

Scrutiny review: Department of Work and Pensions' (DWP) Sanctions and Conditionality Regime

Review of the Overview and Scrutiny
Management Board

October 2013 – March 2014

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Executive Summary

The aim of the review:

The review was instigated following discussions at the Welfare Reform Steering Group and elsewhere about an increase in the use of sanctions locally and an apparently unfair or inappropriate use of sanctions in some cases. The review was therefore set up to gain a clearer understanding of the conditionality regime and sanctions process and make recommendations to help ensure fairness, transparency, flexibility and consistency

The review group was made up of the following members:

- Cllr Glyn Whelbourn (Chair),
- Cllr Ann Russell
- Cllr Jackie Falvey,

In gathering its evidence, Members spoke to benefits claimants who had been sanctioned, representatives from Job Centre Plus and also from support agencies Families for Change, CAB and Supporting People. A considerable amount of data was gathered about current trends in the implementation of sanctions both nationally and locally, and the review also took into account national research findings on the matter. The help and co-operation of all who participated in this review is gratefully acknowledged.

It should be noted that two key partners declined the opportunity to take part in the review, these were the two main Work Programme Providers – A4E and Serco. The Review Group were extremely disappointed with this outcome, as not only do the findings now miss out the perspective of the providers, but also potentially impact on the ability of partners locally to implement all of the recommendations.

Summary of findings and recommendations

The key findings of the review were grouped under 4 headings; Communication, Flexibility and Discretion, Vulnerable Claimants and Local Working Protocol. There is one main recommendation of the review, directed to the partners on the Welfare Reform Steering Group, which is to establish a local working protocol with the aim of ensuring complete fairness in the process of implementing sanctions in Rotherham. In implementing this recommendation they are also requested to consider:

- Inclusion of advice agencies
- How to include Work Programme providers
- Clear and consistent communication mechanisms
- Clear and consistent standards of referral within the partnership
- Rotherham MBC to review its eligibility criteria for the Fund for Change
- DWP partners to investigate the possibility of having the mandatory reconsideration process carried out locally instead of via the centre in Hanley.

1. Why members wanted to undertake this review?

The review group was established in response to a concern raised within Rotherham Partnership's Welfare Reform Steering Group, Chaired by the Leader of the Council. Evidence suggested that potentially unfair implementation of sanctions was taking place and making the most vulnerable families within the Borough, more vulnerable. They therefore referred the issue to the Overview and Scrutiny Management Board to conduct a thorough review into the matter. The purpose of the review was therefore to ensure the DWP's conditionality and sanctions regime is implemented fairly, consistently and flexibly, reflecting the needs and circumstances of claimants, with increased transparency and more effective partnership working.

2. Terms of reference

The areas of focus for the review were as follows:

- Understanding the step-by-step process for applying a sanction, including how this is communicated to claimants
- The relationship between JCP and Work Programme (WP) providers and the role of WP providers in making sanctions referrals
- Examining local statistics on the application of sanctions, including – if possible – the figures for different claimant groups and comparisons with other areas
- The impact of sanctions on particular groups (e.g. lone parents, carers, disabled people, homeless people, those with mental health problems)
- The extent to which local partnership working is mitigating any possible deficiencies or inflexibilities in the system and how relationships can be strengthened
- The potential impact of further changes to the system, including the claimant commitment and ongoing expansion of conditionality (e.g. in work conditionality linked to the introduction of universal credit)
- Ability of the council's *fund for change* scheme to support sanctioned claimants

The review has been provided with support by Michael Holmes, Policy Officer and his help and expertise is gratefully acknowledged. Officer support around specific areas were also provided by Rob Cutts of Revenues and Benefits and Claire Smith from Supporting People.

Key witnesses for the review were:

Natalie Enderby – Families for Change
Simon Freeston and Ian Fletcher – Jobcentre Plus
David Sleightholme – Citizens Advice Bureau
Mike Hatfield, Phil Mellor and Joe – sanctioned benefits claimants

Review methodology

- October – panel members and support officers met with the local Jobcentre Plus Partnership Manager to discuss the approach and parameters of the review

- November – first evidence session with Families for Change worker and sanctioned claimants. Additional written evidence was provided by the Supporting People programme and RMBC Revenues and Benefits.
- January – second evidence session with JCP Partnership Manager and Advisor Manager, Rotherham CAB and sanctioned claimant.

