

# Smarter Sanctions



Sorting out the system

Guy Miscampbell



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## About the Author

**Guy Miscampbell** joined Policy Exchange in August 2012 as an intern with the Economics and Social Policy Unit, before becoming a Research Assistant in November 2012 and a Research Fellow in October 2013.

Prior to joining Policy Exchange he read Economics and Politics at Durham University. Whilst there he interned in the office of United States Congressman Don Young, as well as winning the inaugural Global Debate and Public Policy Championship.

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# About the Economics and Social Policy Unit

By encouraging responsibility by individuals, government and business we believe that growth can be secured, public services improved and better outcomes delivered for families across the U.K.

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# Executive Summary

## A yellow card for benefits

- Each month around 5% of JSA recipients are sanctioned. After reconsideration and/or appeal, 29% of those who receive their first 'lower' tier sanction have it overturned, meaning around 5,600 of them a month are wrongly sanctioned.
- To reduce hardship, instead of removing benefits for four weeks, we propose that this sanction is replaced with trials of benefit payments on card and daily sign in.
- We also suggest much harsher punishments for those who are repeatedly sanctioned. This would help create a more responsive system and make wrongful sanctioning less problematic.

Sanctions hold an integral, but often controversial place within modern welfare systems. Their purpose is twofold; attempting to ensure compliance with the conditionality regime, and punishing noncompliant behaviour. Through this, they aim to create better employment outcomes for claimants in the longer term.

The United Kingdom's sanctions system does not always work perfectly. In several cases that this report identifies, it is insufficiently responsive to the circumstances, either being too lenient on those who repeatedly flout the system or too stringent on those who may have simply made a genuine mistake.

This report estimates that nearly 5,600 claimants per month receive a first 'lower tier' sanction violation which is later overturned. Whilst they eventually receive the full sum in payment, the delay while appeals and requests for reconsideration take place can be problematic for a family or individual's cash flow. We estimate that this is true for 29% of those in this group who are sanctioned, meaning an estimated 68,000 people a year wrongfully experience a sanction in this category. Given that some estimates suggest that 43% of those referred to food banks are there due to benefit stoppage or being refused a crisis loan, this is a clear area of policy concern.

## Yellow cards

This report recommends that instead of removing benefits, the first sanction for less serious instances of noncompliance should be replaced by the payment of JSA on a benefit card (a 'yellow card') for the duration of the sanction. This would have to be picked up from the Jobcentre, fostering renewed contact with the sanctioned individual. If they did not re-engage then they would be unable to pick up the card and access benefits.

With existing technology it is unlikely that access to certain goods could be restricted at least initially. Therefore the card would use a combination of social pressure and re-engagement to attempt to alter behaviour without causing

hardship. We also recommend that daily sign in at JCP be piloted as an additional non-financial sanction, both with and separate from the use of yellow cards. The goal is to provide the opportunity for those who were wrongly sanctioned to not suffer from an unresponsive system, and for those who were correctly sanctioned to have a more positive 'second chance'.

### Making sanctions tougher

We also note that sanctions should be more punitive for those who are repeatedly attempting to avoid the conditionality regime. Therefore, we recommend a series of cumulative increases in sanction duration for those who consistently fail to comply with the conditionality regime. This reflects an aim to make sanctions less punitive for those who may have made genuine mistakes, and more harsh on those who are consistently defying the conditionality regime.

Alongside these suggestions, we make a series of recommendations about how greater information on the effectiveness of sanctions could be gained, with a particular focus on understanding the increasing number of 'reserved' or 'cancelled' decisions. Doing so would be a key part of identifying where and how the sanctioning process can be improved.

### Appeals

Our recommendations may have wider reaching effects on the behaviour of claimants, could also make the reconsideration and appeals process more effective. The proposed changes may help to disincentivise frivolous appeals, as well as making it easier to launch legitimate appeals. We suggest that whilst claimants receive their yellow card, jobcentre plus staff aid them in requesting any reconsideration or appeal, making the process simpler for claimants, as well as discouraging challenges with little merit.

Ultimately, sanctions occupy an important part of the welfare system, and are integral to enforcing conditionality upon claimants. Making them as effective and fair as possible is of the utmost importance. By making them more adaptive, it may be possible to improve the outcome and experience for claimants, change behaviour, and reduce hardship. It is entirely possible that smarter sanctions will be better sanctions, and it is certainly an approach worth trying.



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# 1

## The Role of Sanctions

*“Sanctions are essential to enforcing mandatory participation, because participation is not truly mandatory unless there is a consequence for not participating.”<sup>1</sup>*

### Why do we have sanctions?

Sanctions hold an integral but often contentious place within modern welfare systems. Whilst the popular view might be that they exist to punish cheating the system, their reach and purpose is more nuanced. Through the threat that sanctions might be applied, the welfare state aims to enforce the conditions claimants must fulfil in return for their benefits (‘conditionality’), encourage participation in back-to-work schemes, and ensure there are consequences for those who do not comply with the requirements placed upon them.

Their design is rooted in the concept of reciprocity – namely that in return for the receipt of benefits, claimants must do all they can to find work and reduce their dependence on the state. Through this process, sanctions ensure that money spent on welfare is not wasted, and that it is instead used to encourage beneficiaries to return to work as quickly and sustainably as possible. A report from the Social Security Advisory Committee in 2009 summarised that:

*“All benefits have eligibility conditions; and claimants have responsibilities to report relevant changes in circumstances and not to defraud the system. So responsibilities have always been part of the social security system in the U.K.”<sup>2</sup>*

A key part of these responsibilities is making genuine efforts to find employment. These can vary from preparatory tasks to having to apply for a certain number of jobs, or undertaking a level of work experience or activity. Sanctions aim to encourage participation in these schemes and enforce the conditionality regime. In summary, they:

*“Are intended to support program goals, but how they advance those goals depends on the details of sanction policy and implementation.”<sup>3</sup>*

Therefore, sanctions are not an isolated piece of welfare policy, but rather an integral part of a system which needs to enforce compliance with schemes to help claimants back to work, and to ensure fairness in the system by removing benefits from those who do not make reasonable attempts to find employment. By having a negative outcome for the claimant if they are sanctioned, the goal is to make compliance the preferable option. In summary:

1 Besharov, D. & Germanis, P. ‘Full-Engagement Welfare in New York City – Lessons for TANF’s Participation Requirements’, 2004.

2 Griggs, J. & Bennett, F. ‘Rights and Responsibilities in the Social Security System’, Social Security Advisory Committee Occasional Paper No. 6, 2009.

3 Kauff, J, et al. ‘Using Work-Orientated Sanctions to Increase TANF Program Participation – Final Report’, Mathematic Policy Research, 2007.

“Sanctions provide the negative incentive. Sanction policies penalize individuals on public assistance who do not follow the rules.”<sup>4</sup>

In an ideal world sanctions would be unnecessary as claimants would always comply with the conditions of their benefit receipt. Unfortunately, this is not the case. Without them, the conditionality regime would have no ‘teeth’ and would not be adhered to. There would also be a fundamental issue of unfairness as otherwise undeserving claimants would be able to consistently exploit the welfare system.

The concept of conditionality has widespread support across the political spectrum, forming a vital part of much of the coalition’s welfare policy as well as the welfare policy of the 1997–2010 Labour government. Most recently, a commitment to conditionality was re-emphasised by the Shadow Secretary of State for Work and Pensions, Rachel Reeves who stated that:

“There must always be conditionality for benefits.”<sup>5</sup>

Given the necessity of sanctions, questions must be asked as to how they can be made most effective. At their heart, sanctions are one part of a wider system which seeks to get people into sustainable work. Achieving this is the most important criteria.

## How does the process work?

Historically sanctions have existed from the introduction of unemployment benefit in 1913<sup>6</sup> and have undergone numerous reforms since then, most recently resulting in new regulations being introduced by the 2012 Welfare Reform Act.<sup>7</sup>

In basic terms, sanctions can be applied to those who are receiving Jobseeker’s Allowance or the Employment and Support Allowance work-related activity group. The reasons that a sanction can be imposed include:

- Failure to attend an adviser interview;
- Refusal or failure to carry out a Jobseeker direction;
- Failure to participate in an employment programme or training scheme;
- Not actively seeking employment;
- Not being available for work;
- Leaving employment voluntary;
- Losing employment through misconduct;
- Refusal of employment;
- Failure to participate in mandatory work activity.<sup>8</sup>

If one or more of these actions occurs, a doubt about that claimant will be referred to a separate ‘decision maker’ who will then make a ruling as to whether the decision is ‘adverse’, ‘not adverse’, ‘reserved’, or ‘cancelled’. An ‘adverse’ decision results in a sanction being imposed, whilst a ‘not adverse’ decision does not. A ‘reserved’ decision is made when a claimant has stopped claiming between the referral and decision while a ‘cancelled’ decision indicates that the claimant has ceased to claim benefits at the time of referral.<sup>9</sup>

4 Blank, R. ‘U.S. Welfare Reform: What’s Relevant for Europe?’, CESifo Economic Studies, 2003.

5 Toynbee, P. ‘Rachel Reeves needs the thickest skin in the shadow cabinet’, The Guardian, 2013 – Accessed at: <http://www.theguardian.com/commentisfree/2013/oct/22/rachel-reeves-thickest-skin-labour-best-hope>.

6 Bee, A. ‘Sanctions in the benefit system: Evidence review of JSA, IS and IB sanctions’, Social Security Advisory Committee, Occasional Paper No. 1, 2006.

7 The Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012, Statutory Instruments, UK Parliament, 2012 – Accessed at: [http://www.legislation.gov.uk/ukSI/2012/2756/pdfs/ukSI\\_20122756\\_en.pdf](http://www.legislation.gov.uk/ukSI/2012/2756/pdfs/ukSI_20122756_en.pdf).

8 Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013, Department for Work and Pensions, 2013.

9 Webster, D. ‘Briefing – JSA/ESA Sanctions Statistics Release’, 2013.

If the claimant disagrees with an ‘adverse’ decision, they then can ask for reconsideration, or appeal the decision. Whilst appeals generally follow unsuccessful reconsiderations, this has not always been the case. To streamline the process, in October 2013 the process of ‘mandatory reconsideration’ was introduced, meaning that reconsideration must be undertaken prior to an appeal.

