WRITTEN SUBMISSION FROM DR DAVID WEBSTER

JSA AND ESA SANCTIONS

Introduction

1. For 29 years to 2010 I led Glasgow City Council’s housing policy and planning unit and I have been a specialist adviser to the House of Commons Environment, Social Security/Education & Employment, and Scottish Affairs Committees. I have been researching unemployment for 20 years and my PhD by published work is available at http://theses.gla.ac.uk/1720. I am currently carrying out a critical examination of unemployment benefit sanctions and disallowances in Great Britain since 1911. The present submission is based on this work.

The scale and growth of JSA sanctions

2. JSA dates from October 1996. Full statistics are available from April 2000 to September 2013. These show that the annual total of JSA sanctions in Scotland has more than doubled over the past decade, from under 30,000 to over 80,000 (Figure 1).

3. The number of sanctions is obviously influenced by the number of claimants. Figure 2 shows monthly JSA sanctions as a percentage of JSA claimants. The level and pattern of change has been very similar in Scotland and Great Britain. A big increase took place following John Hutton’s appointment as Secretary of State, from under 3% to almost 4%. The rate fell back at the beginning of the recession in 2008, probably because Jobcentre staff time was taken up registering new claimants. It has then risen sharply under the Coalition, with fluctuations which have been due to administrative factors. The rate has now reached 6% per month in both Scotland and GB.

4. I have also analysed geographical information on sanctions (Webster 2013b) and it appears to me that the JSA sanctions regime is effectively identical in Scotland and GB. The rest of the data on JSA quoted in this evidence relates to GB. For GB as a whole, while Work Programme contractors initiate about half of sanctions, they only account for one third of actual sanctions, apparently mainly because of defective paper work (Webster 2014b, pp.4-5). When this is allowed for, it emerges that the rate of sanctioning across GB by Jobcentres of claimants registered with them (rather than with Work Programme contractors) is now an astonishing 9% per month, or almost one in ten.

5. Analysis of the changing reasons for sanctions is given in Webster (2014b, 2013a). Due to the recession, there has been a big fall in disqualifications for voluntary leaving and misconduct, so that the increase in the more aggressive types of sanction – those aimed at making people do things they do not want to, or may not consider sensible - is correspondingly greater. The duration of most JSA sanctions was also increased in October 2012.

6. No data have been published for JSA sanctions in Northern Ireland since November 2010. A direct comparison with GB can be made for February 2005. JSA
claimants under sanction then were about 1.6 per cent of all JSA claimants in N.Ireland compared to 2.0 in GB. An approximate comparison can be made for the whole period August 2003 to November 2010.\(^5\) This shows that up to November 2010, N. Ireland had not followed GB in its upward sanctions path - in fact N. Ireland shows a downward trend from 2006 onward. It appears that N. Ireland may have been exempted from the GB drive to increase sanctions over the last 8 years. I have not been successful in eliciting any further information from the N. Ireland administration but the Committee might want to arrange inquiries itself.

### ESA sanctions

7. Sanctions were introduced for ESA claimants in the Work Related Activity Group in October 2008, and made harsher in December 2012. **Figure 1** shows that the number of ESA sanctions in Scotland is relatively small compared to JSA. The largest annual total was 2,602 in the year ending June 2010. It then fell to a low of 289 in the year to October 2011 and has since risen again to 1,871 in the year to September 2013. The number is influenced by the size of the WRAG, which has grown to reach 72,040 in Scotland in August 2013. **Figure 3** shows monthly ESA sanctions as a percentage of those in the WRAG. Scotland and GB have followed the same pattern, with a steep decline from an initially high rate of 3.5%-4.0%, down to a trough of under 0.1% in summer 2011 (likely to have been due to the transfer to the Work Programme) followed by a slow rise to 0.35%-0.55% by September 2013. However, the rate has been consistently lower in Scotland, by about 30% overall. Unfortunately I have not had the opportunity to investigate the reasons for this. It could be due to differences in Jobcentre practice or to structural factors, such as differing age structures of the populations of claimants or differences in the reasons for claiming ESA.

### The process for applying sanctions, including how discretion is being applied by local Jobcentre Plus offices

8. Professor Michael Adler of the University of Edinburgh (2013), on the basis of evidence running to 2010, has pointed out how few are the protections for claimants in the JSA/ESA sanctions regime and its grave defects as a system of administrative justice. Under the Coalition, matters have become very much worse. In evidence to the current Oakley review (Webster 2014a), I have spelled out many of the changes which would be required to provide a proper level of protection.

