

GOVERNMENT RESPONSE TO THE WORK AND PENSIONS COMMITTEE REPORT ON BENEFIT SANCTIONS, February 2019

COMMENTARY

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1 April 2019

The House of Commons Work and Pensions Committee published a report on *Benefit Sanctions* in November 2018 (Work & Pensions Committee 2018, following earlier reports in 2014 and 2015). The government response was published on 11 February (Work & Pensions Committee 2019). It contains a number of potential concessions, although the actual outcome is still to be seen either in the results of an internal evaluation of sanctions to be published later in Spring 2019 or in further decisions to be announced later in the year.

The most important points are as follows:

- *Like earlier reports, this one called for a comprehensive review of sanctions.* DWP has agreed only to carry out an internal review of the impact of UC sanctions on claimants, including lone parents, limited to their likelihood of entering work and on earnings, to report in late Spring 2019. This will also consider whether the duration of sanctions affects work search behaviour, although reconsideration of durations will be confined to higher level sanctions and the adequacy of the data seems doubtful. Following this evaluation, DWP ‘will decide on options for undertaking further analysis on well-being’. The only commitment to research on wider, including negative, impacts is to make individual-level sanctions data available to a team at the University of Glasgow to look at health impacts.
- *The Committee called for a reduction in sanctions to 20% for responsible carers of children under 5 or with additional needs, and for care leavers under 25.* DWP agrees to consider this for carers of children (though it is not clear how seriously) as part of its review. For care leavers, it will ‘consider what changes could be made to lower the rate’ and will write to the Committee before the end of 2019.
- *The Committee called for exemption from conditionality and sanctions for those assessed by a Work Capability Assessment (WCA) as having limited capability for work (i.e. the equivalent of the ESA Work Related Activity Group); those with a valid Fit Note saying they are unable to work; and UC claimants with a valid Fit Note awaiting a WCA.* In response, DWP says that in Summer 2019 it will ‘explore the possibility’ of a ‘Proof of Concept’ for a general policy, to be developed in consultation with stakeholders, of not imposing conditionality on claimants before their WCA or on those assessed as having limited capability for work. But it says it will retain the discretion for work coaches to impose conditionality in these cases. Qualified medical opinion contradicting a WCA finding of fitness for work will be disregarded, although DWP says that medical evidence on a *new* or *deteriorating* medical condition results in a switching off of conditionality for 14 days, following which the work coach will be able to impose work-related requirements.

- *The Committee called for in-work conditionality to be delayed until the completion of UC rollout (currently scheduled for December 2023). DWP rejects this, but also says that it will not seek to introduce it (apart from small-scale trials) ‘until there is a sound evidence base’.*
- *The Committee recommended that sanctions should be cancelled when a claimant moves to a no-conditionality group. DWP rejects this recommendation, on the basis of arguments which appear particularly weak.*
- *The Committee pointed out that where a claimant has deductions from their Standard Allowance for debts or repayments, the children and housing elements of UC may be sanctioned. It called for this practice to be stopped by suspending any such deductions for the duration of a sanction. In response, DWP rejects this particular approach, but does commit to exploring ‘options for capping overall deductions’ in these circumstances, and will write back to the Committee before the end of 2019.*
- *The Committee recommended that ‘good reasons’ for ‘failures’ should be specified in regulations (statutory instruments). DWP refuses to do this, arguing that it could disadvantage claimants whose reasons are not prescribed. This would appear to be hard to sustain given that one of the ‘good reasons’ recommended by the Committee was ‘any other situation the work coach considers reasonable’.*
- *The Committee recommended that employment service contractors should not be obliged to refer claimants for sanction if they have given a good reason. This repeats a recommendation of the Oakley Review (2014) and of the Committee’s earlier sanctions report (2015). DWP continues to refuse this recommendation.*
- *The Committee recommended that DWP should commit to a timeframe for decisions at mandatory reconsideration (MR) and appeal. DWP refuses to commit to a timeframe but agrees to monitor performance on MR and to publish Key Performance Indicators by Spring 2019. It says its aim is to decide MRs within the Assessment Period in which they are requested, but that currently only ‘the majority’ of MRs are decided by the end of the following Assessment Period.*
- *The Committee recommended that a first sanctionable ‘failure’ should attract a warning instead of a sanction. This repeats a recommendation made in the Oakley Review (2014), in the Committee’s earlier sanctions report (2015), by the Public Accounts Committee (2017) and by many other commentators. DWP is now (Spring 2019) starting a test of what it says really is a warning system. Little information is yet available on the design of this test but it appears that it may be rather limited.*
- *The Committee recommended that sanction referrals should include a recommendation by the work coach on whether a sanction should be imposed. DWP rejects this. In the view of the present author, there are problems with the Committee’s recommendation and a better approach would be to institute a genuine ‘last resort’ system in which cases would be escalated to successively more senior and experienced officials, and no reduction made in benefits prior to a hearing.*
- *The Committee recommended that recovery of UC hardship payments should only be at an affordable rate, with a default of 5% of Standard Allowance. DWP rejects this recommendation, because it does not think it is harsh enough.*

