JSA SANCTIONS: A GUIDE TO THE OAKLEY REPORT AND THE GOVERNMENT'S RESPONSE

David Webster

Honorary Senior Research Fellow
Urban Studies
University of Glasgow

Updated 14 September 2014

CONTENTS

Note: The revisions to this update concern Oakley's recommendation 3 on Housing Benefit. They reflect the DWP's confirmation in its Housing Benefit General Information Bulletin G8/2014 that in the case of 'intermediate level' sanctions it will continue to tell local authorities that claimants' JSA has been stopped, with the result that wrongful stoppage of Housing Benefit will continue to occur.

SUMMARY

The report of the Oakley Review, carried out under S.2 of the Jobseekers (Back to Work Schemes) Act 2013, was published on 22 July 2014, together with a government response. The report reviews some aspects of the operation of sanctions imposed on JSA claimants on back to work schemes, accounting for one third of all JSA sanctions.

The purpose of this briefing is to help readers to assess how far the review has addressed the problems in the UK sanctions system, how far the government has taken its recommendations on board, and how much difference the proposed changes will make.

The government says it has accepted all of Oakley's recommendations. This is not the case. Of the 17 recommendations, it could only claim to have fully accepted seven, and for two of these no timescale has been fixed. The key improvements proposed by the government relate to reducing unnecessary stoppage of Housing Benefit (though its reliable solution will apply only in two-thirds of cases), informing claimants before their JSA is stopped, ending suspensions of benefit prior to a decision on 'actively seeking work', and the relaxation of requirements on homeless people (the latter two of these were not actually recommended by Oakley but appear to have arisen out of the review process). Proposed improvements to communications are potentially valuable. The government has also committed to fixing a timescale for mandatory reconsiderations, but has given no indication when this will be; this change has substantial resource implications.

The most important problems identified by Oakley which the government has refused to address, or on which it is postponing action indefinitely, are the failure to assess new claimants' needs properly, the conflicting requirements placed on claimants by Jobcentre Plus and external contractors, and the wasteful and damaging requirement on external contractors to refer claimants for sanction even where it is obviously unjustified.

There is a further wide range of problems and issues which the Oakley review did not consider at all, including claimants' problems in accessing and using computers, the discretionary nature of hardship payments, the wasteful and confusing doubling-up of disentitlement and sanction for 'intermediate' failures, the effectiveness of the sanctions regime in actually getting people into work, the failure to assess the consequences of a sanction for the mental and physical health of the claimant and their family before imposing it, the costs to society and to other public and voluntary sector agencies of the sanctions regime, the question whether, if sanctions can be shown to be more effective than alternatives, they need to be so harsh, the ineffectiveness of the appeal system, the whole question of sanctions for ESA Work Related Activity Group claimants, the effects of the proposed changes under Universal Credit, and the incompatibility of the UK sanctions system with the UN *Guiding Principles on Extreme Poverty and Human Rights*.

There have been many calls for a further, wider independent inquiry into the sanctions system, and indeed Oakley himself calls for a wider review, albeit in muted terms. The analysis in this guide, together with a growing volume of other evidence and analysis, shows that the Oakley report has not removed the urgent need for a comprehensive independent inquiry into the UK sanctions system.

INTRODUCTORY

Purpose of this guide

1.The Oakley Report, together with a government response (Cm 8904), was published on 22 July 2014, the last day of sitting of the House of Commons before the summer recess.[1] It reviews aspects of the operation of the system of sanctions for Jobseekers Allowance claimants on back to work schemes, comprising the Work Programme (by far the biggest), Skills Conditionality, Mandatory Work Activity and a number of smaller schemes. These schemes accounted for one third of all JSA sanctions in 2013. From June 2011 to the end of 2013, sanctions were imposed on 18% of all participants in the Work Programme.[2]

2. The Report is quite a complex document and trying to relate it to the government's response adds to the complications. The purpose of this briefing is to help readers to assess how far the review has addressed the problems in the UK sanctions system, how far the government has taken its recommendations on board, and how much difference the proposed changes will make.

Background and scope of the Oakley Review

3. The Oakley review was negotiated by the Labour Party in the House of Commons as the price of its abstention on the emergency passage of the Jobseekers (Back to Work Schemes) Bill 2013 on 19 March 2013.[3] This Bill was introduced by the Coalition in order to defeat the High Court judgment in the Reilly-Wilson case in August 2012 that sanctions on claimants sent on mandatory back to work schemes had been unlawful. It did so by retrospectively changing the Regulations under which claimants had been sent on these schemes. On 4 July 2014 the High Court ruled that the retrospective provisions of the Jobseekers (Back to Work Schemes) Act were themselves unlawful. This decision is being appealed by the DWP, but as of now the only part of the 2013 Act which is lawful is S.2, which was the Labour amendment setting up the Oakley Review. Because of this, the wording used in both the Oakley Report and the government response, 'Independent review of the operation of Jobseeker's Allowance sanctions validated by the Jobseekers Act 2013' is incorrect. The Act has not succeeded in validating these sanctions. Presumably the DWP sent the documents to press before the High Court judgment of 4 July.

4. S.2 of the Act specified that the review should only be of the sanctions covered by the Reilly-Wilson judgment. This has been a very awkward limitation on its scope. The Oakley Report shows (p.21) that it covers only 23% of all JSA sanctions in 2012 and 33.4% in 2013. Many features are the same across all types of sanction, but not all. An example is 'intermediate level' sanctions, which do not apply to back to work schemes but which generate particular problems which Oakley has not considered. Oakley could not consider the ESA sanctions regime at all.

5. The Coalition further limited the scope of the review by restricting the terms of reference to issues of communications and process.[4] The Child Poverty Action Group argued in its submission,[5] correctly in this author's view, that there was no legal basis for such a severe restriction, since S.2 of the Act calls simply for a review of the 'operation' of the relevant part of the sanctions system. West Cheshire Foodbank commented: 'The limited terms of reference for this review and the repeated and patronising assumption that "educating" claimants alone (by making things "clearer to them") can address serious failings in the

nature and implementation of the sanctions regime is erroneous and allows for the exclusion of evidence that could be considered unfavourable to the reputation of the Department for Work and Pensions'.[6] Oakley has gone beyond the terms of reference in places, but they have clearly been a severe limitation.

Evidence submitted to the review

6. The review included a consultation, which ran from 11 November 2013 to 10 January 2014. Oakley reports (p.15) that there were 536 responses, comprising 89 from claimants, 154 from people or groups representing claimants, and 293 from organizations or staff involved in delivering the process. The Call for Information stated 'All responses will be treated in confidence unless we explicitly seek your permission to attribute your comments'. This was clearly an attempt by the Coalition to hinder dissemination of criticisms made by respondents.[7] The Review consequently lacks transparency. While it was reasonable to give an unsolicited undertaking of confidentiality to claimants, it was not reasonable to do so for organizations, or to deprive respondents of the option to waive confidentiality. Scottish official consultations, since 1999, give to individual respondents the option to keep confidential both their submission and the fact that they have submitted, and to organizations the option to keep the submission confidential but not the fact that they have submitted it, but there is no imposition of confidentiality on anyone. These are sensible rules and should be applied in Whitehall.

7. Oakley himself subsequently contacted some respondents to ask for permission to include them in a list of organizational respondents, now at Annex 2 to his report. This includes 89 organizations, including, it appears, only two of the 293 organizations involved in delivering the process (the Careers Development Group (CDG) UK and the Learning Shop). In an effort to aid dissemination of valuable material, the Child Poverty Action Group has put some 34 of the submissions on its website at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations.[8] The status of the remainder is unclear – will the 30-year rule apply, or a 100-year rule, or will the submissions simply be destroyed? They may never be publicly available, although it is hoped they will be available to the further, wider review which is urgently needed.

