House of Commons Public Accounts Committee

**BENEFIT SANCTIONS INQUIRY**

Evidence submitted by

Dr David Webster

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**SUMMARY**

*This submission complements the NAO report on Benefit Sanctions by pursuing its analysis more deeply on several points. A key reason for the huge rise and fall of sanctions in 2010-16 has been the unreasonable and irresponsible DWP ruling that claimants sent on the Work Programme must be referred for sanction in the event of any ‘failure’, even when the provider knows they are participating fully. This has resulted in quadrupling a JSA claimant’s chances of sanction and in the Work Programme producing vastly more sanctions than jobs, for claimants of both JSA and ESA. The NAO report does not identify the key but unaccountable role of ministers, in relation to both referrals for, and decisions on, sanctions. The evidence indicates that there was an unannounced policy decision by ministers at the start of the Coalition government to drive up referrals for sanction, which was relaxed in 2013. Ministers have also been in direct control of the decision makers who since 2010 have increased the proportion of referrals resulting in sanction for every single reason, with an overall increase from 60% to 80%, rising to a ‘rubber-stamping’ 98% in the case of referrals for ‘not actively seeking work’. The NAO has also not picked up the massive waste and confusion created by the ill-considered doubling-up of disentitlement and sanction for ‘not actively seeking work’ by the 2012 Regulations. Nor has it identified the damage caused by the failure of the DWP to implement the August 2015 recommendations of the UK Statistics Authority. This has led to politicians, the public and the Secretary of State himself being scandalously misinformed about the scale of sanctioning, and to a total absence of information on sanctions against unemployed claimants of Universal Credit despite the number of such claimants having risen to a quarter of a million and indications that they are being sanctioned at nearly twice the rate of JSA claimants. These and other problems of the sanctions regime are not incidental failings which can be put right individually. Rather, the whole system is misconceived. It is administrative hubris to claim that a government department such as the DWP is capable of running in a competent manner a secret, unaccountable parallel penal system which often imposes heavier penalties than the mainstream courts but lacks their safeguards. The sanctions system should be abolished.*

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**Introduction**

1. For 29 years to 2010 I led Glasgow City Council’s housing policy and planning unit. I have been a specialist adviser to the House of Commons Environment, Social Security/Education & Employment, and Scottish Affairs Committees and am a Fellow of the Academy of Social Sciences. I have been researching unemployment for 23 years and my 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.

2. Supported by Jonathan Portes of NIESR, I was the author of the complaint to the UK Statistics Authority which led to the recommendations of 5 August 2015 whose implementation is urged by the NAO in report on Benefit Sanctions[[1]](#endnote-1) (Recommendation d, p.10, and para.3.5-3.6).[[2]](#endnote-2)

3. This submission complements the NAO report by pursuing its analysis more deeply on three points:-

* The reasons for the huge rise and then fall in the rate of sanctions between 2010 and 2016, and their implications.
* The problems arising from the introduction by the 2012 Regulations of a double penalty – disentitlement *and* sanction – for ‘not actively seeking work’.
* The significance of the DWP’s failure to date to implement the UK Statistics Authority’s recommendations of August 2015.[[3]](#endnote-3)

**Reasons for the rise and fall of sanctions 2010-16**

4. The NAO report (Figure 3, bottom chart) shows that there was a huge rise and fall in the monthly rate of JSA sanctions between 2010 and 2016. But its analysis of the reasons for this needs to be carried further. I have made an analysis myself (Webster 2016) and the following is based on it.

*Role of the DWP’s guidance to Work Programme providers*

5. The NAO (para.2.5) correctly states that changes in the number of referrals of claimants to the Work Programme have been a major factor in the rise and fall of JSA sanctions. My own estimate is that they contributed 41% of the rise and 24% of the fall (Webster 2016, Table 1). However the NAO has missed the key role of the DWP’s irresponsible ruling that Work Programme providers must refer a claimant for sanction in the event of any ‘failure’ at all, even when they know that the claimant is engaging fully in the Programme. This ruling was strongly criticised by the official review of July 2014 (Oakley 2014). Oakley recommended (pp.44-5) that DWP should revise its guidance so that providers have an obligation to seek ‘good reasons’ for ‘failures’ from claimants and can accept them without referral to DWP.

