



Benefit Sanctions: A Presumption of Guilt

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Summary

This research report reveals serious concerns about the impact of the current system of benefit sanctions in Great Britain and about the inadequacy of the mechanisms for challenging them.

Despite being imposed for fairly minor failings (in January 2022, 99% of Universal Credit sanctions were for missing, or being late to, an interview¹) sanctions are significant penalties that exceed some of the most serious court fines. Aside from the immediate and obvious financial implications of a sudden loss of often the entirety of an individual's income, there is extensive evidence of the wider impact of sanctions on claimants' health, longer term finances and trust in the system.

What is ultimately required is a complete review of the sanctions regime – a shift from a primarily punitive system to one based on support and respect. However, while the Government continues to demonstrate its commitment to the current regime, it is vital that people have access to quick, effective and meaningful remedies when sanctions are imposed incorrectly. PLP's research shows that is currently not the case.

Since the introduction of the Welfare Reform Act 2012, claimants who wish to challenge a sanction decision must first go through a Department of Work and Pensions (DWP) internal review process called Mandatory Reconsideration before they can appeal to an independent Tribunal.

The latest Government data (from 2018) showed a relatively low number of Mandatory Reconsiderations (16%) and a tiny number of Tribunal appeals (0.3%). However, when claimants did challenge to Tribunal the success rate was high (81%),² indicating that claimants were not challenging sanction decisions even when they have a good chance of success.

¹ DWP, Benefit Sanctions Statistics to January 2022, published 17 May 2022 <https://www.gov.uk/government/statistics/benefit-sanctions-statistics-to-january-2022-experimental/benefit-sanctions-statistics-to-january-2022-experimental>

² DWP, Universal Credit Sanctions Experimental Official Statistics: Background information and methodology, February 2018, p4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682635/benefit-sanctions-statistics-to-october-2017.pdf; David Webster, Briefing: Benefit Sanction Statistics: February 2018 (20 March 2018) <https://cpag.org.uk/policy-and-campaigns/briefing/david-webster-university-glasgow-briefings-benefit-sanctions>



This research looks in greater detail, through survey data and interviews with claimants, advisers and support workers, at the reasons why claimants do not appeal sanction decisions.

The findings suggest that a combination of significant practical barriers and a lack of trust in the system mean that sanctioned claimants currently do not have an effective or accessible route to challenge sanction decisions. Examples of barriers include:

- Inconsistent awareness of the right to request a Mandatory Reconsideration or appeal.
- An unclear Mandatory Reconsideration process, with no clearly defined timescales resulting in claimants being left 'in limbo' and unable to move to the next stage of appeal.
- Lack of trust in the Mandatory Reconsideration process as a fair and effective means of redress.
- Difficulties in accessing advice and support due to a lack of capacity within the advice sector.

Meaningfully addressing the barriers of trust and perception requires a fundamental culture change that includes, but goes beyond, the current sanctions regime. However in the meantime there are a number of practical actions that can be taken to improve the accessibility and effectiveness of Mandatory Reconsideration and appeal. We have set out our main recommendations below. These have been organised by the section of the sanctions or challenge process they relate to. However, they follow three key themes:

- Improving the transparency of, and trust in, the challenge process (while recognising the limitations of this without more wholesale reform).
- Improving the information and support available to claimants about their rights and how to exercise them.
- Increasing opportunities for evidence to come forward at the earliest possible stage.



Recommendations

Trust and confidence

1. Given the extensive evidence of its risk of harm, Government should urgently review the current sanction regime and should not be expanding its use.
2. The DWP should adopt a transparent and evidence led approach to sanction decision making.
3. The DWP should adopt a culture that values accountability and clearly signal to claimants that challenge is legitimate and will be dealt with seriously and fairly.
4. The DWP should adopt a charter of mutual rights and responsibilities which sets out clearly commensurate obligations on DWP.

Sanction decision making

5. The initial DWP sanction Decision Maker should always contact the relevant claimant to hear from them in their own words, rather than relying solely on the information provided by a Work Coach.
6. If an initial claim was opened with support from an interpreter, or language needs are otherwise flagged on a claimant's file, this conversation with the sanction Decision Maker should be undertaken with the support of an interpreter.
7. Sanction Decision Makers should take particular care when reviewing Work Coach sanction referrals to check whether an appointment notification was clearly made and can be evidenced.
8. The DWP should continue with its Yellow Card Warning scheme pilot and publish the results as soon as they become available.

Mandatory Reconsideration

9. The DWP should revert to the position that was in place prior to the Welfare Reform Act 2012, where claimants have the option to request an internal review but without it preventing a parallel appeal to the Tribunal.



10. The section of the template Sanction Notification letter that refers to the right to request a Mandatory Reconsideration and appeal should be revised to include more and clearer information for claimants.
11. The DWP should urgently investigate concerns as to whether Mandatory Reconsideration requests are being consistently and correctly treated as Mandatory Reconsideration requests, and ensure this is understood by all members of staff. In the meantime DWP staff guidance should make clear that if there is doubt about whether a claimant enquiry is a request for an explanation or a Mandatory Reconsideration, it should be treated as a Mandatory Reconsideration.
12. When a Mandatory Reconsideration request is submitted there should be a clear and consistent acknowledgment setting out next steps, timelines and an explanation of the different roles of those involved in making that decision.
13. The DWP should introduce a timeframe by which Mandatory Reconsideration decisions need to be made. If this timeframe is not met, claimants should have the right to proceed to appeal.

Tribunal appeal

14. Her Majesty's Courts and Tribunals Service (HMCTS) should further improve the information provided to claimants about what to expect when appealing to Tribunal.
15. Advice sector and advocacy organisations should ensure that information provided to claimants highlights:
 - a. The Tribunal's independence,
 - b. The relatively high success rate at appeal, and
 - c. The impact of a successful challenge on future sanction periods and back-pay of incorrectly sanctioned amounts.
16. Tribunal panels should ensure a balance is struck between questions and allowing the appellant the opportunity to set out their submissions in their own words.



17. To minimise the risk of adjournments and postponements, the DWP should review the quality and consistency of internal record keeping and appeal bundles and seek to provide information at the earliest possible stage.

Advice and support

18. The DWP should ensure that any further expansion of the Future Support Offer for those making their first Universal Credit claim should:

- a. Include ongoing support to maintain a claim for those who need it, and
- b. Reintroduce in person advice.

19. As part of the development of additional advocacy proposals referred to in the Health & Disability Green Paper, the DWP should:

- a. Avoid an overly restrictive approach to who is entitled to access support,
- b. Recognise the difference between advocacy and qualified welfare advice, and
- c. Include advocacy support around both avoiding sanctions in the first place and in challenging sanctions should they occur.

20. Advice providers providing online advice should as far as possible (and as some already do) include clear and accessible guidance and template letters supporting claimants to understand what to write as well as how to navigate the process.

Methodology

PLP reviewed the relevant literature on both sanctions and welfare conditionality and the reasons people do and do not challenge or appeal state decisions.

We then carried out an initial scoping survey of organisations supporting those at risk of benefit sanctions. This survey ran between July and August 2021 and received 32 responses with two further responses provided by email.

A further substantive survey was published in partnership with Law for Life between January and June 2022. This received 31 responses, 27 of which were from people in their capacity as claimants, three as an adviser or support worker and one as a family



member or friend of a claimant. The majority (26) of the responses related to Universal Credit sanctions, however six related to Jobseekers' Allowance (JSA) sanctions and one to Employment Support Allowance (ESA).³

We conducted semi-structured interviews with two groups:

- 15 claimants in receipt of JSA, ESA or Universal Credit
- 13 welfare rights advisers and other individuals who have experience of providing support to sanctioned claimants.

Interviewees were recruited through referrals from advice or support organisations, follow up to survey responses and promotion of an online contact form. Interviews lasted between one and two hours.

A further focus group was held with members of a community organisation who had previously accessed support from that organisation's welfare advice service.

PLP also met members of the DWP's policy and research team, a number of whom had worked recently in a frontline capacity, in order to gain further insight into how the sanctions and Mandatory Reconsideration policy is applied in practice.

In addition a round table was held with relevant stakeholders in order to test the report findings and draft recommendations.

Ethical considerations

All responses have been anonymised to protect the identity of individual participants. A process to ensure informed consent to participate in the research for the survey and the interviews that were carried out. An information sheet was provided to all participants and information sheets and consent forms were provided to those who participated in interviews. The information sheets included information on how to subsequently withdraw from the research and contact details were provided to seek any further clarification about the research process.

The survey was produced in collaboration with Advicenow and was set up as a webform accessed via the section of Advicenow's website providing advice on benefit sanctions. It provided information about the research including its aims and objectives and how

³ Two respondents had been sanctioned more than once in relation to different benefits, which is why this sums to more than the total number of respondents



information provided would be used and stored. This included a link to an information sheet.

