**House of Commons**

**Work and Pensions Committee report: *Benefit Sanctions Policy***

***beyond the Oakley Review***

**(24 March 2015)**

**BRIEFING ON THE GOVERNMENT’S RESPONSE**

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**4 November 2015**

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**SUMMARY**

The government’s response published on 22 October 2015 does not acknowledge any of the fundamental problems of the sanctions system identified by the Work & Pensions Committee. It repeats unjustified claims that sanctions only affect a small minority of claimants, that there are effective safeguards against wrongful sanctions, and that the UK system can be justified by reference to international evidence. It asserts at least ten times that the ‘Claimant Commitment’ ensures that requirements on claimants are reasonable, when the DWP’s own research findings show that around half of claimants in each case state that their ‘Commitment’ contains actions which do not take account of their personal circumstances, do not genuinely increase their chances of finding work, or are not achievable.

The government has refused those Committee recommendations which would have thrown further light on the problems of the system, namely: a comprehensive independent review, specific review of ESA sanctioning, exploration of alternatives to financial sanctions (other than possibly for ESA rather than JSA claimants), evaluation of the lengthening of sanctions in 2012, early evaluation of the Claimant Commitment, monitoring of destinations of sanctioned claimants, and reform of the legislative framework.

The government has also refused the recommendation that all claimants should be allowed to apply for a hardship payment from day one of a sanction, and has given up on attempts to prevent wrongful cancellation of Housing Benefit for the one third of penalised JSA claimants who are ‘disentitled’.

The only guaranteed improvement to the system is the restoration of automated sanction notifications, which should almost entirely resolve the problem of the two thirds of penalised JSA claimants who are sanctioned but not ‘disentitled’ having their money stopped before they are informed. Further improvements which are being considered include allowing mentally ill and homeless people to apply for hardship payments from day one; automatic hardship application for ‘vulnerable’ claimants; a 14-day pause for representations before a sanction is applied; and possible resolution in future Work Programme contracts of the problem of contractors having to make obviously unreasonable referrals for sanction.

There are also a range of issues where the government says that it is improving guidance to DWP staff, or changing methods of working. The test of whether these improve the system will be whether there is any abatement in the stream of complaints from the voluntary sector about inappropriate sanctions.

**Purpose of this Briefing**

1. The House of Commons published its report *Benefit Sanctions Policy beyond the Oakley Review* (HC 814) on 24 March 2015, shortly before the General Election. The response by the newly elected Conservative government (HC 557) was published on 22 October 2015,[[1]](#endnote-1) together with a covering letter from Iain Duncan Smith to the Committee chair,[[2]](#endnote-2) a Parliamentary statement[[3]](#endnote-3) and a research note.[[4]](#endnote-4)

2. The purpose of this briefing is to help readers to assess how far the government has agreed to address the problems identified by the Committee.

**Background to the Committee Inquiry**

3. The Work and Pensions Committee report is the first serious review of benefit sanctions policy since the extension and intensification of sanctions which began in 1986. A review by Professor Paul Gregg in 2008 (Gregg 2008) did not take evidence and primarily reflected its author’s personal views. The Oakley Review (July 2014), also conducted by a single individual, did take evidence[[5]](#endnote-5) but had restricted terms of reference; it was confined to issues of process and communication, considered only some individual types of JSA sanction (accounting for one third of the total), and did not consider ESA sanctions at all.[[6]](#endnote-6) The Work and Pensions Committee inquiry, by contrast, had wide terms of reference, took evidence, and was conducted by the full Committee on a non-partisan basis. It received about 160 written submissions, of which 100 are listed in the report (pp.65-67) and available on the Committee website.[[7]](#endnote-7) Submissions came from claimants themselves, voluntary organizations, local authorities, former DWP staff, ERSA (the representative body for the employment support industry), the DWP staff union, and academics and policy institutes. The Committee also held three oral evidence sessions.

4. The Committee’s inquiry developed from an earlier inquiry, *The Role of* *Jobcentre Plus in the reformed welfare system* (HC 479, January 2014), which had highlighted the seriousness of the problems being created by the sanctions system (Chapter 4, pp. 23-28).[[8]](#endnote-8) It was the government’s refusal[[9]](#endnote-9) to accede to the Committee’s call in that report for a comprehensive independent review of sanctions which led to the Committee’s own inquiry on sanctions. The Committee does not regard its inquiry as a substitute for a comprehensive independent review. Moreover, there are important issues that the Committee’s report does not address, for instance the question of ministerial pressure on DWP staff to increase sanctions, and the effect of Mandatory Reconsideration in all but killing off any independent appeal process.

5. This briefing does not attempt to work through the recommendations in sequence, but highlights the key issues under the following headings: Evaluation and Monitoring, Hardship Payments, Processes, Communications, Legislative Framework and Universal Credit. Where the Committee has included more than one point within the same recommendation, the government response has split the Committee’s recommendation and renumbered, thus increasing the number of recommendations from 26 to 36. In referring to individual recommendations, this briefing gives both numbers, e.g. ‘Comm 25/Govt 33’.

**The Government’s Introduction**

6. Although the Committee’s report reasserts support for benefit conditionality in principle, it represents a fundamental challenge to the current UK sanctions system. Its Summary (pp.3-6) points out a wide range of problems in the system: lack of evidence to justify financial sanctions, or their severity; doubts about the reasonableness of Claimant Commitments; lack of protection for vulnerable groups and single parents; an inappropriately strict approach to all claimants rather than a focus on those who are genuinely not engaging in work search; fundamental doubts about the appropriateness of sanctions for ESA claimants; and inadequacy of the hardship payments system.

7. The government’s response does not acknowledge any of the fundamental problems. It starts with a reassertion of its dogmatic position on sanctions (Introduction, pp.1-2). This contains some important specific misrepresentations.