Detailed comments are in the **Appendix**.

APPENDIX

DETAILED COMMENTS ON THE GOVERNMENT RESPONSE

General

In para.4, the government cites its own figure of 2.9% as the proportion of Universal Credit claimants subject to conditionality who were undergoing a sanction in August 2018. As noted in the November 2017 Briefing (pp.8-10), this figure understates the true impact of sanctions.

In para.6, DWP asserts without qualification that ‘work is the most effective route out of poverty’. Readers will be aware that a raft of evidence has been showing that in-work poverty is an ever-growing problem.¹

In para.7 the government quotes three overseas studies in support of its claim that ‘benefit systems supported by conditionality are effective at moving people into work’, and a fourth study is quoted in para.14 to the same effect. However, none of the studies actually supports the government’s sanctions policy. Svarer (2011) and Lalive et al. (2005)² are both only about exit from unemployment, not entry into work. While Van den Berg & Vikström (2014 – a study specifically of redundant workers) do find a positive effect on entry into work, they also find that sanctions cause people to accept jobs with lower wages and fewer hours, at lower occupational levels, causing a permanent loss of human capital. Arni et al. (2012) show that sanctions increase entry into work, but they also show that they increase entry into non-employment, and cause reductions in earnings that last at least two years; they conclude that sanctions should not involve 100% loss of benefits as occurs in the UK system. The DWP concedes that ‘there is some evidence from these studies that shows this can come at the expense of lower wages’ but does not mention the other negative effects. It also does not mention the NAO study (2016) which found that sanctions make ESA claimants *less* likely to enter work.

Effects of sanctions

The Committee called for a review of the effectiveness of the conditionality regime as developed since 2012 in achieving its stated aims. This repeated earlier recommendations in similar terms from the Work and Pensions Committee (2014 and 2015) and also from the Public Accounts Committee (2017). In response the DWP undertakes only to use administrative data in an internal study to look at the impact that UC sanctions have on claimants’ likelihood of entering work and on earnings, to report in late Spring 2019. The quality of this work remains to be seen. While it is welcome, it surely remarkable that it has taken the DWP 6 years since the harsh changes of late 2012 to begin to evaluate them.

The Committee called for an assessment of the impact of sanctions on claimants’ wellbeing and on wider public services. In response the DWP says it has already made individual-level sanctions data available to external researchers (at the University of Glasgow) to look at health effects. This is not quite true as at the time of writing it has yet to deliver the data. It also says that following the effectiveness evaluation, it ‘will decide on options for undertaking further analysis on well-being’.

The Committee called for a reduction in higher level sanctions from three, six and thirty-six months for first, second and third ‘failures’ to two, four and six months, until robust evidence

is presented that longer sanctions are more effective. The DWP rejects this recommendation but says it will consider whether the duration of sanctions affects work search behaviour as part of its evaluation of UC sanctions and will reconsider the length of higher level sanctions (but apparently not lower or intermediate level) if this produces relevant evidence. It should be noted that DWP does not record numbers of ‘repeat’ sanctions or the lengths of sanctions actually imposed, and therefore currently has no idea what are the effects of longer durations. It does not say whether the evaluation will produce any data on repeat sanctions, or whether it will simply use the problematic data which it publishes on actual duration of sanctions (see Briefing, November 2017, pp.6-8).