6. In its response to Oakley (DWP 2014, pp.15-16), DWP said that it could not change its guidance without primary legislation, and that this needed to compete with other legislative priorities. In fact, it had already had an opportunity to legislate, if it really needed to, through the Welfare Reform Act 2012, and it had another in 2016 in the Welfare Reform and Work Act. But the claim that it needed legislation at all is far-fetched. Most of the sanctions refer to cases where the claimant ‘without good reason....fails to attend....a scheme or programme’ (Jobseekers Act 1995, S.19A (2) (f) as amended). The Act says fails to attend a *programme*, not a *single interview* or *session*. To suggest that it would be illegal for the DWP to tell providers to use their common sense is nonsense. The fundamental legal rule is that statutory provisions must be interpreted reasonably. It has clearly not been followed here. The NAO report itself notes (Appendix 3, para.3, p.53) that between July and December 2015, one million Jobcentre Plus appointments were missed but these resulted in only 34,000 sanction referrals. Someone was exercising their common sense there!

7. The trouble is that once a referral for sanction is made, the DWP’s penal processes swing blindly into action, and the onus shifts to the claimant to prevent a sanction, which they are often unable for various reasons to do. Not only is a referral overwhelmingly likely to produce an actual sanction (Figure 15, p.32 shows that three-quarters of Work Programme referrals result in sanction), but it is also clear that DWP decision makers exercise little genuine discretion on whether to sanction. Figure 13, p.29 shows that the same proportion of Work Programme referrals turn into sanctions irrespective of the provider’s referral rate, in a situation where, as para.2.12 points out, some providers make twice as many referrals as others, from an identical caseload.

8. The consequence is that the Work Programme has turned into a monstrous sanctioning machine. Over the almost 5 years from July 2011 to March 2016 Work Programme providers made 1.5 sanction referrals per JSA claimant enrolled on the programme (NAO report, para.2,11, p.11). This is almost three times the rate of referrals for all other reasons for all JSA claimants over the 5 years April 2010 to March 2014, which was 0.6 per claimant.[[4]](#endnote-4) It means that as soon as a JSA claimant is sent on the Work Programme, their chances of referral for sanction are quadrupled. Consequently by March 2016 the Work Programme had delivered about 843,000 JSA sanctions and 881,615 cancelled JSA sanction referrals compared to only 483,827 JSA job outcomes.[[5]](#endnote-5) While it may have done some good, the Programme has also done incalculable harm to claimants, and produced massive administrative waste.

9. The NAO report does not address the similarly large rise and fall in ESA sanctions after 2011, which was entirely due to sanctions for non-participation in work-related activity, usually meaning the Work Programme (Webster 2016, pp.8-9). ESA sanctions for this reason rose from nil prior to June 2011, to 4,500 per month in March 2014. Once again, the DWP’s insistence on automatic referral of any ‘failure’ has played a major role. Here its legal argument is equally flawed. In a response to the House of Commons Work and Pensions Committee (2015, p.16) the DWP claimed that ‘S.16(3) of the Welfare Reform Act 2007 specifically prevents the contracting out of decisions on whether the claimant has failed to comply, shown good cause or should suffer ..... sanction’. The DWP’s interpretation of S.16(3) is self-contradictory. If the subsection meant what DWP says, a provider would no more be able to make any referral to DWP than they would be able to make a judgment whether the claimant had a good reason for not doing what they didn’t do. It is obvious that neither the act of referring a claimant for sanction nor the non-act of not referring them is a ‘decision’ within the meaning of S.16(3), which is clearly designed for the sole purpose of avoiding a situation where the decision to cancel a state benefit is made by a private contractor.

10. In consequence of this DWP ruling, the Work Programme has delivered about 175,000 ESA sanctions and about 162,970 cancelled ESA referrals against 36,986 ESA job outcomes.[[6]](#endnote-6) The NAO report notes (para.3.10, p.41) that receiving a sanction makes ESA claimants *less* likely to get employment.

11. Given that the DWP’s unreasonable rulings on automatic referral of both JSA and ESA claimants on the Work Programme were made at the same time that other referrals were being driven up and the harsher penalties of the 2012 Regulations were being incubated, it certainly appears that they were made deliberately, in order to increase pressure on claimants, but without thinking through the administrative or ethical implications.

*Role of ministers: introductory*

12. The NAO report does not mention the role of ministers. But it has been central to the great sanctions campaign of 2010-16.

13. While the Work Programme contributed 41% of the rise and 24% of the fall in sanctions in 2010-16, almost all of the rest of the rise and fall was due to referrals directly initiated by Jobcentre Plus. Since 2011 Jobcentre Plus has no longer been an Executive Agency but simply a part of DWP, so that referrals by Jobcentre Plus staff are under the control of DWP ministers. Moreover, since the Social Security Act 1998, which abolished independent adjudication, all decisions on referrals, whether originating from contractors or from Jobcentre Plus, have been decisions of the Secretary of State and therefore also under direct ministerial control. The DWP’s decision makers are simple instruments of the Secretary of State, without any accountability of their own.