Misrepresentations in the government's discussion of the background and context

8. The discussion in the government's response contains a number of misrepresentations.

9. In her foreword, the Minister for Employment, Esther McVey, states 'Rights and responsibilities have been an ever-present feature of our benefits system and can be traced back to the Beveridge Report in 1942'. This is an attempt to claim legitimacy for the Coalition's campaign of sanctions against the unemployed by invoking the name of a respected figure of the past. In fact rights and responsibilities go back to the beginnings of the unemployment insurance system in 1911. However the system operated almost entirely without sanctions until the Thatcherite governments of the later 1980s onwards. Until 1986, almost all disqualifications (not sanctions) related to giving up a job voluntarily or losing it through misconduct, and were limited to a maximum of six weeks; National Assistance or Supplementary Benefit, sometimes at a reduced rate, was available as of right to disqualified claimants, on the usual rules. Beveridge never imagined anything remotely like the vicious sanctions regime operated by the Coalition, which is bringing back three of his 'five giant evils' – squalor, want and disease – on a large scale. Of the 'genuinely seeking work'

condition (abolished in 1930), which in the form of 'actively seeking work' has been made the main reason for sanctions under the Coalition, he specifically said that it 'will not, it may be hoped, ever rise from its dishonoured grave' (Beveridge 1930, p.280).

10. The government response goes on to claim that 'Seventy-two per cent of claimants say that they are more likely to follow the rules due to the presence of sanctions'. The report from which this is taken (DWP 2013, Table 6.2, p.157) does indeed show this, and indeed it would be surprising if it did not (motorists, for instance, are more likely to park only in an authorised place if they see a traffic warden coming). But later on the same page this report states: 'there was no evidence from the survey that knowledge of JSA conditions led to actual movement into work'. A recent OECD report (2014) also recommends that Jobcentre Plus should assess whether the new requirements placed on claimants of unemployment benefits genuinely increase the volume and quality of job search. In fact, therefore, the Coalition has no evidence that the regime it is imposing on claimants actually helps them into work.

11. The government response also claims that 'The Jobseekers Act 1995..... is clear that, in order to be entitled to the benefit, a claimant must take all steps they reasonably can to give themselves the best prospects of employment. Jobcentre Plus has strengthened its approach to making sure claimants are meeting this condition of entitlement.' In fact the Coalition's regime is going far beyond what is required by the 1995 Act (S.7 (1)), which states 'For the purposes of this Act, a person is actively seeking employment in any week if he takes in that week such steps as he can reasonably be expected to have to take in order to have the best prospects of securing employment'. The evidence to the Oakley review provides numerous examples of unreasonable and pointless requirements being placed on claimants. The government states (p.6) that 'It is clear that the increases (in sanctions) have been driven by..... claimants who have failed to take all reasonable steps to find work and those who have failed to participate in the Work Programme'. The first part of this is misleading for the reason just stated. The second part is also misleading, since the great majority of Work Programme sanctions are imposed on claimants who are in fact participating in the Programme, but miss a single interview. To an extent, this issue is covered in the Oakley report and it is discussed below.

12. The government response claims that 'in 2013, on average, five per cent of JSA claims resulted in a sanction in any month'. This figure (actually 5.14%) is the rate of sanctions after reconsiderations and appeals. The estimated rate before reconsiderations and appeals was 6.1%. Since everyone sanctioned loses their money, and only gets it back after a successful reconsideration or appeal, this is a truer reflection of the scale of sanctions. Interestingly, 6% is the target which a new Jobcentre Plus whistleblower says was enforced from 2011 onwards.[9]

13. The government response also claims (p.7) that 'only around 13 per cent of the (sanctions) decisions (in 2013) were changed on reconsideration or appeal, and often that was because the claimant brought forward new evidence'. The fact is that of the approximately 1.05m initial sanction decisions in 2013, only 29.4% were challenged through reconsideration or appeal, and only 3.2% went to Tribunal appeal. Of those that went to reconsideration only, excluding cancelled, 47% were overturned. Of those that went to Tribunal, excluding cancelled, 20% were overturned. The government well knows, from DWP's own research, that many sanctioned claimants find the appeal process too difficult. Peters & Joyce (2006) found that claimants saw the process as long and futile, feared a lack of support, or could not afford phone calls/stamps/fares.

Is the sanctions system 'not fundamentally broken'?

14. In appointing Matthew Oakley as reviewer, the Coalition made sure that the review would be done by someone sympathetic to the sanctions regime.[10] In the event Oakley has done a very reasonable, if not fully adequate, job in reflecting the issues put to him, in so far as this can be judged from the publicly available submissions (which are almost exclusively from the voluntary sector). Inadequacies in the review result mainly from the limitations of the Act and the terms of reference, and the failure of the government to act on many of the recommendations.

15. However, Oakley's conclusion that the sanctions system is 'not fundamentally broken' is questionable. He bases this on the fact that over the first two and a half years of the Work Programme to end-2013, 82% of participants were not sanctioned (i.e. 18% were), which he says shows that 'the majority of claimants are fulfilling the obligations placed on them and have an adequate understanding of the broad system' (pp. 8-9) or that 'the vast majority of JSA claimants fulfil the requirements placed on them whilst in receipt of benefits, move back to work and are not sanctioned' (p.35). The figure of 18% presumably relates to sanctions after reconsideration/appeal (the DWP's usual presentation), and therefore will not show the total number of people having their JSA stopped. It is also probably significantly biased downwards by the delayed build-up of sanctions following transfer of responsibility to external contractors in June 2011.[11] More important, what does 'fundamentally broken' mean? Presumably something like 'not needing fundamental change'. If so, then the evidence cited is not capable of justifying the conclusion. Overall, there are currently 1.1m JSA and ESA sanctions per year, affecting some 0.7m people. There is a large amount of evidence, some of it produced by the Oakley review itself, that a great deal of damage is done by these sanctions, both to the people sanctioned and to others not sanctioned who are bullied into bad and unsuitable jobs or training by their threat. There is not much evidence of their efficacy. Many people reading through the endless appalling case histories in the Oakley submissions on the Child Poverty Action Group website are likely to conclude that the system is a shambles. Certainly any conclusion that it does not need fundamental reform would require a much more comprehensive review.

OAKLEY'S RECOMMENDATIONS AND THE GOVERNMENT'S RESPONSE

16. The government claimed in its press release on 22 July[12] that 'Mr Oakley has today made a series of recommendations.... which the government has accepted.' The DWP website[13] continues to claim that the government has accepted all of Oakley's recommendations. This is not the case, as indeed the government response itself (p.7) acknowledges: 'The Government welcomes these recommendations..... and, wherever possible, and subject to detailed feasibility and securing the necessary resources, has accepted them'. Of the 17 recommendations, it could only claim to have fully accepted seven (1, 2, 3, 4, 13, 16 and 17), and for two of these (16 and 17) no timescale has been fixed for implementation. **Appendix 1** works through all of Oakley's 17 recommendations, compares them with the government's response, and assesses whether and when the problems identified will actually be resolved. Below is a summary; details on any point will be found in Appendix 1. Oakley did not number his recommendations and the numbering used here is the government's.

17. **Improved communications – comprehensiveness, comprehensibility, etc (Recs 1, 2, 4 and 7)** Oakley made four recommendations on this issue, of which the government is implementing three, including provision of a clear guide (web and hard copy) to the whole sanctions system. This was published on 21 July.[14] The fourth, about using claimants' preferred communications channels, has been accepted 'in principle' and the government will consider implementing it.

18. However, many of the communication difficulties around **hardship payments** – highlighted in the report as a particular problem - are an inevitable result of the discretionary nature of the hardship system, which creates the need for an additional application process, with resulting scope for misunderstanding and error. This dates only from 1988. Neither Oakley nor the government has addressed this issue. Reverting to the pre-1988 system where there was only a percentage reduction in benefit would resolve most of the difficulties and the research evidence is that in so far as sanctions have beneficial effects, this would be just as effective or more so.