3. Background

Sanctions are a central element of DWP’s conditionality regime, which is in place to ensure job seekers are taking appropriate steps to prepare and look for work. They involve suspending benefit payments from claimants for a fixed period of time.

Conditionally “doubts” are raised by job centre staff or DWP’s contracted Work Programme providers and then a decision on whether to impose a sanction is made by a separate DWP decision-making team.

Specifically, sanctions can be applied for (see appendix A):

- *Lower level: failure to attend/participate in an interview or training scheme* – 4 weeks loss of benefit for a first failure, rising to 13 weeks for subsequent breaches
- *Intermediate level: failure to be available for work* – disentitlement and up to 4 weeks loss of benefit for first failure, increasing to 13 weeks for subsequent failures
- *Higher level: failing to comply with the most important job seeking requirements (i.e. leaving a job voluntarily or failing to accept a reasonable job offer)* – the sanction can vary from 13 weeks for the first failure to 3 years for a third failure

3.1 National context

The sanctions regime became a particularly high profile topic in 2013, with media reports suggesting a targets culture in job centres. In response, the DWP commissioned an internal report, which “found no evidence of a secret national regime of targets or widespread secret imposition of local regimes to that effect”.

However, recently published results of a survey of job centre staff carried out by the Public and Commercial Services Union (PCS) paint a different picture. Headline findings from the survey responses included:

- 23% said they had explicit targets for sanction referrals, with 81% having an “expectation” level
- 61% experienced pressure to refer claimants where they believed it may be inappropriate
- 10% had gone through formal poor performance procedures for not making “enough” referrals
- 70% did not believe that sanctioning has a positive impact on a claimant finding work.

Due, at least in part, to new regulations introduced in October 2012, the number of sanctions increased significantly in 2013. According to the DWP, there were 553,000 sanctions between November 2012 (the first full month of the new regime) and June 2013, compared with 499,000 from November 2011 to June 2012; an increase of nearly 11%.

The number of sanctions has increased to the extent that around 5% of all jobseekers allowance (JSA) claimants are sanctioned every month. Some 860,000 JSA claimants

were sanctioned in the year to June 2013, the highest number in any 12-month period since at least April 2000.

The government has commissioned an independent review of JSA sanctions, which is due to report back shortly.

In January, the work and pensions select committee published its report into the role of Jobcentre Plus (JCP) in the reformed welfare system. Conclusions and recommendations directly relating to the sanctions regime included:

- Conditionality is a necessary part of the benefits system and sanctioning, if used appropriately, can be a useful tool for encouraging engagement with employment support. Sanctions should be used primarily for this purpose and as a last resort. Strict conditionality regimes should be balanced by meaningful and in-depth advice and support from JCP for those who need it.
- Our evidence suggests that many claimants have been referred for a sanction inappropriately or in circumstances in which common sense would suggest that discretion should have been applied by job centre staff.
- We recommend that DWP take urgent steps to monitor the extent of financial hardship caused by benefit sanctions, including by collecting, collating and publishing data on the number of claimants "signposted" to food aid by job centres and the reasons for claimants' need for assistance in these cases.

A report by the think tank, Policy Exchange, published on 3rd March 2014, casts doubts on the efficacy of the sanctions system, suggesting that each year as many as 68,000 people on JSA have their benefits taken away by mistake and face unnecessary hardship as a result:

“After appeals and reconsiderations our estimates suggest that only around 34.7% of sanction referrals actually result in an upheld adverse decision [i.e. where a sanction was imposed and not overturned after any appeal]. The obvious implication is that an extremely high proportion (65.3%) of decisions are eventually classified as ‘not adverse’ or ‘reserved/cancelled’. This suggests that the referral mechanism may be too stringent, with more referrals occurring than necessary.”

New conditionality rules and “intensive measures” to help the long-term unemployed, introduced from April 2014, are likely to see an increase in referrals and sanctions as claimants will have more mandatory requirements to comply with.

3.2 Local context

Numerous agencies have provided anecdotal and case study information on sanctions issues in the borough, both prior to and during the review. This includes: front line housing support organisations, family support workers, RMBC’s supporting people team, the Gate Surgery and Rotherham CAB.