8. The government makes the unqualified statement that ‘There is a large body of evidence showing that work is good for physical and mental wellbeing’, citing a government-sponsored paper by Waddell & Burton (2006). In fact Waddell and Burton make no such unqualified statement. They say (p.ix) ‘Although the balance of the evidence is that work is generally good for health and well-being, for most people, there are ..... major provisos ......

a minority of people may experience contrary health effects from work; (and) Beneficial health effects depend on the nature and quality of work.’ These provisos are borne out by other research, for instance by Bartley (2003), who showed that ‘men and women in the least favourable employment conditions (were) nearly four times more likely to become ill than those in the most favourable’, and Baumberg (2014), who found that ‘people in low-control (but not high-demands) jobs are more likely to claim incapacity benefits in the following year’. The government also claims that ‘work provides a route out of poverty for families’. But a recent report from the Institute for Fiscal Studies (2015) showed that the proportion of children in poverty living in a working family rose from 54% in 2009–10 to 63% by 2013–14.

9. The problem is that while it is generally true that people will be better off in work, the specific effect of the current type of sanctions system is precisely to drive people into the jobs which are worst for their health and wellbeing and the least likely to improve their net incomes. It is often a way of minimising the benefits from work.

10. The government also asserts that ‘international evidence is clear that benefit regimes tied to conditionality get people into work’. While there is some evidence that financial sanctions have small effects in increasing employment, none of the relevant studies have ever considered whether the resulting benefits outweigh the many documented costs of sanctions in terms of damage to health and wellbeing, worse job matching, lower productivity, waste of employers’ time in pointless job applications, reduced quality of employment services etc. Nor has such an assessment ever been made by the DWP. Moreover, there is simply no evidence that financial sanctions applied to particular groups such as people with mental health problems have any positive effects at all, but there is a lot of evidence of negative effects.

11. The government goes on to claim that ‘a benefit reduction is applied’ ‘for the small minority of claimants who refuse to meet their agreed requirements or refuse to take up employment without good reason’. This comment combines several misrepresentations:

(i) Sanctions mean the complete loss of JSA, not a reduction; following George Osborne’s summer budget, from April 2017 they will also involve the complete loss of ESA.

(ii) Requirements are often *not* genuinely agreed. The DWP’s two relevant studies, each of about 900 claimants (DWP 2014b, para. 3.2.3, and DWP 2015a, Table 3) gave very similar results. They showed that 59% or 51% of UC claimants thought their Claimant Commitment contained actions which did not take account of their personal circumstances, 55% or 46% that it contained actions which would not genuinely increase their chances of finding work, and 46% or 41% that it contained actions that would not be achievable. A significant proportion (11% or 8%) thought that *none* of the actions took account of their personal circumstances. The government has tried to conceal the true import of these findings by reporting them inappropriately. So it claims (p.8) that the surveys show that ‘the vast majority of claimants thought that *some or all* of the actions they accepted as part of their Claimant Commitment would increase their chances of finding work, took account of their personal circumstances, and were achievable’. But given that claimants may be sanctioned if there is *any* action in the claimant commitment that they fail to perform, clearly it is essential that *every single* action should be worthwhile, reasonable and achievable. The system is failing to achieve this by a mile. The assertion that the Claimant Commitment ensures that requirements on claimants are reasonable is made at least ten times throughout the government’s response, as it is relevant to so many aspects of the sanctions system. This therefore is a fundamentally important misrepresentation.

(iii) Under the Coalition, it has been very rare for a claimant actually to be found a job by DWP and therefore to have any chance of refusing it: only 2.4% of JSA sanctions in 2014 were for refusing a job, compared with 9.7% in 2003. Almost all sanctions are for not doing things demanded by DWP which at best might help the claimant get a job at some time, and are often of no value at all, such as repeated ‘cold calling’ applications for jobs for which the claimant has no particular qualification.

(iv) Sanctions do not only apply to a ‘small minority’ of claimants. The DWP's Freedom of Information response 2014-4972 disclosed that of all those who claimed JSA during the financial year 2013/14, 18.4% were sanctioned (after challenges). Over the five years 2009/10 to 2013/14 inclusive, the percentage of JSA claimants sanctioned (after challenges) was even greater, at 22.3%. The proportion *before* challenges will have been higher still, at about one quarter.[[10]](#endnote-10) In other words, a claimant’s true chance of sanction is about one in four. The DWP systematically misrepresents this point, and as a result of a complaint by the present author, the UK Statistics Authority in August this year recommended to DWP that it should include in its quarterly benefit statistics a statement of the proportion of JSA claims subject to a sanction, as well as the proportions of claimants who have been sanctioned during the most recent one-year and five-year periods, and the numbers on which these proportions are based.[[11]](#endnote-11)

12. The government’s claims (p.2) that ‘A robust decision making process is in place to ensure that (sanction) decisions are correct’ and that ‘We also take particular care with those with a mental health condition, learning disability or a condition affecting communication or cognition’ are not justified considering the large amount of evidence of wrongful sanctioning and damage to vulnerable people put to the Committee and to Oakley in their three inquiries, and a resolution passed by the whole House of Commons on 3 April 2014 stating ‘That this House notes that there have been many cases of sanctions being wrongfully applied to benefit recipients; and call on the Government to review the targeting, severity and impact of such sanctions’. The government also states that ‘claimants can ask for the (sanction) decision to be reconsidered and appeal to the First-tier Tribunal’. Following the introduction of Mandatory Reconsideration in October 2013, the number of cases appealed to independent Tribunals has fallen to about one in a thousand for JSA, and nil for ESA.

**The Responses to Individual Recommendations**

**EVALUATION AND MONITORING**

**Comprehensive Independent Review**

13. The Committee’s most important recommendation (**Comm 1/Govt 1**) was for a broad independent review of benefit conditionality and sanctions. The government continues to refuse this (p.3).

