

Independent review of Jobseeker's Allowance (JSA) sanctions for claimants failing to take part in back to work schemes

Evidence submitted by

Dr David Webster

Honorary Senior Research Fellow, Urban Studies, University of Glasgow

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1. For 29 years to 2010 I led Glasgow City Council's housing policy and planning unit and I have been a specialist adviser to the House of Commons Environment, Social Security/Education & Employment, and Scottish Affairs Committees. I have extensive experience of social issues. I have been researching unemployment for 20 years and my PhD by published work is available at <http://theses.gla.ac.uk/1720>. I am currently carrying out a critical examination of unemployment benefit sanctions and disallowances in Great Britain since 1911. The present submission is based on this work.

2. I have very serious reservations about this so-called 'independent review', but I am submitting evidence in the hope that it may lead to improvement of at least some aspects of what is a hugely damaging system of JSA and ESA sanctions. The system of 'sanctions', as opposed to unavoidable entitlement conditions, is fit only for abolition, and nothing in this evidence should be taken to suggest that it can be rendered acceptable by any type of reform.

3. Due to the restrictive terms of reference of the review, this submission deals with only a small proportion of the very large number of issues that urgently need to be addressed. Over the past year I have produced a number of papers on the sanctions/disallowances system. These are listed among the references at the end and should be read for the fuller analysis which they give. If a source is not given for points made in this response, it (and supplementary information) will frequently be found in my other papers.

4. Please note that nothing about this response is confidential and I wish it to be freely available to anyone who may want to see it, or to whom it might be of interest.

Background to the Review

5. It is important to make some observations about the circumstances which led to the establishment of this review in the form it has taken.

6. The review originated in an amendment to the Jobseekers (Back to Work Schemes) Bill 2013 negotiated with the then Employment minister Mark Hoban by the then Opposition spokesmen Liam Byrne and Stephen Timms in order to provide an excuse for the Labour Party in the House of Commons to facilitate the Bill's emergency passage and to abstain in votes on the Bill on 19 March 2013.¹ This Bill/Act constitutes a grave attack on the rule of law, as was explained in a very able speech in the Lords by Lord Pannick; passage of the Act

was analogous to a private insurance company bribing or threatening politicians into allowing it to default on obligations which the courts had found it had towards its policyholders. The official Opposition in the House of Commons should have done everything possible to prevent its passage, as indeed did the SNP, Plaid Cymru, DUP, SDLP, Alliance, Green Party, 44 Labour rebels in the House of Commons, and the entire Labour group in the House of Lords.

7. Two days after the Commons votes, Liam Byrne asserted ‘I’ve heard too many stories – not least from my own constituents – about people being wrongly sanctioned. And that’s why I insisted – and won – an independent review of the sanctions regime with an urgent report to Parliament. We need to use this to ruthlessly expose bad behaviour. It is actually one of the practical things we can do to make a difference over the next year.’² However, this comment is gravely misleading; no ‘ruthless exposure’ is going to occur. In his negotiation with Mr Hoban, Mr Byrne failed to ensure that appropriate terms of reference for the review would be inserted in the Act, or to secure any guarantees about these terms from Mr Hoban. The terms of reference as published on 15 May 2013 (see below) omit any reference to the issue of people being wrongly sanctioned or indeed to most of the issues which Parliamentarians asked to be covered by the review. For instance, in the Lords debates (21 and 25 March), three amendments were moved seeking to widen the terms of reference (see **Appendix 1**). All were rejected by ministers at the time, and none but 4(f) has been included in the published terms of reference. This is in spite of an assurance given by Lord Freud, Parliamentary Under-Secretary (25 March, col.941) that ‘The Government are happy to consider a wide range of areas for the review, but it would be unhelpful to lock down the terms of that review at this stage. Despite my earlier comments, the amendments list a number of areas the review could usefully consider. I am happy to confirm what I said on Thursday, and give a commitment that we will discuss further with the Opposition the scope of the review.’ If indeed there was any subsequent discussion with the Opposition, then it was without result.

The Reviewer

8. Mr Byrne also failed to secure any assurances about the appointment of the reviewer. For a review of this kind, one would expect the reviewer to possess front-line experience of working with disadvantaged people, or to be part of a panel collectively possessing such experience. One would also expect the reviewer to be accepted as impartial or at least to be part of a panel representing a balance of interests.

9. The reviewer appointed in September 2013 apparently has some twelve years of work experience, exclusively in backroom roles, split between the Treasury and a politically committed ‘think tank’ (the Policy Exchange). His recent appointment to the Social Security Advisory Committee (January 2013) and move to Which? in October 2013 will as yet have done little to broaden this experience. Contrast, for instance, the case of William Beveridge, who prior to attempting to influence national policy went at the age of 24 to work at the Toynbee Hall settlement in the east end of London, where he found out a great deal about unemployment and unemployed people at first hand (Price 2000, p.11).