In addition, data from “food in crisis” organisations reveals that around 38% of customers identify benefit delays or sanctions as the main reason for needing help from food banks (between November 13 and January 14).

Though DWP’s internal report recommended that statistics on sanctions should start to be published at individual job centre level, this has not happened and the data only seems to be available via the department’s Stat-Xplore website.

Based on Stat-Xplore figures, the following information has been gleaned in relation to JSA sanctions in Rotherham across the three job centres (town centre, Maltby and Dinnington) from October 2012 to September 2013:

- There were an average of around 1,300 sanction decisions per month, with around 1,000 individual claimants referred for a decision (or compliance “doubt”) each month
- Approximately 534 sanctions were applied per month
- This represented an increase of around 17% on the previous 12 months
- Approximately 78% of total decisions and 64% of “adverse” decisions (i.e. where a sanction was applied) related to low level failures; 15% of total decisions, but 31% of adverse decisions were for intermediate level; and 7% of decisions, but just 5% of adverse decisions were for high level.

4. Evidence

4.1 Department of Work and Pensions – Jobcentre Plus

The process was outlined as follows. A customer makes a new claim online. They attend the job centre and the conditionality is discussed. They then draw up a jobseeker’s agreement which details the agreed conditionality. This is a 2-way discussion with commitments from both sides and is done within the legislative requirements. Fortnightly reviews take place where job seeking activity is reviewed. If they are not meeting their agreement they are given a warning, though the advisers do have discretion e.g. if appointments are missed due to a hospital appointment. If the claimant hasn’t got a computer or has travel limitations this is considered as part of the original agreement. The need to deal with family crisis is built into the system.

All staff are trained in how to follow this process and in tackling the barriers that clients may have.

If in the fortnight following a warning it is felt that they are still not meeting the conditions, relevant evidence is submitted in a report to the DWP decision-making centre in Hanley. The decision on whether to sanction is made there, with an automated system triggering a letter to advise the claimant of the decision. No sanctions are issued without a warning first.

There is a mandatory reconsideration process which allows Jobcentre Plus to reverse the sanction without going to appeal. This part of the process is done by the centre in Hanley. There is a rapid re-claim process for the end of temporary contracts, so if someone’s contract ends they can start a new claim much quicker. If sanctions had been in effect prior to the temporary work then they would kick in again on the new claim.

The hardship fund is a payment of 60% of jobseeker’s allowance to which sanctioned claimants can apply. The decision will be based on the extent to which the claimant is likely to experience hardship, taking into account the resources they have available and their level of vulnerability. Unless a claimant is judged to be in a vulnerable group, they will have to wait fourteen days before being eligible for hardship support.

Sanctions do not affect housing benefit so claimants should still be able to access this. The review group were also made aware of a more severe element of the conditionality regime, referred to as a disallowance which does affect other benefits. This is a more severe form of penalty for persistently failing to look for work or accept jobs, but is used

sparingly. With a disallowance, as well as losing benefits for a period of time, claimants are also ineligible for hardship funding.

Sanctions:

Initial sanction – 4 weeks

2nd sanction – 13 weeks

Appeal and reconsideration is included at every stage

Higher level (for refusal/misconduct)

Initial – 13 weeks

2nd – 26 weeks

3rd – 156 weeks

There are very small numbers of the 26 week penalty and they have not experienced the maximum one of 156 weeks yet.

A brand new claim would stay with JCP for 39 weeks for 18-24 year olds and 52 weeks for ages 25+. After that they would move to a Work Programme provider for 2 years. At this point JCP loses all contact with the client; they have an exit interview to explain all these changes to them and this would include information on how to make a complaint. The client would return to JCP after the 2 years. Vulnerable claimants e.g homeless, ex Armed Forces, drug or alcohol dependent or other health conditions can have voluntary access to Work Programme from day one of a new claim.

4.2 Work Programme providers

The two Work Programme prime contractors for South Yorkshire – Serco and A4e - were invited to take part in the review either by giving evidence at meetings or answering written questions. Both turned down the opportunity to provide evidence and to have their input considered by the review, with A4e taking the view – based on advice from their DWP account manager - that it would be inappropriate to respond to the panel's questions.