**Financial sanctions as opposed to other means of influence**

14. The Committee pointed out (para.59) that while there is evidence that conditionality regimes promote employment, there is very limited evidence on the specific impact of financial sanctions as opposed to that of the benefit conditions themselves, and of employment support. It therefore recommended evaluation of these relative impacts (**Comm 9/ Govt 9**), and piloting of non-financial models of conditionality for vulnerable groups (**Comm 22/Govt 30**). The government has rejected both of these, while claiming to have accepted the latter ‘in principle’. It cites (p.3) DWP research, already quoted in its response to Oakley (p.5), showing that ‘72 per cent of JSA claimants and 61 per cent of ESA claimants said awareness of sanctions made them more likely to follow rules’. As noted in this author’s *Guide to Oakley* (p.6), the same research also shows that there is no evidence that this helps people into work - not surprising given the findings quoted at para.11(ii) above showing how inappropriate the ‘rules’ often are.

15. The Committee also asked for piloting of voluntary approaches for ESA claimants (**Comm 22/Govt 29**). The government’s response here is more positive. It notes that it is testing alternative approaches for claimants with long term health conditions and disabilities. It refers to an Individual Placement and Support model pilot[[12]](#endnote-12) and a Voluntary Early Intervention pilot, which is part of a wider package announced in November 2014.[[13]](#endnote-13)

**Lengthening of sanctions**

16. The Committee pointed out (para. 57-58) that there is no evidence to support the lengthening of sanctions that took place in 2012, and recommended that there should be an evaluation of the efficacy and impacts of longer sanctions (**Comm 9/Govt 10**). The government refuses to do this (p.3), giving no reasons.

**Claimant Commitment**

17. As noted in para.11 above, the government regularly claims that its ‘Claimant Commitment’ is agreed between the claimant and the Jobcentre adviser. Evidence to the Committee contradicted this, indicating that claimants are often forced to include actions which are inappropriate or unachievable, and then being sanctioned as a result. The Committee therefore recommended early evaluation, and publication of the results, before the end of 2015 (**Comm 11/Govt 12 & 13**). In response, the government has refused to evaluate the claimant commitment within JSA, and has reiterated its publication schedule for evaluation of Universal Credit.

18. However, this particular argument appears to have been settled already. As noted in para.11(ii) above, the DWP’s own research confirms that large numbers of claimants within Universal Credit are being forced to agree inappropriate actions. The Claimant Commitment clearly requires radical reform.

**Monitoring destinations of sanctioned claimants**

19. Referring to the Oxford University research showing many claimants leaving benefit after sanction but not going into jobs (Loopstra et al. 2015), the Committee pointed out the importance of monitoring what happens to sanctioned claimants in terms of employment and claimant status, noting that the introduction of Universal Credit creates new opportunities to do this (**Comm 10/Govt 11**). The government refuses, giving no reason.

**HARDSHIP PAYMENTS**

20. Prior to the late 1980s, sanctioned or disqualified claimants were entitled to Supplementary Benefit on the normal rules, reduced by 40%. It was Michael Portillo who introduced the current system of discretionary hardship payments on specially harsh rules in 1988, and Portillo and Peter Lilley who extended it in 1996, at the same time introducing the provision that sanctioned claimants, other than arbitrarily-defined 'vulnerable' (which now includes all ESA claimants), cannot apply for hardship payments for the first two weeks of a sanction.[[14]](#endnote-14)

21. The hardship payment system operates in great secrecy. No statistics have been published on it since February 2005, other than a Freedom of Information response in 2013[[15]](#endnote-15), and a Parliamentary Answer of 21 January 2015.[[16]](#endnote-16) We know from the latter that in 2011/12, when there were 705,000 JSA sanctions, there were only 64,000 hardship payment awards, indicating that only about one in ten of sanctioned claimants got a hardship payment. A Parliamentary Answer on 6 March 2015 promised that more information would be published in May 2015, but to date nothing has appeared. The Committee was highly critical (para.150) of the lack of published information about hardship payments and called for at least annual data on numbers of hardship payment applications, numbers of awards, and numbers of those awards made from day one of a sanction (**Comm 25/Govt 34**). In its response the government reiterates its intention to publish further data but although we are 5 months on from its failure to honour its undertaking to publish in May, it gives no indication of the proposed timescale.

22. The hardship payment system is responsible for destitution and food bank use on a large scale, and the official DWP Decision Maker’s Guide acknowledges that the two week wait will often damage the claimant’s health (para. 35099). The Committee concluded that ‘changes to the system are required to ensure that the risks of severe financial hardship are more comprehensively mitigated’, and recommended that all sanctioned claimants should be able to apply from day one (**Comm 25/Govt 32**).

23. In response, the government spends two paragraphs irrelevantly repeating its claims about the allegedly agreed and reasonable nature of the Claimant Commitment. It then goes on to agree only to consider extending the definition of 'vulnerability' for the purposes of day one application to 'a wider group of claimants'. Duncan Smith's parliamentary statement and letter to the chair specifically mention people with mental health conditions and homeless people. The fact that these groups are not mentioned in the response itself suggests that this was an afterthought.

24. It is extraordinary to suggest that mentally ill and homeless people should be deliberately refused any means of support in the first place. Setting that aside, the obvious difficulty with an approach that merely extends the ‘vulnerable’ categories is that vulnerability cannot be identified through membership of predetermined groups. Indeed, as a matter of common sense, anyone deprived of all means of support becomes vulnerable.

25. The Committee also recommended that where the claimant has dependent children or is a member of a vulnerable group, the hardship payment decision-making process should be instigated by DWP Decision Makers themselves (**Comm 25/Govt 33**). The government says it accepts this recommendation, subject to further work on feasibility. It is difficult to see what the alleged feasibility issues might be.