10. So far as I can ascertain, Mr Oakley has never published a paper in a peer-reviewed journal. His published views on social security conditionality would generally be agreed to lie at an extreme of the current debate. In two reports published in 2011, Mr Oakley set out the following views:

Oakley & Saunders (2011)

- Conditions on claimants should be increased so that more time each week has to be spent engaging in job search. The ambition should be that job search becomes more like the typical 35 hour week of those in full time employment. (This proposal has since been implemented by the Coalition government in the form of the ‘Claimant Commitment’ currently being rolled out across Britain.)
- Those claimants who do not qualify for contribution-based JSA should be required to search for any work from day one of their claim, rather than the current situation where they are allowed to turn down non-preferred jobs for the first 12 weeks. As a general rule, where people claiming welfare are capable of working, they should be required to look for work and to accept employment when it is offered, even if it pays no more than their welfare benefit.
- Sanctions need to become a stronger tool for influencing the behaviour of those who fail to fulfil activity conditions. Instead of impacting on only one part of one benefit, they should be more closely related to total benefit eligibility. They should not necessarily be topped up by other government payments. To ensure that dependents are not negatively affected, innovative solutions need to be developed. For instance claimants who are sanctioned might have their benefits paid through smart cards that limit the sorts of goods that can be bought. Managed payments for rent and bills and the use of non-financial sanctions might also be considered.
- Those without a contribution record should be subject to stronger conditionality than other claimants.

Doctor & Oakley (2011)

- Claimants should have to actively seek work for two weeks before becoming eligible for benefit.
- Work Programme providers should be allowed to put in place schemes and measures that act as a deterrent to claiming, as well as those that ‘help’ in finding a job and improving employability. This would allow them to use workfare type arrangements if they felt them to be appropriate.
- A formal pilot of mandatory workfare arrangements for specific groups of claimants should be introduced.

Doctor & Oakley (2011) also achieved notoriety due to its widely reported claim (highlighted in line 5 of its Executive Summary) that jobseekers in the UK spend an average of only eight minutes per day looking for jobs. On p.30 it was explained that this claim was based on a paper by Krueger & Mueller (2008b). Doctor & Oakley claimed that this was ‘more recent’ than, and therefore (they implied) superseded, a DWP report (McKay et al. 1999) which had found that the average JSA claimant spent 7 hours per week looking for work. Doctor & Oakley omitted to report that McKay et al. had also found that for almost two-fifths of JSA claimants, the amount of search was limited by costs (such as fares and phone charges) and for one quarter, by other factors, such as sickness or unavailability of transport; they also failed to mention McKay et al.’s findings in their Executive Summary. On consulting Krueger & Mueller (2008b) I found that no information was provided about the source of their data. For this I had to go to Krueger & Mueller (2008a), apparently not consulted by Doctor & Oakley. This revealed that their data dated from 2000-01- little later than McKay et al. whose fieldwork was in Autumn 1997 - and were based on a mere 245 ‘diary days’ of

reporting by UK unemployed people! These 'diary days' may have included weekends. The number of actual persons included in the sample, and the sampling procedure, were not reported. McKay et al. had a sample of 4,777 people, at least 19 times larger and very likely more. Moreover, Krueger & Mueller's sample were unemployed as defined by the ILO. In other words only about two thirds will have been JSA claimants, the others including many people only slightly interested in getting a job, such as middle class mothers toying with the idea of returning to work, or students thinking of getting a part time job. This would lead to an underestimation of the time spent in job search by claimants.

11. Despite this background, it is to be hoped that Mr Oakley will listen attentively to what he is told by respondents to the review, and will do his best to make recommendations aimed at mitigating those issues lying within his terms of reference, whether this is to the liking of Coalition ministers or not.

The Terms of Reference

12. The terms of reference for the review published on 15 May 2013 stated:

1. It will review the clarity of the initial information provided to Jobseeker's Allowance claimants in the notifications provided to them about the consequences of failing to take part in these back to work schemes.
2. It will evaluate, where a claimant has failed to participate, how the sanctioning process then worked. This will include reviewing the clarity of information given to claimants to help them navigate this process. This will include what information was provided to explain that they can avoid a sanction by showing good cause and that they can apply for a review or appeal if a sanction is imposed.
3. It will evaluate, where a sanction has been issued, the clarity of the information provided to claimants about why the sanction was issued, and the options they have, including application for hardship payments, and an explanation of the review and appeals process.
4. It will include recommendations about how the government can improve the information provided to claimants in relation to Jobseeker's Allowance sanctions and appeals.