19. **Effective identification of claimants who need support due to particular difficulties (Recs 5 and 6)** This was a major theme in submissions to the Review and Oakley made two recommendations on this. The government has effectively rejected them, the fundamental reason being that it continues to reject the advice of the House of Commons Work and Pensions Committee, the OECD and others that it should make a proper assessment of claimants when they first claim JSA.

20. **Wrongful stopping of Housing Benefit for sanctioned claimants (Rec 3)** The DWP has been negligent in setting up a system where it tells local authorities that JSA or ESA has stopped, but not that this is not a reason for stopping Housing Benefit. The government says it will now tell sanctioned claimants to check with their local authority. By Autumn 2014 it says it will implement an IT solution to give local authorities proper information. However, this is an issue where the S.2 restriction on the terms of reference appears to have caused real trouble, by excluding consideration of JSA 'intermediate level sanctions', where there is both a disallowance and a sanction. These do not occur in back to work schemes. The DWP will continue to tell the local authority that the claimant has been disallowed, since there is no certainty that they will reclaim JSA.[15] Consequently the IT change will only benefit two-thirds of sanctioned JSA claimants. For the most commonly occurring type of sanction, 'not actively seeking work', the government could solve the problem at a stroke by abolishing the disallowance and just keeping the sanction. This would not affect the length of penalty. But neither the government nor Oakley has considered this issue.

21. **Conflicting requirements on claimants from Jobcentre Plus and external providers (Recs 8, 9 and 10)** Oakley points out (p.10) that claimants can be sanctioned for not meeting their conditions of entitlement whilst undertaking activity recommended by their Work Programme adviser. He recommended that DWP should give a copy of the Claimant Commitment to the provider, and should test consulting the provider when it is drawn up. The government has refused the first recommendation, although it will strengthen guidance to the claimant on the importance of sharing the document with the provider, and to the provider of the importance of asking the claimant for a copy. It has said only that it will consider consulting the provider in drawing up the Claimant Commitment. It thinks this could be expensive. Oakley also recommended adapting the current system of dual requirements by Jobcentre Plus and external providers; the government says only that it will consider this in future development of the Work Programme.

22. The fundamental problem here is that the government, in increasing Jobcentre Plus's requirements on claimants through the Claimant Commitment - partly at Matthew Oakley's previous urging (Oakley & Saunders 2011) – has not worked through the relationship with external contractors' requirements.

23. **External providers to accept or seek to establish 'good reasons' for non-compliance by claimants (Recs 12 and 14)** The astonishing current situation is that if a claimant misses a single interview with an external contractor, even if they have a strong record of participation, and even if they clearly had a good reason, then the contractor has to refer them for sanction. Oakley recommended that the contractor should be able to apply common sense, and not make unnecessary referrals; where they do refer, they should have an obligation to establish and report any good reason to Jobcentre Plus. The government has rejected both recommendations, the first on what appear to be spurious legal grounds, and the second without giving any reason.

24. **Communications about sanctions between Jobcentre Plus and external providers (Recs 13 and 15)** Oakley recommended that external providers should have to check the DWP's Provider Direct system before making any sanction referral, to ensure up-to-date information. The government has accepted this, but only for future contracts, with an exploration of earlier implementation. Oakley also recommended that external provider referrals should be automatically flagged to the claimant's Jobcentre Plus adviser. The government has rejected this, being willing only to instruct advisers to check the DWP systems for information.

25. **Pilot of warnings and non-financial sanctions (Rec 11)** Oakley, like others before him, suggests that first-time failures do not necessarily have to be hit with a financial sanction. The government says it accepts this in principle but that it would require legislation. It makes no commitment at all.

26. **Timescales for sanction and reconsideration decisions (Rec 16)** Claimants suffer long delays in getting decisions on reconsideration, which appear to have got worse under mandatory reconsideration, and Oakley recommended that the DWP should fix timescales. The government says it will fix timescales but does not say when, or how long they will be.

27. **Payments stopped before the claimant is informed (Rec 17)** Oakley recommended that claimants' money should not be stopped before they are informed. The government says it will change procedures to ensure that this does not happen, by delaying sanction decisions if necessary. This reverses a change which the government itself implemented in October 2012. No timescale is mentioned.

OTHER CHANGES NOT ASKED FOR BY OAKLEY

28. **Suspensions of JSA** – often for a long time - while a sanction decision is considered have been causing a lot of difficulty for claimants, who cannot appeal until a decision is made.[16] The government response to Oakley (p.8) announced an important reform whereby, in the case of 'not actively seeking work', there will be no suspension before a decision. It expected this to take effect in July 2014.

29. **Sanctions for homeless people** The huge problems caused by sanctions for homeless people, and the absurdity of pushing them further into crisis, featured strongly in the evidence submitted to Oakley. He did not take this up, but the government separately has done. As from 21 July, Jobcentre Plus advisers have had discretion to exempt homeless people in crisis from being available and looking for work, provided they are taking reasonable action to find accommodation.

HOW FAR WILL THE SYSTEM BE IMPROVED AFTER OAKLEY?

30. It is apparent from the foregoing analysis (given in more detail in **Appendix 1**) that few of the problems of the sanctions system will be resolved following the Oakley Report. The key immediate improvements agreed by the government relate to reducing unnecessary stoppage of Housing Benefit (though their reliable solution will apply only in two-thirds of cases), informing claimants before their money is stopped, ending suspensions prior to a decision on 'actively seeking work', and the relaxation of requirements on homeless people. Improvements to communications are also potentially valuable, although we do not know what these will amount to.

31. The government has also made an important commitment to fixing a timescale for mandatory reconsiderations, but has given no indication when this will be.

32. The most important problems identified by Oakley which the government has refused to address, or on which it is postponing action indefinitely, are the failure to assess new claimants' needs properly, the conflicting requirements on claimants of Jobcentre Plus and external contractors, and the wasteful and damaging sanction referrals by external contractors where they are obviously unjustified.

33. There is a further wide range of problems and issues which the Oakley review did not consider at all. These include first of all a group of issues which were raised in the submissions to the review but which Oakley did not take up:

- Inadequate arrangements for enabling claimants to meet travelling costs imposed by mandatory requirements
- Inappropriate mandatory placements; sanctions make these more likely as claimants are unable to refuse
- Lack of consistency in approach to conditionality between different Work Programme providers

34. There is also a much larger range of issues which lay outside Oakley's terms of reference:

- Claimants' difficulties in accessing computers and in using the compulsory Universal Jobmatch (this relates to 'actively seeking work' and is not implicated in back to work scheme sanctions)
- The discretionary nature of hardship payments
- The wasteful and confusing doubling-up of disentitlement and sanction for 'intermediate' failures
- Whether the requirements placed on claimants genuinely increase the effectiveness of job search
- The effectiveness of the sanctions regime in actually getting people into work