26. One of the major criticisms made in the Oakley report (p.38) was that claimants were not being told about the existence of hardship payments or how to claim; it quoted (p.9) the DWP’s own research showing that only 23% of claimants who said their benefit had been stopped or reduced said they had been told about hardship payments. The government now claims that ‘we have improved the hardship process to ensure that our customers are regularly told about the availability of hardship payments throughout their claimant journey’. It also says it has speeded up the hardship claim process so that awards are paid within 3 days.

27. In this author’s view, there is no viable solution to the administrative and humanitarian problems created by the Portillo/Lilley hardship payment system other than a restoration of the entitlement to a reduced rate of benefit which was in place prior to 1988. It is understood that this is the intention of the cross-party private members’ Benefit Sanctions Regime (Entitlement to Automatic Hardship Payments) Bill which will have its second reading debate in the House of Commons on 4 December.

**PROCESSES**

**Targeting of conditionality and sanctioning**

28. One of the most important criticisms of the sanctions system made by the Committee was of its ‘scatter-gun’ approach, in which all claimants are exposed to severe sanctions without any attempt being made to establish whether they are genuinely trying to gain employment. It therefore called for a more targeted approach to conditionality and sanctioning, with a pilot based on ‘segmentation of claimants by their attitudes and motivations’ (**Comm 17/Govt 21 & 22**).

29. The government’s response falls into two parts. The first is a reassertion that the Claimant Commitment is already fully tailored to claimants’ needs. Unfortunately, as noted in para.11(ii) above, its own research shows that this is not the case.

30. The second part of the response states that the government is in fact developing a segmentation tool. It refers to a trial in 27 Jobcentres which was described in DWP Freedom of Information response 2014-3854[[17]](#endnote-17) and accompanying attachment.[[18]](#endnote-18) However, it is hard to see how the four ‘segments’ being tested would help in targeting sanctions. Presumably ‘Willing but nervous jobseekers’ and ‘Eager jobseekers’ would not be targeted for sanctions, but the other two categories ‘Ambivalent claimants with few barriers’ and ‘Other jobseekers’ respectively ‘May have personal circumstances which means they see work as less of a priority (e.g. health/childcare issues)’ and ‘May have significant barriers to working or undertaking job‐search activity’. These circumstances would also appear to make sanctions inappropriate. In this author’s view, segmentation to target sanctions is impracticable, since misattribution to segments is bound to be frequent. A more sensible approach, for those who say they believe in sanctions ‘as a last resort’, would be to introduce procedures to ensure that sanctions are only considered once all other approaches have been gone through.

**Less than full compliance with the Claimant Commitment**

31. As an extension of the previous point, the Committee was concerned that claimants who have slightly deviated from their Claimant Commitment are just as likely to be sanctioned as those who are not genuinely seeking work at all, and recommended that DWP should make a clear distinction between them (**Comm 18/Govt 23**). Of course ministers have only been able to drive up ‘not actively seeking work’ disentitlements/sanctions from the 48,560 (after challenges) of the last full year of the Labour government to 316,887 in 2013 and 193,019 in 2014 precisely by ignoring this distinction. Few claimants who have been sanctioned for supposedly ‘not actively seeking work’, or voluntary agencies which have tried to help them, will recognise the description of the supposedly flexible process for assessing their compliance which the government gives in its defence (pp.13-14). The test of whether the government really intends to do anything to make the actual process conform to its rhetoric will come in future statistics showing the rates of sanction for ‘not actively seeking work’.

**Tailored support for sanctioned claimants**

32. The Committee heard evidence that the duties places on claimants are not matched by those on DWP to provide employment support. Having heard the Minister Esther McVey assert (4 February 2015, Qu.197-200) that sanctioned claimants are given extra support but unable to say what it was, the Committee specifically recommended additional tailored support for sanctioned claimants (**Comm 6/Govt 7**). In response the government now says this will be provided through a new ‘Work Coach delivery model’, under which the claimant will have the same Work Coach every time they attend the Jobcentre, whom they will meet within two weeks after a sanction. This cannot be entirely correct, due to holidays and staff movements, but to the extent that it is, there would seem to be some problems:

1. In most cases the sanction will have soured the relationship and it would be better for the claimant to see someone different.
2. Sanctioned claimants’ own personal accounts often stress how different advisers can be, with some unpleasant bullies and others who are very constructive. The new system will be hard on those stuck with a bully.
3. Maintenance of the two-week ban on applying for hardship payments (see **Comm 25/Govt 32** above) means that many sanctioned claimants will be in no fit state to discuss anything.
4. Loopstra et al. (2015) have shown conclusively that many claimants simply leave benefit after a sanction, thus putting themselves beyond the reach of any support.

33. Judgement must be suspended on whether the new system will actually provide any better support.

**Failure to inform claimants of a sanction**

34. A longstanding problem has been of claimants not being informed of a sanction, finding out about it only when the money fails to appear in their bank account. This also has the effect of making it difficult for the claimant to appeal. Oakley (pp.45-46) highlighted this problem in July 2014. It was not raised in the Committee’s report, but the government has returned to it in its response (p.3) and particularly in its Parliamentary statement and letter to the Committee chair. It has published a research note (DWP 2015b) analysing the records for 2014, which show that 47,239 JSA claimants (6.9%) who were sanctioned in that year did not receive notification of the sanction. Applying this percentage to the whole period of the Coalition government, there will have been about 279,000 cases where claimants had their benefit stopped through sanction before being notified. The government now proposes to reintroduce computer-generated notification (abandoned in 2001) to deal with this, although it admits that it will be unlikely to be 100% successful. (The 279,000 figure does not include people who money was stopped before notification because of a ‘suspension’ prior to disentitlement - see para.36-37 below. The DWP research note does not discuss these cases.)

