



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Welfare Reform Committee**

### **4th Report, 2014 (Session 4)**

# **Interim Report on the New Benefit Sanctions Regime: Tough Love or Tough Luck?**

**Published by the Scottish Parliament on 11 June 2014**

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Pàrlamaid na h-Alba

## Welfare Reform Committee

### 4th Report, 2014 (Session 4)

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## **Welfare Reform Committee**

### **Remit and membership**

#### **Remit:**

To keep under review the passage of the UK Welfare Reform Bill and monitor its implementation as it affects welfare provision and to consider relevant Scottish legislation and other consequential arrangements.

#### **Membership:**

Annabelle Ewing  
Linda Fabiani  
Jamie Hepburn  
Alex Johnstone  
Ken Macintosh  
Michael McMahon  
Kevin Stewart

#### **Committee Clerking Team:**

##### **Clerk to the Committee**

Simon Watkins

##### **Assistant Clerk**

Rebecca Macfie

##### **Committee Assistant**

Kevin Dougan



The Scottish Parliament  
Pàrlamaid na h-Alba

**Welfare Reform Committee**

**4<sup>th</sup> Report, 2014 (Session 4)**

**Interim Report on the New Benefit Sanctions Regime:  
Tough Love or Tough Luck?**

The Committee reports to the Parliament as follows—

**EXECUTIVE SUMMARY**

- 1. In late 2012 a new benefit sanctions regime was introduced by the Department of Work and Pensions which increased the severity of sanctions for those on Jobseeker's Allowance and Employment Support Allowance who do not meet the conditions of their benefit. Claimants may now be sanctioned for a period of up to 3 years and some have.**
- 2. This has led to a significant increase in the number of sanctions applied, despite the fact that the numbers on the relevant benefits have dropped. The rate of sanctioning for Job Seekers Allowance has increased very rapidly through 2013 from 3% at the start of the year to an average of 5.7% during the last three months of the year.**
- 3. The Department of Work and Pensions appears to believe that 'many benefit recipients welcome the jolt that a sanction can give them. ... Some people no doubt react very badly to being sanctioned—we see some very strong reactions—but others recognise that it is the wake-up call that they needed, and it helps them get back into work.'**
- 4. Having taken significant evidence, including at first hand from those who have been sanctioned, the Committee does not recognise this description of the current sanctions regime.**
- 5. Instead, we see many weaknesses in the regime and in its application. These are leading to a climate of fear around JobCentres, rather than one that encourages people to engage with them and find their way back to work.**

**6. Weaknesses in the current system include:**

- **A consistent failure to notify people that they are being sanctioned and why.**
- **A lack of flexibility and misapplication of sanctions reducing the likelihood of people finding work.**
- **A failure to appreciate that many people on benefits do not have the necessary IT skills at day one to utilise the DWP's Universal Jobmatch facility or other IT technology.**
- **A failure to make those sanctioned aware of the availability of hardship payments.**
- **The consistent triggering of a stop in housing benefit as a result of a sanction, which should not happen and can lead to significant debt being incurred even for a minor sanction.**
- **The lack of a deadline for decision-making on DWP reconsiderations leading to delays in redressing wrong decisions.**
- **The shunting of the costs of dealing with sanctioned claimants onto other agencies: local authorities; health boards; third sector agencies; etc.**

**7. The weaknesses of the current sanctions regime are reflected in the outcome of decision reviews. The statistics can be read many ways, but, on review, 4 in 10 decisions to apply a sanction are overturned.**

**8. There has been debate about whether formal targets exist for the number of sanctions. It is clear to the Committee that, whether formal targets exist or not - as one witness put it - 'Given all the evidence, there can be no doubt that there is now a deliberate policy ...to drive up the level of sanctions to previously unheard-of levels through managerial pressure on JobCentre staff.'**

**9. The Committee is not automatically opposed to a benefits system that incorporates conditionality. However, we share the view, expressed by Citizen's Advice Scotland, that sanctions must only be used as a last resort for those who have consistently and deliberately refused to engage with jobseeking requirements without good reason. If sanctions are to be used, then we believe they should be applied appropriately and consistently and with greater levels of discretion and support. We believe that the current operation of the sanctions regime is not in line with these principles.**

**10. Sanctions are also disproportionately affecting some of the most vulnerable groups of claimants, in particular, the disabled, single parents and young people, including those who have recently left care.**

**11. In many cases, rather than being a driver to get people back into work, as claimed by the Department of Work and Pensions, sanctions are actually getting in the way of people getting back into work.**

**12. The Committee makes a number of suggestions for improvements to the operation of the sanctions regime, but more important than these is a sea change in the culture of the policy from punitive to supportive.**

**13. The Welfare Reform Committee has adopted this report, but Committee member, Alex Johnstone wishes his dissent from the contents to be noted.**

## INTRODUCTION

14. The Committee first became aware of the impact that the new sanctions regime was having last year. However it has held off examining the issue until this point to allow evidence to accumulate.

15. This is an Interim Report, as the Committee has taken a limited amount of evidence to date and may return to the issue later in the session. It amounts to a review of the current situation, although a number of recommendations are forthcoming.

16. The Committee is grateful for to the following organisations and individuals for providing evidence:

- Barnardo's Scotland.
- Citizens Advice Scotland.
- Homeless Action Scotland.
- Inclusion Scotland.
- Joseph Rowntree Foundation.
- One Parent Families Scotland.
- Scottish Council for Voluntary Organisations.
- Scottish Federation of Housing Associations.
- Dr David Webster.
- The Department for Work and Pensions (DWP).

17. The report examines the impact of sanctions on Jobseekers Allowance and Employment Support Allowance claimants. It does not cover those on Universal Credit as the numbers in Scotland are still very small.

18. The Committee is aware of other work being undertaken in this field, particularly the report commissioned by the DWP from Matthew Oakley on Jobseeker's Allowance Sanctions<sup>1</sup>, and the commitment by Esther McVey, the Minister for State, to establish a further independent review to investigate whether sanctions were being applied proportionately. The Committee has also benefited from the House of Commons Work and Pensions Committee report of their Inquiry into 'The Role of JobCentre Plus in the Reformed Welfare System'.<sup>2</sup>

## THE NEW SANCTIONS REGIME

### The Changes

19. Conditionality and sanctions have been part of the Job Seekers Allowance (JSA) since its introduction in 1996 and for Employment Support Allowance (ESA) claimants in the Work Related Activity Group (WRAG) since October 2008. A revised sanctions regime for JSA came into effect from 22 October 2012, and a revised sanctions regime for ESA came into effect from 3 December 2012. Sanctions also exist in a number of other benefits, but these are not covered in this report.

20. The new sanction rules are supposed to make the consequences of non-compliance with conditions clearer and impose more proportionate sanctions for claimants who repeatedly fail to meet their responsibilities. The rules, which are broadly aligned with the system that will be in place with Universal Credit (UC) introduced, comprise:

- 3 categories of sanction – 'higher', 'intermediate' and 'lower' – depending on the nature of the offence.
- Different levels of sanction for first, second and third offences.
- Changes to the date a sanction starts - Sanctions will be applied more quickly – specifically by the next payment date.

21. Figure 1 provides an outline of how the current system compares with the previous system.

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<sup>1</sup> [Matthew Oakley, Jobseeker's Allowance sanctions: independent review.](#)

<sup>2</sup> [UK Parliament Work & Pensions Committee, The Role of JobCentre Plus in the Reformed Welfare System.](#)

Figure 1:

September 2013

**Jobseeker's Allowance: overview of revised sanctions regime**

Sanction Level	Applicable to:	Description	Previous sanction regime	Revised sanction regime from October 2012:		
				1 <sup>st</sup> failure	2 <sup>nd</sup> failure	3 <sup>rd</sup> failure
<b>Higher Level</b>	JSA claimants	Failure to comply with the most important jobseeking requirements	Variable 1 to 26 weeks except MWA Fixed 13 weeks	13 weeks	26 weeks <i>if within 52<sup>1</sup> weeks but not within two weeks of previous failure</i>	156 weeks <i>if within 52 weeks – but not within two weeks - of previous failure that resulted in 26 or 156 week sanction</i>
				Disentitlement then up to 4 weeks loss of benefit	Disentitlement then up to 13 weeks loss of benefit <i>if within 52 weeks – but not two weeks -of previous entitlement ceasing</i>	
<b>Intermediate Level</b>	JSA claimants	Failure to be available for work	Disentitlement but no sanction <sup>2</sup>	4 weeks		
<b>Lower Level</b>	JSA claimants	Failure to attend/participate in an adviser interview/training scheme	Fixed 1, 2, 4 or 26 weeks	4 weeks		13 weeks <i>if within 52 weeks – but not two weeks - of previous failure which resulted in a 4 or 13 week sanction</i>
				100% of the prescribed ESA amount open-ended until re-engagement followed by a fixed period of		
				1 week	2 weeks <i>if within 52 weeks – but not two weeks - of previous failure</i>	4 weeks <i>if within 52 weeks – but not two weeks - of previous failure which resulted in a 2 or 4 week sanction</i>

<sup>1</sup> The 52 week rolling period begins from the date the sanctionable failure took place and not the date the sanction is applied.

<sup>2</sup> Individuals able to reclaim JSA after small number of waiting days.