13. Mr Oakley has supplemented this with some questions of his own:

- (1) To what extent do JSA claimants understand that when they are referred to a 'back-to-work' scheme (such as the Work Programme) their benefit may be sanctioned if they don't take part?
- (2) To what extent does a claimant's failure to meet their conditions arise from them not having a sufficient understanding of what is expected? Are there ways in which this could be made clearer to them?
- (3) Do sanctioned claimants understand why they have been sanctioned, and if not are there ways in which this could be made clearer to them?
- (4) Do sanctioned claimants feel informed throughout the sanctions process, and if not how could their awareness be improved?
- (5) To what extent are sanctioned claimants aware of the help available to them from Jobcentre Plus? For instance are they aware of how to appeal a decision or how to seek help through hardship payments? Are there ways in which this could be made clearer to them?

14. These terms of reference severely restrict the usefulness of the review, and also its practicability. So, for instance, Mr Oakley in his ‘Flyer for Claimants’ has stated that he only wants to hear from sanctioned claimants if their ‘offence’ was non-participation in a Back to Work scheme. This is likely to lead to a large amount of valuable experience being overlooked, since Back to Work scheme sanctions are only around one quarter of the total. Moreover some categories of sanction will be omitted entirely from the review, since they do not arise in Back to Work schemes. This would include those for not actively seeking work (now the largest category), voluntary leaving/misconduct, and non-availability for employment.

15. In what follows, I work through the issues according to the sequence of events in the sanctions process. Key issues which are **excluded** from consideration by the terms of reference are mentioned and their exclusion is noted. Recommendations are shown in the text and also as a list in **Appendix 2**.

Harsher Penalties, Fewer Safeguards

16. Many of my recommendations relate to the need for better safeguards for claimants. It has become commonplace for both politicians and DWP officials (e.g. Liam Byrne; Neil Couling, DWP Work Services Director) to claim that ‘there have always been sanctions’ in the British national insurance system. That is in fact incorrect. Conditions date from 1911, but sanctions were a much later innovation and did not exist on any scale until the 1990s. Leaving that aside, what these commentators appear ignorant of is the extent of the changes that have taken place in the system of penalties. The story has been one of massively increased severity accompanied by massively reduced safeguards; penalties are now frequently much greater than those commonly imposed by the courts, but without any comparable protections.

Increased Severity

17. From the foundation of unemployment insurance in 1911 until 1986, the greatest penalty that could be imposed was 6 weeks’ loss of benefit. This was increased to 13 weeks in 1986, and then to 26 weeks in 1988. In October 2012, the Coalition government, without attempting to give any rationale other than an unsubstantiated claim that ‘some sanctions were not proportionate to the failure’, increased this hugely further, to 156 weeks (3 years). It is a similar story with the income provided to claimants while denied benefit. For several decades prior to the Jobseekers Act 1995, they received Supplementary Benefit or Income Support as of right on the normal rules, with a cash or percentage deduction. In 1995, the rules were changed to substitute hardship payments, not available as of right, calculated on their own especially harsh rules, and not paid for the first two weeks except for arbitrarily defined ‘vulnerable groups’ accounting for only around 1 per cent of sanctioned claimants. Prior to October 2012, sanctioned claimants normally continued to receive National Insurance credits towards their state retirement and other future benefits. These credits were removed by the Coalition in October 2012, essentially by stealth since this was not mentioned in the Explanatory Memorandum, and storing up problems of poverty for the future.

Fewer Safeguards

18. In the original system, unemployment benefits could only be removed by a Court of Referees, a tripartite body comprising an employer, a trade unionist and a lawyer chairman.

Later, decisions were taken by an independent Adjudication Service, whose Chief Adjudication Officer made an annual report to Parliament, with a right of appeal to a Social Security Tribunal constituted similarly to a Court of Referees. In 1998, however, the Labour government implemented proposals drawn up by the previous Conservative government, and abolished independent adjudication, giving decision-making power to the Secretary of State. Appeal to a Tribunal was retained but has been little used by claimants due to the difficulty of using the system.

19. What we have now arrived at is a grotesque disproportion between the severity of the penalties being imposed by DWP officials under the instructions of ministers, and the slightness of the safeguards for claimants. On any sensible view, the penalties have become hugely excessive, taking into account that very few of the alleged ‘offences’ by claimants have any material effect on their likelihood of getting a job. In 1913, when the only penalties were for voluntarily leaving a job or losing it through misconduct, it could be fairly stated that the claimant’s unemployment was initially due to their actions, although it was rightly recognised that this would cease to be true within quite a short period, which was fixed at 6 weeks. But it is obviously foolish to claim that if someone only applies for 29 jobs in a fortnight rather than 30, or turns up 2 minutes late for an interview, that this is the cause of their unemployment.