35. The research note concludes that people who were not notified were not thereby disadvantaged in the appeal process, i.e. they were slightly *more* likely (9%) to be successful in challenging their sanction. However, it arrives at this conclusion by defining ‘decision reviews’ as not part of the appeal process. If decision reviews are included, it turns out that on the DWP’s figures, non-notified claimants were significantly disadvantaged, being 28% *less* likely to have their sanction overturned. The DWP justifies omitting decision reviews on the ground that ‘the relatively high propensity for decisions to be changed at ..... review is not related to a claimant requesting this (to) happen’. However, the published procedures make it clear that a decision review is in fact a sanctioned claimant’s compulsory first recourse, since they cannot apply directly for Mandatory Reconsideration (there is no form). Only if the claimant is unsuccessful in getting the sanction overturned at decision review stage does the Decision Maker (not the claimant) fill in a form to request Mandatory Reconsideration. Moreover the research note also states ‘Decision Makers can and do alter their decisions in light of further evidence .... The decision review is used for this purpose.’ The source of this further evidence must often or usually be the claimant. Sanctioned claimants who do not know they have been sanctioned will not usually have the chance to provide this information.

**Suspension of JSA before ‘good reason’ is considered**

36. There is a particular problem about penalties for ‘not actively seeking work’ (which accounted for 31.9% of all JSA penalties in 2014) and ‘non-availability for work’ (1.3% in 2014). These cases are defined by the Jobseekers Act 1995 as removing entitlement to JSA, and not merely attracting a ‘sanction’ (although the 2012 Regulations added a sanction to the disentitlement). Benefit is suspended immediately on identification of a ‘doubt’ about entitlement, before a determination of the question is made. This therefore is a second reason why a claimant would not receive notification before their benefit is stopped. As just discussed, Oakley raised the issue of non-notification, but did not separately identify the specific role of ‘disentitlement’. However, in its response to Oakley (p.8) the government did identify this issue, and undertook to speed up decision-making in these cases so that a decision is made before benefit stoppage takes effect, expecting to introduce this from July 2014. In oral evidence to the Committee, the DWP stated that it was aiming to make these decisions within two days. In its report, the Committee asked for confirmation of the steps DWP has taken to deal with this problem, and assurance that they are working (**Comm 19/Govt 24**).

37. In response, the government states that as a result of ‘significant improvements’ and the 48 hour timescale for decisions, ‘the vast majority of claimants’ now feel no impact from this problem, i.e. are notified before their money is stopped. ‘The small number of cases which go over are usually those which require further information’. This does raise the question why claimants should have their money stopped on the basis of missing information.

**Wrongful stoppage of Housing Benefit**

38. This issue was highlighted by Oakley (p.38), who received a large amount of evidence that sanctioned claimants were wrongly having their Housing Benefit stopped by their local authority and running up large rent arrears and sometimes being evicted as a result. The issue had not been resolved by the time of the Committee’s inquiry and it recommended that the government should clarify the position (**Comm 5/Govt 6**).

39. In its response to Oakley (pp.10-11) the government appears not to have understood the issue properly. There are two types of JSA conditionality penalty: a sanction alone (accounting for about two thirds of penalties) and disentitlement, which since 2012 is accompanied by a sanction (accounting for one third). The government’s response to Oakley did not make any distinction between these. It proposed in the short term to tell all sanctioned/disentitled claimants to contact their Housing Benefit office to confirm their status, and in the longer term to change the information given to local authorities by the DWP’s computer system.

40. The government now claims that the problem does not exist for the two thirds of penalties which are *sanctions*, but has given up on any attempt to prevent *disentitled* claimants from wrongly losing Housing Benefit. A recent clarificatory circular to local authorities, HB Bulletin U1-2015 (30 September 2015)[[19]](#endnote-19) related only to 'sanctions' and not 'disentitlements'.  The government response to the Committee (p.5) accepts that 'disentitled' claimants’ Housing Benefit may be affected. This is a grave problem because almost none of the disentitlement cases should lead to loss of Housing Benefit.

41. As explained in this author’s *Guide to Oakley* (pp.8 & 17-18), the main problem arises from the perverse drafting of the Jobseekers Act 1995. It is a matter of common consent that people are not unemployed unless they are actively seeking work. The ILO defines ‘actively seeking work’ as having taken an action to look for work in the past 4 weeks. But the 1995 Act chose to make entitlement to JSA dependent, not on seeking work, but on taking ‘reasonable steps’ as decided by the DWP. Under the Coalition there has been a massive increase in the requirements placed on claimants, together with much more aggressive treatment of anyone held not to meet them. In 2003 there were only 4,459 disentitlements (after challenges) for ‘not actively seeking work’. By 2009, the last year of the Labour government, they had risen to 48,560. But by 2014 the Coalition had raised this to 316,887 – *seventy-one times as many* as in 2003.

42. The solution to this, major, part of the problem lies in reforming the 1995 Act. This could easily be done by making entitlement to JSA depend only on meeting the ILO definition of ‘actively seeking work’. Even if the government then maintained sanctions for not meeting DWP’s detailed job seeking requirements, they would not cause loss of Housing Benefit.

43. Claimants are also disentitled for non-availability for work, although there are far fewer of these cases – only 7,828 (after challenges) in 2014. This is more difficult to deal with conceptually, but in practice could be addressed in a similar way.

**Work Programme contractors’ referrals where claimants have ‘good reason’**

44. Another longstanding problem which was highlighted by Oakley (pp. 43-45) is that Work Programme contractors are required to refer every missed appointment to DWP for sanction even where it is obvious that there was a good reason for it, thus generating huge waste. The Committee (**Comm 2/Govt 2**) reiterated its concern. The government claims that this cannot be changed because of ‘legislative and contractual obligations’. However, there can obviously be no contractual problem in the government unilaterally releasing contractors from what is a financially burdensome duty. In this author’s view, the claim about legislation is also mistaken, for the reasons given in the *Guide to Oakley*, p.20. The legislation (Jobseekers Act 1995, S.19A (2) (f)) refers to failure to attend ‘a scheme or programme’, not failure to attend a single interview. In common sense terms this means that missing a single appointment, especially if a sensible reason is given, is not normally a sanctionable failure and therefore no referral is required. It is significant that a recent Upper Tribunal case[[20]](#endnote-20) threw out the DWP’s attempt to put an overly strict construction on the similar provision relating to ‘failure or refusal to carry out a Jobseeker Direction’.