22. As can be seen from the table, there has been a marked increase in the severity of sanctions. Sanctions can now be imposed for up to three years, and some have been.

23. As Dr Webster pointed out in his oral evidence, the loss of income that sanctions can lead to is now twice the maximum that can be imposed in fines by the courts.

'It is disturbing that the level of the penalties is comparable to or greater than the level of fines that are administered by the mainstream courts. That has become an extreme anomaly. I worked out the numbers. If someone over the age of 25 is on JSA and they are sanctioned, the minimum fine is £286.80 and the maximum fine is £11,185.20. In the UK scale of fines, the level 1 fine is £200 and the maximum—the level 5 fine—is £5,000. Therefore, the JSA scale of fines runs higher than that which is available to the mainstream courts, yet claimants have none of the protections that an accused in the mainstream courts would have. I am referring to the presumption of innocence, the entitlement to legal representation and the fact that—as I mentioned in my submission—in a mainstream court, before someone is sentenced, the sheriff will call for reports so that the sentence is appropriate.'<sup>3</sup>

24. As Citizens Advice Scotland point out, the increase in severity is not restricted to Jobseekers Allowance claimants 'In December 2012 the sanctions regime for ESA claimants became much more stringent. An ESA sanction now removes the entire personal allowance of £71.70 a week. (Prior to this the loss was usually £14 a week for the first four weeks.) The sanction lasts for an open-ended period until you are deemed to have re-engaged with your requirements, followed by a further fixed period sanction.'<sup>4</sup>

### **The Sanctions Process**

25. The sanctions process for JSA operates as follows. Individuals claiming JSA are provided with a Jobseekers Agreement which specifies the conditionality of their JSA payments, including activities that must be carried out. From 28th October 2013, new claimants for JSA must complete a Claimant Commitment which replaces the Jobseekers Agreement. Claimants can be directed to undertake a range of specific activities and they have a duty to demonstrate that they have complied by providing evidence and information and by attending interviews with their JobCentre Plus (JCP) personal adviser.

26. A JobCentre Plus adviser can raise a sanction referral. This referral acts as a statement that, in the opinion of a personal adviser, a claimant may not be fulfilling the conditionality requirements and therefore may not be entitled to a payment of JSA. The referral is passed to a decision maker who will decide if a sanction is to be imposed. Once the claim has gone forward to a decision maker, a claimant may have their benefit suspended pending a decision being made. A decision to apply a sanction is called an adverse decision. A sanction will not be applied if the claimant can show that they had good reason for the action that led to a sanction

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<sup>3</sup> [Scottish Parliament Welfare Reform Committee, \*Official Report\*, \(1 April 2014\), Col 1404.](#)

<sup>4</sup> [Citizen Advice Scotland, written evidence.](#)

being considered. For example, a good reason could be if the claimant left their job because they were a victim of bullying or harassment at work.

27. In general, JSA sanctions can last for a fixed period of 4, 13, or 26 weeks, or 3 years, depending on the level of sanction applied. It also depends on whether it is the first, second or third time that a sanction has been applied. There are special rules about when JobCentre Plus can sanction 16 and 17 year olds. Under the new regime:

- Higher level sanctions (for example, for leaving a job voluntarily or failing to take part in the Mandatory Work Activity scheme, failing to take on a suitable employment opportunity) will lead to claimants losing all of their JSA for a fixed period of 13 weeks for a first failure (within 52 weeks – but not within 2 weeks - of their last failure).
- Intermediate level sanctions of 4 weeks for a first failure, rising to 13 weeks for a second or subsequent failures (within 52 weeks – but not within 2 weeks - of previous entitlement ceasing) may be applied following a period of disallowance for not actively seeking employment or not being available for work.
- Lower level sanctions (for example, for failing to attend an adviser interview or failure to comply with a Jobseeker Direction) will lead to claimants losing all of their JSA for a fixed period of 4 weeks for the first failure, followed by 13 weeks for subsequent failures (within 52 weeks – but not within 2 weeks - of their last failure).
- ESA claimants in the Work Related Activity Group who fail to comply with the conditions for receiving benefit receive an open ended sanction, followed by a fixed period sanction when they re-comply. The fixed period sanction will be one week for a first failure, two weeks for a second failure and four weeks for a third and subsequent failures in a 52 week period. Claimants who are sanctioned will lose all of their personal allowance, but their work related activity component will not be affected.

28. A system of hardship payments exists. In order to receive payments the claimant is required to prove they are at risk of hardship. In practice, hardship payments are made if claimants can demonstrate that they cannot buy essential items, including food, clothing, heating and accommodation and so are at risk of severe suffering or privation. Vulnerable groups which include anyone with responsibility for children can access hardship immediately; non-vulnerable groups cannot do so for the first 14 days of a sanction.

29. If eligible for hardship payments, claimants will receive 60% of their JSA personal entitlement allowance for the period of the sanction (80% if a claimant or a member of the family or a member of a joint-claim couple is pregnant or seriously ill). The levels of 60% and 80% are set in legislation. They are considered to be the minimum amount of benefit claimants in hardship need in order to meet essential needs, whilst still subjecting them to a financial impact for non-compliance.

## Increasing Numbers of Sanctions

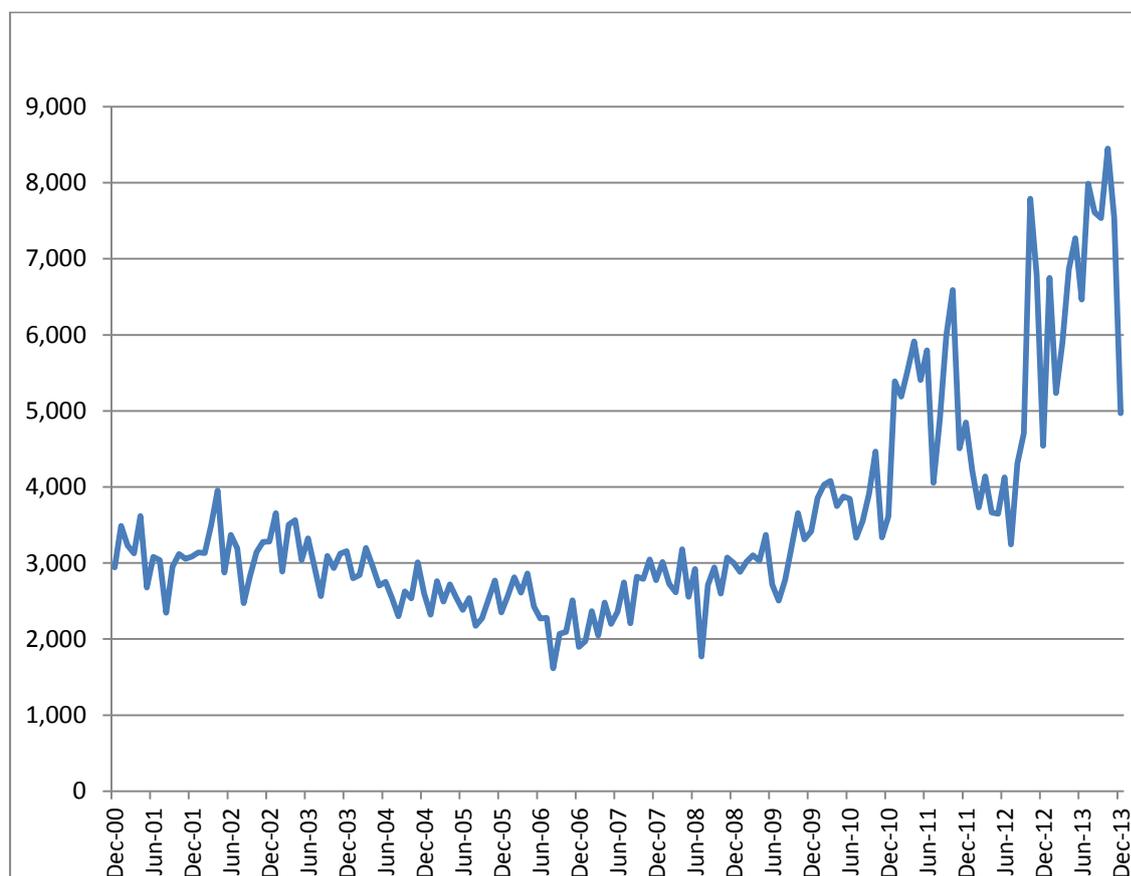
### JSA

30. The most recent DWP sanctions statistics relate to the period up to December 2013.<sup>5</sup> The situation in Scotland since the change in regime is set out below. All figures that relate to the 'new regime' cover Scotland for the period 12 October 2012- 31 December 2013.

31. Under the new sanctions regime, 223,867 Job Seekers Allowance sanction decisions have been made. Increasing numbers of sanction decisions are being made, despite the fall in number of JSA claimants – down to 108,824 in December 2013 from 133,503 in December 2012.<sup>6</sup>

32. Figure 2 shows the number of 'adverse' decisions, where the decision to apply a sanction has been confirmed. As can be seen, the numbers sanctioned have increased over time.

Figure 2: Number of Decisions to Apply a Sanction – JSA, Scotland



<sup>5</sup> Statistics have been taken from the DWP's [stat-xplore](#) tool which allows users to create their own tables. Please note that data issues had been identified, these have been resolved and the most recent data replaces all previous data. Please note that in some cases slightly different numbers given for the same statistics depending on the table configuration used. This may be because of the random adjustment of cells to avoid the release of confidential data.

