**NOT SO SMART!**

**Comments on the Policy Exchange report**

**‘Smarter Sanctions: Sorting out the system’ by Guy Miscampbell, published 3 March 2014**

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**SUMMARY**

The Policy Exchange report *Smarter Sanctions: Sorting out the system* (March 2014) aims to address two issues in the current UK regime of sanctions for JSA and ESA claimants: hardship suffered by claimants who subsequently win their appeals, and the existence of some 30,000 claimants per year (around 5% of the total number of people sanctioned in a year) who are repeatedly sanctioned. Its proposals are misconceived and would be counterproductive. The problems of hardship, including resort to food banks, and of wrongly applied sanctions, can affect any of the people receiving the almost 900,000 sanctions handed out per year, not just the around 300,000 first-time ‘lower level’ ‘offenders’ per year who the Policy Exchange proposes should receive what it claims is more ‘compassionate’ treatment. There is no logic to the identification of this group. The proposals would do nothing to reduce wrongly applied sanctions, and while potentially reducing hardship for some, would increase it for others and leave it unrelieved in the case of most sanctions. The proposal for a shaming ‘yellow card’ instead of loss of benefit is destructive and for many claimants would reduce rather than increase engagement. Daily signing-on would also be impracticable and counterproductive for many. The Policy Exchange proposes that these penalties should be applied to people who have done nothing wrong at all. Its claim that harsher sanctions for repeat ‘offenders’ would be more effective in producing compliance is contradicted by the available evidence. Addressing the problems of destitution caused by sanctions, and of wrongly applied sanctions, would require much more drastic reform including ensuring a decent minimum income for all sanctioned claimants, and proper protections against abuse in what is a gravely defective system of administrative justice. More fundamentally, in so far as the state has valid reasons for attempting to promote particular behaviours – and the reasons are often not valid – there are better ways of doing it than taking money away from already poor and/or crisis-stricken people. Sanctions should be abolished.

**Comments on the Policy Exchange report**

**‘Smarter Sanctions: Sorting out the system’**

This Policy Exchange report has secured wide publicity. The Policy Exchange has influence on the right of British politics (having for instance fathered the JSA ‘claimant commitment’ currently being rolled out) and, if left unchallenged, the report might affect policy. The purpose of these comments is to point out where it is wrong.[[1]](#endnote-1)

The Coalition has changed the official language used in referring to sanctions in such a way as to imply that sanctioned claimants are in effect a type of criminal, particularly through the drafting of the October 2012 Regulations and their Explanatory Memorandum.[[2]](#endnote-2) Thus we read of ‘offences’, ‘failures’, transgressions’, ‘serial and deliberate breach’, ‘failure to meet their responsibilities’, and the like. The Policy Exchange report adopts this language uncritically, and adds to it, with phrases such as ‘flout the system’ (p.6), ‘defying the conditionality regime’ (p.7), ‘separate levels of punishment depending on the offence’ (p.29), ‘prevent the system from being gamed by those who have no intention of being compliant’ (p.36), ‘abuse the leniency in the “first” sanction’ (p.36), ‘the most troublesome cases’ (p.37) ‘more extensive punishment for those who consistently abuse this system’ (p.37). But it should be remembered that even when a sanction is lawful (which is often not the case), the claimant has frequently done nothing deserving of any criticism from either a moral or a practical point of view. Very often they have simply taken a different view from the state about the most constructive way forward. Or they are exercising a fundamental right, such as the right to give up a job at any time on whatever grounds they see fit, subject only to their employment contract. Moreover, the fact that a sanction may go unchallenged does not mean that it is reasonable or lawful, since we know from the research evidence that most claimants find the process of challenge too difficult to undertake.

In what follows it has not been possible to avoid using the language of ‘offence’ and ‘punishment’ in reporting what the Policy Exchange has said, but it is important to bear the above points in mind.