Information sheets and consent forms were sent to research participants prior to interview. The interviewer checked at the start of the interview whether interviewees had any further questions and to confirm consent, including in relation to the recording of the interview for the purpose of transcription.

All participants were made aware that their participation in the research would be anonymous. Anonymity has been provided to ensure participants felt able to speak freely about their experiences.

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We would also like to thank the members of the DWP policy and research team who met with us and provided further information to help inform this report.



1. Conditionality and sanctions

What are conditionality and sanctions?

For many Universal Credit claimants, payments are conditional on taking steps to look for or prepare for work (or more or better paid work). These conditions are referred to as Work-Related Requirements⁴. A claimant's Work-Related Requirements should be recorded in a document called their Claimant Commitment.⁵

Universal Credit payments are made up of a standard allowance and any extra amounts that apply, for example if a claimant:

- Has children
- Has a disability or health condition which prevents them from working
- Needs help paying their rent.

If a claimant fails to meet one of their Work-Related Requirements, for example by failing to attend an appointment with a Work Coach,⁶ they can be sanctioned. A sanction means that the claimant will usually lose 100% of their standard allowance for a period of time.⁷

Sanctioned Universal Credit claimants can apply for Hardship Payments (a loan of 60% of the sanctioned amount), subject to certain conditions, including demonstrating that they:

- are struggling to meet their basic needs as a result of the sanction, and
- have done everything they can to get money from other sources.⁸

The DWP does not publish data on the number of Hardship Payments applied for or granted.

⁴ Welfare Reform Act 2012 s13

⁵ Welfare Reform Act 2012 s14

⁶ A Work Coach is a Jobcentre staff member who is assigned the cases of Universal Credit, JSA, ESA & Income Support claimants. Their role is to support claimants as they prepare for or move into work. They work with the claimant to create a Claimant Commitment and are responsible for identifying any failures to comply with it.

⁷ Universal Credit Regulations 2013, SI 2013/376, Reg 111(1). In limited circumstances claimants will be sanctioned an amount equivalent to 40% of their standard allowance: Universal Credit Regulations 2013, SI 2013/376, Reg 111(2)

⁸ Universal Credit Regulations 2013, SI 2013/376, Reg 116



Hardship Payments are recoverable by way of deductions from Universal Credit payments. The normal maximum recovery rate is 25% of the standard allowance. This in effect extends the period of potential financial hardship.⁹ Given that, by definition, the claimant has been struggling to meet their basic needs and has no other options, this creates a real risk of an extended period of financial hardship.

By far the most common reason for a sanction is a failure to attend an interview with a Work Coach (a Work-Focussed Interview). Between February 2021 and January 2022 this accounted for 99% of the reasons given for a sanction decision.¹⁰

Conditionality of some degree has long been a feature of the social welfare system in the UK.¹¹ However, over time, there has been an expansion of the extent of the conditions imposed, the categories of claimants that are expected to meet Work-Related Requirements and the severity of the sanctions that follow. This has led to concerns about whether the current sanctions regime is:

- Proportionate
- Harmful
- Effective at supporting people into work

The current conditionality and sanctions regime was introduced by the Welfare Reform Act 2012, with some changes to the regime since then.

In addition to implementing Universal Credit, the Welfare Reform Act 2012 introduced new sanctions rules for JSA and ESA. These broadly align with the sanction rules for Universal Credit.

⁹ David Webster, Briefing: Benefit Sanctions Statistics, February 2018 (20 March 2018) <https://cpag.org.uk/policy-and-campaigns/briefing/david-webster-university-glasgow-briefings-benefit-sanctions>; illustrated at para 129, House of Commons Work & Pensions Committee, Benefit Sanctions: Nineteenth Report of Session 2017–19, HC955, published 6 November 2018

<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/955.pdf>

¹⁰ DWP, Benefit Sanctions Statistics to January 2022, published 17 May 2022 <https://www.gov.uk/government/statistics/benefit-sanctions-statistics-to-january-2022-experimental/benefit-sanctions-statistics-to-january-2022-experimental>

¹¹ For further detail on the history of welfare conditionality, see Michael Adler, A New Leviathan: Benefit Sanctions in the Twenty-first Century, *Journal of Law and Society*, Volume 43, Number 2, June 2016 and Beth Watts, Suzanne Fitzpatrick, Glen Bramley and David Watkins, *Welfare Sanctions and Conditionality in the UK*, the Joseph Rowntree Foundation, September 2014 <https://www.jrf.org.uk/report/welfare-sanctions-and-conditionality-uk>



How long are sanctions for?

The length of a sanction depends on the nature of the Work-Related Requirement that has not been met and whether you have been sanctioned before.

For the failures that the DWP deems the most serious, for example failing to apply for a job you have been directed by the DWP to apply for, the maximum sanction someone can receive is 6 months (where they have been sanctioned three or more times previously).¹²

For what DWP deems a low level failure, such as failure to attend a Work Focused Interview (the most common sanction reason) a sanction is imposed until a 'compliance condition' is met (for example, attending a rescheduled interview). This is usually followed by fixed period of 7 days if it is the first time you have been sanctioned. This is extended to 14 days if it is the second time and 28 days if you have been sanctioned three or more times.¹³

The need to meet a compliance condition can lead to very lengthy sanctions if the compliance condition is not met. This is particularly concerning if the reason the condition has not been met is due to an underlying issue that has not been addressed. As a result, some of what the DWP classes as the most minor failings can lead to some of the lengthiest sanction.

The DWP is not currently publishing data on sanction duration due to issues with their methodology. However, the latest data published (for the period to February 2020) suggested that the average (median) sanction lasted 29 days but that 5% had lasted for more than 6 months.¹⁴ As part of this research, PLP spoke to one adviser who was supporting someone who appeared to have unresolved sanctions that had been in place for a number of years.

Mandatory Reconsideration and appeal: How do claimants challenge sanctions?

Claimants have the right to challenge sanction decisions by appeal to the First-tier Tribunal (Social Security and Child Support) (usually referred to in this report

¹² Universal Credit Regulations 2013, SI 2013/376 Reg. 102(2)

¹³ Universal Credit Regulations 2013, SI 2013/376 Reg. 104(2)

¹⁴ DWP, Benefit Sanction Statistics to January 2020, published 11 June 2020

<https://www.gov.uk/government/statistics/benefit-sanctions-statistics-to-january-2020-experimental/benefit-sanctions-statistics-to-january-2020>



as the Tribunal). However, following changes that were made as part of the Welfare Reform Act 2012, before they can do so they must first ask the DWP to review the decision internally.¹⁵ The DWP refers to this internal review process as Mandatory Reconsideration.

Before this change was made, claimants could appeal directly to the Tribunal. They could however request an internal review either instead of or in parallel to that appeal.

Following the introduction of the Mandatory Reconsideration process, the number of appeals to Tribunal dropped significantly.¹⁶ Data published by the DWP in February 2018 (the latest available data) showed that a relatively low number of Universal Credit (UC) sanction decisions (16%) were challenged to the first stage of Mandatory Reconsideration and only 0.3% were challenged as far as Tribunal. However, when decisions were appealed to Tribunal 81% were successful.¹⁷

Sanction statistics

In response to the Covid-19 pandemic, Government suspended the use of sanctions for the period between 30 March 2020 and 1 July 2020.¹⁸ Unsurprisingly this saw sanctions fall to a historic low. Low levels of sanctioning continued in the months following the end of the suspension period as the DWP took a phased approach to their return.

¹⁵ Welfare Reform Act 2012 s102; Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013; Social Security and Child Support (Decisions and Appeals) Regulations 1999/991 Reg 3ZA

¹⁶ Social Security Advisory Committee, Decision Making and Mandatory Reconsideration: A Study by the Social Security Advisory Committee Occasional Paper No 18 (July 2016) pp22-24 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/538836/decision-making-and-mandatory-reconsideration-ssac-op18.pdf; Ministry of Justice, Tribunal and gender recognition statistics quarterly: January to March 2016 (published 9 June 2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/528233/tribunals-commentary.pdf

¹⁷ DWP, Universal Credit Sanctions Experimental Official Statistics (February 2018) p4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682635/benefit-sanctions-statistics-to-october-2017.pdf; David Webster, Briefing: Benefit Sanction Statistics: February 2018 (20 March 2018) <https://cpag.org.uk/policy-and-campaigns/briefing/david-webster-university-glasgow-briefings-benefit-sanctions>

¹⁸ Social Security (Coronavirus) (Further Measures) Regulations 2020



However, the DWP's most recent sanctions data (covering the period to January 2022) showed that:

- The Universal Credit sanction rate has now increased above pre-pandemic levels when compared to the 11 months preceding the Covid-19 pandemic.
- There were 38,200 Universal Credit sanctions imposed in January 2022 – the highest number of Universal Credit sanctions since current records began in 2016 and over 69% larger than it was at its previous pre-pandemic peak in July 2019.¹⁹

As imposition of sanctions increases, it is all the more important that the DWP take urgent action to:

- Review the suitability of the sanctions regime as a whole, and
- Improve the safeguards that are in place to reduce the risk of harmful and incorrect sanction decisions.