<sup>6</sup> Source: NOMIS unseasonably adjusted figures.

33. Figure 3 shows that in 43% of cases a decision was made to apply a sanction, while in 26% of cases a decision was made not to apply a sanction. Most sanction decisions (54%) are low level.

Figure 3: Sanction decisions in Scotland (new regime)

Decision	%	No.
Decision to apply a sanction (adverse decision)	43%	97,462
Decision not to apply a decision (non-adverse)	26%	57,620
Cancelled <sup>7</sup>	26%	11,491
Reserved <sup>8</sup>	5%	57,294

Source: % calculated from data obtained from Stat-xplore

34. Under the new regime 59,568 individuals have received a decision to apply a sanction (an individual can receive a decision to apply a sanction on more than one occasion). Figure 4 shows that 79 individuals have been subject to three or more adverse decisions on a high level failure – these individuals would be subject to their benefit being stopped for three years.

Figure 4: Individuals receiving a decision to apply a JSA sanction (adverse decision – by sanction level and number of sanctions – (Scotland, new regime)

	One decision to apply sanction	Two decisions to apply a sanction	Three or more decisions to apply a sanction
Low Level	23,434	5,821	4,193
Intermediate Level	20,695	4,547	1,551
High Level	7,897	424	79

Source: Stat-xplore

35. The rate at which sanctions are being applied to individuals can be estimated by considering the number of individuals that have a sanction decision applied as a proportion of the number of JSA claimants in each month.<sup>9</sup> Figure 5 shows that the rate of sanctioning in Scotland has doubled from around 2% in 2006 to 4.6% in

<sup>7</sup> A Cancelled referral results in no sanction being made. This can occur in specific circumstances e.g. the claimant stops claiming before they actually committed the sanctionable failure.

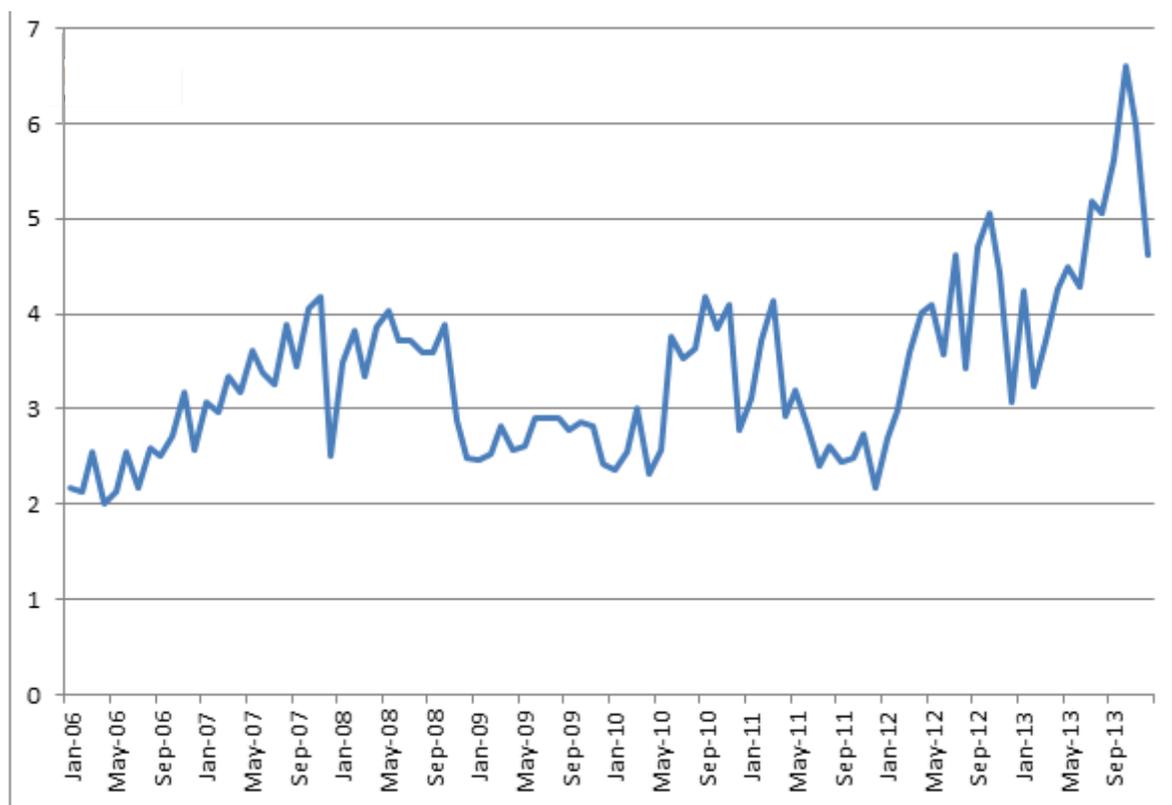
<sup>8</sup> A reserved decision is where a sanction would be appropriate but cannot be imposed because the claimant does not have a current claim to JSA.

<sup>9</sup> This is a general estimate as the month a decision to apply a sanction was made may relate to a JSA claim made in a previous month.

December 2013. It has also increased very rapidly through 2013 from 3% to an average of 5.7% in the last three months of 2013.

36. Some commentators have argued that even this is an underestimate of the rate of sanctioning by JobCentres as sanctioning by Work Programme operators is taking place at a lower level. In evidence to the committee, Dr David Webster, Honorary Research Fellow in Urban Studies at the University of Glasgow, maintained that 'When this is allowed for, it emerges that the rate of sanctioning across GB by JobCentres of claimants registered with them (rather than with Work Programme contractors) is now an astonishing 9% per month, or almost one in ten.'<sup>10</sup>

Figure 5: JSA decisions to apply a sanction as a % of JSA claimants - Scotland



37. It is worth noting that over a third (39%) of individuals that have had a sanction decision applied were in the 18-24 age group. Yet only around a quarter of JSA claimants are in the 18-24 age group. This suggests that younger claimants are more likely to be sanctioned.

#### ESA

38. Under the new regime the situation with regard to Employment Support Allowance is slightly different. There are fewer ESA (WRAG) claimants in Scotland compared to JSA and relatively fewer sanction decisions made. At August 2013 there were 72,040 ESA (WRAG) claimants in Scotland. Under the new ESA sanction regime, 9,029 ESA decisions have been made, of which 2,615 decisions

<sup>10</sup> [Dr Webster, written evidence, para 4.](#)

were made to apply a sanction (28%), 2,264 (25%) decisions were not to apply a sanction and 4,026 (44%) were cancelled.

39. In Scotland 5,274 individuals were subject of sanction decision, and 1,842 individuals received a decision to apply a sanction.

40. At Great Britain level 75% of ESA adverse decisions were made because of a failure to participate in work related activity (this includes failure to participate in the Work Programme), with the remainder due to a failure to attend a mandatory interview.

## IMPACT

### **The Department of Work and Pensions' View**

41. The Committee had wished to take evidence from Esther McVey, the Minister at the Department of Work and Pensions with responsibility for sanctions. However, the Minister refused to make herself available for a public evidence session and the Committee instead took evidence from Neil Couling, Work Services Director at the Department of Work and Pensions. Mr Couling is the senior official with responsibility for JobCentre Plus.

42. Neil Couling outlined the rationale for sanctions, 'The reason for a sanction is that, where there is a responsibility on a claimant to do something, there has to be a consequence of not doing the thing that they are being asked to do. In essence, if we were to get rid of sanctions, as I heard some contributors suggest in evidence, it would mean our having to get rid of any conditions on benefit. Otherwise, the conditions would be essentially toothless. We want to ensure that the sanction drives the right behaviour. We are looking to have people engage with the system, rather than their being disengaged from it. It is a careful balance.'<sup>11</sup>

43. He also stressed in his written evidence that 'It is a mistake to see sanctions as a punitive measure or seek to consider them in isolation of the broader system in which they sit. Sanctions form part of a wider framework of policy designed to support and encourage claimants to return to work. Support is given with job-searching and skills but at its heart the system relies on people seeking employment for themselves. It is therefore critical to get people to comply.'<sup>12</sup>

44. In his oral evidence to the Committee, Neil Couling also reported 'My experience is that many benefit recipients welcome the jolt that a sanction can give them. Indeed, I have evidence—which I can share with the committee if members want it—of some very positive outcomes from just those kinds of tough conversations. They are tough conversations to have on the JobCentre side, as well as for the claimants. Some people no doubt react very badly to being

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<sup>11</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Col 1455.](#)

<sup>12</sup> [DWP, written evidence, para 6.](#)

sanctioned—we see some very strong reactions—but others recognise that it is the wake-up call that they needed, and it helps them get back into work.<sup>13</sup>

### **The Committee's View: culture change**

45. The Committee simply does not recognise this description of the sanctions regime as it currently operates in Scotland.