20. Therefore the sensible approach would be to have a huge reduction in the level of penalties, at least back to the pre-1986 6 weeks, together with a restoration of the pre-1995 provision for hardship. Failing this, if ministers insist on maintaining the current extreme level and high frequency of penalties, they should not be surprised to find themselves facing pressure to provide the much greater protection for claimants proposed here, such as provision for compensation of those wrongly sanctioned.

General issues of communication

21. It is clear from abundant case histories that there is a very high level of confusion among claimants about sanctions and that there is often little effort on the part of DWP staff to explain the system. The general standard of communication by DWP staff is poor, with many reports of sloppily drafted letters, unreturned phone calls, missing paper work etc.

22. Something not generally realised is that the Coalition’s huge intensification of sanctions is itself responsible for lowering standards of administration within Jobcentre Plus. Sanctioning activity is consuming an ever-increasing proportion of JCP resources. For instance, the total of ‘reconsiderations’ under the Coalition has reached a new high of 20,000 per month, from a previous level of 5,000 per month. This is an extraordinary drain on resources. Moreover, voluntary organizations report that the escalation of sanctions is placing an increasing burden on them, diverting resources from their own proper tasks (Homeless Watch 2013, p.19; Naysmith 2014). The DWP’s claim in its Explanatory Memorandum to the Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012, para.10.1, that the lengthening of sanctions ‘imposes no costs on the private sector or civil society organisations’ appears to have been mendacious.

Recommendation 1: Ministers should reconsider their priorities and give proper weight to Jobcentre Plus’s primary tasks of nurturing the labour force and improving the efficiency of the labour market. This issue is EXCLUDED.

Process prior to sanction decision

23. A host of examples show that in many cases letters containing instructions which may result in a sanction if not complied with, or information vital to the claimant's rights in the sanctions process, are not being delivered or indeed not being sent in the first place. This particularly affects homeless people.

Recommendation 2: All letters sent to claimants which may result in a sanction (e.g. appointment letters) or which give information about sanctions should be sent by recorded delivery. Proof of delivery should be required before any sanction can be imposed.

24. In October 2012 the Decision Maker's Guide was changed to enable Jobseekers Directions to be given orally (Memo DMG 37/12, 'JSA sanctions from 22.10.12', para.39). This invites abuse and guarantees misunderstandings.

Recommendation 3: All directions should be in writing and if not handed in person to the claimant should be posted by recorded delivery.

Referral stage

25. There is abundant evidence that very large numbers of sanctions are being wrongfully imposed as a result of excessive targets for sanctions being given to Jobcentre Plus staff. This is of central importance to this sanctions review. Mr Oakley asks (para.13(2) above) 'To what extent does a claimant's failure to meet their conditions arise from them not having a sufficient understanding of what is expected?' The answer to this is that while there may be cases where claimants do not understand what is expected, there certainly are very large numbers of cases where claimants understand perfectly well, but the requirements are unreasonable. Sanctions are frequently imposed on claimants for not doing things which are literally impossible - for instance, not attending appointments when they are in hospital, not meeting commitments to be in two different places at the same time, or not being able to use a computer in the week before the start of a course which has been arranged to train them how to do it. Even where requirements are not impossible, they are frequently stupid and timewasting – such as making token applications for large numbers of jobs the claimant has no chance of getting, not looking for a job when they have already found one, or discontinuing useful courses in favour of worthless ones.

26. The present Employment Minister, Esther McVey, claimed on 6 November 2013 that 'The people who get sanctions are wilfully rejecting support for no good reason'.³ She could not possibly have the evidence required to substantiate such a statement, the more so since she and her fellow ministers have refused to set up an inquiry into the widespread allegations of wrongful sanctions, in Parliament and elsewhere. The Scottish Government's recent analysis (2013) concluded that 'Research shows that claimants who face sanction are often unable to comply with conditions rather than unwilling. The reasons why claimants receive sanctions are complex and include: lack of awareness, knowledge and understanding of the sanction process; practical barriers and personal barriers'.

27. Ministers (e.g. Lord Freud, House of Lords, 25 March 2013 col.941) have frequently denied that any targets are set but it has become clear that they have been playing with words.

Neil Couling, the DWP's Work Services Director, during his appearance before the House of Commons Work & Pensions Committee on 20 November 2013 at 11.36 a.m. confirmed that Jobcentres are issued with sanctions 'Expectations'. In any reasonable use of language, these are essentially the same as targets.

28. My reading of the terms of reference is that this central issue is **EXCLUDED**. Mr Oakley's question 2 appears to take him somewhat beyond the terms. He will have to decide. However, the worst thing would be for Mr Oakley to undertake a superficial examination of the wrongful sanctions question. It must either be examined fully, or not at all. Since the terms of reference will have prevented many potential respondents from submitting evidence on this matter, in my view Mr Oakley should not examine it at all. Instead, he should make the following recommendation.