“Under the current system, wrongly applied sanctions can cause hardship, stress, and other negative outcomes for the most vulnerable families”

The stated aim is to help resolve disputes without an appeal, hopefully arriving at the correct decision as quickly as possible.<sup>10</sup>

The welfare to work system includes a number of different private and third-sector actors providing referrals and services. For example, with the introduction of sanctions into skills conditionality in August 2011, those providers became involved in the sanctioning process.<sup>11</sup> Similarly, the launch of the Work Programme has meant the involvement of prime contractors and subcontractors. Whilst this can mean a separate body is raising doubts about conditionality, it does not affect the process, with doubts still being referred to external decision makers.

The welfare to work system includes a number of different private and third-sector actors providing referrals and

10 Department for Work and Pensions, Appeals Reform – An Introduction, 2013.

11 Department for Work and Pensions & Department for Business, Innovation and Skills, ‘Skills Conditionality – Public consultation’, 2010.

12 Mason, P, ‘The growing demand for food banks in breadline Britain’, BBC News, 2012.

13 Clydebank Post, ‘Mum’s fears after benefits stopped’, 2013 – Accessed at: [http://www.clydebankpost.co.uk/news/roundup/articles/2013/03/22/450852-mums-fears-after-benefits-stopped-/#.UU8H5\\_Kh6oM](http://www.clydebankpost.co.uk/news/roundup/articles/2013/03/22/450852-mums-fears-after-benefits-stopped-/#.UU8H5_Kh6oM). twitter.

14 House of Commons Hansard, 19th March 2013, Comments from Caroline Lucas MP – Column 836.

15 House of Commons Hansard, 19th March 2013, Comments from Steve McCabe MP – Column 846.

16 Nottingham Post, ‘Post helps job hunter win appeal’, 2013 – Accessed at: <http://www.nottinghampost.com/Post-helps-job-hunter-win-appeal/story-19155342-detail/story.html>.

17 Daily Mail, ‘Unemployed graduate has benefits stopped after missing a job centre appointment because she was at an interview’, 2013, Accessed at: <http://www.dailymail.co.uk/news/article-2347281/Unemployed-graduate-benefits-stopped-missing-job-centre-appointment-INTERVIEW.html>.

## What is the problem?

What sanctions should consist of and how they should be applied is an issue which has not been completely resolved, and should be discussed in the context of an evolving welfare system. On the one hand, wrongfully applied sanctions can cause hardship for families, and the system for resolving them can lead to short-term cash flow issues. On the other, there is a small but significant ‘hard core’ of claimants for whom sanctions are currently not as effective at driving behaviour as they need to be.

There are a number of reasons to believe this situation could be improved. Under the current system, wrongly applied sanctions can cause hardship, stress, and other negative outcomes for the most vulnerable families. With some 874,000 adverse decisions being made between October 2012 and September 2013, and over 146,000 of them being successfully appealed or reconsidered it is clear that possibility of wrongly applied sanctions, and what their effects might be, is an important one. With some estimates suggesting that 43% of those referred to food banks are there due to benefit stoppage or being refused a crisis loan,<sup>12</sup> there is not currently an adequate safety net for those who are wrongly sanctioned.

Whilst there is a system to appeal and reconsider the decision, this merely means the benefits will be reimbursed retrospectively, doing little to assuage immediate cash flow issues. Similarly, while there are sources of support available, they can be inconsistent and hard to access. Given the possibility of sanctions being incorrectly applied due to events such as being late for an appointment,<sup>13</sup> unable to afford to attend a placement,<sup>14</sup> conflicting obligations,<sup>15</sup> errors on the part of providers,<sup>16</sup> or even attending a job interview,<sup>17</sup> it is especially important that some attention is paid to mitigating the effect of wrongly applied sanctions.

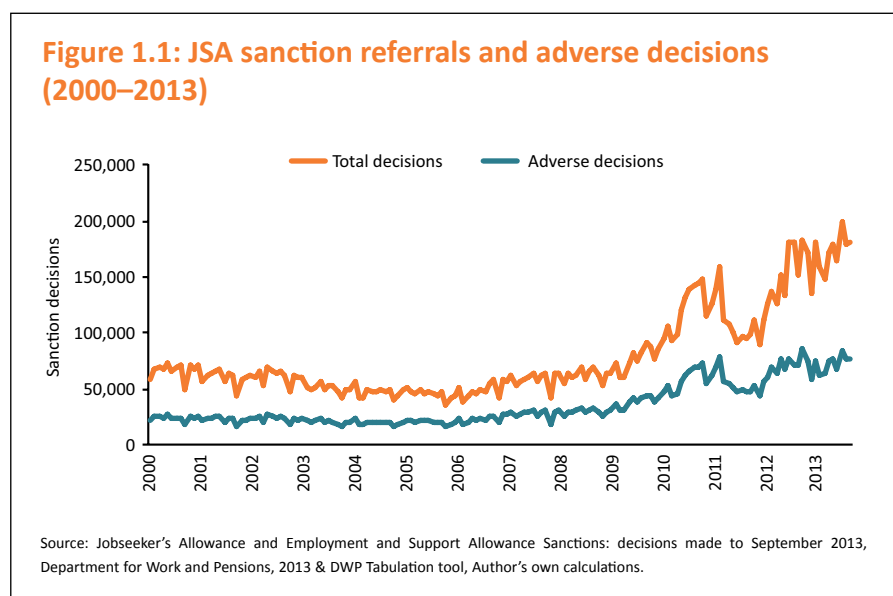
Similarly, the system was insufficient for a small group of around 30,000 claimants in this period who were on a ‘lower tier’ sanction which was their 3rd or more. Clearly more needs to be done to prevent this group of individuals consistently wasting time and resources. This ‘hard core’ of claimants face

comparatively lenient sanctions for repeat offences in the 'lower' sanction category. Policy needs to adapt to be more effective at ensuring sanctions are better targeted towards these different groups.

We believe that a more responsive approach which focuses on outcomes rather than process and crude targets is the correct one. In designing sanctions policy it is not necessarily true that there should be a greater or smaller number of sanctions. However, what is certain is that the sanctions which do exist should be carefully designed and targeted to achieve the appropriate effect.

### How widespread are sanctions?

In the period October 2012–September 2013 there were over 2,052,000 referrals for sanctioning, with over 870,000 adverse decisions being made. In terms of historical trends, as Figure 1.1 demonstrates, the number of sanctions, referrals, and adverse decisions have increased since around 2006. Sanctions are thus an increasingly important part of the public policy debate, as demonstrated by the media attention surrounding the recent case of Cait Reilly<sup>18</sup> and Jamie Wilson<sup>19</sup> who unsuccessfully contested the legality of back-to-work schemes and, implicitly, the sanctions which compelled them to take part.<sup>20</sup>



In September 2013 (the last recorded month to date) over 180,000 JSA claims were referred as doubts with over 76,000 sanctions being imposed. This amounted to around 14% of the claimant count that month being referred, and nearly 6% being sanctioned.

Whilst the common perception is that sanctions exist to address fraud within the benefits system, this is largely untrue. As has already been noted, the purpose of sanctions is primarily to shift behaviour and encourage compliance. For example, in 2012/2013, estimates of fraud within total benefit expenditure accounted for around 0.7% (£1.2bn) of the total spend, and only 4.1% of JSA total expenditure (£210m) was overpaid, including fraud, claimant error, and official error. Whilst fraud and error within the benefits system are obviously important, reducing fraud should not be the priority of sanctioning policy.<sup>21</sup>

18 Daily Mail, 'It is my human right not to work for Poundland: Graduate who faced losing benefit sues ministers,' 2012 – Accessed at: <http://www.dailymail.co.uk/news/article-2085142/Cait-Reilly-Unemployed-graduate-sues-ministers-forced-work-Poundland.html>.

19 BBC News, 'Back-to-work scheme ruled lawful by High Court,' 2012 – Accessed at: <http://www.bbc.co.uk/news/business-19146347>.

20 Oakley, M, 'Welfare-to-work schemes will continue despite court ruling,' The Guardian, 2013 – Accessed at: <http://www.theguardian.com/commentisfree/2013/feb/13/welfare-to-work-continue-appeal-court>.

21 Office for National Statistics, 'Fraud and Error in the Benefit System: 2012/13 Estimates (Great Britain)', 2014.

## Should there be more sanctions?

Recently there have been renewed criticisms that sanctions in certain jobcentres were being applied in order to meet ‘targets.’<sup>22</sup> This claim attracted significant attention and was followed up with reports which emphasised that this was not an isolated instance.<sup>23</sup>

However, the DWP response to this emphasised that the records kept were strictly for benchmarking purposes to identify potential areas where there were doubts about whether sanctions were being applied appropriately. The explanation for the behaviour of the jobcentres in question was that it was likely a legacy of the system of benchmarks which had existed until they were abolished in 2011. In a wider sense, this was attributed to the legacy of a culture which excessively focussed on arbitrary targets rather than a particular form of malpractice.<sup>24</sup> In summary, the continuing position of the DWP was that:

“Sanctions, where appropriate, should be applied and are not a matter for individual discretion.”<sup>25</sup>

## Welfare reform and sanctions

Policy Exchange has previously recommended a wide-ranging set of reforms which aim to provide more comprehensive employment support and drive behavioural changes. These have included:

- More effective conditionality;
- Providing more personalised employment support on the basis of barriers to work rather than the primary benefit being claimed;
- Implementing in-work progression and related conditionality under Universal Credit;
- Exploring how limited ‘workfare’ schemes can be used within the welfare system; and
- Establishing schemes to assist the ‘hardest to help’ claimants.

Given the necessity of conditionality, there is a need to examine sanctions and how it might be possible to improve them. A 2008 Independent Review undertaken on behalf of the Department for Work and Pensions surmised that:

“The current approach of using conditionality backed by sanctions has been shown to have a great deal of success, in the main without adverse consequences. However, that doesn’t mean the system cannot be improved.”<sup>26</sup>

Whilst that quote was referring to operations and communication within the system, the same can be said of the sanctions system more broadly today. There have been useful steps including the introduction of a three tier sanctions regime in October 2012.<sup>27</sup> However, the possibility of making sanctions ‘smarter’ by adopting reforms which could simultaneously drive behavioural change, reduce hardship, and allow better targeting, is an option which should be explored.

