



Work and Pensions Committee inquiry into benefit sanctions

CPAG's response

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Executive Summary

1. The way sanctions currently operate amounts to a breach of natural justice, with no opportunity to understand or challenge decisions, and no opportunity to remove a sanction by adjusting behaviour. The sanctions regime does not work: not for the government, not for the labour market, and not for claimants.
2. Specific problems include:
 - inflexibility in the interpretation of conditions,
 - inadequate consideration of claimants' circumstances,
 - poor communication, and
 - error and maladministration by government departments and local authorities.
3. We argue that fixed period sanctions as a whole are not working, and not appropriate. In terms of specific improvements to the regime as it stands, we focus on proposals to:
 - increase access to hardship payments,
 - clarify communications about sanctions,
 - mitigate impacts while sanctions are being reconsidered,
 - improve information sharing within government departments and with Work Programme providers, and
 - address particular issues around the interaction of sanctions and housing benefit.

Introduction

4. Child Poverty Action Group (CPAG) has worked for almost 50 years to prevent and relieve poverty among children and families in the UK. We have a wide range of expertise and evidence from which we draw in this submission. Each year, we author and publish *The Welfare Benefits and Tax Credits Handbook*, the authoritative guide to social security in the UK; provide specialist advice and training to first tier advisers; coordinate and collate evidence from the National Association of Welfare Rights Advisers; collect evidence and case studies of the impacts of welfare reform in Scotland through the Early Warning System (EWS); and are currently providing frontline welfare rights advice to food bank users in Tower Hamlets.
5. In submitting our evidence, we draw on a number of sources. We refer to CPAG research published in November 2014 with the Church of England, Oxfam and the Trussell Trust, investigating drivers of food bank use,¹ as well as unpublished additional information on sanctions contained in the qualitative interviews for that research. We analyse examples from our welfare rights case files. We cite evidence collected, all since July 2014, for the EWS in Scotland. And we draw on our submission to the independent review of jobseeker's allowance sanctions, in January 2014.²

¹ 'Emergency Use Only: Understanding and reducing the use of food banks in the UK' is attached as an appendix, and available for download at: <http://cpag.org.uk/content/road-food-bank-paved-failures-safety-net>

² The full submission is attached as an appendix, and available at: <http://cpag.org.uk/content/independent-review-ja-sanctions-response>

6. Substantial recent increases in the numbers sanctioned suggest a growing issue to investigate. In the year to 30th June 2014, there were 852,665 JSA sanctions after reconsiderations and appeals, compared with 496,771 in the last year of the previous Labour government. This accounts for 6.05% of claimants, the highest proportion since JSA's introduction in 1996. In the year to 30th June 2014, there were 39,591 ESA sanctions after reconsiderations and appeals, more than double the previous year, and, at 0.97% of claimants in the work-related activity group, the highest since ESA sanctions for that group were introduced in 2008. The number of appeals against sanctions being upheld at tribunal is suggestive of a significant problem. An estimated 138,100 JSA or ESA sanctions were overturned in the year to 30 June 2014 via appeals or old-style reconsiderations, not including the unknown numbers of successful requests for mandatory reconsiderations. In the 3 months up to Sept 2013, 87% of challenges were upheld (up from an average of 20% from 2000-2010). More recent data is hard to interpret due to the introduction of mandatory reconsiderations (for which figures are not reported), and the apparent collapse in the number of tribunal decisions.³

Sanctions policy

7. The stated aim of sanctions is to improve employability, through incentivising activity that helps claimants to move towards or into work. Yet a raft of evidence suggests that sanctions fail in those terms,⁴ notwithstanding the other problems identified in our submission. CPAG's experience is of sanctions acting to degrade people's human capital in a number of ways, rendering them further from, not closer to, the labour market, and thus less, not more, capable of entering employment. (See 'Problems arising from sanctions' below, paragraphs 24-28.)
8. In these terms, the logic of fixed period sanctions is also questionable. As currently constituted, they aim to change behaviour, but offer no prospect of a reduction or lifting of sanctions when behaviour is judged to have changed.

Problems with the implementation of sanctions

9. Sanctions are often applied without adequate consideration of claimants' personal situations, characteristics, or the barriers they face – particularly in relation to their ability to comply with the conditions placed upon them. Across our evidence base, poor communication, error and maladministration are recurring themes. Our welfare rights work with regard to the Work Programme suggests that, while the vast majority of claimants may understand the general requirements placed upon them by the Work Programme or related schemes, these conditions often lack specificity, or can be so unreasonable and/or inflexibly interpreted by advisers that claimants are simply unable to abide by them.