Recommendation 4: Mr Oakley should recommend to Parliament that an urgent comprehensive investigation of wrongful sanctions should be undertaken. Because of the dreadful damage being done unjustifiably to large numbers of claimants, in my view this should take the form of a judicial public inquiry.

Decision stage

29. Coalition ministers have found it much easier to drive up the number of sanctions because the Social Security Act 1998 abolished the independent adjudication which had existed since 1911. DWP decision makers do not have a direct responsibility to administer the law with integrity. They are simply agents of the Secretary of State, subject to his instructions.

30. There is strong *prima facie* evidence that ministers have intervened directly to instruct decision makers to give more adverse decisions on referrals. For instance, under John Hutton, who was appointed Secretary of State in November 2005, the proportion of referrals for not actively seeking work resulting in disentitlement rose from around 60 per cent to around 80 per cent in the space of only two years (Webster 2013a, para.11). DWP decision makers appear to have responded to the Coalition's early pressure on staff to make more referrals by increasing the proportion of reconsiderations in claimants' favour from a long-term level of just over 50 per cent, up to 60 per cent, but since December 2010, claimants' success rate at reconsideration has come back down to about 50 per cent (Webster 2013c, para.27).

Recommendation 5: The Social Security Act 1998 should be repealed and independent adjudication restored, so that ministers will not be able to give instructions to DWP staff about how the law is to be administered.

A new 'warning' stage

31. Freud (2007, p.95) and Gregg (2008, pp.72-3) both recommended that the first stage in the sanctions process should be a written warning (as would apply in an employer's disciplinary procedure). This recommendation would help to avoid the frequently occurring situation that claimants are taken by surprise by sanctions, and reduce the collateral damage caused. But it has been ignored by ministers – including Freud who is of course now a minister responsible for sanctions, and well placed to follow his own advice.

32. On 6 November 2013, DWP ministers and officials both made claims implying that a warning stage is unnecessary. A ‘DWP spokesman’ said ‘Sanctions are used as a last resort’,⁴ and Esther McVey ‘insisted sanctions were only applied in the most serious cases. She said: “.....We’ll do everything to stop you having a sanction”.⁵ These claims are false. The DWP’s guidance to its staff about imposing sanctions is available on the web. Nowhere is there any suggestion that sanctions should be a last resort. On the contrary, the ‘expectations’ Jobcentres are given about the rate of sanctions they should impose have the effect of triggering sanctions on the slightest excuse, as is shown by thousands of case histories available in the media, on the web and from voluntary organizations such as CABx. Moreover, if sanctions were a last resort, claimants with longer unemployment durations would be more likely to be sanctioned, but the data for 1 April 2000 to 21 October 2012 show that this is not the case.

Recommendation 6: As previously recommended by the current Parliamentary Under Secretary of State (Minister for Welfare Reform), a new ‘warning’ stage should be introduced so that rather than an actual sanction, a first failure to comply with requirements should result in a warning letter and interview.

Following an adverse decision

33. Since the Jobseekers Act 1995, sanctions have been deliberately designed to reduce people without other resources to complete destitution. Unless a claimant is in an arbitrarily defined ‘vulnerable’ group, they are prohibited from even applying for a hardship payment for the first two weeks of a sanction. There is no assessment of actual vulnerability. The official DWP Decision Makers’ Guide acknowledges that the two week wait will often damage the claimant’s health (para. 35099). This denial of all benefits for the first two weeks is gravely immoral and causes immense damage to the poorest claimants – those who do not have other resources, or family or friends to fall back on. It cannot possibly be justified.

Recommendation 7: All sanctioned claimants should be eligible for hardship payments immediately. This issue is EXCLUDED.

34. The criteria for ‘hardship’ are specific to the sanctions regime and are particularly harsh – for instance, a person with cash in hand equal to their ‘applicable amount’ will be refused even if the money is owed to a payday lender (DMG para. 35198). Sanctioned claimants in England are in a much worse position than they were prior to the Coalition because of the ending of full Council Tax Benefit even for those on hardship payments, and homeless claimants throughout the UK suffer from the need to pay hostel charges which are not eligible for Housing Benefit. Consequently it is not surprising that sanctions account for around one quarter of applications to voluntary Food Banks.

Recommendation 8: Assessment of resources for hardship payments should follow the same rules as Income Support, as it did prior to the Jobseekers Act 1995. This issue is EXCLUDED.

35. If a claimant is refused a hardship payment, there is currently no appeal. Yet there is plenty of *prima facie* evidence of claimants being wrongly refused hardship payments, and it is wrong in principle for such an important, indeed sometimes life-or-death, decision to be beyond appeal. Therefore

Recommendation 9: Refusal of hardship payments should be subject to an appeal procedure. This issue is EXCLUDED.