46. The Committee believes that there is a role for conditionality within the benefits system. As Neil Couling pointed out. 'Historically conditions have always been applied to the payment of jobseekers benefits'.<sup>14</sup>

47. Similarly, as Dr Jim McCormick reported, 'Most Organisation for Economic Co-operation and Development countries use conditionality systems. Even some of the admired Nordic systems have pretty tough conditionality systems, but they ally those systems with much more generous offers of childcare and retraining.'<sup>15</sup>

48. However, the Committee has become aware of the punitive and arbitrary nature of the new sanctions regime, which appears to be creating a climate of fear around JobCentres, rather than encouraging claimants back to work.

49. We spoke to sanctioned claimants at an informal evidence session at Parkhead citizens advice bureau in Glasgow. They believed that there had been a sea change in the culture of JobCentre Plus offices. They felt that JobCentre staff were disrespectful and judgemental and that JobCentre Plus offices could feel intimidating rather than helpful. The claimants we met were not trying to single out and blame JobCentre staff; instead, they were simply saying that they felt that they were victims of a change in culture that had happened across the board.

50. This view is widely held by agencies that support claimants:

51. John Downie, Scottish Council of Voluntary Organisations (SCVO): 'We have seen the regime move from supportive to punitive.'<sup>16</sup>

52. Marion Davies, One Parent Families Scotland: 'We feel that sanctions are at the core of a system that is based on compulsion and punishment rather than on incentives and support.'<sup>17</sup>

53. Peter Kelly, Poverty Alliance: 'Over the past years, it is striking that issues of dignity, respect and discrimination come up in most contexts when we talk to people who have experience of the benefits system; similarly, those issues come up with regard to sanctions.'<sup>18</sup>

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<sup>13</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Col 1452.](#)

<sup>14</sup> [DWP, written evidence, para 4.](#)

<sup>15</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1392.](#)

<sup>16</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1391.](#)

<sup>17</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1401.](#)

<sup>18</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1393.](#)

54. One Parent families Scotland: 'Lone Parents have reported back to OPFS & our partners that there has been a cultural shift within some JCP offices where lone parents are treated in a judgemental way and with disrespect.'<sup>19</sup>

55. Peter Kelly, Poverty Alliance: 'They feel as if they are on trial every time that they go into a Job Centre. That plays into their fear of making mistakes for which they would then be sanctioned.'<sup>20</sup>

56. Dr Webster believes that the language of the new sanctions regulations themselves have had an impact in creating this culture '...the regulations have very dramatically influenced the language of sanctions by introducing the language of failure. If you look at the statutory instrument and the explanatory note, you will see the punitive phraseology that it uses. That has contributed a great deal to the current climate, which has definitely shifted towards treating the system as one of punishment.'<sup>21</sup>

57. Like the sanctioned claimants that we met, we do have some sympathy for JobCentre Plus staff who have been burdened with administering all the regime changes and do not always seem to have been provided with appropriate training. It has been suggested that their heavy workload can affect their ability as decision-makers to make correct decisions.

58. However, becoming part of the sanctions regime can lead to a spiral of decline which can lead ultimately – given the three year maximum penalty – to destitution:

59. David Ogilvie, Scottish Federation of Housing Associations (SFHA): 'The conditionality of a sanction pretty much assures people that they will get another sanction, and another sanction, and because their income is being repeatedly compromised their ability to go out and get a job is increasingly compromised. It is a self-defeating, self-reinforcing process...'<sup>22</sup>

60. Dr Jim McCormick, Joseph Rowntree Foundation: 'People in this position face the threat of destitution as their benefits are reduced or suspended in a bid to mould behaviour and encourage people to take jobs.'<sup>23</sup>

61. At the time that the new sanctions regime was introduced, it appeared to be assumed that the new incentives would lead to few if any claimants receiving the full three-year sanction. However, there are already 79 claimants in Scotland in this position.

62. The Committee has received a wealth of examples of cases where sanctions have been misapplied or where insufficient flexibility has been shown. We have not reproduced this anecdotal evidence within the body of the report, but many examples are contained in the written evidence submitted to the Committee. We

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<sup>19</sup> [One Parent Families Scotland, written evidence.](#)

<sup>20</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1394.](#)

<sup>21</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1390.](#)

<sup>22</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1414.](#)

<sup>23</sup> [Joseph Rowntree Foundation, written evidence.](#)

reproduce only three examples here - from a single homeless project in West Lothian - to give a good flavour of the range of the problems that the sanctions regime is creating:

63. Annemarie was sanctioned in December 2012 for four weeks for failing to do the requisite number of job searches. She applied for 27 jobs instead of 28 within a two week period. This left Annemarie without the money she needed to heat her home or to be able to buy food. Annemarie could not access the hardship fund until the 15<sup>th</sup> day of her sanction, leaving her with no money for over 2 weeks. Annemarie felt her only option was to borrow money through a payday loan, enabling her to buy food as well as small Christmas gifts for her family. Fortunately, Annemarie was able to access seasonal part time work to assist her throughout this time. Annemarie is still paying back the loan now, more than 12 months after the initial sanction.<sup>24</sup>

64. Kayleigh worked for less than 16 hours per week at her local Pizza Hut and her income was supplemented by JSA. As part of her role Kayleigh was expected to participate in training. After one training course Kayleigh had worked for 16.5 hours in a week (although the training was unpaid). The JobCentre Plus continued to pay Kayleigh JSA for one month after this occurred. However, once they realised that Kayleigh had worked over 16 hours she was sanctioned for 2 months. Kayleigh had to rely upon friends and family to lend her money to supplement her wages throughout this time to buy food and necessities.<sup>25</sup>

65. Adam was sanctioned while on a work placement scheme as the driving assistant for the van of a local charity shop. Adam's appointment to sign on coincided with his work placement. He phoned the JobCentre Plus and was told he had to come in and sign on. Adam arranged this with his work and went to his appointment. The next day the JobCentre Plus told Adam he would be sanctioned because he'd missed a day at work. Adam was told he should have arranged for the driver of the van to drop him off and then make his own way back to the van. Adam explained that this was not a practical or feasible option, because after signing on there was no way he could have met the van on time. The JobCentre Plus told Adam that this was not their problem.<sup>26</sup>

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<sup>24</sup> [Homeless Action Scotland, written evidence.](#)

<sup>25</sup> [Homeless Action Scotland, written evidence.](#)

<sup>26</sup> [Homeless Action Scotland, written evidence.](#)

## WHAT IS WRONG WITH THE REGIME

### Communications

66. It is clear from the evidence that we have received that poor communication by the Department of Work and Pensions is the biggest single weakness exhibited by the new sanctions regime.

67. We discovered through our informal evidence session at Parkhead citizens advice bureau in Glasgow that communication from the DWP to clients can be very poor indeed. In all too many cases claimants do not even realise that a sanction has been applied - the first they know of it is when they go to the bank and find that they have no cash. Claimants are also sometimes unclear about why a sanction has been applied. We were told it is often difficult to contact the appropriate person who made the decision to sanction to find out the reason why; claimants were often told different and incorrect information about whom they have to contact.

68. This raises a major question about the purpose of sanctions. If the purpose of sanctions is to achieve compliance with jobseeking requirements, but clients are not aware of them, what is the point?

69. Neil Couling argued in his submission that 'It is a mistake to see sanctions as a punitive measure'. However, if claimants are not even made aware of the reason for their sanction, it is difficult to view them in any other way.

70. This view is supported by the experience of support agencies in the field:

71. Citizens Advice Scotland: 'Many of the clients seen in Scottish citizen's advice bureaux do not know why they have been sanctioned. Sometimes they can find it hard to get this information from the DWP.'<sup>27</sup>

72. Beth Reid, Citizens Advice Scotland: 'There are a lot of administrative problems. When a client comes in to say that their benefit has been stopped, the bureau will call the JobCentre to find out what is happening. We are told, "It looks like the person has been sanctioned, but we do not know why and there is nothing on our system to tell us why." It is therefore very difficult for people to understand what they have done wrong and how they can prevent the same thing from happening a second, third or fourth time.'<sup>28</sup>

73. One Parent Families Scotland: 'Lone Parents are often very unsure of why they were sanctioned and tell us that they had not received a letter from the Job Centre informing them of the sanction.'<sup>29</sup>

74. Citizens Advice Scotland: 'Bureaux often see clients who are sanctioned for not attending meetings yet say they have had no notification of meetings. In

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<sup>27</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>28</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1398.](#)

<sup>29</sup> [One Parent Families Scotland, written evidence.](#)

some cases this is because the DWP has failed to process information they have been provided with.<sup>30</sup>

75. Citizens Advice Scotland: 'If claimants do not know why they have been sanctioned, and the DWP is not able to tell them, it undermines the purpose of sanctions, that is, to encourage jobseekers to comply with the requirements placed on them.'<sup>31</sup>

76. Citizens Advice Scotland: 'We would like to see better notification of sanctions being applied. Bureaux regularly see clients who are unaware that they have been sanctioned: some advisers suggest this is the majority of sanctions cases they see.'<sup>32</sup>

77. Barnardo's Scotland: 'We have experienced situations where young people we work with are unaware that sanctioning has taken place until they arrive at a bank to discover that no payment has been made. The practice is that people are notified in writing of a sanction decision; however this often arrives much later than the date that the sanction was imposed. In addition the letter which is sent to individuals is not particularly claimant-friendly. The language used within the letter is overly complex, full of jargon and often reads as accusatory. Our service users' report that it is difficult to understand what they should do next after receiving this letter.'<sup>33</sup>

78. It is also alleged that some of the initial communications produced by the Department of Work and Pensions do not make clear the conditionality of benefits. This issue seems to apply particularly to Employment Support Allowance. Beth Reid, Citizens Advice Scotland reported: 'Benefits advisers have flagged to me that, when a claimant gets a letter telling them that they are in the work-related activity group—the group in which they can be sanctioned on ESA—it is not clear that the requirements that are placed on them are mandatory and that they will lose their benefits if they do not comply.'<sup>34</sup>

79. Communications would appear to be the biggest single area for improvement within the Department of Work and Pensions if the sanctions regime is to be at all effective.