³ David Webster, 'Briefing: the DWP'S JSA/ESA sanctions statistics release, 12 November 2014':

<https://paulspicker.files.wordpress.com/2014/11/14-11-sanctions-stats-briefing-d-webster-nov-2014.pdf>

⁴ See, for example, a review of the evidence around the effectiveness of sanctions, 'Welfare sanctions and conditionality in the UK', 10 September 2014, Joseph Rowntree Foundation, <http://www.jrf.org.uk/publications/welfare-sanctions-and-conditionality-uk>

10. Research published by CPAG and partners in November 2014 found that sanctions were a major factor in participants' reasons for food bank use. This came out strongly in in-depth interviews (conducted with 40 participants), and in additional data collected on reasons for food bank use in food banks in Durham, Epsom and Ewell, and Tower Hamlets – where 19 per cent, 23 per cent and 28 per cent respectively of food bank users had had their benefit reduced due to a sanction.
11. The caseload analysis from Tower Hamlets food bank (where a CPAG welfare rights adviser has been helping users since summer 2013, with a total of 178 clients' cases analysed for the research) found that key issues regarding sanctions included lack of information, incorrectly applied sanctions, and sanctions of vulnerable people.⁵

One man interviewed in Tower Hamlets by a CPAG researcher as part of the project (but whose testimony was not published as part of the final report) had been sanctioned, and had his JSA stopped for two weeks, for failing to attend an appointment he received no letter about. His landlord, about whom he has unsuccessfully complained to the council, restricts his access to his letterbox, and he has learning difficulties which mean that he needs assistance to read the letters that he does receive. Explaining what happened when he told the Jobcentre about not having received his letter, he said: 'they said we can't do nothing about it; you will have to sort it out yourself. That's not a very nice thing to say. They know my situation, they know about my illness [he is diabetic] and everything, but they don't really bother'. As a result, he was left unaware of his right to appeal the decision.

12. The way in which letters are constructed is defective. Letters often fail to make clear that a sanction has been applied, are frequently unclear about the specific reason for the sanction, and do not as a matter of course explain the process for appealing a decision or for obtaining hardship payments. More broadly, participants in the November 2014 research experienced difficulty obtaining information from the DWP, particularly regarding reasons for a sanction, as a result of multiple decision makers.

The EWS in Scotland provides a number of examples of incorrectly applied sanctions, including:

- A client was sanctioned for missing an appointment with his Work Programme provider. The letter informing him of the appointment arrived at his home on 27th June 2014. It was dated 26th June 2014 and informed him of an appointment which he had to attend on 25th June 2014. Despite showing this letter to Jobcentre Plus staff and being assured a sanction would not be applied, he was subsequently sanctioned.
- The client, who has a three year old and a fifteen year old, was sanctioned for being ten minutes late for an appointment because of problems with public transport. She was assured by the receptionist and an advisor at her Work Programme provider that she shouldn't worry as she would not be sanctioned. Despite this, the client was subsequently sanctioned for three weeks.
- A 19 year old woman failed to attend an appointment with Jobcentre Plus because she had been told to do unpaid work experience at the Commonwealth Games on the same day. Despite providing signed and date stamped evidence of this from her Work Programme provider, she was sanctioned for three months (because this was her second sanction).

13. A lack of clarity regarding the legal basis on which sanctions are imposed can make it difficult for clients to understand the reason for which they have been sanctioned, and thus challenge the decision – even with help from a welfare rights adviser. An example from CPAG’s advice service demonstrates the complexity that this can engender:

A client was told she hadn't done enough job search activity (though she disagrees), and that a decision would be made regarding a sanction. After waiting for 2 weeks, she phoned up and was told she had been sanctioned for 4 weeks. After 4 weeks, she received no money, and was told this was because her claim had ended and she needed to reclaim. She reclaimed, but had now lost 6 weeks’ JSA rather than 4. After asking to backdate and to reconsider the sanction, she received a letter refusing to backdate.