**Pre-sanction written warnings and non-financial sanctions; delay before sanction**

45. Gregg and Oakley, and the DWP Minister Lord Freud in a previous role (Freud 2007), have all called for first-time ‘failures’ to be met with a written warning rather than a sanction, and Oakley also called for trialling of non-financial sanctions for first-time failures. The Committee adopted these recommendations (**Comm 4/Govt 4**, **Comm 5/Govt 5**).

46. The government claims to have accepted these recommendations in principle, but it has not. Instead, it proposes to *trial* arrangements under which sanctioned claimants will be notified of the intention to sanction and given 14 days during which they can provide further evidence to explain their non-compliance.

47. The government made much of this in its Parliamentary statement and letter to the Work & Pensions Committee chair, but it is in fact little more than a reversal of a change made by Iain Duncan Smith and his team which took effect for JSA on 22 October 2012. The Explanatory Memorandum to the Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012[[21]](#endnote-21) stated:

7.14 We propose to change the effective date of a sanction, that is, the date from which a sanction is applied to a claimant’s benefit. The aim is to make the link between claimants’ failure to comply and the subsequent sanction clearer and swifter. Currently there can be a delay of up to two weeks between non compliance and the subsequent sanction which can confuse claimants. We are changing the approach to ensure that a sanction will be applied to the next payment due.

7.15 Under the revised approach a sanction will be applied from the first day of the benefit week in which the failure occurred, unless payment has already been made for that period at the time the decision to sanction is made, in which case the sanction is to be applied from the first day of the benefit week after the one for which the claimant was last paid JSA.

7.16 Whilst we are bringing forward the effective date of the sanction we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction before it is applied and have the opportunity to show good reason for non compliance (in which case no sanction will be applied) and a right of appeal against the decision.

48. If the 14-day notification period is eventually rolled out to all claimants, then it is likely to be an improvement. Some, or even most, sanctioned claimants who would have overturned their sanction on review or reconsideration but would have had their benefit cut anyway prior to a repayment, should under the proposed arrangement be able to overturn the sanction before payment is stopped. However, this remains to be seen as the outcome will depend on the attitude taken by the relevant staff, which in turn depends on whether ministers maintain their pressure to drive up sanctions. The government response also makes it clear that the 14-day notification will not necessarily apply to the one third of penalties which are disentitlements as well as sanctions. On p.15 it states only that ‘Following the results of our trial on early warning for *sanctions* (emphasis added), we will further consider how the approach might be tailored for where a doubt is raised for *entitlement* (emphasis added)’.

49. In spite of the reassurance in the 2012 Explanatory Memorandum that ‘we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction’, the DWP research note (2015b) implies that approximately 138,000 sanctioned JSA claimants were *not* notified of their sanction in the ensuing 29 months, to March 2015.

**Sanctions and support for ESA Work Related Activity Group claimants**

50. The Committee was particularly concerned about sanctions on ESA claimants, which have been rising rapidly, almost entirely within the Work Programme. It received evidence querying whether safeguards were working, whether there was sufficient support for claimants, whether sanctions were appropriate at all and whether alternative approaches should be tried. It recommended that DWP should review ESA sanctioning in relation to the Work Programme, accelerating development of more effective support, and prioritising the updating of regulations early in the next Parliament, to empower Work Programme providers to be able to accept “good cause” (**Comm 21/Govt 27**).

51. In line with its refusal of a general review of sanctions, the government has not agreed to a review; indeed its response does not even refer to this part of the Committee’s recommendation. It also claims that in the specific case of ESA, S.16 (3) of the Welfare Reform Act 2007 means that Work Programme contractors must refer any ‘doubt’ to DWP even when it is obvious that the claimant is not at fault. As in the case discussed in para.44 above, this interpretation appears unnecessarily rigid. It is true that S.16 (2)(a) and (3) prevent contracting out of decisions on whether the claimant has failed to comply, shown good cause or should suffer a sanction. But the intention of this section is clearly to reserve to DWP the power to make decisions to a claimant’s disadvantage. It surely leaves it open to a contractor faced with an event that might or might not mean non-compliance simply to postpone any action at all pending further evidence.

52. The government does however say that it has been improving guidance to contractors. Once again, whether this means anything will be shown by whether there is an abatement of the stream of complaints about inappropriate sanctions on ESA claimants.

**‘Core Visits’ in the ESA sanctions process**

53. Where an ESA claimant has failed to meet a condition but is particularly vulnerable as a result of a mental health or cognitive condition or learning disability, there is supposed to be a ‘Core Visit’ at home before a sanction is applied. DWP told the Committee that it makes around 40,000 Core Visits a year, but it does not monitor them and could not say how many are followed by a sanction. The Committee asked for a review of the Core Visits programme, and clarification of what its effects are (**Comm 21/Govt 28**). In response, the government has refused a review and has not offered any clarification on the effects.

54. In this author’s view, this exchange illustrates how inappropriate it is to try to operate a system of severe penalties for a group containing many vulnerable people through an administrative process. There is never going to be sufficient transparency or adequate safeguards.