**BACKGROUND**

In order to understand the report it is necessary to be aware that sanctioned claimants lose their benefit immediately and even if they successfully ask for reconsideration or appeal, the money lost is only refunded months later. The financial position for JSA and ESA claimants while under sanction is as follows:

1. **JSA**: Since the Jobseekers Act 1995 (implemented October 1996), sanctioned claimants lose all their JSA for the varying period of weeks. They may apply for hardship payments of 60% of JSA (80% for those in a ‘vulnerable’ group) but these are discretionary and are assessed according to a special set of rules designed to ensure that the claimant has no other resources left and has exhausted any possible assistance from family and friends. Claimants not in a ‘vulnerable’ group are not allowed even to apply for hardship payments for the first two weeks. There is no assessment of ‘vulnerability’. ‘Vulnerable’ groups are arbitrarily defined and are mainly people looking after children.
2. **ESA**: Sanctions were introduced for long-term sick or disabled claimants in the ESA Work Related Activity Group in October 2008. Up to 3 December 2012, sanctioned ESA claimants lost half of their ‘work related activity component’ (£28.45 per week) for the first 4 weeks and all of it thereafter. Since December 2012, they have lost all of their main payment (the ‘personal allowance’, the equivalent of JSA) but retain the smaller ‘work related activity component’. Sanctioned ESA claimants can apply for hardship payments immediately.

These sanctions are in effect fines. For claimants over 25, and disregarding open-ended loss of benefit for some types of ‘failure’ pending ‘compliance’, they range from £286.80 up to £11,185.20 for JSA, and from £71.70 to £286.80 for ESA. Under -25 benefit rates are lower, so the amounts lost through sanctions are also lower. ‘Hardship payments’ may reduce the amounts lost. About a quarter of sanctioned JSA claimants get hardship payments, but only around 1 per cent get them at the ‘vulnerable’ rate. **Table 1** shows the net amounts lost by the various types of claimant, on the assumptions shown.

For comparison, the fines normally available to the mainstream Courts range from £200 (Level 1) to £5,000 (Level 5).

The impact of these sanctions varies according to the circumstances of the claimant. Those with significant financial resources and/or support from relatives or friends may be relatively little affected, especially if they quickly get a job. Those who are already without resources, especially where they do not have support from relatives or friends, and have barriers to employment such as age, literacy/numeracy problems, sickness etc., are driven into total destitution and frequently actual hunger. To its credit, this Policy Exchange report gives short shrift to Ministers’ claims that there is ‘no robust evidence’ to link the increase in food bank usage to welfare changes, including the increase in sanctions. It accepts the obvious, namely that sanctions drive people to food banks.

**Table 1: Minimum and maximum financial amounts of sanctions**

|  |  |  |
| --- | --- | --- |
|  | **Age 25+** | **Age under 25** |
|  | **Minimum £** | **Maximum £** | **Minimum £** | **Maximum £** |
| **JSA, no hardship payment** | 286.80 | 11,185.20 | 227.20 | 8,860.80 |
| **JSA, hardship payment, non-vulnerable** | 200.76 | 4,560.12 | 159.04 | 3,612.48 |
| **JSA, hardship payment, vulnerable** | 57.36 | 2,237.04 | 45.44 | 1,772.16 |
| **ESA, no hardship payment** | 71.70 | 286.80 | 56.80 | 227.20 |
| **ESA, hardship payment** | 14.30 | 57.36 | 11.36 | 45.44 |

**Notes**: These amounts do not include open-ended sanctions for some types of ‘failure’ pending ‘compliance’. It is assumed that application for hardship payments is made as soon as permitted and is immediately successful, and that hardship payments are paid throughout the period of the sanction at maximum rate. These assumptions will probably not often be correct. Benefit rates are as at 2013-14.

**Source**: Author’s calculations.

**SUMMARY OF THE POLICY EXCHANGE REPORT’S ARGUMENT AND PROPOSALS**

The report argues that the current sanctions system is too harsh on some people and too lenient on others.

It argues that it is **too harsh** to an estimated 68,000 people per year[[3]](#endnote-3) who receive a 4-week sanction which is *subsequently overturned by reconsideration or appeal*, for a *first-time* ‘offence’ which is defined as ‘*lower level*’ by the October 2012 Regulations. Therefore a policy should be piloted whereby lower level first-time ‘offenders’ should receive either or both of the following penalties (argued to be more ‘compassionate’):

1. Upon ‘re-engagement’ with Jobcentre Plus, the claimant would have their benefits paid via a ‘yellow card’, usable only at designated shops and, technology permitting, only for designated goods. This substitute penalty should be imposed for a longer period of 8 weeks.
2. The claimant should have to sign on daily.

The most effective permutation of these penalties (one or other or both) would be established by the pilots.

These first-time ‘offenders’ (but not other ‘offenders’) should also automatically receive assistance with applying for reconsideration or appeal.