- The effect of sanctions in driving genuinely unemployed people off benefit, and what happens to them
- Whether the extreme harshness of the sanctions in the British system actually adds anything to their effectiveness, if it exists at all, in getting people into work; would lighter sanctions be just as effective?
- Whether there are effective alternatives to financial sanctions (Oakley raised this in his Recommendation 11, but it is outside his terms of reference and he did not give it substantive consideration)
- The impact of the sanctions regime in diverting Jobcentre Plus resources away from productive employment support work
- The failure to assess the consequences of a sanction for the mental and physical health of the claimant and their family before imposing it
- The costs inflicted by sanctions on other government agencies, the health service, the police, the voluntary sector and the community. The publicly available submissions to Oakley make it clear that the sanctions regime is inflicting heavy costs on the voluntary sector.
- The role of sanctions in creating need for Food Banks (this among other issues is currently being examined by the All-Party Parliamentary Inquiry into Hunger and Food Banks in Britain, initiated by Frank Field MP)
- The methods which have been used by ministers and senior DWP officials to drive up the numbers of sanctions, including the question of targets, and their legality (the PCS membership survey[17] has information on this)
- The political interference in sanction decision making within DWP made possible by the removal of independent adjudication by the Social Security Act 1998
- The Coalition's creation in October 2012 of a power for Jobcentre advisers to give Jobseeker Directions orally, and the potential for confusion this creates
- The need for a more effective appeal system which claimants feel able to use
- The need for HM Courts and Tribunals Service to highlight systemic problems in the sanctions system which are revealed by the individual cases coming to them, as recommended by the Administrative Justice and Tribunals Council (2011)
- The need for compensation for claimants wrongly sanctioned
- The impact of the sanctions regime for ESA claimants
- The effects of changes to sanctions under Universal Credit: extension of sanctions to part-time workers, worsened Hardship Payment regime
- Incompatibility of the UK sanctions regime with the UN *Guiding Principles on Extreme Poverty and Human Rights*: 'Persons living in poverty must be recognized and treated as free and autonomous agents. All policies relevant to poverty must be aimed at empowering persons living in poverty. They must be based on the recognition of those persons' right to make their own decisions and respect their capacity to fulfil their own potential, their sense of dignity and their right to participate in decisions affecting their lives' (para. 36); 'States should: ….take corrective measures, to be implemented both immediately and progressively, to provide access to adequate food' (para. 76). The Community Links response to Oakley, for instance, stated (para.41): 'The fear of being sanctioned is preventing individuals from developing their own views of what is best for them in their journey back to work'.[18]

THE NEED FOR A FURTHER INQUIRY

35. There have been many calls for a further, wider inquiry into the sanctions system, in particular by the House of Commons Work and Pensions Committee (2014). The House of Commons itself on 3 April 2014 agreed without a vote a resolution moved by Michael Meacher MP stating: "That this House notes that there have been many cases of sanctions being wrongfully applied to benefit recipients; and calls on the Government to review the targeting, severity and impact of such sanctions." Oakley himself (Foreword, pp. 4-5) in effect calls for a wider review, albeit in muted terms: he highlights particularly 'issues around the effectiveness of the sanctioning system in improving movements into work', and 'the proportionality of current sanctions levels'. The Minister, Esther McVey, made a promise to the Work & Pensions Committee that she would commission a wider inquiry, but has gone back on it.[19]

36. The analysis in this guide shows that the Oakley report has not removed the urgent need for a comprehensive independent inquiry into the UK sanctions system.

REFERENCES

Administrative Justice and Tribunals Council (2011) *Right First Time*, June

Beveridge, William (1930) *Unemployment: A Problem of Industry (1909 and 1930)*, London, Longmans Green

Bryson, Alex & Jacobs, John (1992) *Policing the Workshy: Benefit controls, the labour market and the unemployed*, Aldershot, Avebury

DWP (2013) *The Jobcentre Plus Offer: Final evaluation report*, November

Freud, David (2007) *Reducing dependency, increasing opportunity: options for the future of welfare to work*. An independent report to the Department for Work and Pensions, Corporate Document Services

Gregg, Paul (2008) *Realising Potential: A Vision for Personalised Conditionality and Support*. An independent report to the Department for Work and Pensions
House of Commons Work and Pensions Committee (2014) *Inquiry into the Role of Jobcentre Plus in the reformed welfare system*, Second Report of Session 2013-14, HC 479

McKay, S., Smith, A., Youngs, R. & Walker, R. (1999) *Unemployment and jobseeking after the introduction of Jobseekers Allowance*, DWP Research Report No.99

McVicar, Duncan (2010) 'Does Job Search Monitoring Intensity affect Unemployment? Evidence from Northern Ireland', *Economica*, 77, 296–313

Miscampbell, Guy (2014) *Smarter Sanctions: Sorting out the system*, Policy Exchange, March

Oakley, Matthew & Saunders, Peter (2011) *No Rights without Responsibility: Rebalancing the welfare state*, London, Policy Exchange

OECD (2014) *Connecting People with Jobs: Activation Policies in the United Kingdom*, July, at
http://www.oecd.org/employment/emp/activelabourmarketpoliciesandactivationstrategies.htm

Peters, Mark and Joyce, Lucy (2006) *A review of the JSA sanctions regime: Summary findings*, DWP Research Report No. 313

APPENDIX 1: Detailed Comparison of Oakley's Recommendations and the Government's Response

Oakley made 17 unnumbered recommendations. The government's response has given them numbers and these are used here. The ordering has been changed to group similar issues together.

COMMUNICATIONS

Communication with all claimants

Recommendation 1 *- All letters sent to claimants (including those at referral, good reason and decision notification stages of the sanctions process) should be reviewed to improve claimant understanding. They should give a personalised description of exactly what the sanction referral or decision relates to and include clear information about reconsideration, appeals and hardship.*

Recommendation 2 *- The Department should work with experts in communication and behavioural insights to test whether variations in the style and content of letters could boost the proportion of claimants who open and engage with the letters they have been sent.*

Recommendation 7 *- As recommended by the Social Security Advisory Committee, the Department should ensure that claimants' communication preferences are routinely recorded and that communications are delivered through the requested channel. This information should also be shared with providers of mandatory schemes and guidance adjusted so that they also communicate with claimants in the manner requested.*

Recommendation 4 *- The Department should ensure that an accessible guide to benefit sanctions that includes information and links to details of the process of reconsideration, appeals and hardship payments is available in both hard-copy and on-line through the gov.uk website.*

Many submissions to the Oakley review made well-evidenced comments on the very poor standard of Jobcentre Plus communications with claimants, and on the fact that sanctioned claimants are often not given information about hardship payments and the appeal process. Oakley accepted these points, and the above are all sensible recommendations. The government has accepted 1, 2 and 4 and states that it is already implementing them via a DWP Communications Review which commenced in May 2014 and will be completed by 'summer 2014', conducted by a Claimant Communications Unit and an operational Claimant Communications Team. The 'accessible guide' was published on 21 July 2014.[20] The government has accepted Recommendation 7 'in principle' and will consider implementing it. It was pointed out in submissions to the Review that communicating by text is particularly important for homeless people for whom surface mail is unreliable, and also that text reminders about appointments would be helpful for a wide range of people.[21]

The government response makes no mention of the recommendation that claimants' communication preferences should be shared with external providers.

Hardship payments – a more fundamental issue

There is a more fundamental issue about hardship payments, on which Oakley did not comment. This is that **the problems over information and communication inevitably result from the fact that the payments are discretionary and have to be separately applied for.** This creates the likelihood of misunderstanding and error, and is also very stressful for claimants. 'The depth interviews (with JSA claimants) highlighted that the process for applying for hardship payments was seen as a challenging experience, with people struggling to cover household bills and day-to-day living costs whilst making the claim. This was particularly problematic for claimants who suffered from mental health issues, such as anxiety and depression, for whom the stress of dealing with the situation could exacerbate their existing conditions. Even once the hardship payment was received, the effects from their condition would continue. "They wanted [me] looking for six jobs a week ... so I said "how can I apply for the jobs if I ain't got a car, got no driving license or anything like that …" so the money was stopped. I went to my doctor, as my blood pressure went up high again so then they did give the hardship money as I couldn't cope." (Female, JSA 50+) (DWP 2013). The same survey found that only 23% of sanctioned claimants had been told about hardship payments.[22] Evidence to the Oakley Review included a dramatic first-person account of one instance of the consequences of DWP's failure to ensure that sanctioned claimants are told about hardship payments, provided by Gipton Supported Independent Living.[23]

If the sanctions regime simply took away a proportion of the claimant's benefit, instead of all of it, most of the administrative problems would be wiped out, since payment would simply continue at the reduced rate. This would also resolve most of the problems relating to Housing Benefit discussed under Recommendation 3 below.