Among all correspondence, there was no letter giving the period of the sanction, or the right of mandatory reconsideration against it. A further letter disallowed her for failing to sign on, but the sign-on date it gives is the date she was not permitted to sign on, having been told she would probably be sanctioned, and the same date she had already been disallowed for not doing enough to actively seek work. When her adviser phoned the Decision Maker, she was told the client had been disallowed for 2 weeks and sanctioned for a further 2, and should have reclaimed after the first 2 weeks, and been told to do so by the Jobcentre.

It is unclear from the information the client received whether the disallowance was on the grounds of failure to seek work, failure to sign on, or failure to participate in an interview. This, in turn, makes it difficult both to challenge the decision, and for the client to understand the behavioural changes the sanction is supposed to be encouraging.

14. Ultimately, there is clear evidence of very harsh and apparently irrational decision making. It is hard to substantiate whether this approach is officially supported or encouraged, but the type of experience on the ground we describe is common.

ESA sanctions decision making

15. The processes employed within the DWP in making decisions on sanctions systematically lead to sanctions for ESA claimants being employed readily, and not used as ‘a last resort’ as is often claimed.
16. When claimants are assigned to the work related activity group (WRAG), in the process of assessment (via work capability assessment, or WCA), a DWP Decision Maker will typically rely on a medical report (an ESA85) detailing the claimant’s limitations as assessed under regulations which specify when a claimant is in the WRAG. When a claimant is referred to a Work Programme provider, however, the DWP does not share with that provider either a copy of this report or a summary of its main findings, meaning that the provider is unaware of a claimant’s

specific difficulties. Thus, they may refer a claimant for a sanction, even where the reason for doing so would otherwise be explained by the claimant's particular difficulties. To compound this problem, the Decision Maker who then considers whether to impose the sanction does not have routine access to the ESA85, or to the findings of the WCA Decision Maker, and will thus rely on the referral from the Work Programme provider – similarly lacking in information about a claimant's difficulties. The Decision Maker will write to the claimant asking why they did not participate, but in the absence of a response – an absence which could be explained by the claimant's difficulties – will proceed and issue a sanction. Examples of difficulties arising from mental health issues, which can lead to assignment to the ESA WRAG, and which could explain a sanctionable behaviour such as missing an appointment and subsequent failure to respond to a Decision Maker's letter, include:

- Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person;⁶
- cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions [planning, organisation, problem solving, prioritising, or switching tasks] for the majority of the time;⁷
- engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.⁸

17. The guidance issued to Work Programme providers can potentially mitigate this problem. For example, it stipulates that providers should only refer for a sanction once they have undertaken 'safeguarding action' for claimants assessed by the DWP as 'vulnerable'. Such action might include telephoning the claimant to check why they could not attend. Yet the DWP do not require the provider to inform them of what safeguarding action has been taken or attempted when a referral for a sanction has been made. Thus, in cases where providers have failed to take appropriate action, the DWP has no way of knowing. Since the requirement to take safeguarding action is only in guidance and not a requirement of the law, even when such action has not been undertaken, this does not necessarily mean that a sanction can be overturned.

18. Such legal protections as do exist are undermined by the lack of information sharing described above. There is a legal requirement that a Work Programme provider should only require a claimant to undertake activity which is reasonable in light of their specific problems. However, given that the provider does not have access to the details of a claimant's specific health problems, they often struggle to assess what is reasonable in a specific case. This problem is compounded as the Decision Maker also has no access to that information, and in practice seeks no evidence from the Work Programme provider as to the specific activity the claimant failed to undertake, and why it was assessed as reasonable in their circumstances.

⁶ That is, Activity 15(b) of Schedule 2 to the Employment and Support Allowance Regulations 2008 (SI No. 794) applies.

⁷ That is, Activity 13(b) applies.

⁸ That is, Activity 16(b) applies.

19. The Work Programme provider is required to have drawn up an 'action plan' and issued it to the ESA claimant. This is a document which sets out what work-related activity a claimant has to perform. CPAG have heard of many examples of claimants not being given an action plan. Indeed, there is anecdotal evidence of a provider attempting to charge a claimant £10 for access to their action plan under Data Protection Act 1998 rules as if this was a 'subject access request'. When a sanction is considered, this action plan is a key document: it sets out what action the Work Programme provider required of the claimant, and can be examined to assess whether the actions required were reasonable, and to see whether a claimant had indeed failed to undertake them. However, the action plan is not obtained by Decision Makers when they consider whether to impose a sanction.
20. A sanction for a WRAG claimant is supposed to come to an end a fixed period after a claimant agrees to comply. Provider guidance indicates a claimant should be told when a doubt arises what action they need to agree to undertake in order to be regarded as compliant. That does not seem to occur in most cases. In addition, in many cases, the Work Programme provider does not appear to inform the DWP promptly when a claimant has become compliant, with the result that sanctions remain in force for longer than they should.