The proposed measures would have to be applied to all first-time lower level ‘offenders’ since the outcome of reconsideration/appeal is not known until too late. The report estimates that about 19,000 people a month would be subject to them, but it does not attempt a full-year estimate. At current levels, this would be of the order of 300,000.[[4]](#endnote-4) This is somewhat over half the total number of individual JSA claimants sanctioned during a year, which is over 528,000, but only one third of the total number of JSA sanctions (874,850).[[5]](#endnote-5)

The report argues that the current system is **too lenient** to people who incur *repeated* JSA sanctions defined as ‘*lower level*’ by the October 2012 Regulations. At present a second or subsequent lower level ‘failure’ within the same year incurs a 13 week sanction. The report proposes to add further progression, namely 26 weeks for a third ‘failure’, 39 weeks for a third, and in general 13(*n*-1) weeks where *n* is the number of ‘failures’, with a maximum of 156 weeks (which would be reached upon the 13th ‘offence’).[[6]](#endnote-6) This proposal would raise the maximum sanction for this group from £932.10 (under-25s £738.40) to £11,185.20 (under-25s £8,860.80). The report does not offer an estimate of the number of people who would be affected by this proposal but the DWP statistics indicate that it would be somewhat over 30,000 per year, around 5% of the total number of people sanctioned during a year.

The report also considers that treatment is **too lenient** for people with repeated ESA sanctions. At present, the sanction is open-ended until re-engagement and is then followed by a 1-week sanction for a first ‘failure’, 2 weeks for a second, and 4 weeks for a third or subsequent ‘failure’. The report proposes to add further unlimited progression, to 8 weeks for a fourth ‘failure’, 12 weeks for a fifth, and in general 4(*n*-2) weeks where *n* is the number of ‘failures’. The present maximum sanction for this group of £286.80 (under-25s £227.20) would be raised to a level limited only by the time to retirement.

This proposal seems scarcely worth making since the DWP statistics show that there are under 1,200 ESA claimants who have ever had more than three sanctions. The algebraic formula is certainly wasted since once beyond six sanctions the numbers are down to double figures in the whole of Great Britain.

The report does not comment at all on the treatment of people sanctioned for JSA ‘offences’ defined as ‘intermediate’ or ‘higher’ level by the October 2012 Regulations. It does not make any attempt to cost its proposals or make any kind of impact assessment.

In considering the weaknesses of the report, these comments deal separately with the ‘too harsh’ and the ‘too lenient’ aspects.

**CRITICISMS OF THE REPORT: ‘TOO HARSH’**

**Identification of claimants who should be treated less harshly**

The identification of first-time ‘lower level’ ‘offenders’ as the only claimants who should be treated less harshly is odd. It leaves the following categories of sanctioned claimants who would *not* be treated less harshly:

 - second and subsequent time lower level ‘offenders’, whether successfully appealing or not

- all intermediate and higher level ‘offenders’, whether first-time or not and whether successfully appealing or not.

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There is no justification for the Policy Exchange proposal to treat these groups less favourably.

**Discrimination by first-time/repeat**

Repeat ‘offenders’ are just as likely as first-timers to be wrongly sanctioned. Wrongly sanctioned people with a previous ‘offence’ should not be treated less favourably than wrongly sanctioned first timers. The report does not attempt to justify this discrimination, which presumably arises from an implicit assumption that an ‘offence’ renders a claimant ‘undeserving’ and that as a result they should forfeit their right to justice.

Such discrimination would be counterproductive. Consider the hypothetical case of a claimant who ‘offends’ on one occasion, is sanctioned, and who then ‘reforms’ only to find that they are then subjected to a further sanction which is wrongfully imposed, and they are told that because of their previous offence, they are not entitled to fair treatment. This would promptly undermine the supposed effectiveness of the system.

**Discrimination by ‘level’**

As the report itself acknowledges (p.20), the reconsideration/appeal success rate for ‘higher level’ sanctions is much higher than for ‘lower’: 31.8% compared to 19.9%.[[7]](#endnote-7) So there are actually more wrongly sanctioned claimants in this group, and this is even more serious as the sanctions are of much longer duration. Reconsideration/appeal success rates are also significant for ‘intermediate’ sanctions, at 12.3%. Therefore if the objective is to reduce the suffering of wrongly sanctioned claimants, the report’s proposal will not achieve it.

The report does not offer any justification for treating ‘higher’ and ‘intermediate’ ‘offenders’ less favourably than ‘lower’ offenders. It appears simply to have accepted these distinctions uncritically at face value. But this categorization did not exist until October 2012. The Explanatory Memorandum to the October 2012 Regulations did not offer any justification for the categorization, simply claiming without explanation that ‘under the existing regime some sanctions are not proportionate to the failure’. The designation of some ‘failures’ as more serious than others is shot through with unwarranted assumptions.