*Role of ministers: Referrals for sanction*

14. The NAO report (para.2.6, p.26) says that the DWP ‘does not have a clear understanding of the reasons for variation in referrals over time’ and refers to ‘operational influences’ on referrals. The summary (para.13, p.8) says that ‘It is likely that management focus and local work coach discretion have had a substantial influence on changing referral rates’. These conclusions do not square with the evidence in the report. My own conclusion (Webster 2016, p.10) was that there must have been an unannounced change of policy by ministers to pressurise staff to make more sanction referrals, as soon as the Coalition government took office in May 2010. This policy was then probably relaxed in 2013. The basis for this conclusion is that the rate of referrals began rising from May 2010 *for every single reason* for sanction. Evidence in the NAO’s Appendix 3 (para.16, p.58) supports this: it notes that the rate of sanction for JSA claimants who were put on to JSA after Work Capability Assessments saw exactly the same rise and fall in referrals as other claimants, even though they could have been expected to behave differently. Moreover, the fact that the variation in referral rates between Jobcentres has been consistent over time in spite of large changes in those rates (para.2.8, p.26 and Figure 11, p.27) indicates that the NAO cannot be correct in suggesting that local work coach discretion can explain the rise and fall. Sanction referrals have clearly been tightly controlled from the centre throughout, as indeed was indicated by the leaked DWP Jobcentre ‘scorecard’ printed in *Guardian* of 28 March 2013.[[7]](#endnote-7)

*Role of ministers: Decisions to sanction*

15. The NAO report notes (para.2.18 and Figure 15) that the proportion of referrals resulting in sanction has risen since 2010 for each of the three main reasons for sanction. This important finding has not found its way into the NAO’s Summary (pp.6-10). In fact it greatly understates what has occurred. Webster (2016, p.8) shows that *for every single reason* a referral in 2016 was much more likely to result in a sanction than a referral in 2010, with the overall proportion of referrals resulting in sanction rising from 60% to 80%. Moreover, the NAO records but does not draw attention to the remarkable fact that (Figure 15, p.32) from 2010 onwards the proportion of referrals for ‘not actively seeking work’ resulting in sanction rose steadily from 81% to an incredible 98%, during a period when (para.12, p.56 and Figure 30, p.57) such referrals tripled before falling back to their starting rate. Decision makers are now doing little more than rubber-stamping these referrals. Had they been doing a proper job, the proportion of referrals resulting in sanction would have fallen as the rate of referrals rose, and risen as they fell.

*Role of ministers: conclusion*

16. Ministers play a decisive managerial role in the sanctions system but there is an almost total lack of transparency and accountability about the way they discharge it. S.81 of the 1998 Act requires that ‘The Secretary of State shall prepare, either annually or at such times or intervals as may be prescribed, a report on the standards achieved by the Secretary of State in the making of decisions against which an appeal lies to an appeal tribunal’. Since 2000 only five such reports have been published, the most recent being in March 2010, referring to 2004-07 (DWP 2010). This report itself lacked clarity and transparency and in particular did not bother to seek any input from claimants. There has been no report on the Secretary of State’s decision-making since the Labour government left office.

**‘Not actively seeking work’ – waste and confusion arising from doubling up of ‘disentitlement’ and ‘sanction’ in the 2012 Regulations**

17. The NAO report ((Appendix 3, para.12 and Figure 30) notes that referrals for ‘not actively seeking work’ tripled under the Coalition. In fact actual *sanctions* for this reason more than quintupled, from 65,000 in the year to April 2010, to 349,000 in 2013.[[8]](#endnote-8) It is now one of the three most common reasons for sanction. Given this, one might have expected DWP to ensure the administrative efficiency of the sanction process for this reason. In fact, it made it very much worse.