Without an effective mechanism, behavioural change and the effects of welfare reforms are likely to be lower than they could be. Previously, Policy Exchange has recommended several avenues which could be explored, including the following.

22 Wintour, P, ‘Jobcentre was set targets for benefit sanctions,’ The Guardian, 2013 – Accessed at: <http://www.theguardian.com/society/2013/mar/21/jobcentre-set-targets-benefit-sanctions>.

23 Wintour, P, & Domokos, J, ‘Leaked jobcentre newsletter urges staff to improve on sanctions targets,’ The Guardian, 2013 – Accessed at: <http://www.theguardian.com/society/2013/mar/25/jobcentre-newsletter-sanctions-targets>.

24 Couling, N, ‘Conditionality and Sanctions – A report to the Secretary of State for Work and Pensions’, U.K. Government, 2013.

25 Couling, N, ‘Conditionality and Sanctions – A report to the Secretary of State for Work and Pensions’.

26 Gregg, P, ‘Realising Potential: A Vision for Personalised Conditionality and Support’, An independent report to the Department for Work and Pensions, 2008.

27 Department for Work and Pensions, ‘Explanatory Memorandum to The Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012’, 2012.

- Applying the ‘sanction’ to a wider range of benefits than is currently the case;
- Using non-financial sanctions such as managed payments or pre-paid cards;
- Extending workfare schemes as a non-financial sanction.

In this report we concentrate on the second of these. There is much to be done to fix the sanctioning system. Whilst it retains public support, the system itself can be crude and is riddled with issues. Creating more effective, efficient, and responsive sanctions should be a goal of government policy and is necessary to support the progress which has been made so far.

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# 2

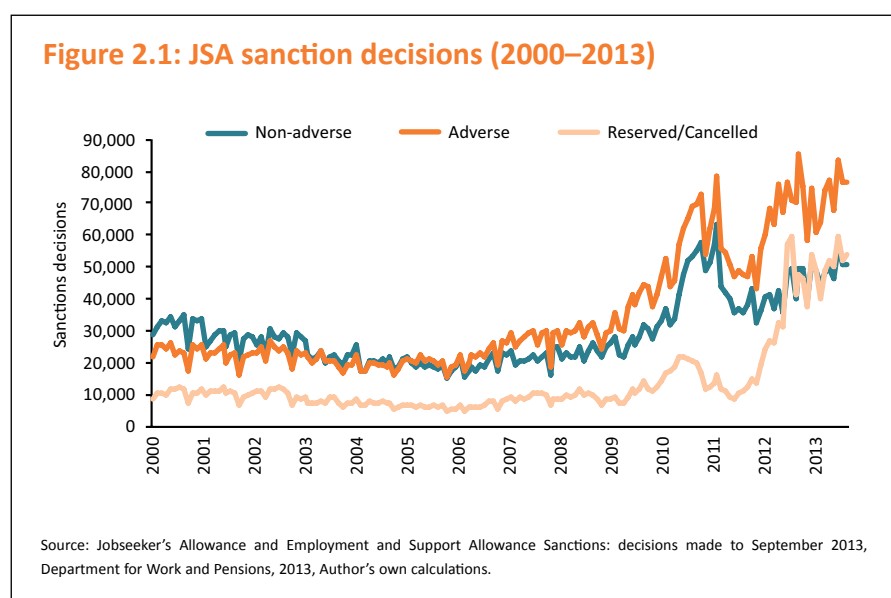
## Sanctions Statistics

Some understanding of the sanctions process can be gleaned from the DWP's own records on the use of sanctions. Whilst the sanctions regime has changed several times in this period, data from 2000–2013 is available.

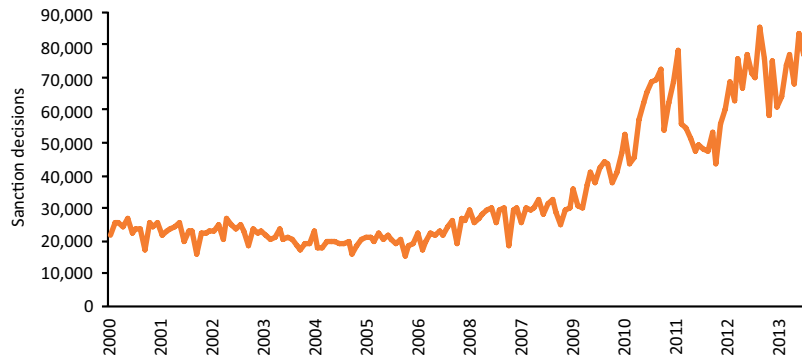
Within this period there is a large but brief movement during October 2012. Whilst this appears to be significant, it can largely be considered as a result of the transition phrase between the old and new sanctions regime causing a brief but significant 'spike', rather than part of a meaningful trend. The graphs themselves display data from the DWP sanctions statistical release up until September 2013.

### Trends over time

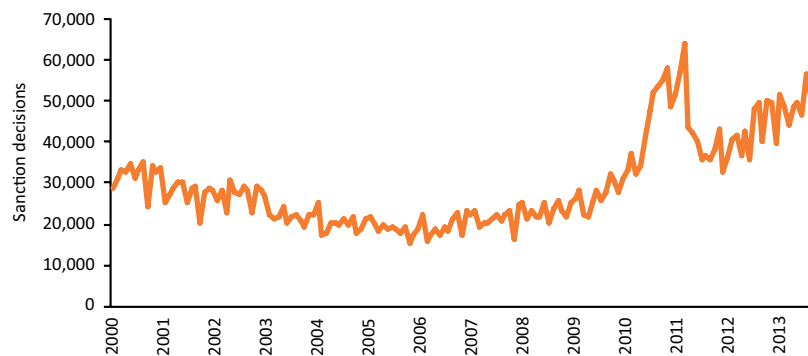
As can be seen, in Figure 2.1, it is clear that the number of total decisions in sanctions has increased substantially over this period, with a particular spike seen from around 2010 onwards.



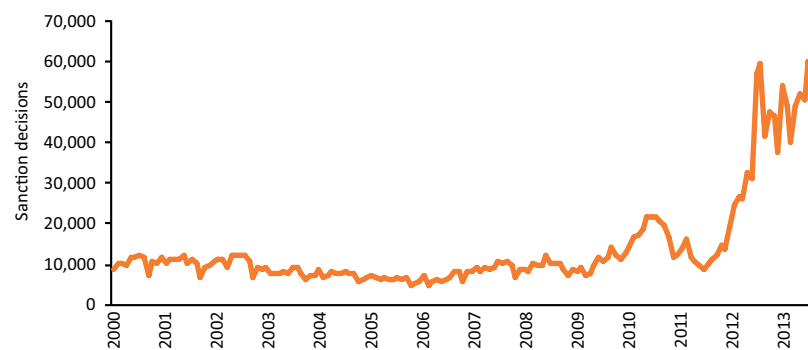
From around 2009 there is a demonstrable increase in the amount of decisions being made, and whilst this decreases between 2011 and 2012, the general trend is upwards. As can be seen in Figures 2.2, 2.3, and 2.4, this is a result of all categories steadily increasing since around 2006, though there is substantial variation in movement from 2011 onwards.

**Figure 2.2: JSA adverse decisions (2000–2013)**

Source: Jobseeker's Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013, Department for Work and Pensions, 2013, Author's own calculations.

**Figure 2.3: JSA non-adverse decisions (2000–2013)**

Source: Jobseeker's Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013, Department for Work and Pensions, 2013, Author's own calculations.

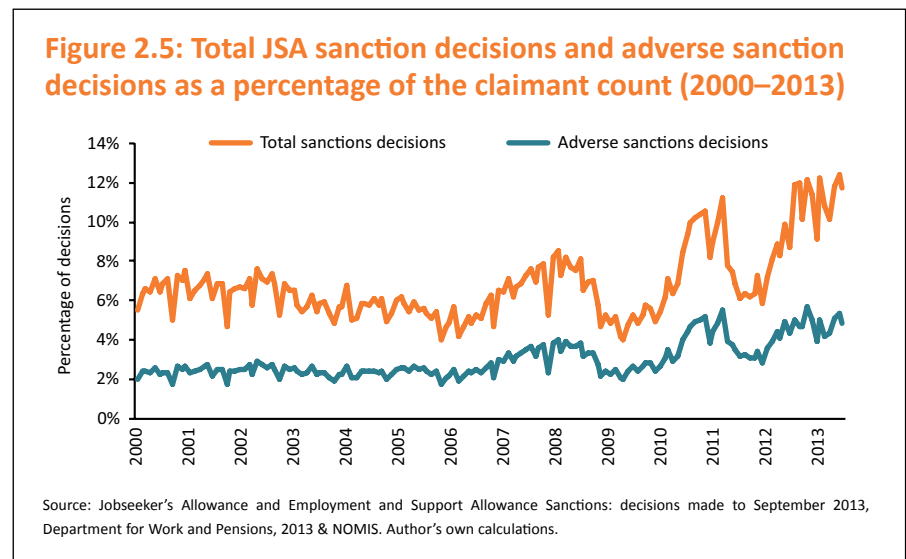
**Figure 2.4: JSA reserved/cancelled decisions (2000–2013)**

Source: Jobseeker's Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013, Department for Work and Pensions, 2013, Author's own calculations.