In fact the UK had such a system prior to the Thatcher/Major governments. Only from 1988 (for unemployed claimants on Income Support) and 1996 (for unemployed claimants entitled to contributory benefit) did the possibility arise of an unemployed person without resources not receiving some sort of basic income from the state. This is explained more fully in **Appendix 2** to these comments.

The evidence is quite clear that in order to achieve their supposed benefits, sanctions do not have to use the sledgehammer of complete deprivation of income. For instance, in its recent report (2014, p.134) the OECD stated 'Relatively light sanctions may be effective in influencing exits from unemployment, if applied together with rigorous monitoring of job-search efforts'. This itself is an overstatement, since there is evidence that monitoring of job search is effective on its own (McVicar 2010). The submissions to the Oakley review also provided much evidence that harsh sanctions are actually counterproductive, making job search more difficult by throwing claimants into crisis and making them less able to afford the costs of search. The DWP's own research (McKay et al. 1999) has found that for almost two-fifths of JSA claimants, the amount of search was limited by costs such as fares and phone charges; and this was for people receiving full benefit.

Support for claimants with particular difficulties

Recommendation 5 *- The Department and providers should work together with stakeholders and advocates for groups with communication support needs to develop an approach for*

identifying and engaging claimants who might require third party support to understand letters sent while they are on mandatory schemes.

This was a major theme in submissions to the Review. Although the government claims that it has accepted this recommendation, a reading of the text of its response on pp. 11-12 shows that it has not. Almost everything it says relates to communications, including the setting up of a stakeholder group. In other words it is repeating its response to Recommendations 1, 2, 4 and 7 already discussed above. On third party support as such, all it says is 'Where claimants need extra support to understand communications we already involve third party support. We will further strengthen our guidance on this provision so that advisers continue to identify when third party support is required. The (stakeholder) group will also aim to draw on stakeholders' expertise in communicating effectively with claimants with support needs, and to explore how we can use their contact with these groups to maximise reach and understanding of information.'

The fundamental problem here is that Jobcentre Plus does not assess claimants' support needs at the time they first claim. The DWP has argued to the House of Commons Work and Pensions Committee (2014, Qu. 469-486) that assessing claimants when they first claim JSA is not value for money. The Committee did not accept that, and recommended that Jobcentres adopt a more thorough and systematic initial face-to-face assessment of claimants' barriers to employment, and develop a 'segmentation' tool to help in this process (House of Commons 2014, Recommendations 3 – 4, Vol. I p. 44). The OECD (2014, pp. 126-9) has supported their recommendation on a segmentation tool.

It is this issue of proper identification of claimants' support needs (for instance, for those who are homeless or suffer from mental health issues, learning difficulties or autism) at the initial time of contact which the DWP needs to tackle. This could readily address support needs for dealing with Jobcentre Plus as well as support needs for getting a job. Ironically, the DWP's sanctions campaign is getting in the way of this, by destroying the trust which is essential if claimants are to talk freely about their circumstances,[24] and by consuming so much of the time of Jobcentre Plus staff which could be spent more productively. Submissions to the Oakley review also frequently raised the question of lack of privacy in Jobcentre Plus interviews with claimants, which makes it more difficult for those with particular problems to raise them with their adviser.

Recommendation 6 *– After sanction decisions have been made, the Department should consider how vulnerable groups might be identified, helped to claim hardship payments and/or access support services offered through Jobcentre Plus and contracted providers.*

The government's response states that 'The Department is undertaking a thorough review and improvement of the hardship process and associated communication activities, and we will strengthen guidance so that hardship provision is clear upfront to all claimants who are sanctioned. We will have this new process in place by August 2014.' So far as it goes, this is all to the good and we will need to see what it amounts to in due course, but it has nothing to do with Oakley's recommendation which was about identifying vulnerable groups to be helped.

The government response goes on to make various points about what it will do to help 'vulnerable claimants'. However, whereas the text of the Oakley report (p.38) makes clear that what he means by 'vulnerable' is 'groups with poorer understanding of the system', the

government is clearly referring to 'vulnerable groups' as defined in the legislation, i.e. families with children etc. (see the Decision Makers Guide, paras 35057-35135). These groups are all defined in terms of objective matters such as family structure, age, long-term medical conditions etc. They do not coincide with the population of people with 'poorer understanding of the system'. For instance, the government response states 'the Department will make a commitment that if vulnerable claimants claim for hardship on or before their signing day, they should receive a hardship payment at their normal payment date'. It could not make this commitment unless it was referring only to statutorily defined 'vulnerable groups', because under the Jobseekers Act 1995 they are the only people who can legally be exempted from a full two-week break in payments.

Essentially, the problems are the same as for Recommendations 1, 4 and 5 discussed earlier. It is the discretionary nature of hardship payments which creates the administrative problems; and it is Jobcentre Plus's failure to assess claimants' needs properly at the outset which prevents it from providing proper support. Neither Oakley nor the government has addressed these issues.

Communications with claimants and local authorities in relation to Housing Benefit

Recommendation 3 *- The Department should work with Local Authorities to improve the coordination of their approach to delivering Housing Benefit for claimants who have been sanctioned. In the short-term, all letters and communications informing claimants of the application of a sanction should advise claimants already in receipt of Housing Benefit to contact their Local Authority about their claim.*

Many submissions to the review told of cases where sanctioned claimants have run up cripplingly large rent arrears with their social or private landlord because the DWP has told the local authority (which administers Housing Benefit) that JSA or ESA has ceased but not that this is not a reason to stop HB. The Drugscope-Homeless Link submission (p.14) stated '(Our) research found that Housing Benefit (HB) arrears were the single biggest outcome of JSA (and ESA) sanctions, even though HB is not the benefit being sanctioned'.

In its response, the government accepts that the current system for notifying local authorities that a claimant's JSA has stopped does not distinguish between cases where a claimant has got a job and those where they are sanctioned. This is an extraordinary confession of negligence. It has now emerged that DWP has also been making wholly unnecessary notifications to the local authorities of stoppage of claimants' personal allowance within ESA.[25] In a further admission of negligence, the government has also acknowledged that 'Although the majority of these (JSA and ESA sanction) notifications have no impact on the HB entitlement, claims are being suspended while further enquiries are made. This in turn is creating additional work for the LA as they have to check every notification to see whether the claimant is no longer entitled to benefit or benefit has ceased due to a sanction.[26]

In the 'short term', the government is going to put the responsibility on the claimant, who will be advised 'wherever necessary' to keep their local authority informed to stop them inadvertently closing their HB. This is clearly not a reliable solution, and does not solve the problem of unnecessary workload for LAs. Therefore in the 'long term', the DWP will 'implement an IT solution so that Local Authorities are given the information they need to suspend HB only in cases where it is appropriate to do so. We are currently planning to implement this by autumn 2014.'

The government response does not identify 'cases where it is appropriate' to tell local authorities to suspend HB. There is a problem with 'intermediate level' sanctions (previously called 'disentitlement decisions'), where the claimant is disqualified from benefit, their claim is closed, they have to reclaim, and on reclaim they are sanctioned. These sanctions fall outside Oakley's terms of reference, since none apply to mandatory back to work schemes. Most of these 'intermediate level' sanctions are for 'not actively seeking work', which in 2013 was the commonest of all JSA sanctions, accounting for one third of the total.[27] The remainder are for not being available for work, which accounts for relatively few cases (only 1.3% of total sanctions in 2013 – although this was still over 12,000 cases). In these cases, the government cannot avoid telling the local authority that a claimant's JSA claim has been closed, since it is this claim which is the reason for the HB qualification and there is no certainty that the claimant will subsequently renew their claim. Thus the potential for confusion and loss of HB will remain. Alarmingly, the DWP has told local authorities that it will discontinue its 'interim solution' (i.e. telling sanctioned claimants to check with their local authority) once the IT solution is in place.[28] If it really means this, then it will make the situation worse again.