This leaves a gap in the review's evidence as Work Programme providers have a significant role in the local employment support system and – thus – the sanctions process.

All information regarding how Work Programme providers trigger the sanctions process was therefore provided by the claimants themselves.

5. Key findings

The findings are considered in relation to a number of themes that emerged from the evidence sessions.

5.1 Communication

This relates to communication both with claimants and between agencies/providers, and the general consensus was that this needs to be improved. Communication with claimants relates to notifications of sanctions being triggered and applied, both verbally by the advisers and by letter from the centre in Hanley.

Evidence was heard that claimants were unaware of the sanctioning process being applied, which indicates that either warnings had not been issued or that the claimants had failed to understand they had received a warning.

Members wished to highlight the issue of communication strongly. The complex nature of the system causes confusion for many claimants and therefore in the opinion of the review group, more likely to be sanctioned. It is essential therefore that this issue is addressed.

There were also examples of letters arriving late (i.e. after sanctions had been applied) and letters being sent to a homeless person who couldn't read. What was clear to the review group was that a definite breakdown in communications channels was occurring, at least in the case of the claimants they heard from. This also applied to the providers that claimants were referred to (not necessarily as part of the Work Programme) with examples of claimants being sanctioned due to confusion over dates, conflicting advice over whether attendance was required and clashing of appointments.

Again, this suggests that there are communication issues to be addressed to avoid unnecessary sanctioning and the complications that this causes. The Jobcentre Plus representatives who gave evidence also agreed that the situation with regard to Work Programme and other providers was complicated and sometimes caused communication difficulties.

The situation is further complicated by the fact that letters are sent to claimants from the main centre in Hanley and the remote nature of this doesn't allow for local flexibility in how communications are handled. Members were strongly in favour of implementing as much flexibility as is allowed locally to achieve a consistent and clear mechanism for communicating both between providers and with claimants.

Signposting to support services and advising of appeals process / availability of hardship fund was also found to be inconsistent in terms of the experiences of the claimants who presented to the review group. Claimants gave evidence that they were either unaware of the appeals process or hardship fund, or they were treated insensitively by the operators from the telephone number they were provided to enquire about the hardship fund.

Although Work Programme providers did not provide evidence to the review, the DWP guidance for Work Programme providers suggests that signposting to the hardship fund may not be automatic. The guidance states that: **"If a participant**

asks about or requests information on Jobseeker's Allowance hardship provision you should direct them to their Jobcentre Plus office".

Finally in this section, despite their unhappy experiences with the DWP, no claimants mentioned making a formal complaint and the review group again felt that this is not communicated well enough. The representatives from Jobcentre Plus confirmed that they manage the complaints process for their services.

5.2 Discretion and flexibility

Following on from the points made about communication, it was felt by the review group that it was important to attempt to introduce as much local flexibility into the system as possible, although the scope to do this is constrained by legislation and regulations.

For example, one claimant had been unable to do the required job search as part of his agreement due to his wife's illness. This wasn't taken into account and sanctions were applied. Jobcentre Plus representatives pointed out that flexibility around this is already present in the system and advisers should use their discretion to allow for circumstances such as these. They confirmed that all staff are trained accordingly. The warning system should allow these discussions to take place and it was confirmed that no sanction should apply without a prior warning being issued. Again, evidence from the claimants suggested that this was not being implemented consistently.

Jobcentre Plus do aim to reconsider sanction decisions prior to appeals (and this is now a national requirement), but this will be too late to prevent benefits being stopped and people experiencing hardship.

Concern was expressed about Work Programme providers who – according to the DWP guidance - are required to raise a doubt for any "failure to participate" in mandated activity by jobseeker's allowance claimants. Due to the lack of evidence from them it was difficult for the group to determine what is happening locally regarding this, but national data suggests only 35% of doubts raised ultimately lead to a sanction.

Concern was expressed about the role of the centre in Hanley. Members were made aware of the mandatory reconsideration process which allows a decision against a claimant to be reversed without having to go through the appeal process. This is carried out by Hanley and members wished the potential for this role to be carried out locally to be considered.