80. As Mark Ballard of Barnardo's put it 'The DWP could change its policy and explain clearly, not using vast amounts of DWP jargon, what has happened and what the decision is.'<sup>35</sup>

## Suspensions

81. The Committee heard evidence that a claimant's benefit may be suspended, and that claimants were confused about why their benefit was stopped. The lack

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<sup>30</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>31</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>32</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>33</sup> [Barnardo's Scotland, written evidence.](#)

<sup>34</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1409.](#)

<sup>35</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1415.](#)

of communication in these circumstances appears particularly acute. As things currently stand, according to Neil Couling, for some infringements a claimant can have their benefit suspended - that is, they will not be paid – without any requirements for the DWP to have informed them in writing at all.

82. Mr Couling explained to the Committee, ‘It depends on the nature of the sanction. There are three different types, which the memorandum sets out: low, intermediate and high. In the case of some decisions, such as an intermediate decision, it will feel to the claimant as though they have not been told that they would be sanctioned, because, technically, they will not have been. Their benefit will have been suspended and they may feel that we have not communicated to them the decision on the sanction. Technically speaking, a decision will not yet have been made on their case; their benefit will have been suspended. In that case, that will have been communicated to them orally. However, how that is done is not always as clear as it could be, because the person in the JobCentre may tell the claimant, “I have to refer your case to a decision maker.” A claimant will not always understand that that could mean that they will not be paid benefit that week. I cannot prejudge what Mr Oakley will say, but that is a process that we could tighten up and help claimants more to understand.’<sup>36</sup>

83. The Committee believes that this arrangement cannot be in the interests of motivating claimants to meet their commitments and should be amended immediately. It should be an absolute requirement of the sanctions regime that anyone sanctioned receives a written notification, including the reason for the sanction.

### **Lack of Flexibility**

84. Sanctioned claimants at our meeting in Parkhead claimed that there is a lack of flexibility to rearrange appointments with JobCentre staff, no matter what the circumstances are. For example, because a claimant has childcare issues or is ill. Missed appointments can mean, of course, that a benefit sanction is applied.

85. There is substantial anecdotal evidence to support this view and the examples from West Lothian included above are representative of much of the evidence that was submitted to us.

86. One such case, from one of the claimants we met in Parkhead, was reported back to Committee: ‘One of the girls from whom we heard was particularly funny about the system’s lack of flexibility in, for instance, changing appointments. She said that she had had an appointment for a job interview on 27 January and that she knew that because she went into labour on the 26th. When she phoned up and said, “I am in labour. Can I change my appointment?”, the guy at the other end said, “You don’t sound like you’re in labour.” That sums up the lack of flexibility and the different attitude that is being taken; people are now clearly being blamed for their own circumstances.’<sup>37</sup>

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<sup>36</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Cols 1472-3.](#)

<sup>37</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1387.](#)

87. A lack of flexibility is of course particularly a problem for lone parents due to their childcare responsibilities. As One Parent Families Scotland reported 'Also sanctions are automatically applied if rules are breached e.g. someone not turning up for an appointment, so a valid excuse is no protection.'<sup>38</sup>

88. It also seems that in some instances at least, claimants are being denied volunteering opportunities that may increase their job readiness. One Parent Families Scotland reported, 'Lone Parents are being discouraged from accessing volunteering opportunities / participating in training – for example OPFS Big Lottery funded training.'<sup>39</sup>

89. We were reassured to learn from Neil Couling that this should not happen, provided that it does not materially affect the claimant's availability for work.

90. Dr Webster summarised the situation by saying 'It is not surprising therefore that there is now a huge volume of evidence of unreasonable sanctions.'<sup>40</sup>

### Information Technology

91. There appears to be a failure by the Department of Work and Pensions to appreciate that many people on benefits do not have the necessary IT skills at day one to utilise the DWP's Universal Jobmatch facility or other IT technology.

92. Citizens Advice Scotland has undertaken some research on this. 'CAS conducted a survey of Scottish CAB benefits clients and found that only 54% have an internet connection at home, and less than a quarter (24%) feel able to apply for jobs or benefits without help'<sup>41</sup>. Some are undertaking training to gain the necessary skills and help them do their jobsearch, but may still get sanctioned in the meantime. These clients understand that they need to develop their IT skills but the requirements placed on them at this stage are unrealistic and mean sanctions are inevitable.'<sup>42</sup>

93. It also reports that this is becoming a problem on the ground, 'Bureaux in Scotland have seen a very large number of cases where clients are being sanctioned because they have failed to use IT correctly to do their jobsearch. Many of these clients have no IT skills and / or no access to the internet.'<sup>43</sup>

94. The same problem is also being reported by One Parent Families Scotland 'Issues of digital access are being ignored so that sanctions are being applied to lone parents who: don't have access to a PC; don't have broadband; or don't have the on-line skills required by JCP to meet job search requirements.'<sup>44</sup>

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<sup>38</sup> [One Parent Families Scotland, written evidence.](#)

<sup>39</sup> [One Parent Families Scotland, written evidence.](#)

<sup>40</sup> [Dr Webster, written evidence, para 9.](#)

<sup>41</sup> [CAS \(2013\) Offline and left behind](#)

<sup>42</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>43</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>44</sup> [One Parent Families Scotland, written evidence.](#)

95. There may also be cost issues regarding IT accessibility 'Some clients are unable to meet jobseeking requirements because they cannot afford the costs of their jobsearch. Often this is the result of a previous sanction.'<sup>45</sup>

96. Overall, it appears that the DWP's attitude to IT accessibility issues may be reinforcing the cycle of decline that can affect some sanctioned claimants.

97. In its report '*The role of JCP in the reformed welfare system*' published in January 2014, The House of Commons Work & Pensions Select Committee expressed concern that the Universal Jobmatch system "appears to contain a significant number of dubious, duplicate, out-of-date and inaccurately categorised job vacancies, which pose a risk to its efficiency and effectiveness as a job-search tool."<sup>46</sup>

98. As Citizens Advice Scotland claim, this may affect a significant number of the jobs contained on the system, 'However, there has been considerable criticism of the [Universal Jobmatch] system for hosting jobs which are out of date, fake, or inappropriate. Some estimates suggest that this represents one in five jobs on the site.'<sup>47</sup>

### Variability

99. There has been criticism of the variability of the implementation of the sanctions regime between JobCentre Plus offices, and even between individual advisers. The Committee raised this issue with Neil Couling:

'Dr Webster, whom you mentioned, has done some analysis that shows that there is variation between and within areas of Scotland as regards the number of claimants. Do you recognise that that inconsistency will, in itself, create unfairness?'

Neil Couling: I do, and I am concerned about it.'<sup>48</sup>

100. Mr Couling explained that a number of actions have been undertaken to counter this. They include:

- On the 8th April we launched a full quality assurance framework and checklist for the staff that work in our JobCentres, and will be implemented consistently from 28th April 2014.
- A revised service delivery model was introduced in Labour Market Decision Making in January 2014 which has started to improve links between decision makers and advisors/providers.

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<sup>45</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>46</sup> [UK Parliament Work & Pensions Select Committee, report on 'The role of JCP in the reformed welfare system.](#)

<sup>47</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>48</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Col 1467.](#)

101. The Committee very much welcomes these initiatives and hopes that they lead to a much more uniform implementation of the sanctions regime.

### **Housing Benefit**

102. It is clear that in normal circumstances housing benefit should not be affected by sanctioning. This is because the claimant retains an underlying entitlement to Income-Based JSA which is a passported benefit to housing benefit, and the claim for Income-Based JSA has not been stopped - it is just the payments that have been stopped / reduced.

103. This was confirmed by Mr Couling in his written evidence, 'Those receiving housing benefit or council tax reduction will continue to do so throughout a sanction period provided they continue to meet the JSA conditions.'<sup>49</sup>

104. However in practice, there does seem to be a significant problem with housing benefit being stopped as a result of a sanction.

105. Homeless Action Scotland explained the situation in its written evidence, 'Ensuring that this happens in practice requires a ready flow of dialogue between the housing benefit office, JobCentre Plus, and the person in receipt of benefit. There are a number of reasons why this communication may not happen as well as it should and where the constituent parts of the system are disjointed a person's benefit may be cut further, making a bad situation worse.'<sup>50</sup>

106. The prevalence of this problem is supported by evidence from the Scottish Federation of Housing Associations which undertook a survey of its members and discovered that '... seven out of 10 housing associations indicated that they had seen a marked increase in the number of tenants reporting that they were in rent arrears because of a sanction.'<sup>51</sup>

107. This situation seems to arise therefore all too commonly, either through errors in coding at the JobCentre Plus end of the process or in interpretation at the local authority revenue and benefits end of the process. This is a serious additional and unnecessary penalty for anyone who has been sanctioned as it can lead them into significant debt very quickly and may ultimately threaten their tenancy, leading to homelessness.