 **Intermediate level** – Until October 2012 these were not treated as offences at all. They all relate to cases where the claimant does not meet the entitlement conditions for JSA because they are not available for work, not actively seeking work, have not signed on or have not completed a Jobseeker’s Agreement, or are unemployed because of a relevant trade dispute. Such claimants were simply ‘disentitled’, and a new claim showing that the claimant now met the conditions resulted in immediate restoration of JSA, apart from a few ‘waiting days’. The Coalition decided to turn these matters into ‘offences’ and by adding a fixed 4-week sanction to the disentitlement arbitrarily promoted their seriousness above that of ‘lower level’ offences.

 **Higher level** – These ‘failures’ all relate to cases where it is argued that the claimant’s conduct *has actually caused* their unemployment, i.e. their unemployment is ‘voluntary’ (a claim which is obviously unsustainable in relation to almost all the reasons why claimants are currently sanctioned). This is the rationale for treating them as more serious. In the case of the new offence of ‘failing to participate in Mandatory Work Activity’, this claim is dishonest, since the claimant is not getting a job, but only ‘workfare’ - having to work for their benefits. MWA is ‘intended to help claimants move closer to the labour market, enabling them to establish the discipline and habits of working life, such as attending on time regularly, carrying out specific tasks and working under supervision while delivering a contribution to the community’.[[8]](#endnote-8) MWA should be classified as a ‘lower level’ failure, like the other training activities with which it belongs.

But the severity of the penalty for the other ‘higher level’ ‘failures’ has also long been challenged. For 75 years until 1986, the maximum penalty for ‘voluntary unemployment’ was 6 weeks’ loss of benefit. At that time, there were almost no sanctions or disqualifications except for voluntarily leaving a job or losing it through misconduct. During the Thatcher/Howe recession from 1979 on, job leaving was suppressed because people are more careful to hold on to a job when it is more difficult to get another. As recovery proceeded, job mobility rose – as indeed economic efficiency required – and disqualifications for ‘voluntary leaving’ and ‘misconduct’ rose with it, since many of them are imposed on people who simply miscalculate about how easy it will be to get another job. Conservative ministers of the day did not understand this and thought the penalties needed to be increased, to up to 26 weeks in 1988. The Department of Social Security itself subsequently pointed out: ‘Changes in the economic climate …play an important part in people’s attitude to job leaving and job search…Thus it is not surprising that the length of disqualification appears to have little effect on voluntary leaving’ (DSS 1989, p.5). The relatively trivial ‘offences’ introduced or made more common by the Jobseekers Act 1995 could not credibly be penalised at the level of these ‘voluntary unemployment’ disqualifications and this then left it open to the 2012 Regulations to designate the latter as ‘higher level’.

 **Lower level** – Inclusion of missing an interview as a sanctionable ‘offence’ at all is a recent innovation, in April 2010. Before then, it was regarded as an entitlement issue, permitting a resumption of benefit after only the ‘waiting days’. The logic was that if the claimant does not attend interviews, their availability for work is put into question and their claim cannot be progressed. It was the previous Labour government which decided to turn it into a sanctionable ‘offence’.

**Discrimination in relation to assistance with reconsideration/appeal**

Given that wrongly sanctioned claimants can be found in any group, there is a lack of logic in the proposal that only first-time lower level ‘offenders’ should receive assistance with their appeal. The research evidence (e.g. Peters & Joyce 2006), and the low levels of both reconsiderations and appeals, show that most claimants find the process of challenging decisions too difficult – which is not surprising given the multiplicity of other difficulties which they will be attempting to cope with at the same time.

**The proposed more ‘compassionate’ penalties**

It is striking that the Policy Exchange report makes very little reference to the British literature on the difficulties of sanctioned claimants.[[9]](#endnote-9) Instead, references are mainly to US literature on ‘workfare’, revealing the Policy Exchange’s political preferences and connections.[[10]](#endnote-10) A reading of the British literature would show that there are considerable objections to both of the proposed more ‘compassionate’ penalties.