¹⁹ DWP, Benefit Sanction Statistics to January 2022, published 17 May 2022
<https://www.gov.uk/government/statistics/benefit-sanctions-statistics-to-january-2022-experimental/benefit-sanctions-statistics-to-january-2022-experimental>



2. Impact and effectiveness of sanctions

There is very limited evidence that sanctions are effective at meeting the DWP's stated objectives, which are:

1. To motivate claimants to engage with support to look actively for work and thereby move into work, and
2. To ensure the system is fair to taxpayer by sanctioning a claimant where they fail to meet a requirement to which they have agreed.²⁰

Are sanctions effective at supporting people into work?

The impact assessments undertaken when introducing the current sanctions regime acknowledged that the new regime would 'elicit behavioral responses that [were] difficult to predict with certainty' and that there was 'little historic evidence to guide [DWP] as to the scale of these impacts'.²¹

The DWP instead relied on a number of international studies of distinct and differently designed sanction regimes in other countries as evidence that sanctions could be effective. These did not reflect the specific design of the current UK sanction regime. Nor did they provide unequivocal support for the efficacy of sanctions. Instead, while these studies provided some evidence that sanction regimes could prompt people to move into work more quickly, they also showed that the effect could be short-lived and that they resulted in lower quality jobs in terms of pay, conditions, duration and sustainability.²²

²⁰ Written Evidence from DWP to the Work and Pensions Select Committee's 2018 Benefit Sanctions Inquiry

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefit-sanctions/written/84015.pdf>

²¹ DWP, Impact Assessment: Conditionality Measures in the 2011 Welfare Reform Bill (October 2011) pp 5 and 9

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220184/conditionality-wr2011-ia.pdf

²² Van der Berg G, Uhlendorf A, Woolf J, 2017, 'Under Heavy Pressure: Intense monitoring and accumulation of sanctions for young welfare recipients in Germany'. Van der berg G, Vikstrom J, 2014, 'Monitoring Job Offer Decisions, Punishments, Exit to Work, and Job Quality'. Arni P, Lalive R, van Ours J, 2013, 'How effective are unemployment benefit sanctions? Looking beyond unemployment exit'.



Recognising how little evidence supported its policy, in 2012 DWP committed to carry out robust and comprehensive evaluation of the sanctions regime.²³

The current regime has now been in place for a decade. Despite this, DWP's published research evaluating its impact and effectiveness has been very limited²⁴. However, the small number of trials that have been carried out by or on behalf of the DWP suggest that while there is evidence that the sanctions regime may make some claimants more likely to 'follow the rules' there was no evidence that this led to actual movement into work.²⁵ DWP commissioned research has also raised concerns that sanctions may be counterproductive, finding that 'the use of sanctions did not seem to have a positive impact on motivation to progress and could damage the relationship between the Work Coach and participant'.²⁶

The DWP also acknowledged in its recent Health & Disability Green Paper that research and Green Paper events had identified the fear of sanctions as a barrier to some disabled people and people with health conditions from taking part in employment support.²⁷

A broader evaluation of the current sanctions regime has now been undertaken but DWP do not intend to publish it due to concerns that they have been unable to assess the

²³House of Common's Work and Pensions Committee, Benefit Sanctions: Government Response to the Committee's Nineteenth Report of Session 2017–19, HC 1949 (11 February 2019), paras 10–12

<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1949/1949.pdf>

²⁴ Report by the Comptroller and Auditor General, Department for Work and Pensions: Benefit Sanctions, Session 2016–17, HC 628 (30 November 2016)

<https://www.nao.org.uk/report/benefit-sanctions/>

²⁵ DWP, The Jobcentre Plus Offer: Final evaluation report, Research Report 852 (November 2013) p157

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261656/rrep852.pdf.

²⁶ DWP, Universal Credit: In-Work Progression Randomised Controlled Trial: Findings from quantitative survey and qualitative research (September 2018), p73

<https://www.gov.uk/government/publications/universal-credit-in-work-progression-randomised-controlled-trial>

²⁷ DWP Shaping Future Support: The Health & Disability Green Paper (July 2021), para 117

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004042/shaping-future-support-the-health-and-disability-green-paper.pdf; Adams L,

Cartmell B, Coburn S, Dobie S, Stroud S, Svanaes S, Tindle I (IFF Research). The work aspirations and support needs of claimants in the ESA support group and Universal Credit equivalent, DWP Research Report 983 (published February 2020)

<https://www.gov.uk/government/publications/work-aspirations-and-support-needs-of-claimants-in-the-esa-support-group-and-universal-credit-equivalent/the-work-aspirations-and-support-needs-of-claimants-in-the-esa-support-group-and-universal-credit-equivalent>



broadier 'deterrent effect' of sanctions i.e. the impact of the threat of sanctioning on compliance without a sanction actually having to be imposed.²⁸

A fair system?

Despite being applied to fairly minor failings sanctions are more onerous than some of the most serious court fines in monetary terms – yet the safeguards that are in place to protect against injustice are weaker.²⁹

Under sentencing guidelines, a criminal fine is usually based on one of three bands (A, B or C), depending on the seriousness of the offence. In more serious cases, where the threshold for a community order or custody has been passed, fine bands of D – F may be used. Where someone's only source of income is state benefit, a sanction of four weeks (the average length of a sanction based on the latest available DWP data) is an amount equivalent to a Band D fine, while the maximum fixed sanction period of six months exceeds the maximum Band F fine.³⁰

Court fines are imposed only once an individual has been tried in an independent court of law. In contrast, sanctions are imposed by DWP with limited opportunity for input from the claimant (see further section on the Sanctions Process below). It is then for the claimant to challenge unfair or incorrect decisions by way of first Mandatory Reconsideration and then appeal. As this report sets out, there are currently a number of barriers in place that prevent claimants from effectively doing so.

Given the severity of sanctions (the loss of potentially the entirety of an individual's income at short notice in the context of individuals who by definition have limited means),

²⁸ Written Question to the DWP, UIN77445, answered 24 November 2021 <https://questions-statements.parliament.uk/written-questions/detail/2021-11-18/77445>

²⁹ Michael Adler, *A New Leviathan: Benefit Sanctions in the Twenty-first Century* Journal of Law and Society, Volume 43, Number 2, June 2016 Table 8

³⁰ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/2-fine-bands/>



it is unsurprising that the current regime has been shown to have a profoundly negative impact on the health,³¹ finances³² and wellbeing of those affected.³³

A lack of transparency

The Chair of the Work & Pensions has recently raised concerns about a “culture of secrecy” at the DWP.³⁴ This followed a number of recent decisions either to withhold data or not to publish evidence including the DWP’s evaluation of the effectiveness of benefit sanctions.

There is less data collected and published in relation to Universal Credit sanctions than there was for legacy benefits (i.e. the benefits like JSA and ESA that it is replacing) in a number of areas.

For example, DWP publishes data on Universal Credit sanction measures for age and gender. It does not publish data on any other protected or claimant characteristic. By contrast, statistics for JSA include data on age, gender, ethnicity, disability status and, in the case of JSA, lone-parent status.³⁵

The Equality Impact Assessment that accompanied the Welfare Reform Act 2012 (which introduced both Universal Credit and the current sanctions regime) raised concerns (based on the JSA data at that stage) about implications of the sanctions policy in relation to race, with analysis of JSA statistics at that stage showing that Black and Asian claimants received a disproportionate number of medium level sanctions. The EIA noted there was no robust analysis of why that was the case.³⁶

³¹ Evan Williams, ‘Punitive welfare reform and claimant mental health: the impact of benefit sanctions on anxiety and depression’, *Social Policy & Administration*, vol 55 issue 1, January 2021, p157. See also Evan Williams, ‘The impact of DWP benefit sanctions on anxiety and depression’, *LSE British Politics and Policy blog*, 24 June 2020

³² Final findings report: Welfare Conditionality Project 2013–2018, *Welfare Conditionality*, June 2018, p23

³³ House of Commons Work & Pensions Committee, *Benefit Sanctions: Nineteenth Report of Session 2017–19*, HC 955, published November 2018, p19
<https://publications.parliament.uk/pa/cm201719/cmselect/cmworkpen/955/955.pdf>

³⁴ The Guardian, *DWP blocks data for study of whether benefit sanctions linked to suicide*, 2 March 2022, <https://www.theguardian.com/society/2022/mar/02/dwp-blocks-data-for-study-of-whether-benefit-sanctions-linked-to-suicide>

³⁵ DWP Stat-Xplore <https://stat-xplore.dwp.gov.uk/webapi/jsf/login.xhtml>

³⁶ DWP, *Conditionality, Sanctions and Hardship, Equality Impact Assessment*, October 2011
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220160/eia-conditionality-wr2011.pdfv



A working paper published by the LSE International Inequalities Institute in 2017 also found that ethnic minorities faced a substantially higher risk of receiving JSA sanctions:

- Black men aged 18–24 were 18% more likely to be referred for sanction than White men in the same age group, and 23% more likely to receive a sanction.
- White claimants were the least likely to be sanctioned if referred by an adviser. Asian and ‘Chinese or other’ claimants were, in most age and gender combinations, the most likely to be referred.
- In the 18–24 age group, 51.24% of White women were referred for sanction compared to 57.14% of Black women.
- In the 50+ age group, Asian and Chinese/other women were more likely to be referred for sanction (52.79 and 52.50% respectively) than White women (42.45% referred for sanction).³⁷

This research would not currently be possible to replicate for Universal Credit.