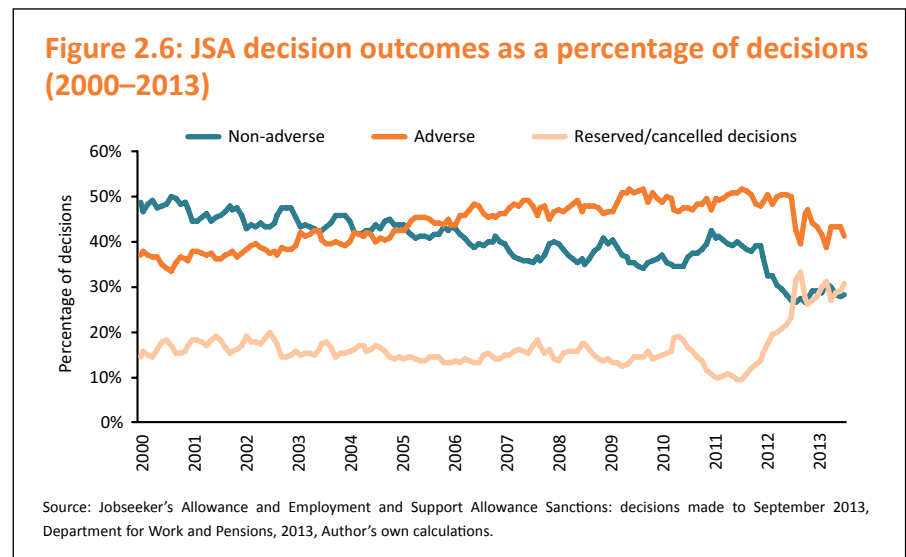


There is a limit as to how useful observing raw increases in the amount of sanctions is without some context of whether or not they are being driven by an increasing number of claimants. Figure 2.5 demonstrates that whilst the relationship is not perfect, a substantial amount of the raw increase prior to 2010 was due to an increasing claimant population. However, from 2010 onwards, there were significant spikes in the number of sanctions as a percentage of the claimant count.

The population effects in question suggest that merely focussing on the raw number of sanctions is likely to ignore more complex issues which are occurring, but also that there is an increase in both the amount of sanctions referrals, and the amount of adverse decisions.

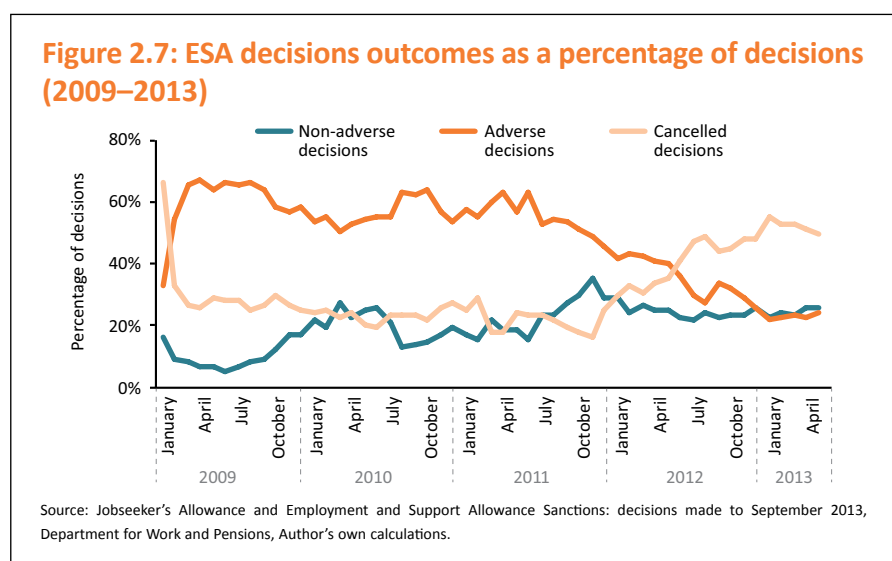


A more nuanced picture of what is occurring can be gleaned by looking at the proportion of total decisions which fall within each category (adverse, non-adverse, and reserved/cancelled). Examining how these decision types have altered as a percentage of total decisions over time can provide a sense of any trends which have occurred.



These figures are displayed in Figure 2.6. As can be seen, adverse and non-adverse decisions have decreased as a proportion of total sanctions decisions taken – whilst the number of decisions which were ‘reserved or cancelled’ has increased sharply.

This is also a picture borne out by the (more limited) data around Employment and Support Allowance sanctions, with a significant decline in the proportion of adverse decisions and a corresponding climb in the number of cancelled decisions since late 2011. Whilst the extent to which these groups are comparable is limited, these results imply that changes to the sanctions regime in 2012 have had fairly profound effects.



The implications are slightly unclear. On the one hand, reserved or cancelled decisions could reflect claimants failing to meet their commitments because they have found employment and not notified the relevant people. It could also reflect those who are unwilling to comply with reasonable work requirements exiting welfare for alternative forms of support, or finding employment.

However, there is also the chance that reserved or cancelled decisions represent claimants signing off to avoid their obligations, but not taking part in employment support programmes. Whilst this is advantageous from the point of view of discouraging noncompliance, the overall outcome is not positive. Unfortunately no data is forthcoming on the proportion of reserved or cancelled decisions which are later relevant again. Responding to a freedom of information request on this subject, the Department for Work and Pensions informed us that:

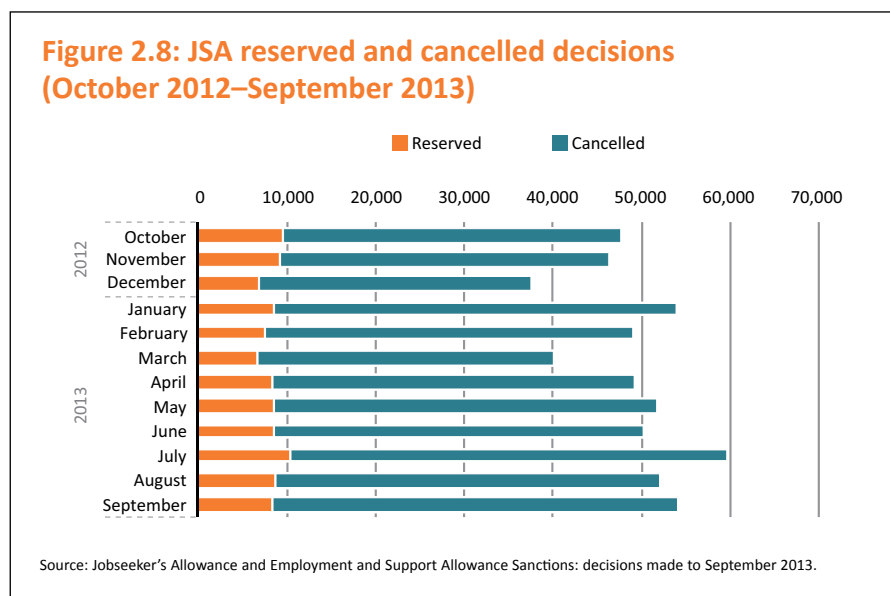
*“We are able to track claims for a period after they have been closed through our administrative data to identify the numbers that return to benefit. We have not undertaken any tracking analysis looking specifically at those claimants who received a reserved or cancelled decision.”<sup>28</sup>*

Until this is the case, it is hard to reach a conclusion on the exact implications of these figures. Dr David Webster from the University of Glasgow suggests that this data implies that:

<sup>28</sup> Department for Work and Pensions response to a freedom of information request lodged by Policy Exchange. For further information contact the author.

“People are being driven off JSA by the sanctions regime. This in turn could explain why there has been a sharp increase between the number of unemployed people identified by the official Annual Population Survey, and the number in the claimant count.”<sup>29</sup>

Whether or not claimants are being driven off JSA by sanctions is unclear. Some insight can be gained from the subdivision of ‘reserved’ and ‘cancelled’ decisions in this period. As can be seen in Figure 2.8, cancelled decisions where the individual has left JSA at the time of referral are much higher than reserved decisions.



As cancelled decisions indicate that the claimant has ceased to claim benefits at the time of referral, these results suggests that if sanctions are driving claimants off JSA, this must be occurring before they receive the sanction rather than in response to referral. Whilst this could still be problematic, it could also be a welcome move if they are leaving either because they refuse to comply with conditionality, or because they have found employment. If, however, they are leaving because they are confused about their obligations, fearful of sanctions, or engaging in ‘cycling’ behaviour (though this may be limited as the sanction would be reintroduced upon signing on) then the outcome would be negative.

Responding to a freedom of information request on the number of reserved or cancelled decisions, the Department for and Pensions suggested that:

“The majority ... result from referrals for a failure to participate in the Work Programme. The overall rise in the number of people on the Work Programme along with a rise in referrals for failure to participate is the most likely reason for the increase in reserved or cancelled decisions...”<sup>30</sup>

And that:

“The main reason for cancelled sanctions is where a doubt has been raised – for example a claimant did not attend a programme as required – this turns out to be because they have already left JSA. This largely reflects the high natural rate of off-flow from JSA.”<sup>31</sup>

29 Webster, D, ‘The DWP’s Updated Statistics on JSA Sanctions: What do they show?’, House of Commons Work and Pension Committee, Inquiry into the Role of Jobcentre Plus in the reformed welfare system, 2013.

30 Department for Work and Pensions response to a freedom of information request lodged by Policy Exchange. For further information contact the author.

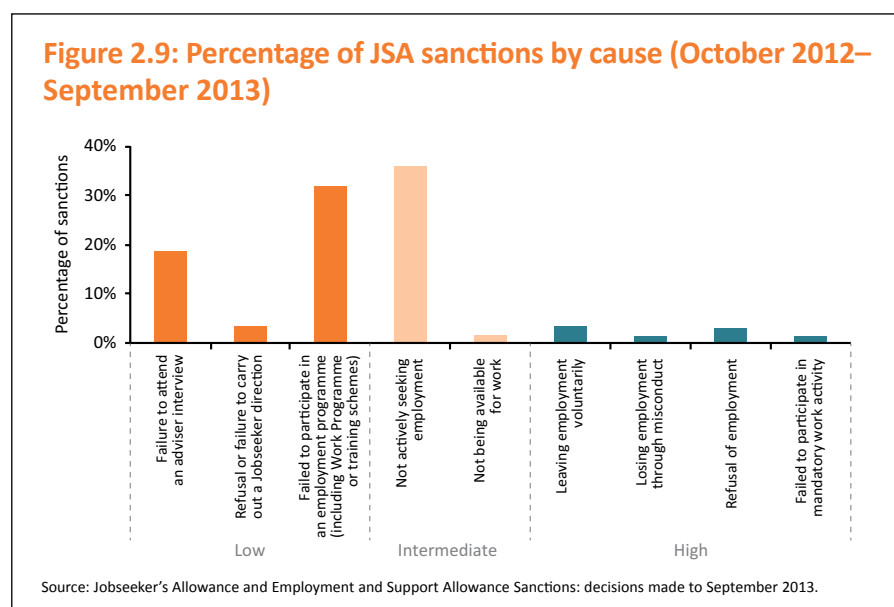
31 Department for Work and Pensions response to a freedom of information request lodged by Policy Exchange. For further information contact the author.