DWP goes on to say that ‘The Department is of the view that different types of failure to comply with conditionality should result in different lengths of sanctions, with the most severe lasting the longest.’ The idea that the penalty should reflect the seriousness of the offence is relevant to a penal system but is not appropriate in the present context, where DWP claims that the purpose of sanctions is to get people into work. Here the only question should be what penalty is the most effective at doing this, at the least cost in terms of collateral damage. It should be remembered that for 73 years from 1913 to 1986 the maximum length of a disqualification from unemployment benefit was 6 weeks and although there was some provision for varying the length, there was none at all for increased lengths for repeat ‘failures’. It would be hard to argue that the British economy suffered as a result.

Vulnerable claimants

The Committee called for an assessment of the effects of conditionality and sanctions on employment outcomes for lone parents. DWP agrees to do this as part of the UC sanction evaluation.

The Committee also called for a reduction in sanctions to 20% for responsible carers of children aged under 5 or with additional needs. DWP refuses to do this pending its evaluation. The sanction deduction rates for this group were increased by the Welfare Reform and Work Act 2016.

At para.20, DWP claims that sanctions ‘only affect a proportion of a UC claimant’s standard allowance. Payments for essential costs, such as for children, are not touched’. As is discussed later in the DWP response (para.52-4), this is not true where there are deductions for existing debts.

In para.21, DWP quotes the Lone Parents Obligation impact assessment of July 2013 (DWP 2013), as saying that conditionality increased the proportion in work by 8 to 10 percentage points. It does not mention that the same study (p.72) showed an increase in the proportion not in work but also not on benefit of 5 to 6 percentage points, and also a substantial movement on to ESA, i.e. sickness/disability benefit.

In para.25, DWP says that the (lone parent) sanction reduction rates ‘should remain as they are unless and until further evidence shows a different rate would better support lone parents into work’. The difficulty about this is that the increased deduction rates brought in by the 2016 Act were not supported by any evidence, whereas the Committee’s recommendation is.

The Committee recommended improved liaison with support services in relation to care leavers. DWP says it accepts this recommendation.

The Committee also recommended that care leavers under 25 should never lose more than 20% of their benefit if sanctioned. DWP does not accept this, but says it will ‘consider what changes could be made to lower the rate’ and will write back to the Committee before the end of 2019.

The Committee called for markers for care leavers and disability within UC. DWP rejects this, saying that ‘pinned notes’ are more effective (these are understood to be entries in the claimant’s online account which are visible to DWP staff but not to the claimant). DWP also says that it ‘continues to develop its approach to capturing accurate, aggregate data on claimants’ and will report back to the Committee in late Spring 2019.

*The Committee recommended that the following groups should be exempted from conditionality and sanctions: those assessed by a WCA as having limited capability for work (i.e. the equivalent of ESA WRAG); those with a valid Fit Note saying they are unable to work; and UC claimants with a valid Fit Note awaiting a WCA. It also recommended developing voluntary employment support for these groups.*³ In response, DWP says that in Summer 2019 it will ‘explore the possibility’ of a ‘Proof of Concept’, to be developed in consultation with stakeholders, for a general policy of not imposing conditionality on claimants before their WCA or on those assessed as having limited capability for work. But it says it will retain the discretion for work coaches to impose conditionality in these cases. Qualified medical opinion contradicting the WCA on fitness to work will be disregarded, although DWP says that medical evidence on a *new* or *deteriorating* medical condition results in a switching off of conditionality for 14 days, following which the work coach will be able to impose work-related requirements. The difficulty about allowing work coaches to override the professional medical opinion of a Fit Note or WCA is that they have no relevant qualifications (they get ‘up to 5 weeks’ training – para.57).

The DWP says ‘Claimants who have been found ‘fit for work’ following a WCA continue to have their work related activities tailored to their individual needs and abilities, based on what the work coach considers to be reasonable in light of their health condition’. This recognises that it is possible for someone to be found ‘fit for work’ by the WCA and yet still have constraints on their work search or preparation activities. Claimants will presumably continue to have to obtain medical certificates to certify these. So while DWP says it does not want demand for ‘fit notes’ to overturn WCAs to place a burden on GPs, it does not appear to acknowledge that making sick or disabled people subject to conditionality will itself impose a similar burden.

DWP says it will continue to ‘invest in work coach capability’ (para.38-40) and that it is already developing voluntary employment support for people with disabilities.