The lack of protected characteristic data applies to Universal Credit as a whole. Even though Universal Credit claimants are asked questions on ethnicity, DWP has stated that the completion rate (the number of Universal Credit claimants that provided ethnicity data divided by the total number of Universal Credit claimants), is below their minimum threshold for reporting.³⁸

The DWP has stated that it is taking steps to improve this completion rate. But we are concerned that even if this does occur, it may not provide reliable data in relation to existing and returning Universal Credit claimants.

PLP research findings on impact and effectiveness of sanctions

The focus of the current research was on barriers to challenging benefit sanctions. However, research participants frequently raised concerns about the impact and effectiveness of the sanctions regime which also influenced claimants’ perceptions of the legitimacy of the system and trust in the process.

³⁷ De Vries, Reeves and Geiger, Inequalities in the application of welfare sanctions in Britain, August 2017
http://eprints.lse.ac.uk/101853/1/de_Vries_Reeves_Geiger_inequalities_in_the_application_of_welfare_wp15.pdf

³⁸ DWP, Universal Credit Statistics: Background Information and Methodology, updated 17 May 2022 <https://www.gov.uk/government/publications/universal-credit-statistics-background-information-and-methodology/universal-credit-statistics-background-information-and-methodology>



A number of the interviews reinforced existing evidence of the negative impacts of benefit sanctions including that they can:

- Trigger evictions, housing insecurity, longer term financial instability and debt, and food and fuel poverty.
- Damage claimants' mental health and emotional wellbeing.
- Undermine claimants' relationship with Work Coaches and their trust in the system as a whole.
- Diminish claimants' ability to seek or retain work due to:
 - Practical barriers such as being unable to afford to travel to work,
 - Reducing their willingness to engage meaningfully with DWP (as opposed to superficially complying),
 - Sanction-backed conditions conflicting with work requirements, for example Work-Focused Interviews arranged during the working day.

"I had no money for food or anything...obviously you get two parts, you get your rent and living money so...I was still getting my rent, which I obviously had to end up spending on food so my rent didn't get paid and that leads [to] me being evicted which obviously as you can imagine in my situation, already disabled...it's incredibly difficult [to] find places"

Universal Credit Claimant


Recommendations

- **Given the extensive evidence of its risk of harm, Government should urgently review the current sanctions regime and should not be expanding its use.**
- **DWP should adopt a transparent and evidence led approach to**



sanctions policy. This should include:

- **Publishing its recent evaluation into the effectiveness of the current sanctions regime,**
- **Taking urgent action to reliably capture data on benefit sanctions and protected characteristics, and**
- **Reinstating publication of Universal Credit Mandatory Reconsideration and appeals data.**



3. Perception of DWP and the benefit system

A punitive rather than a supportive regime


A strong theme throughout our research was the perception of the regime as punitive rather than supportive. This went beyond the immediate issue of sanctions and reflected experience of the system as a whole. It was strongly linked to the perception that the system and those working within it were starting from a position of assuming the worst of people.

This contrasted with claimants' own perspective which was that they, and most others, were simply people wanting to do their best under difficult circumstances and who were engaging with a complex system in good faith.

For many of the claimants spoken to, this stemmed back to the initial experience of claiming, in particular those who had been through a Work Capability Assessment. There was a strong perception that the system was designed to assume individuals were seeking to 'scam' the system rather than that the majority of people were in need of support and seeking to claim what they were entitled to.

"That's what's wrong with the whole system – we are all made to feel that we are guilty of doing something wrong, and we have to prove ourselves innocent"

PIP Claimant / Support Worker



Claimants instead voiced the strong view that the system should be one based on respect, support and a starting assumption of good faith on the part of claimants.

"I would like it if they listened to me and believe that I am trying to do my best and believe me."

Universal Credit Claimant

Power imbalance and a lack of accountability

A further clear theme from the research was the awareness of the inherent power imbalance that came from a situation where one party has control over decisions which could have a hugely negative effect on the other. This was exacerbated by the sense that there was no commensurate set of expectations on the DWP in terms of the quality of decision-making, professionalism and sense of fairness that they should demonstrate. An example cited was that Work Coaches could be late or cancel appointments at short notice with no repercussion, while equivalent actions on the part of claimants would result in a significant penalty. This further exacerbated the existing power imbalance, and reinforced a sense of a lack of accountability.

"I have to answer to them, but they don't have to answer to me, that's the way it is"

Universal Credit Claimant

Although some participants had examples of good interactions with individual members of DWP staff, such as Work Coaches or people on the helpline, this was often expressed as a perception of them as individually sympathetic members of staff constrained by an unsympathetic system. This was further undermined by a perception that there was a degree of lottery as to which member of staff you spoke to – with numerous negative examples of interactions that had been deeply harmful.



"you get some that are just pure vindictive, and I know it doesn't happen all the time, but it does happen and you got people on a power thing. You know what I mean?"

Universal Credit Claimant

Recommendations:

- The DWP should consider adopting a charter of mutual rights and responsibilities including in relation to missed appointments, backed up by Independent Complaint Examiner compensation.
- The DWP should adopt a culture that values accountability and clearly signals to claimants that challenge is legitimate and will be dealt with seriously and fairly. This should include prominent information in both physical settings and in correspondence about claimants' rights to complain and challenge. Staff training should reinforce the importance of accountability and of encouraging claimants to exercise the rights available to them.



4. The initial sanction decision

Sanction process

The initial decision to impose a sanction involves a number of DWP staff with different roles and varying degrees of contact with the claimant. The consequence is a process that places a distance between the claimant and the Decision Maker, with limited, and in most cases no, opportunity for the claimant to make their case directly to the Decision Maker.

The impact of this is to:

- create a decision making process that is opaque and confusing to sanctioned claimants,
- contribute to a sense of a lack of accountability and fairness in relation to decisions that have a significant impact on claimants' lives, and
- hamper the quality of the evidence before the Decision Maker – and therefore the likelihood of a correct decision being reached.

What happens when someone is sanctioned?

In the event that a claimant does not comply with one of the Work-Related Requirements in their Claimant Commitment, it is initially for the Work Coach to determine whether there was 'good reason' for the failure.

In reaching that decision, they should make contact with the claimant to give them an opportunity to say whether they had good reason. Where the relevant breach is missing or being late to a work-focused interview, this might take the form of a conversation if they arrive late or a follow up phone call if they do not attend. However, our research interviews and conversations with DWP suggest that more often than not it takes the form of an online journal message.

The DWP has introduced a framework which highlights the importance of Work Coach having a discussion with claimants. The aim is to identify and understand any barriers or circumstances that may have had an impact on their Work-Related Requirements and to gather the evidence of the claimant's circumstances, including any complex needs,



vulnerabilities or health conditions. It also now requires the Work Coach to meet with their Team Leader before making any referral to a Decision Maker.

If the Work Coach and Team Leader conclude that there was not a good reason for failing to meet the requirement, or if they have determined there was good reason on three previous occasions, they must make a referral to a DWP Decision Maker in another team.

It is this Decision Maker who then makes the decision whether to impose a sanction. The decision is based on the information included by the Work Coach in the referral. The Decision Maker has the power to contact the claimant for further information. However this is rarely exercised, and generally the Decision Maker will have no direct contact with the person being sanctioned.

PLP research findings

Our research found that claimants were not clear about the division of responsibility between the Work Coach and Decision Maker, or about the nature of the decisions they were taking. This exacerbated the sense of being 'done to' by a large, opaque and unaccountable organisation.