36. It appears that claimants are frequently not told of their potential entitlement to hardship payments. Therefore

Recommendation 10: Claimants should always be told of their entitlement to hardship payments and in any case where this does not occur, the sanction should be rescinded.

37. Sanctioned claimants remain entitled to Housing Benefit and Council Tax Reduction. But many claimants are currently incurring large arrears (frequently in excess of £1000) of Housing Benefit and Council Tax, and some are being evicted from their homes, because of the negligent way in which DWP currently handles the link between JSA and Housing Benefit/Council Tax Reduction (Webster 2013e). DWP notifies the local authority that the claimant is no longer qualified for these benefits by reason of receiving JSA, but does not notify the claimant of their need to make a new claim. In addition, it appears that local authorities are frequently refusing backdating of these benefits when the claimant eventually realises their situation. It is not right that sanctioned claimants should suffer these additional penalties, which were never intended by Parliament.

Recommendation 11: The DWP should notify the claimant of the need to reclaim Housing Benefit and Council Tax Reduction and also change the notification to the local authority to say that benefit should not be stopped but that the authority should contact the claimant to reassess their claim.

Recommendation 12: Backdating of Housing Benefit/Council Tax Reduction should be automatically made available to anyone sanctioned, without limit of time.

Reconsideration and appeal

38. It appears that sanctioned claimants are frequently not being told of their right to ask for reconsideration and to appeal.

Recommendation 13: The right to ask for reconsideration and to appeal must be notified to the claimant by recorded delivery in all cases, together with a blank appeal form. Should there be a failure to notify, the sanction should automatically be rescinded.

39. Few sanctioned claimants (25.3 per cent) are asking for reconsideration and even fewer (1.7 per cent) are appealing. Yet the success rates are high: over 50 per cent for reconsideration and now 42.2 per cent for appeal – an increase from 17 per cent which almost certainly reflects the huge increase in wrongful sanctions which has resulted from pressure on staff by ministers (Webster 2013c). This indicates that the current appeal process is failing to cancel huge numbers of wrongful sanctions – probably into the hundreds of thousands.

40. There is abundant evidence that the reconsideration/appeal system is too complicated for many. Peters & Joyce (2006) found that claimants saw the process as long and futile, feared a lack of support, or could not afford the necessary phone calls, stamps or fares. This indicates that it is wrong to rely on the claimant, who is frequently suffering from multiple crises and disadvantages, and above all lack of resources, to initiate the appeal process. Therefore

Recommendation 14: There should be an automatic independent (i.e. external to DWP) review of every decision to sanction or disqualify, with the claimant offered a personal meeting with the independent reviewer, before any sanction takes effect.

41. The recently revised official advice about sanctions at <https://www.gov.uk/appeal-benefit/decisions-made-on-after-28-october-2013quarter> states under 'Written statement of reasons' that: 'You can ask for a written statement of reasons after you've received the decision letter. This explains the reasons for the decision. You won't automatically receive this with the decision letter, and you don't have to get a written statement before asking for mandatory reconsideration.'

42. Given this statement, it is absurd for the review's terms of reference to state 'It will evaluate, where a sanction has been issued, the clarity of the information provided to claimants about why the sanction was issued'. The failure to issue a written statement of reasons for a sanction is outrageous. The claimant cannot challenge a sanction effectively when they do not know for certain why it has been imposed. The suggestion on the DWP's website that claimants should attempt to ask for reconsideration or to appeal without having a written statement of reasons is mischievous. Therefore

Recommendation 15: A written statement of reasons, posted by recorded delivery, together with the notice of right to ask for reconsideration and to appeal, should be a requirement before any sanction can be imposed. This should be subsequent to, and not instead of, the independent review mentioned at Recommendation 14 above.

43. There is currently no timetable for DWP's response to requests for reconsideration, or for Tribunal appeals. Claimants often suffer severe and irreversible hardship as a result of sanctions which are subsequently overturned, for instance losing their home, and it is therefore vital that reconsiderations and appeals should be completed as quickly as possible.

Recommendation 16: Strict time limits should be introduced for both reconsideration and appeal. I would suggest two weeks for reconsiderations and three months for Tribunal hearings. In any case where these time limits are not met, the sanction should be automatically cancelled.

44. Ministers will dislike this recommendation, as their own drive to increase sanctions has been responsible for creating gross delays in the system. Strict time limits would have the benefit of subjecting ministers to some self-discipline, forcing them to work within the resources they are prepared to make available, rather than loading additional costs on to claimants.

45. The Coalition government removed claimants' right to legal aid to assist them in appeal to a Tribunal, with effect from 1 April 2013. This is a very serious attack on the rights of the citizen, and of doubtful effect in saving money since the bulk of such aid has gone on pre-hearing advice which has helped to clarify issues and save the Tribunal's time. The damage has been increased by the reduction in funding generally suffered by Citizens Advice Bureaux as a result of other Coalition cuts, since CABx are the main source of advice to sanctioned claimants. Therefore

Recommendation 17: Legal aid should be restored for Tribunal appellants.