Universal Credit sanctions

The Committee recommended not applying conditionality and sanctions to in-work claimants until UC has been fully rolled out, and only then on the basis of robust evidence; in the meantime, it should develop understanding of in-work claimants’ support needs. In response, DWP refuses to commit to delaying in-work conditionality until completion of UC rollout (currently planned for December 2023), although it also says that ‘Until there is a sound evidence base, the Department will not be seeking to introduce full in-work conditionality, outside any potential trialling activity’ (para.48). It says that once UC is fully rolled out,

around a million people will fall into the in-work ‘Light Touch’ conditionality and sanctions group.

The Committee recommended that sanctions should be cancelled when a claimant moves to a no-conditionality group. DWP rejects this recommendation. On this point, its arguments are particularly weak. It asserts (para.50) that ‘Sanctions act as an incentive for claimants to engage with the support on offer and move into work’. But the Committee pointed out that this incentive is redundant if the claimant is no longer expected to engage or move into work. DWP also argues (para.51) that cancellation would undermine the incentive to work that it has created by providing that any outstanding sanction is cancelled once a claimant has earned over the Conditionality Earnings Threshold (i.e. 35 hours a week at the National Minimum Wage) for 6 months. This point appears to be simply mistaken. If a claimant moves into a no-conditionality group then they have no prospect of working anyway.

The Committee explained (para.83-85 of its report) that where a claimant has deductions from their Standard Allowance for debts or repayments, the children and housing elements of UC may be sanctioned. It called for this practice to be stopped by suspending any such deductions for the duration of a sanction. In response, DWP rejects this particular approach, but does commit to exploring ‘options for capping overall deductions’ in these circumstances, and will write back to the Committee before the end of 2019.

Setting conditionality requirements

The Committee recommended a more systematic approach to easements, including a standard set of questions to be asked by work coaches, and better information for claimants. In response, DWP sets out various improvements it is making, including extended information about easements on GOV.uk and an information package for new claimants to be in place by Spring 2019. Of course under discretionary conditionality as featured in UC it is inevitable that inappropriate conditions will be imposed in many cases, and this problem can only be reduced, not eliminated. In fact UC has increased the problem by reducing many easements to the status of ‘guidelines’ rather than statutory entitlements.

The Committee also called for more co-location of Jobcentres with other support services. In response DWP says there are currently 88 cases of co-location.

Imposing a sanction – referrals and decisions

The Committee recommended that ‘good reasons’ for ‘failures’ should be specified in regulations (statutory instruments). DWP refuses to do this, arguing that it could disadvantage claimants whose reasons are not prescribed. This would appear to be hard to sustain given that one of the ‘good reasons’ recommended by the Committee was ‘any other situation the work coach considers reasonable’. The guidance on ‘good reasons’ given to decision makers is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720645/admk2.pdf

It should be recalled that the Welfare Reform Act 2012 deliberately substituted the phrase ‘good reason’ for the previous phrase ‘good cause’ in order to try to invalidate the case law that had built up and which often functioned to protect claimants.

The Committee recommended that employment service contractors should not, as at present, be obliged to refer claimants for sanction if they have given a good reason. This repeats a recommendation of the Oakley Review (2014) and of the Committee's earlier report (2015). DWP continues to refuse this recommendation, although it no longer makes the contentious claim that legislative change would be required. The issues were fully discussed in Webster (2014). The key point is that once the sanctions machine is set in motion by a referral from a contractor, the odds are heavily weighted against the claimant. This ruling by DWP was a major contributor to the huge surge in sanctions for non-participation in the Work Programme – see Webster (2016).

The Committee recommended that DWP should commit to a timeframe for decisions at mandatory reconsideration (MR) and appeal. DWP refuses to commit to a timeframe but agrees to monitor performance on MR and to publish Key Performance Indicators by Spring 2019. It states that its aim is to decide MRs within the Assessment Period in which they are requested, but that its current performance is only that 'the majority of MRs are decided by the end of the following Assessment Period' (emphasis added). In other words, given that an Assessment Period is a month, performance is currently far short of the aim.

The Committee recommended that a first sanctionable 'failure' should attract a warning instead of a sanction. This repeats a recommendation made in the Oakley Review (2014), in the Committee's earlier sanctions report (2015), by the Public Accounts Committee (2017) and by many other commentators. After a previous failed experiment (DWP 2018) with what it called a 'yellow card' system, but which was not a genuine warning system, DWP is now (Spring 2019) starting a test of what it says really is a warning system. This is five years after Oakley recommended it. All we know so far about this test is what the minister Alok Sharma told the Work and Pensions Committee on 27 June 2018 (Q.238-39 & Q.307-09): 'We are saying let's trial out a system where the first time somebody does not turn up for an interview, that does not lead to a sanctions referral if they have a good reason for not attending.' The trial would be 'certainly by the beginning of next year' (i.e. 2019) and would be in a couple of areas.