**Conditionality for ESA claimants on JSA pending appeal**

55. In 2014, the Work and Pensions Committee conducted a specific inquiry into the treatment of people refused ESA (*Employment and Support Allowance and Work Capability Assessments*[[22]](#endnote-22)), in which it recommended that ‘The current illogical arrangement whereby (ESA) claimants seeking Mandatory Reconsideration are required to claim Jobseeker’s Allowance (JSA) instead of ESA should be abolished’. The Committee returned to the issue in its sanctions report, calling for a review of the conditionality requirements on this group (**Comm 11/Govt 14**). The Social Security Advisory Committee had already (in March 2015) recommended that those who claim JSA pending an ESA appeal, or whilst their ESA claim awaits determination, should be offered back to work support on a voluntary basis but exempted from conditionality beyond attendance at a work-focused interview.[[23]](#endnote-23) The government has refused to reinstate ESA for this group of claimants or to make any specific provision for them within the JSA regime, but it now states that ‘In response to the (Work & Pensions) Committee’s (sanctions report) recommendation, comprehensive guidance has been issued to staff to help improve awareness of how JSA conditionality can be varied to take account of the claimant’s physical or mental health conditions and caring responsibilities’. This guidance does not seem to be available on the web, so it is impossible to say whether the concerns of the Work & Pensions Committee and SSAC are being met. The government’s reassurances would be more credible if it was not continuing to claim that the Claimant Commitment takes account of claimants’ circumstances when its own research shows that it does not, as noted above.

**Lone parent conditionality**

56. The Committee recommended increased training for staff on the flexibilities available to single parent JSA claimants (**Comm 16/Govt 18**). The government states that it has recently published relevant additional information on the DWP intranet, and ‘Under Universal Credit, we are transforming the way that we work with individuals, providing even more tailored and positive support’. The Committee also recommended that DWP should produce a plain English guide to the flexibilities, to be given to all single parent JSA claimants (**Comm 16/Govt 19**). The government says that such a factsheet is already available. This was published in October 2014.[[24]](#endnote-24)

**DWP staff guidance on vulnerability**

57. The Work & Pensions Committee recommended that DWP should develop guidance to help staff identify vulnerable claimants, and amalgamate this into the guidance for the Claimant Commitment (**Comm 13/Govt 15 & 16**). In response the government says such guidance already exists. This appears to be the document *Vulnerability Guidance – Additional Support for Individuals*.[[25]](#endnote-25) This is linked to a DWP intranet ‘Vulnerability Hub’. The government says it will develop the guidance further. Again, only time will tell whether there will be any genuine improvement in DWP practice.

**Use of Jobseeker’s Directions**

58. Under the Jobseekers Act 1995, Jobseeker’s Directions are specific instructions given to claimants to do particular things. There were 20,700 sanctions (after challenges) for non-compliance in 2014, a huge increase over the 3,500 in 2009, the last full year of the Labour government. The Committee wanted to know why Jobseeker’s Directions were needed given introduction of the Claimant Commitment, and recommended specifically that ‘DWP’s evaluation of the Claimant Commitment include an assessment of the appropriate use of Jobseeker Directions and their interaction with the Claimant Commitment process’ (**Comm 14/Govt 17**). The government points out that under Universal Credit, Jobseeker’s Directions cease to exist, being incorporated in the Claimant Commitment. In relation to JSA, it claims to have accepted the recommendation. But it cannot have done, since it has already stated (**Comm 11/Govt 12 & 13**) that it will not evaluate the Claimant Commitment within JSA.

**Investigating deaths of benefit claimants**

59. The DWP conducts ‘peer reviews’ where death of a claimant is linked to DWP activity, and in the case of certain other complaints. Publicity was recently given to 49 such cases where claimants had died. The Committee asked for the number of peer review cases where the claimant was subject to a benefit sanction at the time of death and the results of any such reviews in terms of policy changes (**Comm 26/Govt 35**).

60. The government responds that confidentiality prevents it from stating the number of the deceased claimants who had been sanctioned. This is an oddity, since a Freedom of Information request resulted in publication of this information six months ago. The answer is ten out of 49, although the sanctions were not necessarily in place at the time of death.[[26]](#endnote-26)

61. The government also states that it uses peer reviews only to review procedural issues, and not to inform policy. This again is odd, since policy should be influenced by any relevant information.

62. The Committee also asked for a body modelled on the Independent Police Complaints Commission to conduct a review whenever a claimant on an out-of-work benefit dies (**Comm 26/Govt 36**). In response, the government argues that the large number of claimants of these benefits would make this unworkable and that there are other routes for review.

**COMMUNICATIONS**

63. Oakley (p.40), and the Social Security Advisory Committee before him, recommended that notifications about stoppage of benefits should be made using the claimant’s preferred communication channel as expressed to Jobcentre Plus (**Comm 19/Govt 25**). The government says it accepts this recommendation, but this does not seem to be the case. It says only that staff will ‘have the option’ to use a preferred communication channel, except for claimants such as those with a disability who need a particular channel, where it will be used.

64. The Committee recommended (**Comm 23/Govt 31**) that DWP carry out further work with the Behavioural Insights Unit with a view to improving claimants’ understanding. The government has agreed to this recommendation in relation to the drafting of letters.

**LEGISLATIVE FRAMEWORK**

65. It is clear from the above analysis of the Committee’s recommendations and the government’s response that there are some fundamental problems with the current legislative framework for sanctions. Examples are the hardship payment system, the lack of procedures to ensure that sanctions really are a ‘last resort’, the needless turning of detailed work search requirements into an ‘entitlement’ issue with its effect in wrongful cancelling of Housing Benefit, the lack of provision for piloting any alternatives to financial sanctions, and (for those who accept the DWP’s interpretation of the current legislation) the requirement on Work Programme contractors to refer claimants for sanction even when it is obvious they are not at fault. The government’s own changes have made the situation worse, particularly in the October 2012 doubling-up of disentitlement and sanction for so-called ‘intermediate’ level JSA failures, which gives rise to enormous confusion for claimants and their advisers and generates huge amounts of unnecessary paperwork. The Committee recommended that the broad independent review it is asking for should consider the clarity and coherence of the legislative framework for sanctions (**Comm 20/Govt 26**). The government rejects this, despite having obviously suitable vehicles to use (for instance the current Welfare Reform and Work Bill). The obvious reason for this is that passage of the legislation would give rise to a great deal of unfavourable publicity.