It is unclear to what extent any of these assumptions is true without further information. There is some information on the extent of ‘cycling’ within the welfare system, with Policy Exchange work concluding that only 36% of JSA claimants will find a job within six months of claiming benefits and remaining employed for the following seven or eight months.<sup>32</sup> This suggests that leaving JSA is not necessarily a guarantee of positive outcomes, and that natural off-flow can still be problematic from an outcomes-focused point of view. Ultimately a conclusion cannot be reached without further data on where those who have been sanctioned are exiting to. However, the fact that many of them are exiting before the sanctioning process has begun indicates that it is likely not to be a response to sanctions being imposed, and suggests that the more positive angle may be true in at least some cases.

### What is the ‘average’ sanction and what causes it?

It is useful to note what the ‘typical’ sanction might look like. As can be seen from Figure 2.9, the vast majority of adverse sanction decisions are as a result of ‘low’ or ‘intermediate’ violations.

The top three reasons for sanctions are a failure to attend an adviser interview, failure to participate in an employment programme, and not actively seeking employment. Collectively they account for around 86 percent of adverse sanction decisions.



Exactly what this means for the length of the ‘average’ sanction is unclear without more information. This is because sanctions should be broadly seen in the context of the conditions attached to the claimant. This need for a responsive system is paired with a requirement to have a series of prescribed sanctions in order to promote claimant understanding, and to ensure that the sanctioning system is enforced consistently by the decision maker.

As a result, the nature and duration of the sanction will depend on whether it is the claimant’s first, second, or third failure to comply with the conditionality regime, and whether they are on JSA or ESA. The varying tiers of sanctions are displayed in Table 2.1 below:

32 Oakley, M, ‘Welfare Reform 2.0 – Long-term solutions, not short-term savings’, Policy Exchange, 2012.

**Table 2.1: The length and content of a sanction: current system**

Sanction Level	Applicable to	Sanction		
		1st	2nd	3rd
Lower	JSA claimants	Four weeks loss of benefit.	13 weeks loss of benefit.	
	ESA WRAG claimants	Loss of ESA until re-engagement followed by one week loss of benefit.	Loss of ESA until re-engagement followed by two weeks loss of benefit.	Loss of ESA until re-engagement followed by four weeks loss of benefit.
Intermediate	JSA claimants	Disentitlement from JSA then up to four weeks loss of benefit.	Disentitlement from JSA then up to 13 weeks loss of benefit.	
High	JSA claimants	13 weeks loss of benefit.	26 weeks loss of benefit.	156 weeks loss of benefit.

Source: Department for Work and Pensions, Jobseeker’s Allowance: overview of revised sanctions regime, 2013.

The implications of the distribution and level of sanctions are slightly unclear. However, they do suggest that sanctions are to some extent fulfilling their purpose as the ‘enforcement’ arm of a conditionality regime, with the emphasis being on compliance with requirements related to directly seeking work.

### How many sanctions referrals are actually correct?

A discussion on sanctions would be incomplete without considering how accurate the sanctioning process is once the reconsideration and appeals processes have occurred. The figures below form something of a rough approximation due to issues with limited data and a number of assumptions.<sup>33</sup> With these caveats in mind, it is possible to calculate an estimate of the percentage of referrals for sanctions which are successful and the ‘attrition rate’ – the percentage of sanctions which are overturned due to reconsideration or appeal. These are displayed in Table 2.2:

**Table 2.2: Percentage of JSA sanctions which are overturned, by sanction category (October 2012–September 2013)**

Sanction category	Percentage of referrals classified as ‘adverse’	Attrition rate	Percentage of referrals classified as ‘adverse’ after reconsideration and appeal
Low	35.6%	19.9%	28.5%
Intermediate	75.2%	12.3%	65.9%
High	25.9%	31.8%	17.6%
Total	42.3%	18.2%	34.7%

Source: Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013. Author’s own calculations.

33 Specifically issues with the data are:

- Some referrals and appeals will be from sanctions imposed prior to the recorded period, and some sanctions imposed in the period will be waiting to have their appeals processed.
- Certain categories of sanction have smaller sample sizes, making analysis less meaningful.
- These figures make the assumption that reconsideration is requested and rejected before an appeal, something true for most but not all cases prior to the introduction of mandatory reconsideration.

Several things are worth noting. The first is that despite an increase in the number of sanctions decisions being made, after appeals and reconsiderations our estimates suggest that only around 34.7% of sanction referrals actually result in an upheld adverse decision. 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.

The second point to note is the wide variation in the amount of ‘adverse’ sanctions successfully applied. Whilst extremely high for the ‘intermediate’ group, it is lower for both the ‘low’ and ‘high’ groups. This suggests that there may be more claimants referred incorrectly within these groups. Given that the majority of adverse decisions are within the low group, this casts wider doubts about the accuracy of decisions on the lower end of the scale.

Unfortunately there is no data provided within the sanctions release on the total number of referrals for each sanction cause. Despite this, it is possible to calculate estimated ‘attrition rate’<sup>34</sup> for each cause giving some idea of the scale of incorrect application. This is done in Table 2.3:

**Table 2.3: JSA adverse sanction decision attrition rates (October 2012–September 2013)**

<b>Low</b>	• Failure to attend an adviser interview	20.3%
	• Refusal or failure to carry out a Jobseeker direction	11.3%
	• Failed to participate in an employment programme or training schemes	20.6%
<b>Intermediate</b>	• Not actively seeking employment	12.0%
	• Not being available for work	19.4%
<b>High</b>	• Leaving employment voluntarily	33.5%
	• Losing employment through misconduct	40.4%
	• Refusal of employment	28.4%
	• Failed to participate in mandatory work activity	26.0%

Source: Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013. Author’s own calculations.

The most obvious trend is that ‘high’ level sanctions are much more likely to be overturned by reconsideration or appeal. The most pertinent point is that in all categories we estimate over 10% of adverse sanction decisions are overturned, and in all but two groups, over 20% are overturned. This rate appears to be too high to be acceptable, especially given the effects that sanctions can have. Broadly, it appears that three goals should be pursued. Future sanctions policy should aim to:

- Reduce decision making error where possible and;
- Reduce the negative effects on those incorrectly sanctioned and;
- Maintain the ability of sanctions to shape behaviour and punish noncompliance.

<sup>34</sup> This is calculated as the percentage of adverse decisions which the claimant either successfully had reconsidered, or successfully appealed. Calculations are available by request to the author.

The last point to note is that these estimates assume that those who are sanctioned have opted for reconsideration first, and that the group which appeals is solely comprised of people who have their reconsideration rejected.

Since October 2013, mandatory reconsideration has been part of the appeals process meaning that an appeal necessitates a rejected reconsideration. As a result these estimates are likely to underestimate the true figure for how many reconsiderations and appeals were lodged prior to these reforms.

### Overall findings

From analysis of the most recent statistical release, we found information to suggest that:

- At least part of the rising number of adverse sanctions can be attributed to increases in the claimant count rather than necessarily being a result of a harsher sanctioning regime;
- The proportion of decisions which are 'reserved' or 'cancelled' has increased, whilst the proportion which are 'adverse' or 'non-adverse' has decreased;
- The cause of 'reserved' or 'cancelled' decisions cannot be ascertained, but cancelled decisions are more common, indicating claimants are leaving benefit prior to sanction referrals. The failure to communicate this is then triggering referral.
- The vast majority of adverse decisions, around 86.2%, are due to a 'failure to attend an adviser interview', a 'failure to participate in [an] employment programme', or the claimant 'not actively seeking work.'
- An estimated 34.7% of sanction decisions actually end up being 'adverse' after decision, reconsideration, and appeal. When broken down by category these figures were 28.5% for 'low' level offences, 65.9% for 'intermediate' level offences, and 17.6% for 'high' level offences.

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# 3

## What is Their Effect?

The effect sanctions actually have on outcomes is disputed, and can depend on the nature of the sanction, its duration, the circumstances of the claimant, and many other factors. Findings also vary depending on the criteria being measured (e.g. benefit off-flow, long-term employment, long-term earnings), and are frequently mixed up with the effects of other interventions tested as part of a package of welfare reforms.

This does not, however, mean that lessons cannot be learned from past experiences, both in the U.K. and abroad. Indeed, the discrepancies in findings can help isolate the effects of different design characteristics and build a picture of the different policy questions and dilemmas posed when designing sanctions.

### What assumptions do sanctions make?

The theory behind the use of sanctions contains at least some basic assumptions about human economic behaviour. The first is that to some extent the existence of unemployment insurance benefits reduce the incentive to engage in job searching activity, or increase the ability to be more discerning when searching. This is because they:

*“Reduce the cost of being unemployed, resulting in an increase in the reservation wage and longer spells of unemployment.”<sup>35</sup>*

The result is that in theory a ‘cost’ may need to be imposed on claimants to ensure that staying on welfare is not more attractive than searching for employment. This ‘cost’ manifests itself in the form of a conditionality regime which is designed with the goal of helping claimants find employment.

In summary, sanctions exist to:

- Increase job-search activity and;
- Raise the cost to claimants of not complying with the conditionality regime.

The combination of these incentives is designed to create a system which encourages exiting welfare as soon as possible and, in the interim encourages steps towards finding employment. It is only if a claimant fails to fulfil these conditions that sanctions become relevant.

35 Klepinger, D.H. et al. ‘Effects of Unemployment Insurance Work-Search Requirements: The Maryland Experiment, Industrial and Labor Relations Review’, Vol. 56(1), 2002.