Many of the claimants we spoke to expressed low trust in the process with a perception that internal decision making was likely to favour the submissions of DWP colleagues over the claimant. Claimants and advisers also expressed frustration about not being able to speak directly to individuals with decision making power, leading to a sense of disconnect and powerlessness.

As is set out in further detail at page 36 below, a key issue for claimants is a lack of clarity about the information they need to provide and what might or might not address DWP's concerns. This is exacerbated by a process that is usually a written exchange rather than an open conversation with someone to understand what their concerns are and the information that could be provided to address them.

Sanction circumstances

As part of the interviews there were a number of themes that raised particular concerns about whether sanctions had been imposed fairly or correctly or where certain circumstances had made it more likely that someone was sanctioned in the first place. These included:



- Sanctions for appointments that had not been correctly or clearly notified,
- Sanctions imposed in circumstances where there was a risk of significant harm to a claimant, and
- Situations where claimants did not properly understand or struggled to access the system due to having recently started to claim Universal Credit, difficulties using systems that are digital by default and language barriers.

Unclear notification of appointments

A number of the claimants we spoke to who had been sanctioned for failure to attend an interview raised concerns about a lack of clarity in the notifications of appointments. This was also identified by a number of advisers as a frequent occurrence.

For example, one claimant we spoke to had been advised that a phone appointment would be set up, but with no specific details of an appointment time. When they subsequently missed a phone call (from a number withheld, as is standard with Universal Credit calls), they were sanctioned.

Advisers supporting claimants at the Tribunal stage identified poorly evidenced notifications as a key ground of appeal.

Risk of harm

As set out at page 22 above, a number of claimants referred to significant impact of sanctions on their mental health.

Under DWP's current framework, the initial Work Coach sanction checks should include taking into account any complex needs and vulnerabilities. DWP has developed a system of 'pinned notes' by which known concerns are flagged more prominently on a claimant's universal credit file. As set out above, under DWP's new framework, Work Coaches should also gather evidence of this prior to referring claimants for sanction.

This is largely dependent on a system of voluntary disclosure by claimants. But many claimants, including those interviewed for this research, do not feel comfortable doing that in relation to sensitive issues or where they have a bad relationship with the Work Coach or DWP.

Our understanding is that the intent of DWP is that in addition to considering whether those considerations provided a good reason not to have done something, where there



are concerns of significant harm (such as suicide or self-harm) that may result from a sanction, this can also provide grounds not to sanction.

However, interviews for this research suggested that where concerns about, for example, suicide had been expressed, these had been responded to with a call from a safeguarding lead and provision of a number to call for support. It had not, as far as the claimant was aware, triggered an urgent review of whether the sanction (the driver of the risk of harm) was appropriate.

First time failures

Some of the claimants spoken to had recently signed up to Universal Credit and were trying to learn how the system worked in terms of the expectations on them and how to navigate the Universal Credit journal:

|
"Having just signed on, having had nothing for years, for thirty, forty years, and then . . . they're on to me for failing to do things and I'm thinking to myself what are they talking about and they expect you just to know how to do these things...and I don't, I haven't done it before?"

Universal Credit Claimant

|
The introduction of a warning for the first time someone fails to comply with a Work-Related Requirement has been a long term and consistent recommendation made to DWP by a number of people and organisations (including PLP).

In 2018 DWP committed to undertake a Proof of Concept to pilot the introduction of these Yellow Card Warnings, starting in September 2019. The pilot was paused during lockdown, but has now recommenced.³⁹

³⁹ DWP Written Question UIN 119672, answered 7 February 2022 <https://questions-statements.parliament.uk/written-questions/detail/2022-02-07/119672>



Digital divide

A number of advisers referred to supporting clients who required a high degree of support to access their Universal Credit journal. Advisers were of the strong view that this was a contributing factor to the circumstances where claimants were sanctioned – as well as towards difficulties in subsequently challenging that sanction.

The section on Advice and Support below includes further recommendations on support for ongoing navigation of the system stemming beyond the initial claim set up for claimants who need this.

Language


Language barriers create an additional risk of being sanctioned in the first place (for example, due to misunderstanding the requirements being imposed) and they are a barrier to subsequently challenging that decision (for example, due to difficulties understanding fully what is being communicated in sanction notifications about rights to challenge).

"she didn't fully understand the letter that she received so this [DWP] lady got really funny and said, well, does she understand English or not? She understands most English but there are some terms within your work contract, you're, you're forcing people to sign a contract, and there are . . . words in that sentence . . . that are very, very difficult to comprehend even for an English person"

Support Worker

PLP's understanding is that there are no specific measures put in place in relation to the sanction process for individuals with language barriers – even for claims that are noted on the system as having been initially set up with the support of an interpreter.

Sanction correspondence (as with wider Universal Credit correspondence) is in English. Where a phone call is arranged, and there is a relevant note on the system, there is an option for DWP to arrange an interpreter (although advisers expressed doubt as to



whether this consistently happened and there is an additional issue of whether specific language requirements can always be met). However, there is no specific trigger for phone calls to occur as follow up to written correspondence.

Recommendations

- **The initial DWP sanction Decision Maker should always contact the relevant claimant to hear from them in their own words, rather than relying solely on the information provided by the Work Coach. This should take the form of a discussion, with an opportunity to respond to particular points of concern. It should not be restricted to a journal message.**
- **Sanction Decision Makers should take particular care when reviewing Work Coach sanction referrals to check whether an appointment notification was clearly made and can be evidenced.**
- **The DWP should continue with its Yellow Card Warning scheme pilot and publish the results as soon as they become available. This should include data on protected characteristics and qualitative data on the experience of claimants engaged in the pilot.**
- **Where an initial claim was opened with support from an interpreter, or language needs are otherwise flagged on a claimant's file, this conversation should be undertaken with the support of an interpreter.**



5. Barriers to Mandatory Reconsideration

If a claimant wants to challenge a sanction decision, they have the right to request a Mandatory Reconsideration.

This research found that there were a number of barriers to claimants requesting Mandatory Reconsideration including:

- Inconsistent knowledge of the right to request Mandatory Reconsideration.
- A lack of clarity about the nature of the initial sanction decision.
- Uncertainty about what information needed to be provided to address DWP concerns.
- Fear of triggering a further negative response.
- Mistrust in the process including a lack of faith that it would lead to an effective outcome.

Knowledge of Mandatory Reconsideration

The majority of respondents to the research survey stated that they did not know that they had the right to ask for a Mandatory Reconsideration at the time they were sanctioned. The advisers we spoke to often said that those they were advising were not aware of their right to request a Mandatory Reconsideration or if they did, that they did not know how to go about it.

Some of the claimants we spoke to did know, or had subsequently found out about, the right to request a Mandatory Reconsideration. This often came from:

- Notification letters or journal notices
- Online searches
- Past experience



Understanding the nature of the decision

When a decision is taken to sanction a claimant, they should be issued a sanction notification (in the form of a notice on their Universal Credit journal, or in a letter if the sanction relates to JSA or ESA).

This was how the majority of survey respondents (20) had found out that they had been sanctioned. However a significant minority (10) only realised they had been sanctioned after they had found that there was no money in their account. This was also reflected in interviews with some claimants.

A common theme in interviews with advisers and support workers was that those they were supporting did not necessarily understand clearly what had happened. Claimants might have sought advice because money they had expected was not there and they were not clear why; or it might have been for another issue, with a sanction as a 'side issue'.

Further, the term 'sanction' was frequently used by participants (both claimants and advisers) and others who contacted PLP in connection with the research as a catch-all term for a range of situations in which money was deducted from benefit payments or claims stopped or suspended. This is also reflected in DWP's own commissioned research.⁴⁰

There are many circumstances and reasons for which benefits can be reduced or stopped. These include deductions for DWP debt, overpayments and third party debts, variations in awards due to changes in circumstances and suspension or termination of claims due to issues with verification or administrative error.

For example, one adviser we spoke to was supporting someone to migrate from ESA to Universal Credit. As part of this the claimant was required to attend an appointment to verify their claim but missed the relevant call from DWP. As a result, and despite an attempt by the support worker to explain the situation, their claim was cancelled. This resulted in the claimant spending six weeks with no income at all and a further two to three months receiving less than they were entitled to, due to resulting delays in

⁴⁰ Joanna Crossfield, Trinh Tu, Yasmin White, Lucy Joyce and Amanda Langdon, Universal Credit: in-work progression randomised controlled trial, September 2018
<https://www.gov.uk/government/publications/universal-credit-in-work-progression-randomised-controlled-trial>



assessing their entitlement.

This was not a sanction. However, it is easy to understand why it might be understood and experienced as one. Both can occur due to missing an interview and both can lead to a significant loss of income for a period.