**UNIVERSAL CREDIT**

**In-work conditionality**

66. Universal Credit involves a potentially huge extension of sanctions to part-timers working less than 35 hours a week, estimated by Pennycook & Whittaker (2012) at 1.2m people.[[27]](#endnote-27) The Committee noted the lack of evidence on such a regime and urged the government not to extend sanctions beyond the existing pilots (**Comm 8/Govt 8**). In response the government states that until the pilots are evaluated, UC claimants other than those within the pilots will be subject only to a ‘light-touch’ regime in which they can be sanctioned only for not attending two Work Search interviews, at day one and at 8 weeks. There has been very little reportage of the ‘in-work’ sanctions system. One exception is a Channel 4 programme *Britain’s Benefits Experiment*, 2 November 2015.[[28]](#endnote-28) This showed similar problems to those already familiar from JSA and ESA sanctions, for instance a claimant threatened with sanction because he didn’t attend a Jobcentre appointment when he was working the extra hours that the system is designed to push him into. Universal Credit sanctions are certainly already occurring, but to date the government has not published any information on them, and has declined to indicate when it may publish any.[[29]](#endnote-29)

**Lone parent flexibilities**

67. Lone parent organizations are concerned that under Universal Credit, flexibilities for lone parents are less clear-cut than under JSA. This is because flexibilities which were rights given legislative effect under JSA have been reduced to the level of ‘guidance’. The Committee therefore recommended that ‘DWP review the regulatory flexibilities afforded to single parent Universal Credit claimants, with a view to ensuring that they are offered the same level of protection from inappropriate conditionality and sanctioning as JSA claimants’ (**Comm 16/Govt 20**). The government’s response denies that there is a problem, once again claiming that the Claimant Commitment only imposes reasonable requirement: ‘It is.....not necessary to apply blanket rules in regulations to specify what requirements must or must not be placed on particular groups’.

**Overall Assessment**

68. In its press briefing on publication of the government response, the DWP highlighted the three concessions set out in the Parliamentary statement and letter to the Work & Pensions Committee chair: trialling of reintroduction of a 14-day pause before a sanction is applied, reintroduction of automated JSA sanction notifications, and consideration of adding mentally ill and homeless people to the list of those allowed to apply for a hardship payment immediately. This was successful in securing relatively favourable media coverage. On its numbering, the government also claims to have accepted 12, accepted in principle 15, accepted in part 1, and not accepted 8 of the recommendations. However, when one looks at the response in detail it will be seen that it gives very little ground.

69. It is often difficult to tell whether a particular recommendation has really been accepted or not. But a reasonable assessment would be that the government has in some way accepted 16 of the recommendations at least in part or as ‘maybes’ (its nos. 3, 7, 8, 14, 15, 16, 18, 19, 21, 22, 24, 29, 30, 31, 33 and 34) and definitely refused 19 (its nos. 1, 2, 4, 5, 6, 9, 10, 11, 13, 17, 20, 23, 25, 26, 27, 28, 32, 35 and 36).

70. The government’s response does not acknowledge any of the fundamental problems of the sanctions system identified by the Committee: lack of evidence to justify financial sanctions, or their severity; doubts about the reasonableness of Claimant Commitments; lack of protection for vulnerable groups and single parents; an inappropriately strict approach to all claimants rather than a focus on those who are genuinely not engaging in work search; fundamental doubts about the appropriateness of sanctions for ESA claimants; and inadequacy of the hardship payments system. It repeats the by now habitual unjustified claims that sanctions only affect a small minority of claimants, that Claimant Commitments are genuinely agreed between claimants and Jobcentre Plus, that there are effective safeguards against wrongful sanctioning, and that the UK sanctions system can be justified by reference to international evidence.

71. The government has specifically refused those recommendations which would have thrown further light on the problems of the system, namely: a comprehensive independent review, specific review of ESA sanctioning, exploration of alternatives to financial sanctions (other than possibly for ESA rather than JSA claimants), evaluation of the lengthening of sanctions in 2012, early evaluation of the Claimant Commitment, monitoring of destinations of sanctioned claimants, and reform of the legislative framework.

72. The government has also refused the recommendation, vital to avoiding destitution, that all claimants should be allowed to apply for a hardship payment from day one of a sanction. It has given up on attempts to prevent wrongful cancellation of Housing Benefit for the one third of penalised JSA claimants who are ‘disentitled’.

73. The only improvement to the system which is actually guaranteed is the restoration of automated sanction notifications, which should almost entirely resolve the problem of the two thirds of penalised JSA claimants who are sanctioned but not disentitled having their money stopped before they are informed. It will not necessarily resolve this problem for disentitled claimants, although the government claims to have separately resolved this for ‘the vast majority’ of these claimants.

74. All the other proposed improvements are ‘maybes’. This includes allowing mentally ill and homeless people to apply for hardship payments from day one; automatic hardship application for ‘vulnerable’ claimants; the proposed 14-day pause for representations before a sanction is applied; and possible resolution in future Work Programme contracts of the problem of contractors having to make obviously unreasonable referrals for sanction. If these genuinely materialise, then they will improve the system.

75. There are also a range of issues where the government says that it is improving guidance to DWP staff, or changing methods of working. The test of whether these produce any improvement in the system will be whether there is any abatement in the stream of complaints from the voluntary sector about inappropriate sanctions.

76. As stated in oral evidence to the Committee (Q.48-52, 7 January 2015), in the view of this author it is wrong in principle to attempt to operate administratively as part of employment policy what is a secret, parallel penal system with severe penalties but without proper safeguards.[[30]](#endnote-30) The many problems exposed by this Committee inquiry reinforce this view.

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