## Distinguishing between effects

In general, it is important to differentiate between the two types of effect that sanctions can have. There is generally a distinction between 'ex ante' and 'ex post' effects. The definitions of these are:

- **Ex ante effects:** Effects before the sanction is imposed which change behaviour. Even the possibility of being sanctioned raises claimant's attempts to find employment.
- **Ex post effects:** The effects on behaviour as a result of the sanction being applied. This means that unemployment becomes less attractive, increasing efforts to find employment.

This distinction is important as greater or lower ex ante and ex post effects may be desirable for different groups. Those who are first time offenders may be more susceptible to ex ante effects and a fear of sanctions, whilst those who are repeat offenders may need harsher sanctions to encourage a greater ex post effect. As a result, this is a useful framework to view the design of sanctions through.

## The crude effects

In general, the basic effects of sanctions range from marginal to positive on a variety of metrics. These include generally increased rates of welfare exit through employment for U.S. states with more stringent welfare policies, and a positive association with informal work and training activities in the United States<sup>36</sup> and the United Kingdom. Some specific findings included that:

- In Delaware "controlling for other factors... clients under sanction in a given month were twice as likely as non-sanctioned clients to leave the rolls in the following month. The effect of sanctions on welfare exit increased exponentially with each additional month the sanctions continued."<sup>37</sup>
- Research on JSA in 2000 stated that "the initial increase in movements off benefit was due to a 'weeding out' of those who were not previously assiduous in their job search or were claiming fraudulently."<sup>38</sup>
- An evaluation of basic skills mandatory training pilots found that "the threat of sanctions was found to increase the percentage of claimants who completed provision once they had started it by around three percentage points" and "the threat of sanctions was deemed to be effective in encouraging customers to attend training, especially the more resistant customers."<sup>39</sup>
- A pilot for the evaluation of community sentences and the withdrawal of benefits found that "for those on relevant benefits, the rate of breach initiation in the pilot areas was, on average, 2.4% lower during the evaluation period than during the earlier five month control period."<sup>40</sup>
- A study in Denmark on a program which included sanctions concluded that the transition rate from unemployment to school was significantly raised by the programme. There were also weaker effects on the transition rate from unemployment to employment.<sup>41</sup>
- A study in West Germany found that "in sum, both men and women seem to respond to a sanction in terms of being regularly employed after a sanction during stratum one or two."<sup>42</sup>

36 Lee. B.J, et al., 'Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families', Social Service Review, Vol. 78(3), 2004.

37 Fein. D.J, & Lee. W.S, 'The ABC Evaluation – Carrying and Using the Stick: Financial Sanctions in Delaware's A Better Chance Program', Abt Associates Inc, 1999.

38 Rayner. E, 'Evaluating Jobseeker's Allowance: A summary of the research findings', Department of Social Security, 2000.

39 Joyce. L., et al. 'Evaluation of Basic Skills Mandatory Training Pilot: Synthesis Report', Department for Work and Pensions, 2006.

40 Knight. T. et al. 'Evaluation of the community sentences and withdrawal of benefits pilots', Department for Work and Pensions, 2003.

41 Jensen. P. et al. 'The response of youth unemployment to benefits, incentives, and sanctions', European Journal of Political Economy, Vol. 19(2), 2002.

42 Hofmann. B. 'Work incentives? Ex-post effects of unemployment insurance sanctions; evidence from West Germany', IAB discussion paper, 2008.

These results are just a snapshot from a few studies but they corroborate the generally accepted point of view, that “on average a sanction has a positive effect on the employment outcome.”<sup>43</sup> However, there are two important caveats to this conclusion. The first is that this relationship is less useful than we would like. Many of the conclusions on sanctions relate to compliance or exit rather than finding secure and stable employment. Indeed, as the Delaware study warned:

“After receiving sanctions, many more clients left welfare than cured their sanctions.”<sup>44</sup>

This may suggest that there are issues with whether sanctions act as anything other than a short term stimulus rather than a longer-term tool to improve welfare and outcomes. Summarising this position, the Joseph Rowntree Foundation concluded that:

“Sanctions have the potential to impact on claimants and their families in many ways. In the short term they may promote compliance or participation, or encourage claimants to end their claim, possibly to enter employment. In the longer term they may affect child welfare, earnings and material hardship.”<sup>45</sup>

## The limitations

The limitations in the longer-term cast doubt on sanctions as a perfect tool for ensuring compliance. Again, there is evidence from a number of studies about the longer-term negative effects of sanctions being imposed. These include:

- Sanctions in Illinois being negatively associated with formal employment and earnings, and positively associated with food hardship.<sup>46</sup>
- In Delaware “less than a third (32%) of sanctioned clients eventually cured their sanctions. A larger group (45%) remained non-compliant until sanctions progressed to case closure, and 23 percent left the rolls before their sanction progressed to case closure.”<sup>47</sup>
- In West Virginia “sanctions caused people who were unskilled and uneducated to leave welfare without jobs. As a result, sanctions negatively influenced the self-sufficiency of welfare leavers in an economically disadvantaged area because disabled and uneducated people rarely find jobs when there is a long-term recession.”<sup>48</sup>
- A DWP evaluation of basic skills mandatory training pilots suggested that “the threat of sanctions had a negative effect on the probability of starting a job by around three percentage points. A limited observation window to follow these claimants may partially explain this finding.”<sup>49</sup>
- Similarly, in Maryland “within the first 90 days after case closure, sanctioned families are much more likely to come back on welfare than are other families; almost twice as many sanctioned families (35.2%) as non-sanctioned families (18.4%) came back on welfare in three months or less. Recidivism among sanctioned families also tends to happen very quickly.”<sup>50</sup>

There are limitations to this analysis. Alongside the previous caveats which limit direct comparison, there are also issues with selection. Specifically, the implication

43 Hofmann. B. ‘Work incentives? Ex-post effects of unemployment insurance sanctions; evidence from West Germany’.

44 Fein. D.J, & Lee. W.S, ‘The ABC Evaluation – Carrying and Using the Stick: Financial Sanctions in Delaware’s A Better Chance Program’.

45 Griggs. J, & Evans. M, ‘Sanctions within conditional benefit systems –A review of evidence’, Joseph Rowntree Foundation, 2010.

46 Lee. B.J, et al. ‘Are Welfare Sanctions Working as Intended? Welfare Receipt, Work Activity, and Material Hardship among TANF-Recipient Families’.

47 Fein. D.J, & Lee. W.S, ‘The ABC Evaluation – Carrying and Using the Stick: Financial Sanctions in Delaware’s A Better Chance Program’.

48 Lee. K.H. ‘Effects of Work Incentive Policies and Determinants of the Socioeconomic Status of Welfare Leavers in an Economically Disadvantaged Area’, The Social Policy Journal, Vol.4(3–4), 2006.

49 Joyce. L., et al. ‘Evaluation of Basic Skills Mandatory Training Pilot: Synthesis Report’.

50 Born. C. et al. ‘Life After Welfare: A look at sanctioned families’, University of Maryland School of Social Work, 1999.

of the fact that those with more work experience are less likely to be sanctioned<sup>51</sup> is that those with less work experience, and possibly higher barriers to work are more likely to be sanctioned. Whilst there is not data to support a conclusion one way or another, there is the possibility that those who receive sanctions

“Ideally sanctions should be designed such as to maximise the positive short-term effects and minimise the negative long-term effects. In practice this is likely to be hard to achieve”

may face disproportionate barriers to work, which would in turn distort any findings.

Nonetheless, these results are useful to illustrate some of the wider issues with sanctions. The fact that “conditionality runs the risk of both worsening the position of the most vulnerable and

reinforcing disadvantage,”<sup>52</sup> is evidently an issue. If anything, it is a reminder that the welfare system and the individuals who are on the periphery of it are likely to need much more than merely punitive sanctions to move them into employment. As an assessment in California noted:

“The significant association between having been sanctioned and subsequent poor employment outcomes should be of policy and pragmatic concern. The implication is that those who are sanctioned may need additional help in making the transition from welfare to work, and that fiscal penalties alone will not suffice.”<sup>53</sup>

Negative outcomes in the long-term may not be entirely foreseeable, but are likely to be heavily influenced by policy design. Ideally sanctions should be designed such as to maximise the positive short-term effects and minimise the negative long-term effects. In practice this is likely to be hard to achieve.

### Issues with measurement

Some of the negative longer-term outcomes could be a result of selection effects. Specifically, to the extent where sanctioned families are already likely to face more acute barriers to employment, their outcomes may be worse in the long-term.

This is unfortunately quite likely; those who are sanctioned will probably have experienced a greater level of conditionality than the average claimant and may face greater disadvantage. Several studies from the United States experiences with TANF sanctions suggested that certain groups were more likely to find themselves sanctioned. It concluded that:

“The results... suggested that few demographic characteristics explained why certain recipients received services or were sanctioned. It was not a surprise to find that recipients who had more work experience were less likely to be sanctioned.”<sup>54</sup>

There are two obvious implications. First, longer term negative outcomes for those who have been sanctioned may partially reflect pre-existing issues the claimant or their family have experienced rather than an outcome of the sanctions process. The second is that those with sanctions applied are more likely to face barriers or hardship, meaning that at least some effort must be made to take this into account.

51 Cheng, T.C. ‘Racial Inequality in Receiving Transitional Support Services and Being Sanctioned Among TANF Recipients: A Group Threat Hypothesis’, *Journal of Social Service Research*, Vol.35(2), 2009.

52 Gregg, P. ‘Realising Potential: A Vision for Personalised Conditionality and Support’.

53 Ong, P.M. & Houston, D. ‘CalWORKs Sanction Patterns in Four Counties – A Technical Analysis’, *Welfare Policy Research Project*, 2005.

54 Cheng, T.C. ‘Racial Inequality in Receiving Transitional Support Services and Being Sanctioned Among TANF Recipients: A Group Threat Hypothesis’.