For 'actively seeking work' cases, the obvious solution to the whole problem is to remove the disentitlement/disallowance and just have a sanction. This would have no financial consequences at all, since what happens at present is that the date of the reclaim |(if it is within 13 weeks) makes no difference to the length of time for which JSA is lost; the length of the sanction is adjusted to fit the date of reclaim so that the period of disentitlement plus the period of sanction sums to 4 weeks (13 weeks for a subsequent 'failure').

The cumbersome imposition of both disentitlement and sanction dates only from October 2012. When 'actively seeking work' was revived as a 'failure' by the Thatcher government in 1989 there were no sanctions, only disentitlements, and so a disentitlement it became. Following this, the Jobseekers Act 1995 defined 'actively seeking work' as an entitlement condition. 'Disentitlement' by itself causes only a short break in payments, since the claimant can reclaim quickly. When the Coalition in 2012 wanted to increase the severity of sanctions, instead of *substituting* a sanction for the disentitlement it simply *added* a sanction. This has not only exacerbated the HB problem; it has also caused absurd administrative cost and complexity, since it makes a single 'failure' into two cases, with two sets of case papers going through all the processes to final appeal to a Tribunal.[29]

For 'availability', the problem cannot be so simply resolved. Availability has always been an entitlement condition for unemployment benefit. If you are not available for work you are not unemployed (though there has been plenty of manipulation of the concept of 'availability' to interpret it more strictly than necessary).[30] So the DWP will have to continue to tell local authorities that people found not available for work do not qualify for HB on grounds of receiving JSA.[31]

Since disentitlements are bound to continue, there are always going to be claimants potentially losing HB. There is therefore another important issue. Local authorities have the power to backdate HB for up to 6 months if the claimant had a 'good reason' for not claiming sooner. Why have they not been using it? Another problem is that it is difficult for a claimant to prove that they have (or had) no income. There is a device known as a 'nil income declaration' but this does not appear to be widely known. These issues were raised in the

Scottish Federation of Housing Associations submission to the Review and need to be addressed.

CO-ORDINATION BETWEEN DWP AND EXTERNAL CONTRACTORS DELIVERING TRAINING AND EMPLOYMENT SCHEMES

Much of the evidence submitted to the Oakley Review highlighted poor co-ordination between Jobcentre Plus and external providers of mandatory back to work schemes as being a major reason for mistaken and inappropriate sanctions. The Oakley report makes some quite strong recommendations for improvement, but the government's response in practice rejects most of the proposals.

Sharing the Claimant Commitment beween Jobcentre Plus and external providers

Recommendation 8 *- The Department should work with providers to review procedures to ensure that claimants on mandatory back to work schemes have a clear understanding of their responsibilities to both the provider and Jobcentre Plus. The Claimant Commitment should be shared with providers of the scheme so that they are able to tailor their provision to fit around Jobcentre Plus requirements and any easements that have been highlighted.*

Recommendation 9 *- Where claimants are being referred to the Work Programme, the Department should test whether understanding and compliance could be improved by agreeing the Claimant Commitment between Jobcentre Plus advisers and the claimant, in consultation from the adviser from the provider.*

The government says it has accepted these two recommendations 'in principle'. But while it says that 'relevant details' of the Claimant Commitment are already shared with the provider, it is not prepared to accept that Jobcentre Plus should give a copy of the full Claimant Commitment to the provider at the time of referral. Instead it is going to strengthen guidance to the claimant on the importance of sharing the document with the provider, and to the provider of the importance of asking the claimant for a copy. Given the invasiveness of the whole JSA regime, it is hard to understand the government's scruples about handing over the document – which could in any case be made dependent on the claimant's consent. Perhaps the DWP is worried that providers would be critical of what are by all accounts frequently very unrealistic documents.

On the recommendation that the Work Programme provider should be consulted in the Claimant Commitment process, the government again says it accepts in principle, but says it could be costly and therefore it will only 'undertake further work on how this would actually work in practice'.

Dual requirements from Jobcentre Plus and external providers

Recommendation 10 *- The Department should consider whether the current model of dual requirements from Jobcentre Plus and providers could be adapted to improve claimant understanding.*

In the government's response, this is another 'accept in principle', but there is no commitment to anything but 'We will consider the interaction between Jobcentre Plus and

contracted work provision as part of the development of the next phase of the Work Programme'.

Underlying recommendations 8, 9 and 10 is a fundamental issue that neither Oakley nor the government has addressed. This is that it makes no sense to have onerous requirements laid on claimants by *both* Jobcentre Plus *and* the external provider at the same time. The government response correctly points out that the Jobcentre must retain responsibility for ensuring that the claimant continues to meet their conditions of entitlement to JSA. But this does not need to imply anything as onerous as the Claimant Commitment, which is designed to make unemployed people spend the equivalent of 35 hours a week looking for work. Ironically, it was Matthew Oakley himself who urged the Claimant Commitment on the Coalition (Oakley & Saunders 2011). In taking up this suggestion, it appears that the Coalition did not think through how it would interact with the Work Programme and other mandatory schemes. It now finds itself with two initiatives – the Work Programme and the Claimant Commitment – which the Oakley report shows are seriously in conflict. No doubt it feels it is too embarrassing to do anything about it.

External providers to accept or seek to establish 'good reasons' for non-compliance by claimants

Recommendation 12 *- The Department should revise guidance and/or enabling legislation so that, in some circumstances, providers of mandatory back to work schemes are able to accept good reason from claimants.*

Recommendation 14 *– Guidance for providers should be revised to require that they have an obligation to take proportional steps to seek good reason from claimants. All subsequent referrals for a sanction should outline the attempts that a provider has made to do this and provide accurate details of any good reason that has been given.*

These recommendations highlight an astonishing situation. Oakley (p.43) states that 'because providers of mandatory schemes are unable to make legal decisions regarding good reason, they have to refer (for sanction) all claimants who fail to attend a mandatory interview to a decision maker. This is the case even if the claimant has provided them with what would ordinarily count as good reason in Jobcentre Plus.' He quotes evidence that claimants frequently have good reason, and points out the wastefulness of unnecessary referrals. Almost half of all sanctions referrals are made by Work Programme providers, but they only result in one third of all sanctions.

In its response, the government says that it cannot change the situation without primary legislation, and claims that this needs to compete with other legislative priorities. In fact, it is a matter of common knowledge that there is actually a shortage of legislation in the final session of the current parliament. The government already had an opportunity to change the legislation as recently as October 2012, when it made changes to relevant sections of the Jobseekers Act 1995 through the Welfare Reform Act. But there is a more fundamental issue. 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).[32] The Act says fails to attend *the programme*, not fails to attend *a single interview or session*. But, as the government response confirms, claimants are referred for sanction for missing a single interview even where they have a first-class record of attendance. For instance, a claimant in Glasgow told me that he had attended over 60 interviews with his Work Programme provider,

and was then sanctioned for missing a single one.[33] It is puzzling that the term 'fails to attend' is being given such a stringent interpretation. It would surely be legally possible to issue guidance that the provision should be interpreted reasonably, in other words a sanction referral would be attracted only by a pattern of non-attendance.

Recommendation 14 relates to a different aspect of the same issue. Oakley points out that the process subsequent to the referral by which Jobcentre Plus asks the claimant whether they had 'good reason' often does not work properly; 'a large proportion of claimants fail to respond' to the relevant letter, and many do not understand its significance. He therefore proposes that the external provider, who is on the spot, should have an obligation to establish if there is any good reason and make sure that it gets to Jobcentre Plus. The government states that it has accepted this recommendation, but in fact it has rejected it. It says only that it has 'made it clear that providers *can* record any good reason offered to them from the claimant' and that 'We will continue to *encourage* providers to take all reasonable steps to record good reason where possible'.