9. Many of the problems arise from the abolition by the Social Security Act 1998 of independent adjudication. Since then, decisions on and reconsiderations of sanctions have been acts of the Secretary of State, and Jobcentre staff are merely his agents. The judicial system provides only very weak checks. Less than one third of sanctioned claimants ask even for internal reconsideration by DWP, and only about 2% go to a Tribunal. Involvement by the Courts is rare.\(^3\) It is clear from the research evidence that the great majority of claimants find the appeal process too difficult (Webster 2013a, para.18). Tribunal decisions set no precedent, so that the Secretary of State can carry on using the same unfair and unlawful devices over and over again. It is not surprising therefore that there is now a huge volume of evidence of unreasonable sanctions.\(^4\)
10. Some of the variation in sanction rates for particular reasons between local offices is due to differing labour market conditions. Those related to leaving a job voluntarily or through misconduct, or to neglect to avail or refusal of a job opportunity, occur more often in areas where jobs are plentiful. By contrast, claimants are more often penalised for non-attendance or lateness at interviews, or for non-participation in training or employment schemes, in areas where jobs are scarce. There is a lot of variability between Jobcentre Plus offices in the overall rate of referrals for sanction/disallowance, but less in the rate of actual sanctions (Webster 2013b).

11. Given all the evidence, there can be no doubt that there is now a deliberate policy on the part of Coalition ministers to drive up the level of sanctions to previously unheard-of levels through managerial pressure on Jobcentre staff. In practice, staff now have very little scope for discretion and are frequently driven to impose sanctions on any excuse.

12. A person convicted of a criminal offence will, prior to sentencing, be the subject of assessment and reports, and be given a sentence that takes their circumstances into account. No such assessment takes place for a sanctioned claimant.

The impact of sanctions on individuals

13. Official research on the impact of sanctions on individuals is inadequate. Ministers are still relying on a study (Peters & Joyce 2006) for which the fieldwork was carried out in 2005, when the rate of sanctions was under half its current level. At that time disallowances for voluntary leaving and misconduct accounted for over a quarter of all sanctions and disallowances; this group of claimants tends to be different from others who are sanctioned, because they have just had a job and are often eligible for contributory benefit. Moreover the researchers failed to contact one third of their selected sample, ensuring that particularly vulnerable groups such as homeless people were not represented. There have been various other studies, mostly older.

14. Nevertheless a clear enough picture emerges from the research. Sanctions are quite variable in their effects, the main issue being how well situated the claimant is in the first place. At one extreme, a claimant on contributory JSA who has just lost a job and has good financial reserves, or a young person living with supportive parents, may feel more insulted than financially damaged. At the other, people in long-term poverty, in debt and without relatives are reduced to extreme degradation.

15. The research indicates that sanctions have many damaging effects. They undermine health, family and friends suffer hardship and damaged relationships, they cause homelessness, drive people to Food Banks, increase crime, push people into worse jobs to which they are unsuited (with lasting ill-effects), undermine the support work of Jobcentre Plus, and make claimants reluctant to complain about malpractice by officials, contractors or employers (Webster 2013a, para.21, 23-24). They have undermined the usefulness and acceptability of national unemployment insurance for everyone; there are now a million unemployed people not claiming unemployment benefit, an all-time record.
Whether particular groups of people are being more adversely affected by sanctions

16. There are two aspects to this question: Whether some groups are more likely to be sanctioned, and whether some suffer more when sanctioned.

Groups more likely to be sanctioned

17. Young people aged 18-24 incur sanctions at twice the rate of other groups (Webster 2013a, para.6). Risk declines with age. People from ethnic minorities are at somewhat higher risk of sanctions, and disabled people are at higher risk of repeat sanctions. The framework for disability monitoring is inadequate (Webster 2013a, para.16-17). New data contained in DWP Freedom of Information response 2014-79 show that since October 2011, on average the rate of sanctions for ESA WRAG claimants with mental and behavioural conditions has been one third (33%) higher than for those with other conditions.

18. Homeless people are also at greater risk, although there are no relevant statistics. This is particularly because of their lack of a stable address and the fact that the crisis of homelessness makes them unable to cope with other issues. I was invited to speak to a Scottish homelessness conference last November and was surprised to find how deep was the concern about sanctions.

Groups suffering most when sanctioned

19. As already indicated, the people who suffer most from sanctions are those who are most disadvantaged to start with. Sanctions weaken their position further. Poor people tend to be in a state of crisis much of the time, and sanctions add a further crisis.

Whether sanctions are encouraging claimants to meet the claimant commitment

20. The ‘claimant commitment’, whereby claimants are expected to document a full 35-hour week of job search activity, has been introduced in a rolling programme starting on 14 October 2013, while the published DWP statistics on sanctions run only to 30 September 2013. Therefore the relationship between sanctioning and the claimant commitment cannot yet be established.

21. A more fundamental question is whether it is actually desirable for claimants to meet the ‘claimant commitment’. The ‘commitment’ is not evidence-based. It was inspired by a highly misleading report by the Policy Exchange (Doctor & Oakley 2011) which wrongly claimed that JSA claimants were spending only 8 minutes a week looking for work, when the true figure as shown by the DWP’s own research was 7 hours (Webster 2014a, para.10). The ‘commitment’ aims to raise this to the equivalent of 35 hours a week. But there is no evidence that search activity on this scale actually helps people to find work. What is obvious is that it will prevent unemployed people from doing many other things that they should be doing, taking into account that most tend to cycle in and out of low paid, stressful jobs, often with unsocial hours. These include making their money go further by shopping around
and engaging in DIY, caring for children or sick family members, and spending quality time with their relatives. The claimant commitment will also add to the burden of employers in dealing with multiple unsuitable job applications.  