## A nuanced view

Ultimately, a reductive conclusion that sanctions are ‘good’ or ‘bad’ misses the point. They are a necessary part of the welfare system, and the negative impacts they may have in the longer-run may be offset by short-term benefits and the wider gains from conditionality. Summarising this position, a 2009 analysis for the Social Security Advisory Committee commented that:

*“Evidence on the impact of sanctions is mixed, with evaluations demonstrating that hardship, debt and stress are regular outcomes, with little corresponding benefit. SSAC’s own study suggested there is some evidence that sanctions can reduce the time spent on benefit, but that there is a lack of awareness, and claimants themselves do not feel that sanctions influence their behaviour much.”<sup>55</sup>*

This has two implications. The first is that it speaks to issues of policy design; sanctions must be administered as fairly and effectively as possible. The second and more important point is that there must be an awareness of the ‘post-sanction’ effects on a sanctioned family or individual.

Whilst a claimant may have chosen to move off benefits and has responsibility for that choice, there is still a need to ensure that sanctions are not being counterproductive in the long-term, and to consider wider issues about the claimant’s well-being. There are clear implications from this conclusion, including that the method of sanctioning may be a useful tool to modify.

## Hardship and coping strategies

One of the main post-sanction issues is the financial hardship which can result from sanctions being imposed. There are two sides to this argument. On the one hand there are claims that the loss of JSA can cause hardship for families, with the marginal amount lost being problematic if alternative sources of finance are not found. On the other, there are at least some reports of the sanction forming a small enough portion of income that the claimant did not notice it being imposed.<sup>56</sup>

Evidently this presents a tension. In some cases there is a concern that the sanctions are punitive, unfairly harming the lives of individuals or families who can already be vulnerable. A 2000 survey of those on the New Deal for Young People summarised this point, noting that:

*“Among those sanctioned, it was those who subsequently suffered hardship who were least likely to be in jobs by the time of the survey interview. It may be that the process of sanctioning claimants, and the experience of hardship in the face of benefit stops and reductions, may reduce participants’ changes of subsequently getting jobs. Alternatively, the types of people who were sanctioned might be the sorts of people who are least likely to get and hold onto a job.”<sup>57</sup>*

There are, of course, alternative forms of support available, from the now localised social fund to specialised hardship payments. There are also a number of routes available for people to seek advice or guidance. However, there is still the risk that sanctions are unfairly penalising the most vulnerable claimants, and there is some evidence that many requests for assistance are from those with learning disabilities who found it difficult to understand their obligations and the imposition of sanctions.<sup>58</sup>

<sup>55</sup> Griggs, J. & Bennett, F. ‘Rights and Responsibilities in the Social Security System’.

<sup>56</sup> Goodwin, V. ‘The effects of benefit sanctions on lone parents’ employment decisions and moves into employment’, Department for Work and Pensions, 2008.

<sup>57</sup> Bryson, A, Knight, G & White, M, ‘New Deal for Young People: National survey of participants – stage 1’, Policy Studies Institute, 2000.

<sup>58</sup> House of Commons Committee of Public Accounts, Department for Work and Pensions: Responding to change in jobcentres, Fifth Report of Session 2013–14, 2013.

There are a variety of coping strategies which are used by claimants. Though they are predominantly informal in nature such as borrowing from friends and family, there are also formal routes, such as access to discretionary forms of support. A particularly prominent form of support is the social fund which provided Community Care Grants and Crisis Loans. This was abolished in 2013, with the funding instead being made available to local authorities under the 'localisation' programme.<sup>59</sup>

Some evidence suggests that many of the same coping techniques were used by those who signed off mandatory courses to avoid training or sanctions.<sup>60</sup> In either case, these forms of support can dilute the impact of sanctions, though whether or not this is desirable depends on the individual's circumstances and reason for being sanctioned.

### What are the implications?

At their best sanctions can influence behaviour by stimulating short term participation in various programs which may assist claimants' attempts to find employment. However, studies do also point to longer-term issues which suggest that the effects of sanctions are not universally positive.

Simply considering the impact of sanctions in isolation ignores that the wider system of conditionality depends on their existence. Abandoning them would necessitate removing or rethinking the entire system of conditionality, something which would be ill advised and likely unpopular.

The implication of these findings is the importance of applying sanctions as fairly as possible, and ensuring that they are aimed at maximising the shorter term positive effects, and minimising any of the more problematic long term effects. This clearly points to the need to pay close attention to the design of sanctions, and to consider the role which alternative forms of sanctions can play, alongside how to ensure that the decision making process is made more accurate. Policies to achieve this are discussed in the next two chapters.

59 Kennedy, S. 'Localisation of the Social Fund', House of Commons Library research note, 2012.

60 Joyce, L., et al. 'Evaluation of Basic Skills Mandatory Training Pilot: Synthesis Report'.

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# 4

## Recommendations: Striking a Balance

*“Sanctions have to be present within the system, to underpin the obligations in the benefit system and as a backstop for those failing to engage. But they are very much a last resort.... An effective sanctions regime is one that drives behaviour to increase the chances of finding work, and penalises non-compliance without creating excessive hardship.”<sup>61</sup>*

This approach, advocated by Professor Paul Gregg, is one which aims to generate maximum benefit without being counterproductive. To try and achieve this, the criteria used to award sanctions are aligned with the requirements of the conditionality regime and sequenced appropriately.

Combined with reforms such as the introduction of mandatory consideration, it seems reasonable to conclude that sensible steps are being taken to resolve process issues. To the extent that there are problems with the communication of sanctions, there is an ongoing review into the knowledge that claimants have and how it is communicated.<sup>62</sup> Therefore, this chapter will focus primarily on the content and design of sanctions rather than issues of process.

### What should sanctions consist of?

As discussed previously, there is a careful balance to be struck. There is already some recognition of this being the case in the current system. As recommended in Professor Paul Gregg’s 2008 review of conditionality, a tiered system of sanctions has been introduced.<sup>63</sup> The result is that the sanctioning system is more predictable, with separate levels of punishment depending on the offence and the number of sanctions the claimant has previously had.

This is welcome. However, there are several circumstances in which the current system might be inappropriate, especially when one takes into account that people can be incorrectly sanctioned. Table 4.1 below highlights a few different permutations which might occur depending on the claimant’s circumstances and sanction.

61 Gregg, P, ‘Realising Potential: A Vision for Personalised Conditionality and Support.’

62 Oakley, M, ‘Independent review of Jobseeker’s Allowance sanctions – Call for information, HM Government’, 2013.

63 Gregg, P, ‘Realising Potential: A Vision for Personalised Conditionality and Support’.

**Table 4.1: Likely behavioural change and hardship under the existing sanctions regime**

Claimant circumstances	Sanction	Likely behavioural change	Likely level of hardship?
Correctly sanctioned unemployed individual with low finances.	JSA, Low Level 1st Sanction, 13 weeks loss of benefit.	Likely to be a large behavioural shift as the loss of 13 weeks benefit will have a large impact on finances.	High, sanction will affect finances significantly, and informal or formal networks of support will be necessary.
Incorrectly sanctioned individual with low finances.	JSA, Low Level 1st Sanction, 13 weeks loss of benefit.	May be anticipatory effects, but the individual is compliant and has been sanctioned incorrectly.	Reliance on informal or formal networks of support until the decision is reconsidered or appealed. Hardship in the interim.
Correctly sanctioned individual with higher resources.	JSA, Low Level 2nd Sanction, 13 weeks loss of benefit.	Little behavioural change as the financial impact is cushioned by their assets.	Low, others income cushions the individual from hardship.
Incorrectly sanctioned individual with higher resources.	JSA, Low Level 2nd Sanction, 13 weeks loss of benefit.	Little behavioural change as they financial impact is cushioned and they have been sanctioned incorrectly.	Low, other income cushions the individual from hardship.

Obviously these points are speculative and focus on ‘clear cut’ examples rather than what is likely to be a more complex reality. However, there are clear and demonstrable cases where the current regime of sanctions may not be as effective as it should be.

In the case of individuals with few alternative financial resources, a high level of hardship is likely to be caused and, whilst this may be justifiable in the case of a claimant who is correctly sanctioned, it leaves the individual who is incorrectly sanctioned and their dependents suffering due to error on the part of the decision maker. The implication is likely that the ‘punishment’ for sanctions should be lighter than currently exists.

However, in the case of individuals with access to a greater amount of resources or an alternative support network, the impact of sanctions may be too small to shift behaviour. In this case the implication is that the ‘punishment’ level contained in sanctions should be higher, perhaps extending to full household sanctions on the entire benefit sum the individual or household receives rather than a small portion which is less likely to have measurable effects.

This, however, would be impractical, and any move to make sanctions more or less punitive in their current form risks losing ‘teeth’ or increasing hardship. With this in mind, sanctions must be both:

- Strong enough to shape behaviour in a constructive manner;
- Designed to prevent undue hardship.

Clearly, it is impossible for simple financial sanctions to achieve this balance. However, there is no reason that sanctions need be solely financial. Previous Policy Exchange research has recommended several avenues which could be explored to deal with these issues, including:

- Applying the ‘sanction’ to a wider range of benefits than is currently the case;<sup>64</sup>
- Using non-financial sanctions such as managed payments or pre-paid cards;<sup>65</sup>
- Using workfare schemes as a non-financial sanction.<sup>66</sup>

### Non-financial sanctions

As has previously been noted, a vast majority of ‘adverse’ sanctions fall within the ‘low’ or ‘intermediate’ categories. The design of sanctions for the intermediate category are to some extent irrelevant as they are not designed to deal with an ongoing system of conditionality, instead focusing on disallowing claimants who are not eligible.

**Table 4.2: Percentage of JSA adverse sanctions, by sanction level and number (22nd October 2012 to 30th September 2013)**

	1st Sanction	2nd Sanction	3rd Sanction or more
Low	36.7%	7.9%	5.1%
Intermediate	30.4%	6.6%	2.1%
High	10.4%	0.6%	0.2%

Source: Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013. Author’s own calculations.

As can be seen from Table 4.2, a large percentage of sanctions are first sanctions, suggesting that it is a smaller hard-core who are consistently violating the conditionality regime. This suggests that there is space to flex policy in the ‘first sanction’ category, and to be more punitive in the ‘second’ and ‘third’ categories.

Which mechanisms might be able to achieve a level of behavioural change without causing hardship? In the main, there is little evidence surrounding this area. Predominantly sanctions policy has consisted of reducing the amount being paid, rather than the method of payment or specific requirements for noncompliant claimants.