 **‘Yellow card’** – This proposal is modelled on the ‘Azure card’ issued to asylum seekers denied leave to remain.[[11]](#endnote-11) The British Red Cross is calling for this to be abolished, a fact of which the Policy Exchange appears unaware.[[12]](#endnote-12) The implied withdrawal of full citizenship recalls the overt removal of citizenship rights introduced for workhouse inmates by the 1834 Poor Law. The report itself states (pp.6, 33, 36) that the card would work partly through ‘social pressure’, in other words sanctioned claimants would be publicly shamed, even when they are subsequently found to have done nothing wrong at all. Shaming is undesirable, whether claimants are wrongly sanctioned or not, for all the reasons considered by Walker et al. (2013), Ellis (2010) and Citizens for Sanctuary (2010). The report also proposes (pp.6, 32-33) that the card should have to be picked up from the Jobcentre, ‘fostering renewed contact with the sanctioned individual. If they did not re-engage then they would be unable to pick up the card and access benefits’. Given the shame involved in using the card, it seems likely that only claimants in dire need of money would opt to pick it up, and for many, there would thus be a *reduced* incentive to ‘re-engage’. The report itself (p.10, note 17) references a case where a teacher was wrongfully sanctioned for attending a job interview which took place at the same time as her signing-in time. An offer of a ‘yellow card’ would not only make such a person justifiably very angry; it would also most likely be rejected.

Another problem is that sanctioned claimants often have multiple urgent calls on any funds that come in, e.g. repaying informal debts, feeding a coin electricity meter, buying a child’s birthday present. Many of these would continue to require cash, so denying it would be likely to cause serious crises. The need to find and travel to stores accepting the card would impose further financial costs and waste of time. Indeed it might become impossible for some claimants even to get to the Jobcentre, unless the card was accepted on public transport – an issue on which the Policy Exchange is silent (Reynolds 2010).

The Policy Exchange proposal is that all of these problems should be imposed on people who are completely blameless.

 **Daily signing-on** The main practical objections to this are the time and cost of travel, and the difficulties created for any kind of carer (bearing in mind that large numbers of people have some caring roles even when not classified as ‘carers’, and that there are some 140,000 lone parents with children under 12 on JSA as a result of the ‘lone parent obligation’). Daily sign-on is simply unrealistic for many claimants. It would also run counter to the Policy Exchange-inspired Claimant Commitment, since for many claimants so much time would be taken up in travel that there would be little left for job search. Because of the extremely large differences in the travel times and costs involved, especially between rural and urban claimants, this penalty would bear very unequally on different claimants. It also has a strong resemblance to the oakum-picking of the nineteenth-century workhouse – a deliberately purposeless activity, designed to depress and humiliate. It would be an abuse of the principle of signing on, whose purpose is simply to ensure that the claimant demonstrates their availability for work by their physical presence, and affirms by their signature that they meet the entitlement conditions for unemployment benefit during the relevant payment period. Again, the Policy Exchange proposes that this penalty should be applied to people who are blameless.

**CRITICISMS OF THE REPORT: ‘TOO LENIENT’**

The report does not cite any empirical evidence in support of its proposal to add further progression of penalties beyond 13 weeks for a third or subsequent lower level ‘failure’. It says (pp. 10-11) that ‘more needs to be done to prevent this group of individuals’ – a ‘hard core of claimants’ – ‘consistently wasting time and resources’. Sanctions should be ‘more punitive for those who are repeatedly attempting to avoid the conditionality regime’ (p.7). The harsher progression ‘would increasingly shift the most troublesome cases onto more punitive sanctions’ and ‘should help provide a more extensive punishment for those who consistently abuse this system’ (p.37). This implies beliefs that (a) claimants are deliberately not meeting requirements, (b) harsher penalties will have greater effects in producing compliance, (c) claimants waste the time of Jobcentre staff but Jobcentre staff do not waste the time of claimants and (d) punishment is desirable in itself.