Hardship payments

21. The majority of food bank users in our research who had been sanctioned were not receiving hardship payments. This finding, which came out in in-depth interviews and welfare rights caseload analysis, was reinforced through additional data collection. In County Durham, only 18 per cent of sanctioned food bank users had been awarded a hardship payment. Only one user (of 19 sanctioned) had received a hardship payment in Epsom and Ewell, and only two (out of 25 sanctioned) in Tower Hamlets.
22. This problem in part stems from a lack of awareness of the availability of hardship payments. In the research, this varied between the food bank locations, from 68 per cent in Durham, to 16 out of 25 sanctioned clients in Tower Hamlets, and 5 out of 19 in Epsom and Ewell. One explanation for this is that information on hardship payments – that claimants can apply, or the process for doing so – is not included in letters sent to those who are sanctioned, and there is evidence that information received about hardship payments from Jobcentres and Work Programme providers is inconsistent.
23. The man in the example from Tower Hamlets above had received a hardship payment only as a result of the intervention of a welfare rights adviser based in the food bank and a council employee who also attended food bank sessions. He says he had received no information or help in applying for one from the Jobcentre.

One example from the Early Warning System in Scotland is of a pregnant woman with two young children who failed to complete mandatory work activity because she did not have access to a computer. Her sanction was applied on a Wednesday, but she was not informed that she could apply for a hardship payment until the Friday. She was told on the Friday that she would not be able to apply for the payment until the following Monday.

Problems arising from sanctions

24. A failure to provide clear information about sanctions to the local authority can have a severe impact on the payment of housing benefit, leading in some cases to the threat of eviction, and potentially leading to, or exacerbating, problems with debt. Benefit rules dictate that receipt of an income benefit means that the claimant passes the means test for entitlement to housing benefit. The impact of sanctions on housing benefit differs according to the benefit claimed:
- with ESA, the sanction always leaves the claimant with at least £0.10 a week, meaning that entitlement continues during the sanction, so housing benefit is not affected;
 - whereas, for JSA, the DWP notifies the local authority that the claimant is no longer receiving JSA, without necessarily revealing that this is the result of a sanction, or how long the sanction will last. While housing benefit rules treat a sanctioned claimant as still in receipt of JSA – so there should be no effect on housing benefit – where a local authority is unaware that JSA has stopped due to a sanction, they cannot apply that rule.
25. Analysis of our caseload identifies a number of problems with how the procedure for JSA works in practice, including immediate termination of housing benefit; non-receipt or acknowledgement of letters, the latter often due to language issues; and a failure on the part of local authorities to allow claimants a month to re-establish their proof of housing benefit eligibility. In each case, housing benefit termination is the result, as a result of maladministration on the part of the local authority or of failure of the claimant to respond adequately to notification. We are pleased the Government is now starting to acknowledge this problem.
26. There is anecdotal evidence of problems with housing benefit caused by sanctions leading to difficulties establishing eligibility for council tax support. In general, the more discretion and localisation in the social security system, the more danger there is that sanctions can have knock-on impacts on other benefits.
27. There is also suggestive evidence that some local welfare assistance schemes (LWAS) use sanctioning as a criterion for refusing support. While it is clear that LWAS should not be providing income replacement – and, in the case of sanctions, hardship payments are a more appropriate mechanism for this – it is inappropriate and potentially damaging to debar claimants from accessing this form of assistance as a result of having been sanctioned, irrespective of the cause of their need to access LWAS. There is also evidence of a similar approach being taken with regard to applications for Discretionary Housing Payments (DHPs), with at least one local authority precluding those who have been subject to ‘certain sanctions’ from obtaining a DHP. We would encourage the Committee to consider the issue of the interaction of sanctions and discretion and localisation in the social security system as a whole.

Evidence from the EWS in Scotland provides an example of some of the consequences of the housing benefit issue: a client’s housing benefit was wrongly stopped because he had been sanctioned. He is accruing rent arrears as a result. He is looking for alternative accommodation, and has been threatened with eviction. The client’s daughter stays with him one night per week, but clearly this cannot continue if he is evicted.