However, crucially, each case involves a different set of legal consequences, circumstances and routes to resolution or challenge, creating a very confusing challenge landscape for claimants to try to navigate.

Difficulties contacting DWP

A common first response to receiving a sanction was to contact DWP, for example by phoning the relevant helpline, attending the job centre, or writing a note in the Universal Credit journal.

A positive interaction could be supportive of someone progressing to challenge, for example, by informing claimants of their right to challenge and sending a signal that this was something they should feel entitled to do. However, where interactions either gave inaccurate or discouraging information or resulted in unanswered questions or lengthy delays, this acted as a barrier.

A number of claimants interviewed reported frustrations of feeling that questions were not properly answered, in particular where they fell outside routine topics. A common sentiment expressed by both claimants and advisers, in particular in relation to Universal Credit, was that it was difficult to speak to anyone who could take action and provide insight beyond a limited set of information on a screen.

The Universal Credit Journal messaging system has some advantages over hard copy correspondence including the relative ease (for those that are not digitally excluded) of leaving a message, avoiding the delay of sending by post and the risk of letters going missing. However, claimants referred to difficulties where messages were not responded to in a timely or helpful way. This included questions not being answered, delays in responses and the impact of messages getting 'out of sync' in circumstances where a Work Coach or case manager responded to the most recent message without reading those further up the chain.



"The journal is absolutely a waste of time because no one gets back to you and what ends up happening is it ends up all out of sync and out of date"

Universal Credit Claimant

To illustrate this with the example of a claimant journey, where journal messages are not being answered, a common response is to phone the Universal Credit helpline. However the helpline is limited in the information they are able to access. As a result, claimants are often informed that their case manager will contact them. If that follow up call doesn't happen, a claimant can be stuck in a frustrating cycle of repeatedly calling the helpline and being referred back to a call that never comes.

"I've asked questions about [the sanction] and just [got] no replies, anything, and you...gotta phone up the helpline, and the helpline have got to email, then they get in touch with you in so many working days, but they just leave another stupid message on your journal, you reply to it and no one, no one answers it"

Universal Credit Claimant

Claimants were also unclear as to the role of the Case Manager, reporting that the reference to them by the helpline was the first time they had been made aware that they had one.

The impact of this is both to take up more of the claimant's time and to add to the sense of remote justice.

Knowing what to write

A barrier cited by several claimants we spoke to was anxiety about knowing what to write



when submitting a Mandatory Reconsideration application.

This included circumstances where claimants were not confident in making their case in writing generally.

However it also included claimants who were ordinarily confident in making their case in writing, but who felt under confident in the current context. This was often linked with concerns about being unclear about what DWP wanted or needed to be shown or evidenced. This was sometimes exacerbated by people's previous experiences of other parts of the system, for example, when navigating the rigid approach to Work Capability Assessments.

"I mean, I probably would have just written a letter anyway because I can write, I have a good brain. What I've only understood about the DWP quite recently though is that they don't tell you what they want. When you give them what you think they want, it's never correct. There's like, well a hidden language that you have to learn. . . so me just writing a letter in my terms of what I understand the problem is, is never going to land with them because they want it in a particular way, but until you learn that particular way, you're just scuppered basically"

Universal Credit Claimant

This was sometimes exacerbated by a disparity between how someone would seek to describe the issue as they saw it, and the aspect that seemed wrong to them, and the terminology and questions being used by DWP when drawing on guidance or statute. This could be a genuine gap between what the individual felt was reasonable in a real-life situation and what would constitute good reason under DWP guidance. However, it could also be confusion or uncertainty arising from how things were described by DWP.

For example, DWP staff guidance provides that where a Claimant puts forward as good reason for missing an appointment that they did not receive notification of an appointment, the Decision Maker should follow a two-stage decision making process of:



- Reviewing the evidence on file in terms of notifications and compliance history to make a reasoned decision on whether it is “inherently improbable” that the notification was received
- If they do not think that is the case, it is then for the claimant to show that the notification was not received.⁴¹

Communication of this second point can leave claimants feeling like they have an impossible task of trying to prove they did not receive notification of an appointment. In contrast, the perspective of advisers was that challenging decisions on this ground was often successful (albeit often at the late stage of appeal).

Fear

Some claimants referred to a specific fear of being ‘blacklisted’ or triggering further trouble if they sought to challenge a decision – for example, the perception that a Work Coach or Decision Maker had sought to find a reason to refer or impose a further sanction in retaliation for the claimant submitting a mandatory reconsideration or complaint.


"when she got the letter, she was too afraid to type in on the journal to [provide an explanation]. Somehow she thought that would get her into trouble"

Support Worker

A decision whether to challenge a sanction decision is not made in isolation but is influenced by the wider context of how someone experiences both the benefits system specifically and interactions with the state more generally.

As set out at section 3 above, a common theme throughout the interviews was that claimants experience the system as punitive and authoritarian. That in turn can inhibit both people’s willingness to engage with a system and the quality of any response they

⁴¹ K2371 – K2380, DWP, Advice for Decision Makers: Staff Guide, Chapter K2
<https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>



may or may not provide. As one claimant put it:

"the minute you treat people like idiots, when you kind of adopt this kind of top down punitive sort of sanctioning attitude, like, some people just rebel against it and push back and other people just get really frightened. I mean, I get really frightened and start, like I withdraw and then I can't engage you know?"

Universal Credit Claimant


Mistrust in the process

As with the initial sanction decision, a number of claimants referred to a lack of trust in the process and a sense that there is "no point" in trying to challenge sanctions because of an organisational bias towards upholding the original decision and to disbelieving claimants.

"What evidence can you provide them?...What if you just missed an appointment? Then you say, well, I didn't get the letter they will say, well, they don't believe that do they? They never believe that ...[they] find reasons around it. So you sort of learn not to argue with it...just put it behind me..."

Universal Credit Claimant

Mistrust may be exacerbated in the sanctions process if individuals had already provided information about their good reason before the sanction was imposed. Where that did not stop the sanction being imposed the first time, claimants may take the view that Mandatory Reconsideration will not lead to the sanction being reversed. To compound this, it is not well known that Mandatory Reconsiderations will usually be considered by a different Decision Maker in a different team.



This goes beyond the immediate sanction process and is part of a wider perception and experience of the system, for example, accepting that poor decisions just ‘happen’ as an inevitable part of the system:

"I think there's a general sense of it being futile and that things are just quite hard so people just think 'that's what's happening', rather than thinking 'something's gone wrong here'"

Welfare Rights Adviser

Aside from direct individual experience of the system, people's trust can be damaged by well publicised instances that validate that lack of trust. For example, a well-publicised Freedom of Information Act response provided in 2017 stated that the DWP had a performance target of upholding 80% of original decisions (all, not just sanctions) at Mandatory Reconsideration. After this triggered concern, the DWP stated that they would no longer use this measure in future.

While that measure is no longer in place, a number of claimants we spoke to continued to refer to the perception that Mandatory Reconsiderations was target driven, suggesting a legacy of mistrust.

Recommendation:

- **The section of the template Sanction Notification letter that refers to the right to request a Mandatory Reconsideration and appeal should be revised to include information informing claimants the decision will be reviewed by a different Decision Maker who sits within a different team to the Decision Maker who made the original sanction decision.**

Misunderstanding of time limits

For Universal Credit (and “new style” JSA and ESA) sanction cases, there is no time limit on making a request for Mandatory Reconsideration. Claimants can ask for a sanction



to be reconsidered at any time⁴² – including if the sanction is finished.

This differs from other Universal Credit decisions which have a time limit of one month to request a Mandatory Reconsideration (although late applications can be accepted at DWP's discretion up to 13 months after the decision).

The interviews carried out for this research suggest that the lack of a deadline for Universal Credit is not well known. This is possibly because the one month deadline is regularly and prominently referred to.

“this idea that you can only ask for a Mandatory Reconsideration within a month is so pervasive. And if claimants know anything about how they benefit systems work, that's one thing they may have taken on board. And of course the DWP are always telling them ‘Oh you're too late’, and ‘it's more than a month’ about loads of other different decisions, and so the fact that sanctions are different, yeah, it just doesn't get through.”

Welfare Rights Adviser

Recommendation:

- **The section of the template Sanction Notification letter that refers to the right to request a Mandatory Reconsideration and appeal should be revised to include information informing claimants that a request for Mandatory Reconsideration can be made at any time (while continuing to encourage claimants to apply sooner rather than later).**

⁴² Universal Credit (Decisions and Appeals) Regulations 2013/381, Reg 14



6. Barriers to appeal

Once a Mandatory Reconsideration decision has been taken, the claimant should be sent a Mandatory Reconsideration Notice notifying them of that decision. If they remain unhappy with the decision, they can then appeal it to an independent Tribunal.