108. The Department of Work and Pensions should examine with local authorities the current information sharing arrangements with local authority revenue and benefit sections and seek to eradicate these errors.

### **Hardship payments**

109. There seems to be something of a disparity between the view of the Department of Work and Pensions on hardship payments and that of claimants and organisations that support them.

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<sup>49</sup> [DWP, written evidence, para 21.](#)

<sup>50</sup> [Homeless Action Scotland, written evidence.](#)

<sup>51</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1395.](#)

110. In his written evidence, Neil Couling claimed that, 'Once sanctioned, claimants are advised how they can apply for hardship payments'. However, sanctioned claimants frequently seem unaware of their existence.<sup>52</sup>

111. Our informal evidence session in Parkhead revealed that there is little information available to claimants about hardship payments or the ability to appeal a sanction decision and this view is reiterated by support organisations.

112. In its written evidence, Barnardo's Scotland explained 'In our experience there is often a lack of knowledge amongst service users about the steps to take after a sanction has been served. Sanctioned individuals are not, in our experience, routinely made aware by the DWP that they can request financial assistance (i.e. hardship payments) nor are they signposted to agencies who could provide advice or support.'<sup>53</sup>

113. Similarly, Citizen's Advice Scotland reported 'Many clients seen in Scottish bureaux are not aware of hardship payments or of the right to challenge a sanction decision.'<sup>54</sup>

114. In practice few hardship payments are made. Although, as Neil Couling explained, about 90% of applications result in a payment, in fact - as Inclusion Scotland report<sup>55</sup> - very few people who are sanctioned receive a hardship payment. 'According to an FOI response supplied by the DWP only around one person in seven (14.6%) of those who are sanctioned (or disallowed) receive a hardship payment.'<sup>56</sup>

115. The evidence that the Committee has received does suggest that the availability of hardship payments could be more effectively communicated.

## Delays

116. Sanction decisions can be challenged. However, as we learnt from our session with sanctioned claimants in Parkhead, even if a sanction decision is overturned, a claimant may not receive the money owed to them straight away or indeed in some cases for many months. Claimants therefore risk all the short-term disadvantages of being sanctioned, even when they are not at fault.

117. Barnardo's Scotland pointed to the problems that delays in decision-making can create, 'When someone has been sanctioned or had their benefits suspended, they have 28 days since the date that the DWP made a decision to sanction or suspend their benefits to apply in writing for the decision to be reassessed. This process is known as mandatory reconsideration. However, the DWP has no written guidance about the length of time in which a mandatory reconsideration should take place and a claimant notified of such a decision. The resulting delay

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<sup>52</sup> [DWP, written evidence, para 20.](#)

<sup>53</sup> [Barnardo's Scotland, written evidence.](#)

<sup>54</sup> [Citizens Advice Scotland, written evidence.](#)

<sup>55</sup> [Inclusion Scotland, written evidence, para 3.5.](#)

<sup>56</sup> [Inclusion Scotland, additional information, FOI request.](#)

and uncertainty can cause considerable problems for the claimant who is left in limbo during this period.<sup>57</sup>

118. It would seem reasonable that there should be a deadline for decisions on mandatory reconsideration by the Department of Work and Pensions.

### Cost Shunting

119. The Committee is concerned that, whilst the new sanctions regime is undoubtedly reducing the Department of Work and Pensions expenditure, it is in effect shunting costs onto other organisations.

120. This is certainly a concern of organisations in the field. The Scottish Council for Voluntary Organisations, representing the majority of the third sector, believes that, 'the application of sanctions represents cost shunting to the third sector in Scotland – carer and disability organisations, housing associations, Citizens' Advice Bureaux, condition specific organisations, and mental health charities all report increased demand for support and help as a direct result of welfare reforms.'<sup>58</sup>

121. The same point was made by Jim McCormick of the Joseph Rowntree Foundation in oral evidence, 'The DWP budget might make an efficiency gain in the narrow sense of driving down the JSA budget in the short term, but we know that there is a lot of cost shunting to devolved local budgets, some of which are significant stuff, such as accident and emergency budgets, addictions budgets, policing budgets and Scottish Prison Service budgets.'<sup>59</sup>

122. Peter Kelly of the Poverty Alliance reported that many of these are new costs on these organisations, 'Some of the impact [of welfare reforms] is being spread out into parts of the voluntary sector that never really had to deal with such issues in the past.'<sup>60</sup>

123. Citizens Advice Scotland were able to put numbers to the increasing workload that welfare reform is generating: 'Welfare and benefits issues remain the biggest area of work for the Scottish Citizens Advice Bureaux (CAB) network. It is also an increasing area of work. Total Benefit and Tax Credit issues for CAB have increased 7.2% in the last three years and in 2012-13 it made up 38% of CAB work..... Between 2011/12 and 2012/13 there was an 18% increase in JSA issues dealt with in bureaux. This was largely driven by the increase in sanctions issues, which rose by 43%. Based on the first three quarters of 2013/14, CAS is projecting a similar increase to around 20,000 JSA issues dealt with in bureaux this year. We again believe this increase to be largely due to sanctions...'<sup>61</sup>

124. It does seem to be the case that the new benefit sanctions regime is resulting in significant increased costs for other organisations that deal with claimants.

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<sup>57</sup> [Barnardo's Scotland, written evidence.](#)

<sup>58</sup> [SCVO, written evidence.](#)

<sup>59</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1408.](#)

<sup>60</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1411.](#)

<sup>61</sup> [Citizens Advice Scotland, written evidence.](#)

## Reconsiderations and appeals

125. A number of commentators have suggested that failings in the new sanctions regime are reflected in the degree to which challenges against sanctions are successful.

126. In February 2014, the DWP discovered a data issue regarding outcomes from JSA appeals. The effect of this was that a higher number of reviews and appeal outcomes were being recorded as 'decision not to apply sanction (non-adverse)' when they were, in fact 'decision to apply sanction (adverse)'. The effect of this mis-recording was more significant on appeal outcomes than for review outcomes. Corrected data was published on 14 May. We recognise that some of the comments that were made to Committee may have been based on previously incorrect DWP data. However, we are still concerned by the revised data.

127. Neil Couling's written submission to the Committee referred to intermediate sanctions. He reported, "In these cases 83% of referrals are upheld with a further 6% cancelled, for reasons like the claimant has left benefit. So really 9 out of 10 referrals are right. Of the adverse cases, 21% (1 in 5) ask for a reconsideration. Of these 43% are overturned, but often because the claimant provides new information."<sup>62</sup>

128. However, the figures may be read in a number of ways. The data for all types of sanctions together (not just intermediate sanctions) for Scotland shows that of all decisions that are reviewed<sup>63</sup> a high proportion, 41%, result in no sanction being applied i.e. the original sanction decision is overturned. Since October 2013, claimants who wish to appeal a decision to apply a sanction have had to seek a mandatory reconsideration. As yet data on mandatory reconsiderations has not been included in the published statistics.<sup>64</sup>

Figure 6: Outcomes of Reviews and Appeals – Scotland, new regime

Type of Decision	Number of decisions	Outcome of decision			
		Sanction Applied	No sanction applied	Cancelled	Reserved
Original	186,257	40%	23%	30%	6%
Reviewed	34,915	57%	41%	3%	0
Appealed	2,696	78%	22%	1%	0

Note<sup>65</sup>

<sup>62</sup> [DWP, written evidence, para 29.](#)

<sup>63</sup> Previously referred to in the statistics as reconsidered.

<sup>64</sup> Source: DWP Quarterly Statistical Summery May 2014, para 8: the effect of mandatory reconsiderations not being included with the JSA/ESA sanction decision statistics for this release is estimated to be negligible.

<sup>65</sup> Reviewed decisions were previously called reconsidered decisions. Data for mandatory reconsiderations has not yet been published by the DWP.

129. The situation appears to be even more acute with regard to some vulnerable groups. As One Parent Families Scotland report (based on the older data), 'What is worrying for us is that research and stats are showing that a high percentage of decisions to sanction lone parents are overturned. The latest figures show that 64 per cent of high-level sanctions of lone parents are overturned on appeal.'<sup>66</sup>

130. The fact that so few claimants appeal in the first place also raises some issues. As Ken Macintosh reported from the meeting with sanctioned claimants in Parkhead, 'Those around the table who had been sanctioned thought that, even though things were felt to be wrong, lots of people did not make appeals and just accepted that that was the way it was.'<sup>67</sup>

131. Dr Webster believed that this problem partly derives from the lack of independence of the reconsideration system. 'Many of the problems arise from the abolition by the Social Security Act 1998 of independent adjudication. Since then, decisions on and reconsiderations of sanctions have been acts of the Secretary of State, and JobCentre staff are merely his agents. The judicial system provides only very weak checks. Less than one third of sanctioned claimants ask even for internal reconsideration by DWP, and only about 2% go to a Tribunal. Involvement by the Courts is rare.'<sup>68</sup> It is clear from the research evidence that the great majority of claimants find the appeal process too difficult'<sup>69</sup>

### Targets?

132. Some commentators have claimed that JobCentre Plus offices are routinely given targets for sanctioning. The evidence on this issue is conflicting in the extreme.

