
- He or his partner is responsible for a child or young person who is a member of the former Occupier's household

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- Devotes a considerable portion of each week to caring for another person
- Is aged 60 or more

10.3. Even if none of the above factors apply, there is still discretion to award hardship if:

- You are satisfied that unless Housing Benefit is paid, he or a member of his family, will suffer hardship, taking into account –
 - i. the resources which are likely to be available to his family and the length of time for which they might be available;and
 - ii. whether there is a substantial risk that essential items including food, clothing and heating will cease to be available to him or a member of his family, or will be available at considerably reduced levels and the length of time for which this might be so.

10.4. A claim for hardship may be received at any point, but only applies from Phase C..

10.5. Ideally, the claim will be received before Phase C has started and the decision on whether to award hardship should be made in time for the 30% rate of reduction to be applied from the beginning of Phase C.

10.6. Where a hardship claim is received after Phase C has already started, the claim should be considered as soon as possible. Where hardship is granted, the 30% rate of reduction should be applied from the first Monday following the date the claim is received.

10.7. Hardship cannot be backdated beyond the date of receipt of a written claim.

10.8. You should seek to verify the facts and matters that form the basis of the household's claim to hardship. The household should be asked to provide copies of any documents that provide evidence of their circumstances. For example, a copy of their birth certificate, benefit award letter or benefit book, letter from their GP etc. The sanction coordinator will also have knowledge on their circumstances and will be able to verify certain facts.

10.9. The decision on whether to grant hardship is essentially a benefit decision, and as such should be taken by the HB administrator. However, in reaching a decision the HB administrator should liaise with the sanction coordinator, who should have knowledge of the case.

10.10. A decision not to grant hardship can be appealed against. You should not make any change to the rate or reduction until the appeal is heard

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and a decision made. However, if hardship is subsequently granted, it should be backdated to the date of receipt of the original claim (or to the date when the 100% reduction kicked in if later than the application date).

10.11. In some cases a claim to hardship may have been refused, but the circumstances of the household may change during the duration of a sanction such that hardship might now be applicable. If circumstances change the household should submit a fresh claim to hardship. This new claim should be reviewed taking account of the new circumstances and the legislation. Hardship may be granted from the date this new claim is received.

11. Notification Letters

11.1. Any change to the rate at which Housing Benefit is paid will require the tenant or landlord to be informed of the change. The rules of Regulation 90/Schedule 9 of the HB regulations 2006 (Reg 71/Sch 8 for pensioners) apply.

11.2. If the Housing Benefit payment is made directly to the landlord then the LA must notify the landlord of the amended total of Housing Benefit payment after the ASB sanction. However, LAs are not required to notify the landlord of the reason of the reduction.

11.3. If Housing Benefit has been paid directly to the claimant, then the LA does not need to notify the landlord of the reduction in benefit.

12. Appeals

12.1. The household can raise a complaint at any stage of the process and ask for decisions to be reviewed. There is no right to appeal to a tribunal until the sanction is imposed and so any such complaint should follow your existing complaints procedure.

12.2. If a sanction is imposed, this is a benefit decision and can be appealed in the same way as any other benefit decision, including to the Tribunal Service.

12.3. The Tribunals Service has been informed about the sanction and should be prepared to deal with appeals against the decision to sanction.

12.4. This measure has attracted a lot of interest and a lot of criticism from various quarters. It is therefore likely that interested parties will be monitoring the use of the sanction and potentially willing to assist households up to and including funding a challenge by Judicial Review.

12.5. In the event that a Judicial Review becomes likely you should inform DWP immediately.

13. Other sanctions

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13.1. Housing Benefit sanction will operate concurrently with any sanction of a different benefit. This means that if Housing Benefit is being sanctioned due to this measure and Jobseekers Allowance (JSA) is being sanctioned due to a labour market sanction both JSA and HB can be sanctioned at the same time.

12.1 If the former occupier's Housing Benefit is subject to both reduction under the these regulations and a reduction due to the application of regulations made under section 7 of the Fraud Act (loss of benefit for commission of benefit offences – the “two strikes” sanction) their Housing Benefit in any week of the restriction period is to be reduced by the greater of either-

- the amount by which it would be reduced under the ASB sanction;

or

- the amount by which it would be reduced under regulation 17 of the Social Security (Loss of Benefit) regulation 2001 (b) (*check ref*)

13.2. This means that if a person's Housing Benefit is subject to two sanctions by virtue of a two-strikes and an ASB sanction, both sanctions will operate concurrently but not accumulatively. So if a person is subject to a sanction of 40% because of the two-strikes rules and 30% because of an ASB sanction, the person would be subject to a Housing Benefit sanction of 40% for duration of the two-strikes sanction, and thereafter 30% because of the ASB sanction.

13.3. Example

<p>A “two-strikes” sanction of HB is in place at a rate of 20%. This is due to end 21 March 2008. A HB sanction for ASB starts 3 March 2008.</p>			
Week Commencing	ASB deduction	“two-strikes” deduction	Actual HB reduction
25 Feb	0%	20%	20% (two-strikes)
3 Mar	10%	20%	20% (two-strikes)
10 Mar	10%	20%	20% (two-strikes)
17 Mar	10%	20%	20% (two-strikes)
24 Mar	10%	0%	10% (ASB)
31 Mar	20%	0%	20% (ASB)
<p>In this example, the ASB sanction runs in the shadow of the two-strikes sanction until the two-strike sanction ends.</p>			

13.4. The Department expects that there will be very few, if any, cases where sanctions overlap. Nevertheless, this is something that we will monitor carefully during the pilot period.

14. Discretionary Housing Payments

14.1. Households who are sanctioned will not be eligible to claim a Discretionary Housing Payment on the grounds that the ASB sanction is causing them hardship. Exceptionally, there may be other grounds on which a DHP might be granted.

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Annex A



Microsoft Excel
Worksheet