Therefore the human and financial waste exposed by Oakley will continue.

Communications about sanctions between Jobcentre Plus and external providers

Recommendation 13 *– The department should require providers to check all potential sanctions referrals through the Provider Direct system to ensure that administrative errors have not led to ineffective communication.*

Recommendation 15 *- Referrals for sanctions from mandatory schemes should be automatically flagged to the claimant's Jobcentre Plus adviser. Following this, advisers should attempt to explain, via the claimant's preferred method of communication or at their next fortnightly sign-on, that a referral for a sanction decision has been made. This should also be an opportunity for the claimant to give good reason.*

Oakley points out that there are frequent administrative problems between external providers and Jobcentre Plus. The example he gives (p.44) is where a letter detailing requirements on the claimant is sent to their old address when Jobcentre Plus holds an up to date address. His Recommendation 13, that providers should be obliged to check Provider Direct before making a sanction referral, has been accepted by the government for implementation in future contracts, although it will explore earlier implementation. However, it must be questioned how helpful this will be if providers still do not have discretion over 'good reason'. Presumably, in the example given they will still have to make a sanction referral even if they sent the appointment letter to the wrong address.

Oakley's Recommendation 15 is that the claimant's Jobcentre Plus adviser should be automatically told when an external provider has made a referral for sanction, so that they can advise the claimant appropriately, for instance where the claimant does not know where the sanction has come from and asks their Jobcentre Plus adviser (pp. 10-11). The government says it has accepted this 'in principle', but makes no commitment to automatic flagging at any time in the future. Instead it says that information about external sanction referrals is recorded on Jobcentre Plus systems and Jobcentre Plus advisers will be instructed to check regularly for it. It does not say why it has rejected the idea of automatic flagging, which would be more reliable.

PILOT OF WARNINGS AND NON-FINANCIAL SANCTIONS

Recommendation 11 *- To test potential opportunities to improve claimant understanding, the Department should work with providers to pilot a new approach using warnings and non-financial sanctions following a first failure to comply with conditionality on the Work Programme.*

This recommendation follows in the footsteps of earlier recommendations by Freud (2007, p.95) and Gregg (2008, pp.72-3) that first failures should attract a warning rather than an actual sanction. To this Oakley has added the idea of non-financial sanctions advocated in the paper *Smarter Sanctions* by his former Policy Exchange colleague Guy Miscampbell (2014).[34]

There is no logic in Oakley's restriction of this proposal to Work Programme participants; presumably this is because of his terms of reference. The warning letter idea is a good one, but the problem with non-financial sanctions is that they could be very damaging and in fact Oakley's specific suggestion of requiring claimants to attend interviews more frequently would not be non-financial for most claimants because of the fares and other costs involved.

The government has accepted this recommendation in principle but claims that to implement it, new legislation is 'likely' to be needed. In relation to the idea of a warning letter, this is debatable. Simple police cautions, for instance, do not have any statutory basis, but are based on the commonsense recognition that not every offence needs to be prosecuted. Moreover, the DWP's frequently-repeated (though misleading) claim that sanctions are used as a 'last resort'[35] implies that this type of discretion already exists in the system. How could they be a 'last resort' if the law requires that every single failure must result in a sanction?

TIMESCALES FOR SANCTION AND RECONSIDERATION DECISIONS

Recommendation 16 *- The Department should build on the approach it has taken for the appeals process and introduce a commitment to make decisions over sanctions referrals within a set timescale. This should include both initial sanction decisions and reconsiderations.*

There have been many complaints about the length of time sanctioned claimants have to wait to get a response to requests for mandatory reconsideration. While claimants have to meet a one month time limit for lodging their request, the DWP does not give itself any time limit to respond and the process often takes months. There were about 149,000 cases in 2013 where claimants had sanctions overturned, and all or most will have had to wait an unreasonable time to recover their money because of these delays. The delays appear to have become very much worse since the introduction of mandatory reconsideration in October 2013, because the flow of cases to the independent appeal Tribunals has fallen drastically.[36] In March 2014 only 20 JSA sanction cases were decided at Tribunals in the whole of Great Britain, compared with a normal rate of over 2,000. Oakley's recommendation is therefore important.

Both Oakley and the government note that one timescale has already been introduced on the DWP side. This is the commitment to provide a response to HM Courts and Tribunals Service within 28 days once a Tribunal appeal has been lodged. However, this is currently of little value since claimants are being delayed in lodging their appeals with HMCTS by the

mandatory reconsideration process and in any case only about 3% of sanctioned claimants go to a Tribunal.

The government says it accepts Oakley's recommendation, and that it is currently reviewing its 'end-to-end process'. However it gives no indication when this review will be completed, when any new timescales will be implemented, or how long these timescales might be. Of course there is a conflict here, as fixing timescales means either reducing the volume of sanctions or recruiting more staff. It will be much harder for the DWP to meet any timetable commitment for mandatory reconsiderations, since there are ten times more of these than of Tribunal cases, and they would lose control of the flow.

AN END TO STOPPING PAYMENTS BEFORE THE CLAIMANT IS INFORMED

Recommendation 17 *- The Department should revise procedures and guidance to ensure that proportionate steps are taken to inform all claimants of a sanction decision before the payment of benefit is stopped. Again, claimants' preferred method of communication should be used to convey this message.*

It commonly happens that the first a claimant knows about a sanction is when their JSA payment does not arrive in their bank account. Oakley and the government agree that this is unacceptable. However, the government itself exacerbated the problem in October 2012 by accelerating the implementation of sanctions. This is explained in the Explanatory Memorandum to the Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012 No. 2568, paras 7.14 – 7.16. Interestingly, that memorandum stated 'we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction before it is applied'. This assurance was evidently worthless. The government's response to Oakley states: 'Where payment is due imminently and there is not enough time to inform the claimant that their benefit will be stopped, we will make it clear within guidance that a decision maker should postpone making a decision until after the forthcoming payment.... We will commit to review and, where necessary, strengthen guidance and messaging to decision makers to make sure that..... the situation does not arise where someone leaves a jobsearch review expecting a payment that is not made following a sanction decision.' No timescale is given for these changes and we will have to wait and see what happens.

APPENDIX 2: Stages of Introduction of the 'Hardship Payment' System since 1988

Until 1996, the regimes for contributory and non-contributory unemployment benefit were different. If an unemployed claimant with a contributory entitlement to unemployment benefit (UB) did not meet the conditions for receiving it, which in practice almost always meant having left or lost a job 'voluntarily', or not being available for work, they were entitled to supplementary benefit (SB), if they passed the usual test of resources, and it would be paid at the usual rate minus 40%. An unemployed claimant without a contributory entitlement, or whose UB entitlement was insufficient, was entitled to SB, which until 1989 was subject to the single condition of availability for work. If they did not meet this condition then their SB would be reduced by 40%, but continued payment was automatic and they did not have to reclaim.

In April 1988 the Thatcher government replaced Supplementary Benefit with Income Support (IS), and at the same time introduced discretionary 'hardship payments' for unemployed SB claimants, though not for UB claimants.

The idea of discretionary hardship payments for unemployed SB claimants not meeting labour market conditions was not in the underlying Social Security Act 1986, or in the original Income Support (General) Regulations 1987. But the Income Support (General) Amendment Regulations 1988, introduced by Michael Portillo (who was also later the minister directly responsible for the Poll Tax in England), made the continuance of even the reduced 60% rate of SB subject to a new test of 'hardship'. No hardship test was applied to disentitled UB claimants, who continued to be able to receive the 60% rate of SB as of right if their resources qualified them. The position was ramped up to a modest extent by the Social Security Act 1989, which added 'actively seeking work' as an entitlement condition for unemployed claimants on both UB and SB, although still leaving UB claimants with a right to reduced SB. But the really major extension of discretionary hardship payments came in the Jobseekers Act 1995, the joint work of Michael Portillo and Peter Lilley.[37] This Act, implemented in October 1996, merged UB and IS for unemployed claimants into the new Jobseekers Allowance. All unemployed claimants were now subject to the same, expanded, regime of conditions, and all were now subject to the discretionary 'hardship' test if they were to receive even the 60% reduced rate of JSA. At the same time, the rule was introduced that 'non-vulnerable' claimants (arbitrarily defined) could not even apply for hardship payments for the first two weeks of a sanction or disallowance. The 80% hardship rate for 'vulnerable' claimants, payable immediately on successful application, also appears to have been introduced by the Jobseekers Act 1995.