18. S.7 of the Jobseekers Act 1995 made inadequate job search (as judged by DWP) the basis not for a sanction, but for disentitlement from benefit. The Coalition government wished to increase the pressure on claimants to do more job search of the kind it wanted, but instead of taking the obvious route of changing the penalty from disentitlement to sanction (as the Labour government had done in April 2010 in respect of missed interviews), it used the 2012 Regulations[[9]](#endnote-9) to create a category of so-called ‘intermediate’ sanctions where the claimant is *both* disentitled *and* sanctioned. This is pointless since the length of the sanction is adjusted so as to make the sum of the length of the sanction and the period spent disentitled the same in all cases. But it has created an administrative dog’s breakfast. It is extremely confusing for the claimant. It makes it more likely that the claimant will drop out of benefit altogether since they must actively reclaim. It also generates two sets of paperwork, since the decision to sanction is legally separate from the decision to disentitle, and the claimant must appeal each separately.[[10]](#endnote-10) Switching from disentitlement to sanction would have avoided the massive problem of wrongful loss of Housing Benefit, since disentitlement means that DWP has to tell the local authority that the claimant’s entitlement has stopped.[[11]](#endnote-11) It would also have avoided the major problem of claimants having their benefit stopped before they are notified of the penalty, which arises from the rule that if entitlement is in doubt, payment is stopped immediately in order to avoid the risk of incorrect disbursement of public funds. This has led to a torrent of complaints. In a response to the House of Commons Work and Pension Committee (House of Commons 2015, p.14), DWP said that it would speed up decisions on these cases so that they are made within two days. However, there is already an obvious problem, noted above, that 98% of referrals for ‘not actively seeking work’ result in a sanction, far above the proportion for any other type of sanction. This appears to be the result of failure to give the claimant an opportunity to defend themselves from their adviser’s allegations before the decision maker cuts off their benefit. A two-day time limit only makes this problem worse; proper consideration of ‘good reason’ clearly cannot be completed in two days as it requires interaction with the claimant. It has also led to ‘not actively seeking work’ cases being left out of the current Scottish ‘early warning’ pilot of a two-week period when claimants have an opportunity to show why they should not be sanctioned.[[12]](#endnote-12)

**Recommendations on sanctions statistics made by the UK Statistics Authority**

19. The NAO report (para.24d, p.10 and para.3.5-3.6, pp.39-40) recommends that the DWP should implement the recommendations for improvement to its sanctions statistics made by the UK Statistics Authority in August 2015. What does not emerge from the NAO report is the extent to which the DWP has misled politicians and the public and the seriousness of the consequences. The following are two examples.

*Proportion of JSA claimants who are sanctioned*

20. The NAO report notes that a quarter of JSA claimants receive a sanction at some point (para.7, p.7; Figure 5, p.16). However, it does not point out that the DWP routinely quotes the proportion of claimants sanctioned each month (some 3% - 5%) as if it was the proportion sanctioned ever, and constantly repeats the mantra ‘Sanctions are only every used as a last resort, for a tiny minority of claimants’. Not only is the true proportion not a tiny minority, but in addition the DWP has no procedures at all which would ensure that sanctions are a last resort. This misrepresentation has fundamentally undermined parliamentary and public discussion of the sanctions system. This is not a partisan matter, as some of the main victims have been the government’s own backbenchers[[13]](#endnote-13), and, it appears, the Secretary of State himself, Damian Green, who told the Scottish Parliament Social Security Committee last month: ‘on average, only 2.4 per cent of JSA claims result in a sanction’.[[14]](#endnote-14)

*Universal Credit sanctions*

21. On 16 June 2015 Lord Freud, DWP Minister of State, responded to a House of Lords question from Baroness Lister (HL 402) on whether there were plans to publish statistics on Universal Credit (UC) sanctions by saying ‘The Department published its strategy for releasing official statistics on Universal Credit in September 2013. As outlined in the strategy, officials are quality assuring data for Universal Credit and formulating a definitive list of what statistics will be provided in the future.’ The strategy of September 2013 did not in fact mention sanctions at all. A further question (HL 799) from Baroness Lister simply asking for the number of UC sanctions in each month since rollout produced the response from Lord Freud (6  July 2015) ‘I refer the noble Baroness to the answer I gave on 16 June 2015 to her Question number HL 402’.

22. The NAO report now reveals (Note 4, Figure 2, p.13) that at the time of the above Parliamentary answers, DWP was not collecting statistics on Universal Credit sanctions at all! Only from September 2016 has the DWP been recording whether UC decisions relate to sanctions or to other matters. This is a serious issue because the NAO report also reveals (Figure 2, p.13) that the sanction referral rate for UC, at 11.7% of claimants per month, is approaching twice what it is for JSA (6.5%). This implies that the UC rate of actual sanctions is also likely to be nearly double. Already by October 2016, 250,000 unemployed people were subject to the UC rather than the JSA sanction regime,[[15]](#endnote-15) yet no information at all has been published about sanctions imposed on them.