Mandatory Reconsideration

Following the introduction of Mandatory Reconsideration as a necessary step before appealing a decision, concerns have been repeatedly raised about it acting as a barrier to appeal. This research supports that position, finding that several aspects of the Mandatory Reconsideration process can make it less likely that someone will persist with a further appeal due to it:

- Lengthening an already long process.
- Creating “challenge fatigue” by requiring claimants to make their case a number of times.
- Undermining trust that challenging will be effective.
- Preventing onward appeal when the Mandatory Reconsideration process goes wrong, for example through delays or “missing” Mandatory Reconsideration requests.

Recommendation:

- **DWP should revert to the position that was in place prior to the Welfare Reform Act 2012, so that claimants continue to have the option to request an internal review but without it preventing a parallel appeal to the Tribunal.**

Left in limbo

After a Mandatory Reconsideration is submitted, there is no timeframe for the DWP to reach a decision. The introduction of a time limit has been a longstanding



recommendation from a range of bodies including the Social Security Advisory Committee and the Work and Pensions Committee. DWP has not accepted these recommendations.

Further, there does not appear to be a consistent way to acknowledge receipt of a Mandatory Reconsideration application, detailing what the claimant can expect to happen next and by when. Instead, it is dependent on individual Work Coaches or case managers providing acknowledgment, for example, via a journal notice – something that does not consistently happen.

The combination of a lack of acknowledgment and no clear timelines can leave claimants feeling like they are left in limbo. This makes it difficult to know when to chase for a response and leaves a doubt as to whether something is being properly actioned.

The uncertainty can also exacerbate the stress and anxiety already associated with the process.

"truly I don't know what to do next, I just have to wait. I feel as if I keep writing, I keep writing in there just to show them how anxious I am, and...they're not going to do anything quicker"

Universal Credit Claimant

A number of claimants referred to situations where Mandatory Reconsiderations seemed to have gone missing or where they simply had not received a response.

There were indications that this could be due to requests being made verbally by phone, but not formally recorded as a Mandatory Reconsideration. This conflicts with the correct position, that a claimant is entitled to request a Mandatory Reconsideration in any format, including:

- Over the phone
- Face to face
- By including a note in the Universal Credit Journal
- In writing



It is also possible that requests for a Mandatory Reconsideration were treated instead as a request for an explanation for further information.

Particularly concerning however, were reports from advisers of instances where DWP had not accepted Mandatory Reconsiderations (not just in relation to sanctions) despite them being clearly headed as such.


This creates a significant barrier to onward appeal, as when appealing a sanction claimants are required to submit a copy of a Mandatory Reconsideration Notice with the appeal application (although there is the option of explaining to the Tribunal why this may not be possible).

Recommendations:

- **DWP should urgently investigate concerns as to whether Mandatory Reconsideration requests are being consistently and correctly treated as a Mandatory Reconsideration requests, and ensure this is understood by all members of staff. In the meantime DWP staff guidance should make clear that if there is doubt about whether a Claimant enquiry is a request for an explanation or a Mandatory Reconsideration, it should be treated as a Mandatory Reconsideration.**
- **When a Mandatory Reconsideration request is submitted there should be a clear and consistent acknowledgment setting out next steps, timelines and an explanation of the different roles of those involved in making that decision.**
- **The DWP should introduce a timeframe by which Mandatory Reconsideration decisions need to be made. If this timeframe isn't met, claimants should have the right to proceed to appeal.**

Loss of faith

A further negative impact of the Mandatory Reconsideration process (where this does not overturn a sanction decision) was claimants experiencing a further or new loss of faith in the likelihood that challenging a decision would prove successful. This included situations where claimants had gone into the Mandatory Reconsideration process feeling



optimistic and confident in the strength of their case but who became disillusioned when they were not successful.

"I always thought obviously with the evidence that I had, that it would be, it would go my way. But it didn't. And because of that, I thought, well, what's the point in trying someone else if they're not gonna listen to the evidence, why would someone else"

Universal Credit Claimant

By the time a claimant reaches the appeal stage, and provided the initial sanction process has been correctly followed and engaged with, it is possible that claimants have sought to make the same arguments in three previous settings: first to the Work Coach when providing detail of their good reason prior to referral; second to the Decision Maker should they ask for further information; and third when submitting the Mandatory Reconsideration application. In that context, and if they have only limited awareness of why the Tribunal may be different, it is perhaps not surprising that a claimant would make the decision not to spend the time and resource on a further submission.

Length of process

The mean age of a case at disposal by the Tribunal (from receipt) was six months for January to March 2022.⁴³

However for a number of the research participants we spoke to, hearings were listed in relation to decisions that had occurred two or more years ago. This was due to a

⁴³ Ministry of Justice, Tribunal Statistics Quarterly, 9 June 2022
<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2022/tribunal-statistics-quarterly-january-to-march-2022>



combination of factors, including the impact of postponements,⁴⁴ adjournments⁴⁵ and court backlogs linked to covid-19 as well as factors that had delayed things prior to getting to the appeal submission stage, such as delays in getting information from the DWP, missing Mandatory Reconsideration Notices or delays in claimants seeking advice.

The Social Security and Child Support (SSCS) Tribunal has the largest number of adjournments of all First-tier Tribunals. For 21/22 25,000 SSCS Tribunal hearings were adjourned, accounting for 28% of SSCS listed hearings and 70% of the total number of adjournments across Tribunals, while 8% of SSCS Tribunal hearings were postponed.⁴⁶

The perspective of advisers was that adjournments were often due to information coming to light from the DWP at a late stage, requiring further time to respond or raising additional questions requiring DWP to provide further information.

The impact of lengthy processes includes:

- Practical challenges for advisers when trying to take instructions and identify what had happened some time ago,
- The increased stress for claimants of having an outstanding appeal hanging over them for a lengthy period of time, and
- A reduction in the relevance and effectiveness of the remedy due to significant delays in reaching resolution.

A lengthy and difficult appeals process is a factor in deterring a number of different welfare benefit appeals. However it is exacerbated in relation to sanctions due to their temporary nature. The result is that by the time a decision finally reaches the stage of being considered by an independent review body, the sanction may have long since ended and much of the harm already been done.

There remain important benefits to an appeal. If an appeal is successful the sanctioned

⁴⁴ A postponement is when a hearing is rescheduled before the hearing either at the request of one of the parties, or at the panel's own volition.

⁴⁵ An adjournment is when the Tribunal Panel or judge decides on the day of the hearing that the appeal cannot be finalised, for example because more information is needed, or a party is not ready, and therefore needs to be put off until another date.

⁴⁶ Ministry of Justice, Tribunal Statistics Quarterly, 9 June 2022

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2022/tribunal-statistics-quarterly-january-to-march-2022>



amount will be paid back to the claimant and the overturned sanction will not count towards lengthened sanctioned periods should the individual be sanctioned again. However research interviews showed that claimants did not always know about these benefits.

Although a successful appeal will lead to the sanctioned amount being reinstated, it will not lead to compensation for the wider and potentially longlasting, or even irreversible, impacts that may have followed as a consequence, for example, if a sanction has led to a claimant incurring debt, triggered housing instability or a relapse in a health condition.

This can lead to claimants making a rational choice to prioritise surviving the immediate consequences of a sanction rather than embarking on a lengthy and difficult appeal process that may, or may not, lead to resolution in a number of months or even years time.

Recommendation:

- **To minimise the risk of adjournments and postponements, DWP should review the quality and consistency of internal record keeping and seek to provide information requested by claimants or their advisers at the earliest possible stage.**

Perceptions of the Tribunal

A consistent theme in the interviews for this research was a perception of attending a Tribunal as an intimidating experience.

This was frequently expressed as a perception of being on trial, where the claimant is required to defend themselves in a similar way to a criminal court.





"a tribunal does sound like a court...it sounds very formal. It sounds like this, you know, learned people like a learned judge of some kind who's going to rule on your case...and it's intimidating. You know that you have to conduct yourself in a certain way, that you're there to prove your innocence in a certain way, that you have to go there and really make your case, that they're not gonna make your case for you and then the whole thing just seems really intimidating. Yeah, I've no idea whether it is or it isn't, but to me that just immediately creates a huge barrier in my mind, I'm like, I just don't wanna go through that."

Universal Credit Claimant



Where interviewees had experience of appealing something to the Tribunal (either in relation to a sanction decision or another decision such as a Work Capability Assessment), there were differing perspectives on whether the Tribunal had been as intimidating in practice.

Some had felt that the Tribunal panel had tried to put them at ease:



"And then they introduce themselves, and they're actually, they are human beings. They're lovely, and it's kind of at that point it's a bit more relaxing"

Relative of DLA Claimant



Others felt that the experience had been intimidating. There was often a sense that they were not being given a fair opportunity to make their case, driven by an overly "Q and A" approach. This contributed to claimants feeling like the Tribunal was not being presented with a fair representation of what had happened, and/or that the panel had already made up its mind.