133. On the one hand, Neil Couling was unequivocal in his view both in his written and oral evidence:

'This is why there can never be a target for sanctions, and why the Coalition Government abandoned the practice of benchmarking in 2011. That there are targets is a commonly levelled charge, which was investigated and published in a report, 'Conditionality and Sanctions' to the Secretary of State for Work and Pensions'<sup>70</sup>. And the recent Select Committee enquiry into JobCentre Plus concluded targets did not exist.'<sup>71</sup>

'There are no targets for this applying sanctions at a national or local level.'<sup>72</sup>

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<sup>66</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1403.](#)

<sup>67</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1388.](#)

<sup>68</sup> In the most recent episode, the Reilly-Wilson case, the government reacted to losing its case in the Court of Appeal by passing a retrospective Act (the Jobseekers (Back to Work Schemes) Act 2013) to set aside the Court judgment. The Supreme Court has since upheld the Court of Appeal's ruling and the final outcome of the case remains to be determined.

<sup>69</sup> [Dr Webster, written evidence, para 9.](#)

<sup>70</sup> [DWP, written evidence, para 15.](#)

<sup>71</sup> [Report to Secretary of State for Work and Pensions, Conditionality and Sanctions](#)

<sup>72</sup> [DWP, written evidence, para 22.](#)

134. 'My report [for the Secretary of State on the existence of targets] pulls no punches about this: there have been isolated examples in which JobCentres have misunderstood the instructions and have put local targets in place. Where we have found that to be the case, we have taken quick action to remind them of our policy and of what we want them to do.'<sup>73</sup>

135. The Committee asked 'You can categorically tell us that you are not driving a target to have a set proportion of people going through the system who have to be sanctioned.'

Neil Couling: 'Yes—exactly'.<sup>74</sup>

136. On the other hand, a number of agencies claim that targets do exist in practice:

137. One Parent Families Scotland: 'One Parent Families Scotland staff have been told by JCP Advisers anecdotally that JCP have targets for sanctions.'<sup>75</sup>

138. Bill Scott, Inclusion Scotland: 'Therefore there is a bit of sophistry within DWP when it says that no targets exist, no league tables exist and so on. In fact, that is what is happening in practice. I have messages on my mobile phone from Public and Commercial Services Union members who have been taken into disciplinary meetings to be told that they are being disciplined because they have not imposed enough sanctions. Other PCS members have been told that they will not be getting their annual uplift in pay—their increment—because they have not sanctioned sufficient people in the last year.'<sup>76</sup>

139. A recent survey by the PCS union of its members indicated that 25% believed that they had been given a target and 82% felt that they were under pressure to suggest more people who could be sanctioned.<sup>77</sup>

140. The Committee therefore has some sympathy with the view expressed by Dr Webster that, 'there is now a deliberate policy ...to drive up the level of sanctions to previously unheard-of levels through managerial pressure on JobCentre staff. In practice, staff now have very little scope for discretion and are frequently driven to impose sanctions on any excuse.'<sup>78</sup>

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<sup>73</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Col 1453.](#)

<sup>74</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(29 April 2014\), Col 1454.](#)

<sup>75</sup> [One Parent Families Scotland, written evidence.](#)

<sup>76</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1391.](#)

<sup>77</sup> [http://www.pcs.org.uk/en/departments\\_for\\_work\\_and\\_pensions\\_group/dwp-news.cfm/results-of-the-pcs-membership-survey-on-conditionality-and-sanctions](http://www.pcs.org.uk/en/departments_for_work_and_pensions_group/dwp-news.cfm/results-of-the-pcs-membership-survey-on-conditionality-and-sanctions)

<sup>78</sup> [Dr Webster, written evidence, para 11.](#)

## VULNERABLE GROUPS

141. During the course of our work we have uncovered evidence which suggests that the new sanctions regime is impacting hardest on some of the most vulnerable groups of claimants.

142. The Scottish Council for Voluntary Organisations argued that 'The sanctioning of claimants has driven greater inequality and penalises those who are already vulnerable or in poverty.'<sup>79</sup>

143. Specifically, the Committee has received evidence that suggests that disabled people, lone parents, and young people – particularly those leaving care – have been disproportionately affected by the new regime.

### Disabled People

144. Disabled people have increasingly been drawn into the new sanctions regime through their entry into Employment Support Allowance following a work capability assessment.

145. Inclusion Scotland argued that '... the interaction between the Work Capability Assessment regime and conditionality sanctions is disproportionately impacting on disabled people – particularly those with mental health issues, learning difficulties and cognitive impairments such as autism.'<sup>80</sup>

146. There is some evidence to support this view. As inclusion Scotland points out 'A further 22,840 of those sanctioned [ between September 2012 and September 2013 ] were in the Work Related Activity Group for Employment Support Allowance (ESA). This is the highest annual total for that group since sanctions were introduced for them in 2008.'<sup>81</sup>

147. In addition, as Dr Webster reported 'New data contained in DWP Freedom of Information response 2014-79 show that since October 2011, on average the rate of sanctions for ESA WRAG claimants with mental and behavioural conditions has been one third (33%) higher than for those with other conditions.'<sup>82</sup>

148. As Inclusion Scotland points out, 'Thus hundreds of thousands of sick and disabled people are, wrongly, being found fit for work and forced to claim JSA. When they do claim JSA they are unable to meet the conditions placed on them because their impairments limit their work search activities and their suitability for certain types of employment or full time work.'<sup>83</sup>

149. The Committee is particularly concerned about the number of disabled people, in particular those with mental health difficulties, who are now being drawn into the sanctions system.

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<sup>79</sup> [SCVO written evidence, 1 April 2014](#)

<sup>80</sup> [Inclusion Scotland, written evidence, para 4.3.](#)

<sup>81</sup> [Inclusion Scotland, written evidence, para 2.4.](#)

<sup>82</sup> [Dr Webster, written evidence, para 17.](#)

<sup>83</sup> [Inclusion Scotland written evidence para 4.6.](#)

## Lone Parents

150. The Department of Work and Pensions points out that provision is made for lone parents within the regulations, 'Claimants are only asked to meet reasonable requirements, taking into account their circumstances and capability, including health conditions, disability and caring responsibilities. For example a lone parent or main carer with a child under 13 May be able to restrict their availability for work to jobs that can fit around school hours.'<sup>84</sup>

151. This is reflected in One Parent Families Scotland's written evidence 'If you have caring responsibilities, you can restrict the total hours you are available to less than 40 hours a week if: you are available for employment for at least 16 hours a week and for as many hours as your caring responsibilities permit; and you have a reasonable chance of securing employment despite the restricted hours you are available. You do not have to show this if you have caring responsibilities for a child under 16 and the Advisor decides that you would not satisfy this condition because of the type and number of job vacancies within daily travelling distance of your home.'<sup>85</sup>

152. However, the lone parents who had been sanctioned and that we spoke to in Parkhead believed that they can face particular issues e.g. the ability to look for work and the type of work they can apply for being limited by childcare issues. They reported that some lone parents have been discouraged from taking on voluntary work even though this was regarded by them as valuable.

153. It is also the contention of One Parent Families Scotland that the rules are not being honoured, 'Lone Parent Flexibilities are not being adhered to, in that lone parents are being told to apply for jobs which they would find difficult to sustain given their existing caring commitments.'<sup>86</sup>

154. This is reflected in the experience of agencies on the ground. 'OPFS staff working with vulnerable families in local communities are reporting that there has been a dramatic increase in numbers of lone parents who have been wrongly sanctioned.'<sup>87</sup>

155. This change in the situation of lone parents seems to have been brought about principally by the change in status of lone parents within the benefits system, 'The big change for lone parents is that they have to claim jobseekers allowance when their child is five, which means that they have to be available for work. Thousands of lone parents have been brought into the sanctions system. They were previously affected by sanctions on income support, but there is now the impact of sanctions on Jobseekers Allowance.'<sup>88</sup>

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<sup>84</sup> [DWP, written evidence, para 16.](#)

<sup>85</sup> [One Parent Families Scotland, written evidence.](#)

<sup>86</sup> [One Parent Families Scotland, written evidence.](#)

<sup>87</sup> [One Parent Families Scotland, written evidence.](#)

<sup>88</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1401.](#)

156. The change in status is also having an impact on the numbers. A Freedom of information request has revealed that –in Scotland, over a 12-month period, just under 10,000 lone parents were sanctioned and had their benefit reduced.<sup>89 90</sup>

157. This leads to what One Parent Families Scotland have termed the ‘lone parent trap’ – ‘A big thing for us is that lone parents say that they are being forced into low-paid work. Parents who have degrees, for example, and are well qualified to move into well-paid employment are being told, “I’m sorry. You’re a lone parent jobseeker. These vacancies are available and you have to apply for so many a week. That is the route that you must go down.” It is very much a work first approach. Lone parents are trapped in the sense that, when children are under five and the parent wants to access training and education, it is a challenge for them to get childcare to enable that. When the child reaches five, the doors to access training, education and higher education are closed, because the parent has to be available to work and to sign on.’<sup>91</sup>

### Children Released from Care

158. Sanctions impact disproportionately on young people, and, it seems, particularly on those who have left the care system. Young people aged 18-24 incur sanctions at twice the rate of other groups.<sup>92</sup>

159. It also appears that vulnerable young people are even more at risk of being sanctioned. In evidence to the Committee, Barnardo’s Scotland reported ‘We looked at our records from one of our Scottish services, which works with a large number of vulnerable young people in a single local authority area. Monitoring information collected from the first quarter has so far indicated that 19 of 61 service users have experienced sanctioning of their benefits at some level. This equates to 31% of our current service users’.