1. **Claimants deliberately not meeting requirements** The Scottish Government (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’. The evidence shows that the great majority of claimants are doing their best to find work, and that Jobcentres contribute little of value to their search.[[13]](#endnote-13) For them, what the sanctions system often does is to enforce contrived and pointless actions which bring no actual benefit to anyone.
2. **Harsher penalties to produce greater effect** At present JSA claimants ‘committing’ a third lower level ‘failure’ receive a sanction of £932.10 (under-25s £738.40), on top of what will have been a total of £1,218.90 (under-25s £965.60) for the first and second ‘failures’, bringing the total penalty to £2,151.00 (under-25s £1,897.70). These sums are already so large for an unemployed person that there is a lack of credibility in the Policy Exchange’s claim that a further increase to a grand total of £3,083.10 (under-25s £2,442.40) upon the third ‘failure’, with yet further subsequent increases of £932.10 (under-25s £738.40) for each subsequent ‘failure’, would succeed where the earlier penalties failed. However, what certainly would happen is that many claimants would spend much longer on the vicious ‘hardship payments’ regime, thus reducing them, and their friends or families, further towards destitution (if they are not there already), and making recovery of their lives much more difficult. ESA claimants currently face much smaller sanctions for repeated ‘failures’ than do JSA claimants, but nearly all of them will be in a weak financial position due to a weak employment record; as in the case of JSA, non-means-tested ESA now lasts only a year, so that very few sanctioned ESA claimants will have income or capital above the qualifying levels.
3. **Claimants waste the time of Jobcentre staff but not the other way round** It is clear from the abundant evidence from advice agencies and claimants themselves that most of the waste of time in the JSA system is of claimants’ time by Jobcentre staff, not the other way round. Not only are there the absurd requirements for multiple token applications for jobs the claimant has no chance of getting; there is also the chasing after undelivered letters, the attempts to get phone calls efficiently dealt with and changes of circumstances properly recorded, the referrals to inappropriate courses, the struggle to find a web terminal allowing access to ‘Universal Jobmatch’ followed by the need to screen out the fraudulent[[14]](#endnote-14) vacancies recorded in it, etc., etc.[[15]](#endnote-15)
4. **Punishment desirable in itself** The report is quite open about its belief in punishment: sanctions’ ‘purpose is twofold; attempting to ensure compliance with the conditionality regime, *and*’ (emphasis added) ‘punishing noncompliant behaviour’ (p.6). This position is clearly different from that of more moderate advocates of sanctions, such as Gregg (2008), whose report does not mention the words ‘punishment’ or ‘punish’ at all.

The British literature indicates that claimants with repeated ‘failures’ are likely to be people with difficulties that make them unable to cope with the system, like 19-year old ‘Sally’ with learning difficulties mentioned by Broadway & St Mungo’s (2014, p.6). They simply do not fit the image of the deliberately ‘serially noncompliant’ claimant which the Policy Exchange has imagined (p.39). Oxfam (2014) comments ‘The experiences of our projects and partners suggest that someone who is sanctioned for four weeks is more likely to be sanctioned again. Many of these same people are the most vulnerable members of our society.’

A Freedom of Information disclosure by DWP (2013-1075, 18 April 2013) showed that in 2012 (to 21 October), the type of ‘failure’ with by far the highest proportion of sanctions which were repeats (33.4%, relating to 27,570 individuals) was non-participation in the Work Programme.[[16]](#endnote-16) Given the many reports of unsatisfactory services delivered by Work Programme contractors, this is at least as likely to indicate their failure to meet claimants’ needs as fault on the part of claimants. This is borne out by a recent Work Programme evaluation commissioned by the DWP (Meager et al. 2013), which reported a survey of Work Programme providers as revealing that 25.4 per cent thought the Programme ‘very ineffective’ and 22.5 per cent ‘somewhat ineffective’. The same report also stated that there is ‘no conclusive evidence that sanctions were changing job search behaviour or increasing job entry rates.’

There is not much systematic empirical evidence on the effects of escalating sanctions for repeat ‘failures’. An exception is Saunders et al. (2001). Most of their findings about escalating sanctions (2, 4, 26 weeks for 1st, 2nd and 3rd ‘offences’) in the New Deal for Young People were decidedly unfavourable. Many people received 26-week sanctions because the New Deal did not meet their needs, or because of misunderstandings, and many had significant obstacles to employment. They had mainly been allocated to the most unpopular of the four New Deal ‘Options’ and had had little choice. It was felt that once a client had reached the 26 week stage they were unlikely to return to the Option which they had been sanctioned for not attending. Some claimants talked about losing their confidence in relation to job interviews. In general, jobseekers disengaged from ‘the system’ after being sanctioned, particularly those with 26 week sanctions. Many wanted to sign off and have nothing to do with claiming benefits if it meant remaining on the New Deal. Concerns were also expressed over sanctioned clients who had serious personal difficulties that really needed intensive help.

While there is some evidence that sanctions do get some people off benefits faster, and sometimes even into work, all of it appears to relate to sanctions which are much milder than the present UK regime, let alone that proposed by the Policy Exchange. The Netherlands sanctions studied by Abbring et al. (2005) ranged from around 5% of the previous wage for 4 weeks, to 25 or 30% for 13 weeks. Those studied by Van den Berg et al. (2004) were a maximum 20% reduction in benefits for one or two months. Both of these articles were cited by Gregg (2008) to support his advocacy of sanctions. There appears to be no evidence that heavy sanctions are more efficacious than mild ones.