The Committee recommended that sanction referrals should include a recommendation by the work coach on whether a sanction should be imposed. One of the great objections to the DWP's sanctions system is the imposition of sanctions before any hearing, and the lack of contact between the decision maker and the claimant. This recommendation is intended to mitigate this problem. The response from DWP is a flat rejection. This is based first of all on a legal argument that 'Decision Makers are required by legislation to base their decision only on whether the evidence available shows good reason; there is no allowance for them to consider other factors'. This appears dubious; the courts require public officials to act reasonably taking into account all the circumstances. On the face of it, it would mean that the decision maker should go ahead and impose a sanction even, for instance, in a case where they are formally warned that it is likely to precipitate a mental breakdown. But in any case this stance is inconsistent with DWP's claim that the aim of conditionality is to motivate claimants into work. DWP's second argument is that decision makers already have sufficient insight into each claimant's personal circumstances. Many case histories contradict this claim, and it is in any case implausible given the lack of contact and previous involvement between decision maker and claimant.

Having said all this, there do seem to be drawbacks to the Committee's proposal. Given the decision maker's lack of knowledge of the claimant, a recommendation by the work coach

that a sanction *should* be imposed seems very unlikely to be overridden by the decision maker, and this is likely to disadvantage many claimants in the inevitable cases where there is a bad relationship between claimant and coach.

The present author's view on how to provide some discretion in the system while at the same time protecting the claimant's interests was set out in written evidence to the Committee at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefit-sanctions/written/82601.pdf> and in oral evidence, Qu.39-43 of the hearing of 16 May 2018, at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefit-sanctions/oral/83041.pdf>

It is that sanctions should be a genuine last resort (as the DWP already claims, wrongly, that they are). Cases where a claimant appears to be exploiting the system should be referred to a more experienced official with a remit similar to that of the former Unemployment Review Officers to make further inquiries and if necessary the case would be escalated further. There should be no reduction of benefits without a hearing. 'The key thing is that you should not locate more discretion with the jobcentre adviser at the first stage. The discretion should come in through a review process that involves increasingly specialised and experienced people' (Qu.40).

The Committee also recommended that the claimant should have an additional 30 days to provide evidence of good reason following an initial sanction decision which would be provisional.

DWP is on relatively strong ground in rejecting the 30 day proposal, given that few people used the 14 days offered in the 'yellow card' trial (DWP 2018).

Hardship payments

The Committee recommended that recovery of UC hardship payments (which unlike JSA and ESA are repayable) should only be at an affordable rate, with a default of 5% of Standard Allowance. DWP rejects this recommendation, because it does not think it is harsh enough. It describes 30% (the rate which is to apply from October 2019, reduced from the current 40%) as a 'noticeable' rate of recovery, implying that, for instance, 20% would not be noticeable to people on the UK's very low rates of benefit. It notes that recovery of hardship payments is suspended if people get into work at above their Conditionality Earnings Threshold and that any outstanding balance is written off after 6 months of earning at this level. However, a Parliamentary Question by Stephen Timms MP (WPQ 226487, 4 March 2019) elicited the fact that information on how many people have actually benefited from this supposed incentive 'is not readily available and to provide it would incur a disproportionate cost'. In other words, DWP does not know whether this 'incentive' actually has any effect.

Para.93 of the DWP's response provides some statistics on repayments of hardship payments, which are discussed in the February 2019 Briefing.

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¹ See e.g. <https://www.jrf.org.uk/report/budget-2018-tackling-rising-tide-work-poverty>

² For Svarer, Lalive et al., van den Berg & Vikstrom and Arni et al., DWP actually cites earlier working paper versions from 2007, 2002, 2009 and 2009 respectively. Anyone wishing to follow this up may want to use the later journal article versions cited here, which will contain any improvements suggested by referees.

³ The recommendation that UC claimants with a medical certificate awaiting a WCA should not be subject to conditionality is also made in the Work and Pensions Committee's report on *Universal Credit: Support for disabled people* (2018), para.78.