160. Mark Ballard, Barnardo’s Scotland: ‘One of the things that shocked me when I was talking to our services was that someone can be young and homeless but not considered to be a vulnerable person who is exempt from sanctions. What possible purpose does it serve to sanction a young person who is homeless?’<sup>93</sup>

161. This does appear to the Committee to be one of the situations where the sanctioning of an individual is likely to decrease their chances of finding work rather than increase it.

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<sup>89</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1401. DWP](#)

<sup>90</sup> [Fol No 4873 / https://www.whatdotheyknow.com/body/dwp](#) Extrapolated to 12 months from 8 months figure of 2,100 from Oct 2012 – June 2013

<sup>91</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1403.](#)

<sup>92</sup> [Dr Webster, written evidence, para 17.](#)

<sup>93</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1399.](#)

## BETTER OPTIONS

### Small Scale Improvements

162. In evidence, Citizens Advice Scotland suggested a number of small scale improvements that could be made to the sanctions system. The Committee is happy to endorse these proposals, whilst noting that the final one appears to have been addressed.

1. People should get a written warning at the first breach of the Claimant Commitment before escalating to a sanction to make sure the sanction acts as a deterrent and not a punishment.
2. Claimants must be notified formally as soon as there is a query about a disallowance or sanction which could lead to their benefit being stopped.
3. Claimants should receive written notification at least ten working days prior to a sanction being applied, and should be told then of the reason for the sanction.
4. Outgoing phone calls and texts from the DWP to claimants should display a recognisable number, or ideally a name such as "JobCentre Plus" so that claimants know who the communication is from.
5. The initial letter and explanations of the process to ESA claimants must be improved so that claimants are clear about the requirements on them and the consequences of not meeting them.
6. DWP should examine communication practice across JobCentres to ensure communication procedures are carried out consistently and all claimants receive the correct information in a timely manner.
7. Specific attention should be paid to how the issues set out here (including IT access for jobsearch, notifications of appointments, how to meet the associated costs of jobsearch requirements following an initial sanction, and the clarity over whether targets for jobsearch tasks are on a weekly or fortnightly basis) are communicated and handled when working out a Jobseekers Agreement or Claimant Commitment with jobseekers, both on an individual claimant level and as a broader policy direction.
8. The DWP should gather good practice of JobCentres communicating in effective and innovative ways with claimants, and look at how it can be rolled out more widely across the country.
9. In order for the DWP to comply with its duties under the Equality Act 2010, they should ensure that they proactively identify claimants who have a disability under that Act, particularly clients with conditions that may affect their capacity to understand and comply with the requirements placed on them. DWP must put in reasonable support and adjustments to ensure that they do not get penalised by the sanctions regime for a reason relating to their disability.

10. More effort must be put into communicating to claimants why jobsearch requirements are meaningful, or requirements should be revised to ensure they do genuinely support people to find work.
11. Sanctions should only be applied appropriately, with discretion and as a last resort, to deter people from consistently and deliberately refusing to engage with jobseeking requirements.
12. There needs to be a fundamental and public review of the purpose of the sanctions regime. This review should examine the reasons behind the huge increase in sanctions in recent months and years, the effectiveness of the current regime in meeting its stated purposes, and what if any relationship there is between sanctions, food poverty and destitution.
13. Scottish Welfare Fund guidance should clarify that grants can be awarded where a claimant has been sanctioned if the claimant needs money to meet the living expenses of dependent children, or if there are other circumstances which means a claimant is particularly vulnerable.

### Alternatives

163. There are alternatives to the current method of organising the sanctions regime. Some of these are even being run by the Department of Work and Pensions itself.

164. As Dr Jim McCormick of the Joseph Rowntree foundation told the committee 'One troubling point is that even the DWP's own evidence suggests that there is a better way. When the DWP uses its power to pilot and test alternatives that are within the current system's parameters but involve different implementation and different local operating cultures, we sometimes see substantially better outcomes.'<sup>94</sup>

'An initiative on the border of East London and Essex is being evaluated. In that area, JobCentre Plus staff are taking a more positive approach to conditionality. The focus is on working with claimants on the steps that they will take in the next two weeks, the next month and so on to seek work and do training. That is a more forward-looking and goal-orientated approach than the compliance approach that is about the previous fortnight. That simple change of mindset has produced 20 per cent better sustainable job outcomes and many fewer sanctions.'<sup>95</sup>

165. The Committee has seen at first hand some of the damaging effects that the current sanctions are having. They are in line with those reported by Dr Webster, 'They undermine health, family and friends suffer hardship and damaged relationships, they cause homelessness, drive people to Food Banks, increase crime, push people into worse jobs to which they are unsuited (with lasting ill-

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<sup>94</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1408.](#)

<sup>95</sup> [Scottish Parliament Welfare Reform Committee, Official Report, \(1 April 2014\), Col 1408.](#)

effects), undermine the support work of JobCentre Plus, and make claimants reluctant to complain about malpractice by officials, contractors or employers.<sup>96</sup>

166. The Welfare Reform Committee accepts the need for conditionality within the benefits system. However our position remains that sanctions must only be used as a last resort for those who have consistently and deliberately refused to engage with jobseeking requirements without good reason. If sanctions are to be used, then we believe they should be applied appropriately and consistently and with greater levels of discretion and support. It is clear that the current operation of the sanctions regime is not in line with these principles and requires review.

167. A number of changes are suggested in this report. The Welfare Reform Committee believes however that more important than these is a sea change in the culture of the policy from punitive to supportive.

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<sup>96</sup> [Dr Webster, written evidence, para 15.](#)

**ANNEXE A: EXTRACT FROM MINUTES OF THE WELFARE REFORM COMMITTEE**

**6<sup>th</sup> Meeting, 2014 (Session 4)**

**Tuesday 1 April 2014**

**Benefit sanctions:** The Committee took evidence, in round-table format, from—

Mark Ballard, Head of Policy, Barnardo's Scotland;

Beth Reid, Policy Officer, Citizens Advice Scotland;

Bill Scott, Director of Policy, Inclusion Scotland;

Dr Jim McCormick, Scotland Adviser, Joseph Rowntree Foundation;

Marion Davis, Policy & Research Advisor, One Parent Families Scotland;

John Downie, Director of Public Affairs, Scottish Council for Voluntary Organisations;

David Ogilvie, Policy Manager, Scottish Federation of Housing Associations;

Peter Kelly, Director, The Poverty Alliance;

Dr David Webster, Honorary Senior Research Fellow - Urban Studies, University of Glasgow.

**Benefit Sanctions:** The Committee considered evidence it heard on benefit sanctions at its round-table discussion.

The Committee agreed to pursue information in relation to statistics on regional variation in Job Centre Plus application of sanctions.

Inclusion Scotland agreed to provide the Committee with a freedom of information request which it had submitted to the Department for Work and Pensions in relation to the uptake of hardship payments of those who have been sanctioned.

The Committee agreed to produce a report on benefit sanctions and also a report on food banks.

**7<sup>th</sup> Meeting, 2014 (Sessions 4)**

**Tuesday 29 April 2014**

**Benefit sanctions - DWP:** The Committee took evidence from—

Neil Couling, Work Services Director, Department for Work and Pensions.

Neil Couling agreed to provide the Committee with statistics on the amount of compensation that has been paid out for incorrect benefit sanction decisions. Neil Couling also agreed to provide the Committee with the quality assurance framework and checklist for jobcentre staff which was referred to in the evidence session.

**9<sup>th</sup> Meeting, 2014 (Sessions 4)**

**Tuesday 27 May 2014**

**Benefit sanctions (in private):** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft at its next meeting.

## **ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE**

**25 March 2014, fact-finding visit to Citizens Advice Bureau in Glasgow**

[Note of visit](#)

**6<sup>th</sup> Meeting, 2014 (Session 4) Tuesday 1 April 2014**

Written evidence

[Barnardo's Scotland](#)

[Citizens Advice Scotland](#)

[Homeless Action Scotland](#)

[Inclusion Scotland](#)

[Additional information provided by Inclusion Scotland](#)

[Joseph Rowntree Foundation](#)

[One Parent Families Scotland](#)

[Scottish Council for Voluntary Organisations](#)

[Scottish Federation of Housing Associations](#)

[Dr David Webster](#)

[SPICe paper – benefit sanctions](#)

[Oral Evidence](#)

Barnardo's Scotland

Citizens Advice Scotland

Inclusion Scotland

Joseph Rowntree Foundation

One Parent Families Scotland

Scottish Council for Voluntary Organisations

Dr David Webster

**7<sup>th</sup> Meeting, 2014 (Session 4) Tuesday 29 April 2014**

Written Evidence

[Department for Work and Pensions](#)

[Oral Evidence](#)

Department for Work and Pensions

Supplementary Written Evidence

[Department for Work and Pensions](#)

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP  
by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA

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ISBN 978-1-78457-636-3

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