"I felt they'd already made their mind [up] before we walked in the door. Having filled in the form for her, they didn't ask any questions that were relevant to what was in the form"

Support Worker

As well as representing a potential barrier to appeal, not feeling at ease risks hampering the quality of the individuals' evidence:

"And then going into a town I didn't know, going into a court and I didn't know...I was actually sick by the time I got there and probably didn't say very much because I was gripping the chair and trying to keep myself together"

PIP Claimant and Support Worker

Tribunal proceedings are designed to be straightforward and accessible to all. In recent years HMCTS has sought to take steps to promote a service that is more inclusive.

However, there remains a strong perception of the Tribunal process as intimidating.

A strong theme from both claimants and advisers was the importance of clear information about what to expect at the Tribunal including in relation to the specific circumstances of the decision under appeal. Where claimants do have experience of appeals, it is often in relation to appeals of Work Capability Assessments. However appeals of sanctions are likely to be different in terms of the nature of the questions asked and the number of people on the panel.



Recommendations:

- **HMCTs should further improve the information provided to claimants about what to expect when appealing to Tribunal. This should include short videos of example hearings and information tailored to the specific circumstances of the decision under appeal. This information should highlight that the Tribunal is independent of DWP.**
- **Advice sector and advocacy organisations should ensure that information provided to claimants highlights:**
 - **The Tribunal's independence,**
 - **The relatively high success rate at appeal.**
- **Tribunal panels should ensure a balance is struck between questions and allowing the claimant the opportunity to set out their perspective in their own words. When questions are asked panels should seek to explain to claimants why these questions are relevant.**


Travel

Appellants attending an in person hearing often have to travel to a different town for the hearing. This can present barriers for people who face challenges with travel, be that due to restrictions on time, physical mobility or cognitive challenges to navigating journeys.

"getting to the appeal is usually a couple of bus rides or half an hour in the car, never anywhere close "

Support Worker

Appellants now have the option to request a telephone or video hearing at the Tribunal judge's discretion. This option, while not suitable for everyone, was felt to be positive by some both as a way of addressing some of the practical challenges of getting to a



physical venue but also as a way of creating a less intimidating environment.

"I think if people were in their own home it would put them more at ease, 'cause then they're in their own surroundings and they, they wouldn't feel quite so, I'm trying to find the right word for it because, you just feel like you're in trouble. That's what you say. Like you're in trouble and you gotta get yourself out of it in front of this panel, uh, and I think it would be much better if you could do with their own home and not be so edgy and, um, nervous"

PIP Claimant and Support Worker



7. Supportive factors for appeal

The importance of oral testimony

Claimants can choose whether to have an appeal decided “on the papers” or at an oral hearing. Generally, advisers advise appellants to attend an oral hearing if possible.

Where an oral hearing is selected, this is often the first time in the challenge process that a claimant has been able to explain to someone face to face in their own words.

This is important for establishing the truth:

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"I felt they'd already made their mind before we walked in the door. Having filled in the form for her, they didn't ask any questions that were relevant to what was in the form"

Support Worker

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But it also helps claimants feel that they have had a fair hearing:


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"I'll get to have my say, and I'd maybe get my questions answered that no one, you know, that no one answered, they're happy to sanction us but they're not happy to answer my questions you know?"

Universal Credit Claimant

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Independence

The fact that the Tribunal is independent of DWP is not universally known and



understood. However, where this was something claimants were aware of it was a supportive factor in having trust in the process:

"I mean, they're supposed to be independent aren't they. They've got an independent person on there, I think there are three people and they've all got different roles. I can't remember what the roles are off the top of my head, but the courts are supposed to be separate to the DWP, aren't they? And my trust, but I still have trust for the court system"

ESA Claimant



8. Access to Advice and Support

Supportive factor at every stage

Access to advice and support was a supportive factor at every stage – in preventing a sanction occurring in the first place, challenging it by Mandatory Reconsideration and onward appeal to Tribunal. This included welfare rights advice, other forms of professional or peer support and having a supportive relative.

Reasons for why this was supportive included the following:

- **Knowledge and skill set:** most obviously, the additional experience of knowing how the system works and knowing what to write and how to write it. This includes contexts where individuals are confident in their ability to read guidance notes, and understand procedures, but who are concerned about not having the additional knowledge that comes from the experience of finding out what works in practice:

"Part of this is that you are the go to person, these are people with children in good jobs, but they come to you because you have the expertise, and you know what you are doing, you know how the system works"

Welfare Rights Adviser

- **Relationships and connections to DWP:** a number of advisers felt that relationships with DWP was a key factor in preventing sanctions in the first place and preventing issues escalating.
- **Perception of a different response:** both claimants and advisers referred to the different attitude from members of staff when talking to an adviser rather than a claimant.
- **Moral support through a difficult process:** this included individuals who



would view themselves as capable of understanding and navigating the system, and who in other circumstances would be the one providing support to others, but where the stress and anxiety of their own case meant that moral support was important in supporting them to engage with the process:

"there's a thing though that even if you help others with stuff when it comes to your own situation, it could be very difficult. It's not, it's not you think that you know it's easy for you to do, but...you know, it's easier to help other people than to help yourself sometimes"

Universal Credit Claimant

- **Tenacious support workers (or relative):** where individuals were experiencing multiple challenges in their lives which made it very unlikely they would be able to engage with the system on their own, a committed advocate (either a support worker or relative) determined to fight for their rights despite facing lots of obstacles could challenge decisions.

Lack of capacity

Both claimants and advisers identified lack of advice sector capacity and resource as a key barrier to accessing advice. Restrictions on capacity were well known by claimants, and could lead to them reaching the conclusion that there wasn't any point in trying to access it.

"I suppose I could. I could try to get help...from CAB, but the waiting list I believe is well over a month, if not two months to even get in at that moment. Well, at that point in time it would be paid off, so what's the point?...There's no one to help you and nowhere to turn to really"

Universal Credit Claimant



Some claimants spoke of having returned to previous sources of advice, only to find that this was now less effective due to the consequences of funding cuts. Where claimants had accessed advice, this was often due to having existing support relationships in place.

Advisers also spoke to how restrictions on capacity and funding hampered their ability to do some of the outreach they used to do to reach a wider number of claimants. Interviews with advisers noted the importance of face to face advice and of being able to take the time to make someone feel welcome and to properly understand the issues, all of which had been negatively impacted by reductions in funding. Restrictions in capacity also hampered advisers' and support workers' ability to follow up with claimants beyond an initial short piece of advice to continue to support them through an often difficult and ongoing process.

DWP often signposts claimants towards Citizens Advice and Law Centres. While this is welcome, it is undermined if there is inadequate advice provision at the other end.

For a number of years the DWP has commissioned a Help to Claim service from Citizens Advice to support people making their initial Universal Credit claim. From April 2022, this has been replaced by the Future Support Offer. Unlike Help to Claim, this is currently limited to support via telephone and digital channels, with no requirement to provide face to face support (or support beyond the first full correct payment of Universal Credit). DWP has indicated that there may be further commissioning of support at a later stage. DWP has also indicated in its Health and Disability Green Paper that it is exploring options for additional advocacy for those that 'struggle the most to access and use the benefits system'.⁴⁷

Restrictions in advice sector capacity is as a result of fundamental issues of funding, including interactions with cuts to legal aid and reductions in local authority funding. Individual commissioning of bespoke services, such as Help to Claim, while more helpful than not, cannot adequately plug those gaps, and fail to reflect how many individuals access advice and understand the issues they are facing. Addressing those issues requires a more fundamental rethink of the approach to funding access to advice.

⁴⁷ DWP Shaping Future Support: The Health & Disability Green Paper (July 2021), p 19
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004042/shaping-future-support-the-health-and-disability-green-paper.pdf



The ultimate aim should also be to create a system which claimants are able to navigate without the support of help and advice. However, in the meantime, DWP should take the following actions in relation to the commissioning decisions it makes.

Recommendations:

- **DWP should ensure that any further expansion of the Future Support Offer should:**
 - **Include continuing support to maintain a claim for those who need it, and**
 - **Reintroduce in person advice**
- **As part of the development of additional advocacy proposals referred to in the Health & Disability Green Paper, DWP should:**
 - **Avoid an overly restrictive approach to who is entitled to access support, and**
 - **Include advocacy support around both avoiding sanctions in the first place and in challenging sanctions should they occur.**
- **Advice providers who provide online advice should as far as possible (and as some already do) include clear and accessible guidance and template letters supporting claimants to understand what to write as well as how to navigate the process.**



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