5.3 Vulnerable claimants

The review group found conclusively that there are gaps in support available for the most vulnerable of claimants and that normal communication processes are failing some of them. The vulnerable claimants that the group heard from had managed to find support from agencies such as Families for Change (Rotherham's "troubled families" programme), Action Housing and Citizens Advice Bureau. They had also been referred to food banks for essential provisions during their periods of sanction. All these claimants expressed huge gratitude for the support they had

received and expressed their concern about how they would have managed without such intervention.

Representatives from CAB and Families for Change gave evidence during the review and their experience showed that claimants were unaware of food banks, the support available by contacting utility companies or how to either complain or appeal against DWP decisions. They reported the negative health impacts felt by these vulnerable claimants as a result of sanctions, particularly on their mental health. An example was also received of a claimant whose son was unable to have the special diet that his health condition required during the period of sanctions. Another claimant was forced to sleep rough for 4 days as a result of his sanctions.

Members concluded that it was essential that such vulnerable claimants were able to access one to one support, possibly by involving local support agencies at an earlier stage in the process (i.e. when initial “claimant commitments” are being agreed). Jobcentre Plus representatives were clear that there is provision for the role of advocacy in the system, allowing such agencies to work on behalf of claimants (implicit consent would be required which can easily be established).

5.4 Local working protocol

Members of the review group reiterated that whilst they understood the limitations around their ability to influence rules at a local level, the aim of the review was to ensure that fairness is fundamental to how the rules are applied locally. Their recommendations are therefore that the most effective way to address the themes of this review – better communication; maximising local flexibility and discretion; and support for the most vulnerable - would be via the establishment of a local working protocol.

This would seek to address the above issues, but to be effective it would need to include Work Programme providers, who have so far failed to engage with the review. Jobcentre Plus representatives indicated an in principle interest in this approach. They were also in favour of education and awareness raising for claimants about what kind of behaviour is likely to trigger sanctions and would be interested in working with partners to help with this.

As an example of a local arrangement, in Birmingham a support organisation (St Basils) working with marginalised young people had established a protocol with DWP. They notified DWP of young people who were making a claim and any personal circumstances that may make it difficult for them to meet conditionality requirements. A support worker would then generally attend the young person’s initial job centre appointment and DWP would aim to inform the named worker prior to any compliance “doubt” being raised.

6. Recommendations

The review group have made one single overarching recommendation: that the partners within the welfare reform steering group, via Rotherham Partnership, aim to establish a local working protocol. The overall aim of this is to ensure complete fairness in the process of implementing sanctions in Rotherham. Within this framework, partners are specifically asked to consider the following:

1. How advice agencies can be included in this protocol and the potential role they could play – some suggestions from the review group include a potential presence for them in the job centre itself to pick up instant referrals; cross referrals through the IT systems of the AiR (Advice in Rotherham) partnership; and advocacy and one to one support for more vulnerable clients. They should also consider the potential to carry out awareness raising for claimants on the expectations and responsibilities they have within the system.
2. The importance of including all partners - therefore it is essential for Work Programme providers to be included in this protocol. The review group stresses its extreme disappointment with the providers for their lack of engagement in the review and hopes that they will take the opportunity to rectify the situation by taking part in the protocol.
3. How clear and consistent communication mechanisms can be implemented and/or improved across all of the partners, with the aim of making the process as simple and easy to understand as possible for claimants. Some quality standards around this should be considered.
4. In line with 3 above, again some clear and consistent standards around referral to other support such as the hardship fund, food banks, credit unions and other sources of assistance.
5. Rotherham MBC should review its eligibility criteria for the Fund for Change, as sanctioned claimants are currently not eligible to apply on the basis that they are not in receipt of benefits. The review group notes that since the review concluded, the government have announced their decision to remove the funding for this scheme, which will remove another source of assistance for the most destitute people in the borough. Methods of lobbying the government on this should also be considered.
6. Finally, DWP partners should consider whether it is possible to have the mandatory reconsideration process carried out locally instead of via the decision-making centre in Hanley. The review group request that this be referred as high within the DWP as it needs to go to be given due consideration.

7. Background Papers:

Meeting notes of the Review Group
Written evidence submitted to the review

8. Thanks

- Natalie Enderby – Families for Change
- David Sleightholme – CAB
- Simon Freeston and Ian Fletcher – JC+
- Mike Hatfield
- Phil Mellor
- Joe
- Rob Cutts
- Claire Smith

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