28. Sanctions can also have a range of consequences in terms of health and well-being. The November 2014 food banks research by CPAG and partners showed that, as well as visiting the food bank itself, coping strategies included running up debt, selling possessions, scavenging or begging, and cutting back, including on food. Yet these coping strategies often had costs, including mental health problems, poor diet, and pressure on relationships.

One example from the EWS in Scotland is of a client wrongly sanctioned for six weeks for apparent failure to attend a Work Programme appointment. This was despite the fact that the Work Programme providers had already notified the DWP that he had in fact been at the relevant appointment. The client admitted that he had been forced to break the law in order to feed himself in the meantime.

Sanctions data and transparency

29. While data on sanctions made under the new JSA and ESA regimes is now available, it is not easy to access or interpret. According to David Webster, the respected academic who writes extensively on sanctions policy, 'the DWP Tabtool is extremely cumbersome and time-consuming to use and it is not surprising that people have difficulty with it'.⁹ The lack of data on mandatory reconsiderations means it is impossible accurately to assess the overall proportion of initial sanctioning decisions that were later overturned.
30. Sanctions data are not currently disaggregated according to household characteristics. For example, there is no information available on the number or proportion of sanctioned households which contain children, or regarding disability status, or any other protected characteristic. Parliamentary Questions into this issue have not yielded any further information.¹⁰ This is in spite of a very similar Freedom of Information request for London-only data being granted.¹¹

Recommendations

31. Our recommendations take into account the government's full acceptance of the Oakley Review's recommendations, which we commend. Our subsequent recommendations assume the implementation of the findings of that review. We also welcome Iain Duncan Smith's commitment in response to the report of the All-Party Parliamentary Inquiry into Hunger and

⁹ <http://paulspicker.wordpress.com/2013/03/22/jobcentre-sanctions/>

¹⁰ See, for example, answer to Written Question 218538, 17 December 2014, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-12-12/218538/>; and answer to Written Question 218574, 17 December 2014, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-12-12/218574/>

¹¹ https://www.whatdotheyknow.com/request/number_of_claimant_households_af?nocache=incoming-569411#incoming-569411

Food Poverty to 'do everything we can to make sure that people do not stumble into a process of sanctions'.

32. The rapid increase in numbers being sanctioned requires investigation and remedy. We urge the Committee to ensure in its recommendations that there are no targets or quotas for sanctions – whether official or in practice – and that there is proper training in place for staff about their judicial, decision-making role.
33. There should not be fixed period sanctions. Under such a system, a claimant cannot alter their behaviour and have their sanction removed from this point, undermining the policy objective of encouraging appropriate behaviour.
34. Access should be increased to hardship payments, through making a decision on hardship payment at the same time as a decision to sanction, and ensuring hardship payments are made available to all claimants in the first 14 days of a sanction.
35. Communications about sanctions should be improved. The recommendations of the Oakley Review could be strengthened by ensuring that a sanction decision is only lawful if the letters sent, and proven to have been received, clearly communicate:
 - the reason that a sanction is being imposed (including dates, what the failure was, and why there is not good cause), clearly referring to the specific regulation(s) under which the sanction has been imposed;
 - the period for which the sanction will apply;
 - whether a hardship payment has been granted, and, if not, set out the process for obtaining one;
 - how to challenge a decision, and who to contact.
36. Benefits should not be suspended while a sanction is being reconsidered, and sanctions should not start until 14 days after the claimant has been notified, during which period claimants may challenge the decision. This will serve to mitigate the impact upon claimants while a sanction is being reconsidered.
37. To address the issue of housing benefit claims being impacted by sanctions to JSA, a claimant should be left with at least £0.10 per week of income-based JSA payment to ensure that housing benefit is not affected – as is already the case for ESA sanctions. We welcome the government's commitment to similar recommendations in the Oakley review, but urge the Committee to monitor the efficacy of its proposed solution.
38. Information about ESA claimants' specific difficulties should be shared with Work Programme providers and DWP Decision Makers in order to ensure that they are considered when making a sanction referral or decision. The DWP should be more proactive in obtaining details from Work Programme providers of what safeguarding action they have undertaken, and in assessing action plans as part of the decision-making process on sanctions.

39. The availability and presentation of data on sanctions should be improved, in the interests of transparency, and in consultation with stakeholders.

For further information, please contact Moussa Haddad, Senior Policy and Research Officer, at mhaddad@cpag.org.uk or on 020 7812 5238

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