**Conclusion**

23. The NAO has to confine itself to a relatively narrow focus on value for money and is not in a position to make wider judgments about areas of government activity. But the Public Accounts Committee is under no such constraint. The Committee should consider whether the picture of policy-making without evidence, unwillingness to consider unwelcome information, promotion of misinformation, administrative waste, ineffectiveness and damage to claimants revealed by the NAO report and the present submission indicates flaws in the sanctions system which could be put right, or whether there is a deeper problem. In my view the whole sanctions system is fundamentally misconceived. What was, up to 1986, a generally reasonable administrative system of independent adjudication on the validity of claims for unemployment benefit has been transformed since then, in a series of incremental steps, into a secret, parallel penal system administering penalties for trivial acts or omissions which are often more severe than those available for genuine offences to the mainstream courts, but without the latters’ safeguards which have evolved over centuries. To claim that a government department such as the DWP is capable of running such a system in a competent manner which respects the rights of the citizen is a piece of administrative hubris. It should simply be abolished. This need not mean abolishing constructive forms of active labour market policy, or abolishing conditions for the receipt of unemployment benefit. But it does mean recognising what are the proper limits of governmental interference with the citizen in a democratic society.

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DWP (2014) *Government’s response to the Independent review of the operation of Jobseeker’s Allowance sanctions validated by the Jobseekers Act 2013*, Cm 8904, July

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1. National Audit Office (2016) [↑](#endnote-ref-1)
2. My complaint can be read in full at <https://www.statisticsauthority.gov.uk/correspondence-list/?show=all>, under 27 July 2015. [↑](#endnote-ref-2)
3. The UK Statistics Authority is now the Office for Statistics Regulation but is referred to here throughout by the name used in the NAO report. [↑](#endnote-ref-3)
4. The figure of 0.6 referrals per claimant is derived by dividing the total number of JSA sanction referrals (excluding the Work Programme) over the period 1 April 2010 to 30 March 2014 as shown in Stat-Xplore, 4,887,471, by the total number of persons who claimed JSA during the same period as given in DWP Freedom of Information response 2015-4972 of 9 February 2015: 8,232,560. [↑](#endnote-ref-4)
5. Stat-Xplore data as at 17 August 2016. [↑](#endnote-ref-5)
6. It appears that some of the ESA sanctions and cancellations for non-participation in work related activity may have been originated by Jobcentre Plus rather than the Work Programme but the DWP has released no data on the exact number. It is agreed that the great majority of referrals for non-participation in work related activity have come from the Work Programme. [↑](#endnote-ref-6)
7. https://www.theguardian.com/society/interactive/2013/mar/28/jobcentre-sanctions-scorecard-full-table [↑](#endnote-ref-7)
8. Stat-Xplore data as at 17 August 2016. [↑](#endnote-ref-8)
9. The Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012 No. 2568 [↑](#endnote-ref-9)
10. I myself attended a Tribunal hearing in Glasgow which had to be adjourned, at substantial cost all round, because the claimant accused of ‘not actively seeking work’ had been sent the papers for the sanction, but not those for the separate disentitlement. It was the latter that contained all the key allegations and arguments. [↑](#endnote-ref-10)
11. The DWP has resolved the problem of wrongful loss of Housing Benefit in respect of sanctions, but not in respect of disentitlements. [↑](#endnote-ref-11)
12. This so-called ‘yellow card’ pilot was announced by the Secretary of State on 22 October 2015. [↑](#endnote-ref-12)
13. MPs who, presumably in all innocence, are currently recycling the DWP’s misinformation about the proportion of claimants who are sanctioned to their constituents via their websites include Harriet Baldwin MP (West Worcestershire) <http://www.harriettbaldwin.com/faqs>, Ben Howlett MP (Bath) <https://www.benhowlett.co.uk/benefits-sanctions> and Julian Smith MP (Skipton and Ripon) <http://www.juliansmith.org.uk/benefit-sanctions> (all accessed 3/12/2016). Margot James MP quoted the misinformation in a Westminster Hall poverty debate on 4 February 2015, col.105WH. I emailed her on 8 February 2015 to point out the error and after looking into the matter she agreed on 10 March 2015 to amend her statements in the future. [↑](#endnote-ref-13)
14. Scottish Parliament Social Security Committee Thursday 3 November 2016, Official Report (draft), PDF version, p.9, at <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10606&mode=pdf> [↑](#endnote-ref-14)
15. Data from NOMIS. [↑](#endnote-ref-15)