The JSA hardship payment regime has remained unaltered since then, although there were drastic increases in the duration of benefit sanctions themselves, and thus in the need for hardship payments, in the JSA sanctions amendment regulations of October 2012. Hardship payments were introduced for ESA claimants in December 2012. Universal Credit introduces further changes to hardship payments, in particular making them repayable, removing the 80% rate, eliminating payments for anything but accommodation, heating, food and hygiene (thus omitting for instance clothing and transport), and a new rule that claimants must 'recomply' for a week before being allowed to claim. These changes are set out in the Universal Credit Regulations 2013, No. 376.

NOTES

[1] The Oakley Report is at https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-independent-review and the government response at https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-independent-review-government-response. It is a common government practice to publish an awkward report on the last day of a parliamentary sitting, in order to limit political debate, and to date, there appears to have been no political discussion of this report.

[2] Oakley Report, p.8

[3] More detail on the background to the Oakley Review is given in the author's own submission to the review, at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

[4] The government's terms of reference for the review are at https://www.gov.uk/government/news/benefit-sanctions-terms-of-reference-for-independent-review

[5] The CPAG submission is at http://www.cpag.org.uk/content/independent-review-jsa-sanctions-response

[6] At http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

[7] The confidentiality undertaking was quickly used by DWP to refuse even basic information about submissions to the review in a Freedom of Information request of 14 January 2014 at https://www.whatdotheyknow.com/request/jsa_sanctions_independent_review

[8] To his credit, Oakley draws attention to the CPAG webpage in his Foreword and on p.29.

[9] The whistleblower states: 'CAB staff reported that their caseloads began to increase significantly to year ending 2011; this was during the same period when the 6% benchmark/target was enforced. Ruth Owen (Neil Couling's predecessor as DWP Work Services Director) said at the time, "targets create perverse behaviour" and hence the reason targets/benchmarks were removed from staff appraisal objectives. However, targets were still discussed, despite staff being informed there were no Stricter Benefit Regime measures. In my district the target/benchmark at the time was 6% of the live load of unemployed people on the office register. Furthermore, initiatives were introduced that were not always intended to help people, but to achieve the 6% target. I felt this behaviour was unethical and I decided to resign from a job I once enjoyed, because I was extremely unhappy with the new ethos and the welfare agenda. The situation has worsened since my departure.' - ' – Welfare News Service, 2 September 2014, at http://welfarenewsservice.com/exposed-jobcentre-benefit-sanctions-culture-revealed-whistleblower/

[10] See e.g. Oakley & Saunders (2011).

[11] See Figure 10 of the author's Briefing on the DWP's sanctions statistics release of 14 May 2014, available at http://www.welfareconditionality.ac.uk/2014/03/the-great-sanctions-debate/

[12] https://www.gov.uk/government/news/government-to-update-communications-with-benefit-claimants

[13] https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-independent-review

[14] https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-leaflet

[15] See the DWP's Housing Benefit General Information Bulletin G8/2014, 13 August 2014, para.11-13.

[16] See e.g. the West Dunbartonshire CAB report Unjust and Uncaring, pp.17-18, available at http://www.cas.org.uk/news/unjust-and-uncaring-new-report-west-dunbartonshire-cab

[17] At http://www.pcs.org.uk/en/department_for_work_and_pensions_group/dwp-news.cfm/results-of-the-pcs-membership-survey-on-conditionality-and-sanctions

[18] The Court Judgments in the Reilly-Wilson case have in effect been defending the UN principle that the claimant should have a real say in choosing their route to employment.

[19] The full story of the promised further inquiry and its shelving by the government is on the CPAG webpage at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

[20] https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-leaflet

[21] See the Citizens Advice Bureau submission to Oakley, at http://www.citizensadvice.org.uk/index/policy/policy_publications/er_benefitsandtaxcredits/cr_benefitsandtaxcredits/review_jsa.htm

[22] For methodological reasons the 23% figure appears to be an underestimate, but even allowing for this the proportion told about hardship payments is clearly unacceptably low.

[23] Gipsil Advice Service response to Independent Review of Jobseeker's Allowance Sanctions to be undertaken by Matthew Oakley, Appendix 1 Claimant's Sanction & Hardship Payment experience in their own words, at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

[24] See e.g. the Centrepoint submission to Oakley, paras 19-22 & 26, at http://www.cpag.org.uk/content/oakley-sanctions-review-responses-other-organisations

[25] DWP Housing Benefit General Information Bulletin G8/2014, 13 August 2014, para.12.
[26] DWP Housing Benefit General Information Bulletin G8/2014, 13 August 2014, para.7.
[27] See the author's August 2014 sanctions statistics briefing, available at http://paulspicker.wordpress.com/ (entry for 24 August 2014)
[28] DWP Housing Benefit General Information Bulletin G8/2014, 13 August 2014, para.16.
[29] For more detail on the administrative problems caused by the duplication of case papers for 'intermediate' sanctions, see this author's August 2014 sanctions statistics briefing, pp. 5-6, available at http://paulspicker.wordpress.com/ (entry for 24 August 2014). For a discussion of the weaknesses of the Coalition's October 2012 categorization of 'failures' into 'higher', 'intermediate' and 'lower', see this author's comments on the Policy Exchange report *Smarter Sanctions*, pp. 5-7, available at http://www.welfareconditionality.ac.uk/2014/03/the-great-sanctions-debate/
[30] There is a long history of abuse of the 'availability' condition by the state. Bryson & Jacobs (1992) quote many examples.
[31] There is a separate question here, namely why the Coalition in 2012 decided to add a sanction to the disentitlement in cases of non-availability for work. Presumably it was part of what has been a rather obvious campaign to deter unemployed people from claiming JSA at all. The Coalition has now created the risk for a potential new claimant that if they are found ineligible, they will not only not get JSA, but will also put themselves in the position that should they qualify for JSA in the future, payment will not start for 5 weeks instead of 1 week.
[32] According to the DWP's statistics on Stat-Xplore, almost all the relevant sanctions are for 'failure to participate' in the Work Programme or back to work schemes; the column for 'failure to attend' is being left blank. But this appears to be a misrepresentation.
[33] He has not yet been allowed to appeal this sanction pending a final legal decision in the Reilly-Wilson case, even though the sanction was some two years ago.
[34] A critique of the Policy Exchange report *Smarter Sanctions* by the present author is available at http://www.welfareconditionality.ac.uk/2014/03/the-great-sanctions-debate/
[35] The DWP's press release 'Benefit sanctions – ending the 'something for nothing' culture', at https://www.gov.uk/government/news/benefit-sanctions-ending-the-something-for-nothing-culture (accessed 3/9/2014) states: 'Sanctions are used as a last resort and the DWP has put in place a comprehensive monitoring regime to ensure that sanctions are always and only applied where appropriate to do so'. This claim is frequently reproduced in the media.
[36] See the author's August 2014 sanctions statistics briefing, available at http://paulspicker.wordpress.com/ (entry for 24 August 2014)
[37] An insight into Peter Lilley's political outlook is given by his speech to the 1992 Conservative Party conference, available on YouTube at https://www.youtube.com/watch?v=FOx8q3eGq3g