**ALTERNATIVE PROPOSALS WHICH WOULD BETTER ADDRESS THE PROBLEMS IDENTIFIED**

The Policy Exchange report correctly recognises that two of the biggest problems of the current sanctions regime are the reduction of poor claimants to destitution, and the high proportion of claimants who are wrongly sanctioned. But it is evident from the above discussion that its proposals, far from making sanctions ‘smarter’, would be ineffective and largely counterproductive in addressing these problems. Much more effective solutions are available.

 **Destitution** The report recognises that many sanctioned claimants are made destitute, but proposes to relieve the destitution only of a minority. No one should be made destitute by sanctions, and prior to the Jobseekers Act 1995, no one was. Disallowed or sanctioned claimants were entitled to a reduced rate of Income Support or Supplementary Benefit as of right from the start, assessed on the normal rules. The present vindictive provisions were introduced by the populist right-winger Peter Lilley. Although the Labour Party voted against them, and a Conservative MP crossed the floor of the House in protest, nothing has since been done to reform the system. Gregg (2008), in his review commissioned by the Labour government, side-stepped the issue. He declared (pp.14, 69, 70, 71) that ‘an effective sanctions regime is one that drives behaviour to increase the chances of finding work, and penalises non-compliance *without creating excessive hardship*’ (emphasis added), but he did not make any recommendations for the avoidance of hardship or even ask how the JSA regime actually impacts on the poor.

Reducing claimants to destitution does not help them to find work and is simply counterproductive (Homeless Watch 2013). Led by the churches,[[17]](#endnote-17) increasing numbers of people are recognising that the creation of destitution by the state, most strikingly revealed by the growth of food banks, is unacceptable. Restoration of a decent income for poor JSA and ESA claimants, whatever they are alleged to have done or not done, is an urgent priority, demanding legislation without delay.

**Wrongful sanctions** If people are being wrongly sanctioned on a huge scale, as the report admits, then the obvious solution is not the report’s proposal to treat wrongly sanctioned people supposedly less harshly, but to ensure that sanctions are not wrongly applied in the first place. The report avoids this issue by arguing (p.29) that ‘It seems reasonable to conclude that sensible steps are being taken to resolve process issues.’ Presumably this is a reference to the current government-commissioned review of some JSA sanctions by Matthew Oakley, a Policy Exchange alumnus. But Oakley’s terms of reference limit him to communications and process, excluding the issue of wrongful sanctions. Although the current Employment Minister has declared her intention to hold a wider review, she has committed herself to neither the scope nor the timescale of such a review.[[18]](#endnote-18)

Adler (2013), on the basis of evidence running to 2010, has pointed out how few are the protections for claimants in the JSA/ESA sanctions regime and its grave defects as a system of administrative justice. Under the Coalition, matters have become very much worse. Added to the pre-existing problems, there is now a deliberate policy on the part of ministers to drive up the level of sanctions to previously unheard-of levels through managerial pressure on Jobcentre staff. In evidence to the Oakley review (Webster 2014), I have spelled out many of the individual changes which would be required to provide a proper level of protection.

However, these reforms will not address the many other fundamental objections to sanctions. In so far as the state has valid reasons for attempting to promote particular behaviours – and the reasons are often not valid – there are better ways of doing it than taking money away from already poor and/or crisis-stricken people. Sanctions should simply be abolished (Webster 2013).

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1. Some technical issues about the report are not discussed here. One of these is the question of the reasons for the recent rise in ‘reserved’ and ‘cancelled’ sanctions decisions, on which the report quotes my own work. My up-to-date view on this is set out in the briefing at http://paulspicker.files.wordpress.com/2014/02/sanctions-stats-briefing-d-webster-19-feb-2014-1.pdf [↑](#endnote-ref-1)
2. Explanatory Memorandum to the Jobseeker’s Allowance (Sanctions) (Amendment) Regulations