46. As noted above, claimants often suffer severe and often irreversible hardship as a result of sanctions which are overturned on reconsideration and appeal. This indicates the need to compensate claimants wrongly sanctioned, as would be the case if they were victims of other types of negligence or wrongdoing.

Recommendation 18: Compensation, as well as arrears of benefit, should be paid to the claimant in every case where a sanction decision is reversed. This should be on the basis of actual loss plus a penalty levied on DWP for getting the decision wrong. This issue is EXCLUDED.

Effect of the recommendations on costs

47. Some people's reaction to the above recommendations might be that they would be impossibly expensive to implement. Careful consideration shows that this is not the case.

48. The sanctions system is currently very expensive to operate, but many of the costs are not visible, for several reasons:

- (i) Much of the cost takes the form of diversion of staff time and office overhead spending by both Jobcentre Plus and Work Programme contractors, away from more constructive tasks
- (ii) The very large costs imposed on sanctioned claimants, and on voluntary sector organizations supporting them, or on private organizations (e.g. those arising from 'survival theft' (Webster 2013e), over and above the direct net loss of benefits, are not currently identified or considered by DWP - indeed the existence of voluntary and private sector costs is denied by DWP
- (iii) The current negligent handling of the JSA-Housing Benefit/Council Tax Reduction interface generates costs which appear within the budgets of local authorities, social and private landlords, and the Ministry of Justice, and not within the DWP budget
- (iv) The cost of damage to claimants' health (e.g. Decision Makers Guide, para. 35099) appears within the budget of the NHS and devolved administrations, not within the DWP budget
- (v) The cost of Tribunal hearings appears within the Ministry of Justice and not the DWP budget

49. These costs have to be set against the cash 'savings' from benefit not paid, net of hardship payments. In September 2013 I estimated these at around £250m per year (Webster 2013d), although this figure must now be revised upwards due to the further increase in sanctions and the large increase in dropped claims, reflected in 'reserved' or 'cancelled' decisions.

50. As discussed elsewhere (Webster 2013a), sanctions should be abolished outright. But failing this, the effect of implementing the recommendations made here would be to greatly reduce the number of sanctions issued. The net effect on public sector costs would not be large, because although more would be paid out in benefits, the currently invisible costs of the system at (i), (iii), (iv) and (v) above would be greatly reduced. If the package was adopted as a whole, then some extra costs proposed here could be avoided. For instance, if there was a more reasonable treatment of missed appointments, then appointment letters could continue to be sent by ordinary mail.

51. Introducing a system of compensation for all claimants wrongly sanctioned would have the benefit of forcing DWP ministers and officials to behave more responsibly, and to cut down the ‘bad behaviour’ referred to by Liam Byrne. Currently, they are simply ignoring the damage they are causing to their fellow citizens. Compensation would make this damage visible, and would have a direct effect on their budgets. Internalising these currently externalised costs within the DWP in this way is what any economist would recommend in order to increase societal welfare. If there are no wrongful sanctions, there will be no compensation payments.

52. The recommendations would also achieve what Esther McVey claims to want from the system. Currently it is obviously untrue that ‘sanctions are only applied in the most serious cases’. But it would be the case if these recommendations were adopted.

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APPENDIX 1: MATTERS WHICH WERE PROPOSED IN THE HOUSE OF LORDS ON 21 or 25 MARCH 2013 TO BE INCLUDED IN THE TERMS OF REFERENCE

AMENDMENT 4 (col.932-33) (Lord McKenzie of Luton)

‘A report under subsection (1) will include, but not be limited to, information on the following-

- (a) the number of penalties imposed, the type of failure for which they were imposed and the duration of such penalties;
- (b) the number of demands for reconsideration and the number of subsequent appeals;
- (c) the effectiveness of the appeals process;
- (d) the number of penalties imposed upon claimants in receipt of Employment and Support Allowance;
- (e) whether sanctions originate from a Work Programme Provider or JobCentre Plus;
- (f) the extent to which claimants understand the reasons for penalties being imposed upon them;
- (g) the extent to which sanctions are being promoted and whether targets are being applied in relation to penalties;
- (h) the support available for claimants upon whom a penalty has been imposed, and what additional support such claimants are seeking;
- (i) how penalties are being applied to those with a mental health or other fluctuating health condition;
- (j) the effectiveness of the hardship and mitigation provisions;
- (k) the effectiveness of sanctions in changing claimant behaviour; and
- (l) the application of the public sector equality duty.’

(In the House of Commons on 19 March at col.881-83, Stephen Timms proposed a similar but shorter list, which is therefore not reproduced here.)