**How the financial hardship provisions are working and any potential overlap with the Scottish Welfare Fund**

22. It appears that most people, including most politicians and many policy makers, know nothing about the ‘hardship’ provisions of the Jobseekers Act 1995. This has led them to take at face value official statements that the provisions are designed to prevent hardship, and to assume that they do actually prevent it. In fact the provisions ensure that people who start poor do actually suffer hardship and frequently, destitution. Claimants who are penalised can apply for a means-tested ‘hardship payment’ of 60% of the JSA rate except for ‘vulnerable’ claimants who get 80%. ‘Vulnerable’ claimants can apply immediately, but most have to wait two weeks before they can even apply. The official DWP Decision Makers’ Guide acknowledges that the two week wait will often damage the claimant’s health (para. 35099). The criteria for ‘hardship’ are specific to the sanctions regime and are particularly harsh – for instance, a person with cash in hand equal to their ‘applicable amount’ will be refused even if the money is owed to a payday lender (para. 35198). They are designed to ensure that the claimant has no other resources left and has exhausted any possible assistance from family and friends.

23. The Scottish Welfare Fund Guidance (para. 6.9) currently states ‘Crisis Grants and Community Care grants should not undermine DWP’s sanctions and disallowances. If an applicant is subject to a disallowance or a sanction by the DWP, and their benefit is reduced as a result, a Crisis Grant should only be awarded to meet expenses which are the consequence of a disaster or the cost of food for their children.’

24. I have been told that some relaxation of this Guidance will take place in the new financial year, but have no details. Scottish Welfare Fund payments should not replace DWP hardship payments a claimant is entitled to. But sanctions have many damaging effects, producing additional demands on many devolved services. Therefore, pending reform of the sanctions system, in my view there should be no other restrictions on availability of the Scottish Welfare Fund to sanctioned claimants. The criterion should be their level of need.

**Weakness of the case for sanctions**

25. Sanctions have become part of what J.K.Galbraith called the ‘conventional wisdom’. But it is important to realise that there is no rational basis for the current UK regime. Although there is evidence of an effect in getting people off JSA, and a more modest effect in getting people into jobs, there is a huge amount of evidence of offsetting negative effects. Support for sanctions is associated with belief in welfare-to-work programmes, but the evidence for their efficacy is itself thin, and the less they have to offer the claimant, the more dependent on sanctions they are. There has never been any serious official evaluation of the evidence overall. Even organizations such as the OECD (an advocate of sanctions) have never undertaken any balanced assessment of the evidence. There has also never been any serious
consideration of alternative ways of influencing behaviour. Instead, policy making in this area has been characterised by an exceptional degree of sloganising, stereotyping and scapegoating.

26. In my view it is evident that the negative effects of sanctions far outweigh any positive. They should simply be abolished. Entitlement conditions would have to remain, but they should be based on respect for the claimant and should be accompanied by an effective safety net for those who do not meet them.

REFERENCES


Webster, D. (2014a) Evidence submitted to the Independent review of Jobseeker’s Allowance (JSA) sanctions for claimants failing to take part in back to work schemes, 10 January, revised 13 January, available at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

Figure 1

Scotland: JSA & ESA sanctions, last 12 months

Note: ESA sanctions came into force in October 2008.
Figure 2

JSA sanctions per month as % of claimants, Scotland & Great Britain

- Adverse decisions as % of claimants Scotland
- Adverse decisions as % of claimants Great Britain

Coalition govt
Handover to Work Programme
Start of recession
John Hutton Sec of State
Figure 3

ESA sanctions per month as % of Work Related Activity Group
Scotland & Great Britain

Note: Data on the size of the WRAG are not available before February 2010
Northern Ireland sanctions data are from http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications/benefit-publications-archive/jobseekers_allowance.htm, supplemented by earlier data provided by Kevin Comber of Northern Ireland Department for Social Development. GB comparison data are from DWP Jobseekers Allowance Quarterly Statistical Enquiry, February 2005, and author’s calculations.

In the most recent episode, the Reilly-Wilson case, the government reacted to losing its case in the Court of Appeal by passing a retrospective Act (the Jobseekers (Back to Work Schemes) Act 2013) to set aside the Court judgment. The Supreme Court has since upheld the Court of Appeal’s ruling and the final outcome of the case remains to be determined.

See for instance some two dozen submissions to the Oakley Review at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

http://www.scsb.org.uk/index.php?page=events See also Homeless Watch (2013) and Broadway & St Mungo’s (2014)

Employers are receiving 45 applications for each low-skilled job, but only half of the applicants are suitable. Source: Chartered Institute of Personnel and Development-Success Factors, Labour Market Outlook, Spring 2013, p.2.


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