2012, 2012 No. 2568 [↑](#endnote-ref-2)
3. The figure of 68,000 is actually an overestimate of the group as defined by the Policy Exchange report. It refers to claimants with a first ‘failure’ falling within the period 22 October 2012 to 30 September 2013. The number of claimants within this group failing for the first time *ever –* which is the group apparently talked about by the Policy Exchange report  *-* will be smaller than this but cannot be found from the DWP’s published statistics. The 68,000 figure was incorrectly reported in the media as referring to *all* people wrongly sanctioned. This is actually a much larger number, at least 140,000 per year, and would be larger still if more people asked for reconsideration or appeal. Dissemination of the inaccurate figure resulted from misreporting by the Policy Exchange itself, on its website and in its press release. [↑](#endnote-ref-3)
4. An accurate estimate of the number of people receiving a lower level sanction for the first time in a given year cannot be obtained from the published DWP statistics. These show that 295,897 people received at least one adverse low level sanction decision in the 49 weeks from 22 October 2012 to 30 September 2013, but this is after removal of those whose adverse decision was reversed on reconsideration or appeal. Inclusion of these people would raise the number. On the other hand, definition of the group as those with a ‘first time ever’ sanction – apparently the Policy Exchange’s intention - would lower the number. [↑](#endnote-ref-4)
5. See the author’s briefing at http://paulspicker.files.wordpress.com/2014/02/sanctions-stats-briefing-d-webster-19-feb-2014-1.pdf [↑](#endnote-ref-5)
6. The algebraic formulae are as used in the Policy Exchange report. [↑](#endnote-ref-6)
7. These are the report’s calculations, not the present author’s. [↑](#endnote-ref-7)
8. DWP, Mandatory Work Activity Provider Guidance – Incorporating Universal Credit (UC) Guidance

(January 2014), para.1.7, at https://www.gov.uk/government/publications/mandatory-work-activity-dwp-provider-guidance [↑](#endnote-ref-8)
9. The British literature on the difficulties of sanctioned claimants includes the two dozen or so submissions to the Oakley review of sanctions listed on the Child Poverty Action Group webpage <http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations>. Also Homeless Watch (2013), Manchester CAB Service (2013), and Scottish Government (2013). [↑](#endnote-ref-9)
10. The biography of the report’s author reveals that he served as an intern in the office of a US Republican Congressman for Alaska, Don Young, while the Policy Exchange website has a page inviting donations from ‘American friends of the Policy Exchange’ at <http://www.policyexchange.org.uk/component/zoo/item/about-american-friends-of-policy-exchange>. [↑](#endnote-ref-10)
11. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/258358/vouchers.pdf>. It is remarkable that the Policy Exchange (pp.32-33) cites US and Australian examples of payment cards while apparently being entirely unaware of the existence of such a card in the UK or of the voluminous literature about it. [↑](#endnote-ref-11)
12. http://www.migrantsrights.org.uk/news/2013/red-cross-calls-evidence-azure-card-and-its-impact-asylum-seeker-lives [↑](#endnote-ref-12)
13. Almost all the organizations submitting written evidence to the House of Commons Work and Pensions Committee Inquiry into *The Role of Jobcentre Plus in the reformed welfare system* who commented on the services provided by Jobcentre Plus were highly critical, accusing Jobcentre Plus of failing to assess claimants’ needs properly and of making inappropriate referrals. See http://www.publications.parliament.uk/pa/cm201314/cmselect/cmworpen/479/479vw.pdf [↑](#endnote-ref-13)
14. http://www.theguardian.com/money/2014/mar/16/dwp-jobs-website-universal-jobsmatch [↑](#endnote-ref-14)
15. <http://blog.church-poverty.org.uk/2013/12/04/benefit-sanctions-ineffective-and-immoral/>. The Chartered Institute of Personnel and Development reported in its *Labour Market Outlook*, Spring 2013, p.2, that employers are receiving 45 applications for each low-skilled job, but only half of the applicants are suitable. [↑](#endnote-ref-15)
16. Non-participation in Community Action had a higher proportion of repeat sanctions than the Work Programme but there were so few repeatedly sanctioned individuals (190) that this has been ignored. The next highest proportions were for refusal of employment (16.95%), not actively seeking employment (15.80%), and missing an adviser interview (13.36%). For all other reasons, repeats were under 5%. [↑](#endnote-ref-16)
17. See the comments of Cardinal Nichols on 14 February 2014 at <http://www.bbc.co.uk/news/uk-26200157>, and the letter by 43 Anglican bishops and other clergy on 19 February 2014 at http://www.mirror.co.uk/news/uk-news/27-bishops-slam-david-camerons-3164033 [↑](#endnote-ref-17)
18. Esther McVey MP, letter to Debbie Abrahams MP, 1 February 2014, available at http://refuted.org.uk/2014/02/21/newsanctionsreview/ [↑](#endnote-ref-18)