AMENDMENT 5 (col.934-35) (Baroness Lister of Burtsett)

This amendment sought to widen the scope of the review to cover all sanctions and disallowances, not just those relating to participation in Back to Work schemes.

AMENDMENT 5A (col.933-34)

This amendment sought to include in the review the existence and operation of sanctions targets and league tables.

APPENDIX 2: LIST OF RECOMMENDATIONS

Recommendation 1: Ministers should reconsider their priorities and give proper weight to Jobcentre Plus's primary tasks of nurturing the labour force and improving the efficiency of the labour market. This issue is EXCLUDED.

Recommendation 2: All letters sent to claimants which may result in a sanction (e.g. appointment letters) or which give information about sanctions should be sent by recorded delivery. Proof of delivery should be required before any sanction can be imposed.

Recommendation 3: All directions should be in writing and if not handed in person to the claimant should be posted by recorded delivery.

Recommendation 4: Mr Oakley should recommend to Parliament that an urgent comprehensive investigation of wrongful sanctions should be undertaken. Because of the dreadful damage being done unjustifiably to large numbers of claimants, in my view this should take the form of a judicial public inquiry.

Recommendation 5: The Social Security Act 1998 should be repealed and independent adjudication restored, so that ministers will not be able to give instructions to DWP staff about how the law is to be administered.

Recommendation 6: As previously recommended by the current Parliamentary Under Secretary of State (Minister for Welfare Reform), a new 'warning' stage should be introduced so that rather than an actual sanction, a first failure to comply with requirements should result in a warning letter and interview.

Recommendation 7: All sanctioned claimants should be eligible for hardship payments immediately. This issue is EXCLUDED.

Recommendation 8: Assessment of resources for hardship payments should follow the same rules as Income Support, as it did prior to the Jobseekers Act 1995. This issue is EXCLUDED.

Recommendation 9: Refusal of hardship payments should be subject to an appeal procedure. This issue is EXCLUDED.

Recommendation 10: Claimants should always be told of their entitlement to hardship payments and in any case where this does not occur, the sanction should be rescinded.

Recommendation 11: The DWP should notify the claimant of the need to reclaim Housing Benefit and Council Tax Reduction and also change the notification to the local authority to say that benefit should not be stopped but that the authority should contact the claimant to reassess their claim.

Recommendation 12: Backdating of Housing Benefit/Council Tax Reduction should be automatically made available to anyone sanctioned, without limit of time.

Recommendation 13: The right to ask for reconsideration and to appeal must be notified to the claimant by recorded delivery in all cases, together with a blank appeal form. Should there be a failure to notify, the sanction should automatically be rescinded.

Recommendation 14: There should be an automatic independent (i.e. external to DWP) review of every decision to sanction or disqualify, with the claimant offered a personal meeting with the independent reviewer, before any sanction takes effect.

Recommendation 15: A written statement of reasons, posted by recorded delivery, together with the notice of right to ask for reconsideration and to appeal, should be a requirement before any sanction can be imposed. This should be subsequent to, and not instead of, the independent review mentioned at Recommendation 14 above.

Recommendation 16: Strict time limits should be introduced for both reconsideration and appeal. I would suggest two weeks for reconsiderations and three months for Tribunal hearings. In any case where these time limits are not met, the sanction should be automatically cancelled.

Recommendation 17: Legal aid should be restored for Tribunal appellants.

Recommendation 18: Compensation, as well as arrears of benefit, should be paid to the claimant in every case where a sanction decision is reversed. This should be on the basis of actual loss plus a penalty levied on DWP for getting the decision wrong. This issue is EXCLUDED.

¹ The negotiations were described on 19 March 2013 by Mark Hoban at col.878 and Stephen Timms at col.879. At col.878, Mark Hoban also thanked Liam Byrne and Stephen Timms for their 'constructive approach to the Bill'.

² <http://labourlist.org/2013/03/the-jobseekers-bill-is-difficult-for-labour-but-i-think-weve-made-the-right-call/>, 21 March 2013. Mr Byrne also negotiated a second amendment (now Section 1(13) of the Act), relating to grounds of appeal. However, contrary to his claims this is of no legal effect and in any case would affect only the 1.7 per cent of sanctions cases which go to a Tribunal appeal.

³ 'Life when the Jobcentre says you broke the rules', by Sean Clare BBC News 6 November 2013, at <http://www.bbc.co.uk/news/uk-24829866>

⁴ 'Life when the Jobcentre says you broke the rules', by Sean Clare BBC News 6 November 2013, at <http://www.bbc.co.uk/news/uk-24829866>

⁵ Guardian 6 Nov 'Benefit sanctions soar under tougher regime' at <http://www.theguardian.com/society/2013/nov/06/benefits-sanctions-jobseekers-allowance>