#### Box 4.1: Recommendation – the yellow card

29% of those who receive their first ‘lower’ tier sanction have it overturned, meaning around 5,600 people a month are wrongly sanctioned in this category. We propose that the current four week removal of benefits is replaced with trials of benefit payments on card and daily sign in.

64 Oakley, M, & Doctor, G, ‘Something for Nothing: Reinstating conditionality for jobseekers’, Policy Exchange, 2011.

65 Oakley, M, & Saunders, P, ‘No Rights Without Responsibility: Rebalancing the welfare state, Policy Exchange’, 2011.

66 Holmes, E, ‘Work Fair?’, Policy Exchange, 2013.



**Recommendation 1: Government should pilot non-financial sanctions for some claimants in order to make sanctions more responsive to the differing circumstances of claimants.** They should focus on attempting to alleviate possible hardship in the case of wrongful sanctions, promoting re-engagement and changing behaviour. The details of the proposed pilots are set out below.

Specifically we recommend targeting the ‘lower’ tier of sanctions which currently entail being sanctioned for a ‘failure to attend an adviser interview,’ a ‘refusal or failure to carry out a jobseeker direction,’ or a ‘failure to participate in an employment programme or training scheme.’ The existing system of sanctions means that claimants receive a 4 week sanction for their first failure, and 13 weeks thereafter.

One method of benefit delivery to deal with this issue could be the introduction of alternative sources of payment. This could offer the ability for those who are sanctioned to retain access to finance, subject to continuing compliance with the conditionality regime. If effective, this would allow those who had made genuine mistakes to adapt without hardship. As such, we recommend that:

**Recommendation 2: One policy piloted should be replacing the sanction for the first ‘lower’ tier offence with payment of benefits through a ‘yellow card’ rather than the withdrawal of benefits.** This card would be awarded at the point where the individual had re-engaged with Jobcentre Plus and started complying with conditionality. This could be done in tandem with reconsideration or appeals.

**Box 4.2: The current system and our proposed system**

Current system	Proposed system
A sanction for a first offence in the lower tier consists of: <b>Four weeks without benefit</b>	Under our system this would be replaced by: <b>Benefits being paid on card for eight weeks</b>

There are many examples of this type of payment mechanism being used in different welfare systems and contexts. Two are briefly summarised in Box 4.3 below:

**Box 4.3: Payment cards – examples from Australia and the United States**

**The Australian Basics Card**

This method of payment is used for certain groups within Australia who are subject to ‘income management’, with a report highlighting that around 82% of income managed money is allocated through the BasicsCard. The card functions as a reusable debit card which benefits are received on electronically. However, it can only be used at approved stores and businesses. Those stores and businesses are in turn expected to control which items BasicsCard funds can be spent on, excluding certain harmful substances such as alcohol or tobacco.

Otherwise, the BasicsCard functions much like a normal debit card, allowing individuals to accrue a balance through savings, and only allowing access to the funds through a secret pin. There is also power to restrict daily spending on the card for those who do not manage their finances effectively.<sup>67</sup>

67 Bray, J, et al, ‘Evaluating New Income Management in the Northern Territory: First Evaluation Report’, UNSW Social Policy Research Centre, 2012.

**United States SNAP Cards**

Under the United States Supplemental Nutrition Assistance Program, benefits are paid through an Electronic Benefit card which can only be used in certain stores. The main reason for this is to ensure that the benefits which are intended for a specific purpose (nutrition) are used appropriately, rather than other goods or services.

Eligibility for stores is strictly controlled, and SNAP cards can only be used to purchase certain items. This means eligible stores must either manually process the items in question, or purchase third party software which will distinguish between eligible and non-eligible items. Otherwise the SNAP cards functions much like a debit card, and customers must be treated by shops in an identical manner to other consumers.<sup>68</sup>

Limiting purchasing choices in both systems has required vendor-side technology or enforcement, meaning it is unlikely to be viable as a small and discrete part of a sanctions regime. This is because the investment in new EFTPOS<sup>69</sup> equipment which would likely be required would not be justifiable for a small-scale rollout, even if practical issues such as the need for manual enforcement at checkouts<sup>70</sup> could be overcome.

Nonetheless, the use of limited 'yellow cards' could pave the way for the development of technology which would prevent certain items being purchased with benefits in the future. This is reportedly a direction which the Secretary of State for Work and Pensions has asked officials to investigate,<sup>71</sup> and is broadly popular as a concept.<sup>72</sup> Whether or not this is a desirable policy will likely depend on technological capabilities and their associated costs. Therefore we recommend that:

**Recommendation 3: DWP should investigate the capabilities of the technology behind 'yellow cards' and how non-financial sanctions might be made more effective.** This could include limiting the type of goods or services which could be purchased with the card. Ultimately, the use of 'yellow cards' in this sense could act as a first step towards the capability to trial more radical non-behavioural sanctions.

Regardless, simply paying sanctioned benefits through cards without these capabilities would help achieve three important goals:

- **Reducing hardship** for those who are sanctioned for the first time by allowing them to access benefits, but through a different mechanism.
- **Re-engagement of claimants** through allowing a conversation to take place as they make contact with JCP staff before receiving their yellow card.
- **Changing behaviour** through social pressure placed on the individual.

There are a number of advantages a more responsive system could create. The ultimate goal is to re-engage claimants with the system, enforcing the conditionality regime whilst preventing any potential hardship from occurring. How this sanction would be structured and sequenced is demonstrated in the flowchart below.

68 United States Department of Agriculture, 'Supplemental Nutrition Assistance Program Education Guidance – Nutrition Education and Obesity Prevention Grant Program', 2013.

69 Electronic funds transfer at point of sale.

70 Wood, C. & Salter, J, 'The Power of prepaid', Demos, 2013.

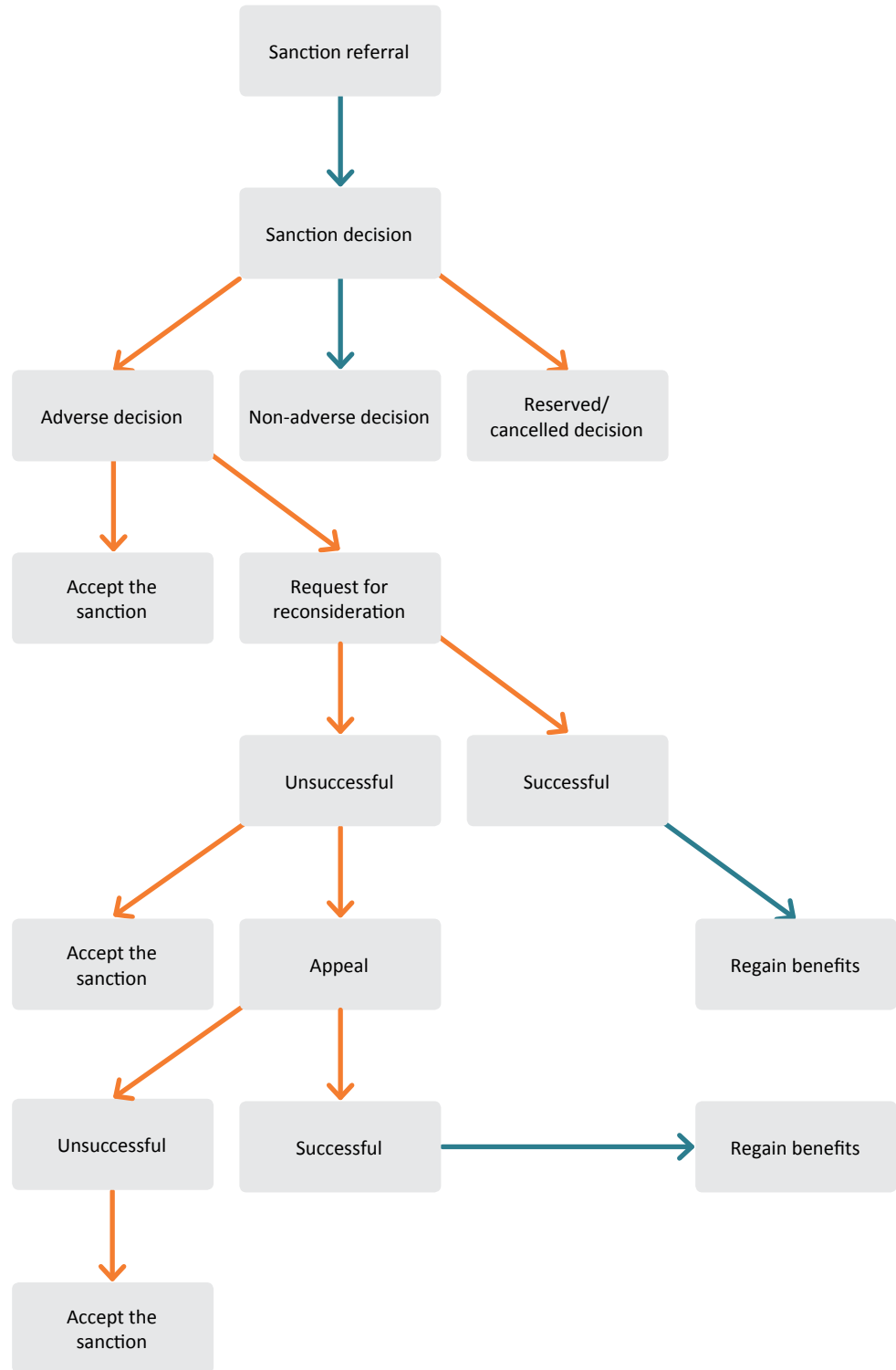
71 Hope, C, '120,000 troubled families could be legally banned from spending benefits on alcohol and tobacco', The Telegraph, 2012, Accessed at: <http://www.telegraph.co.uk/news/politics/9605858/120000-troubled-families-could-be-legally-banned-from-spending-benefits-on-alcohol-and-tobacco.html>

72 Demos, 'Direct Payment Survey', 2012, Accessed at: <http://www.demos.co.uk/files/Demospollingbenefits.pdf>

— Conventional payment    
 — No payment    
 — Benefits payment through card

## The current system

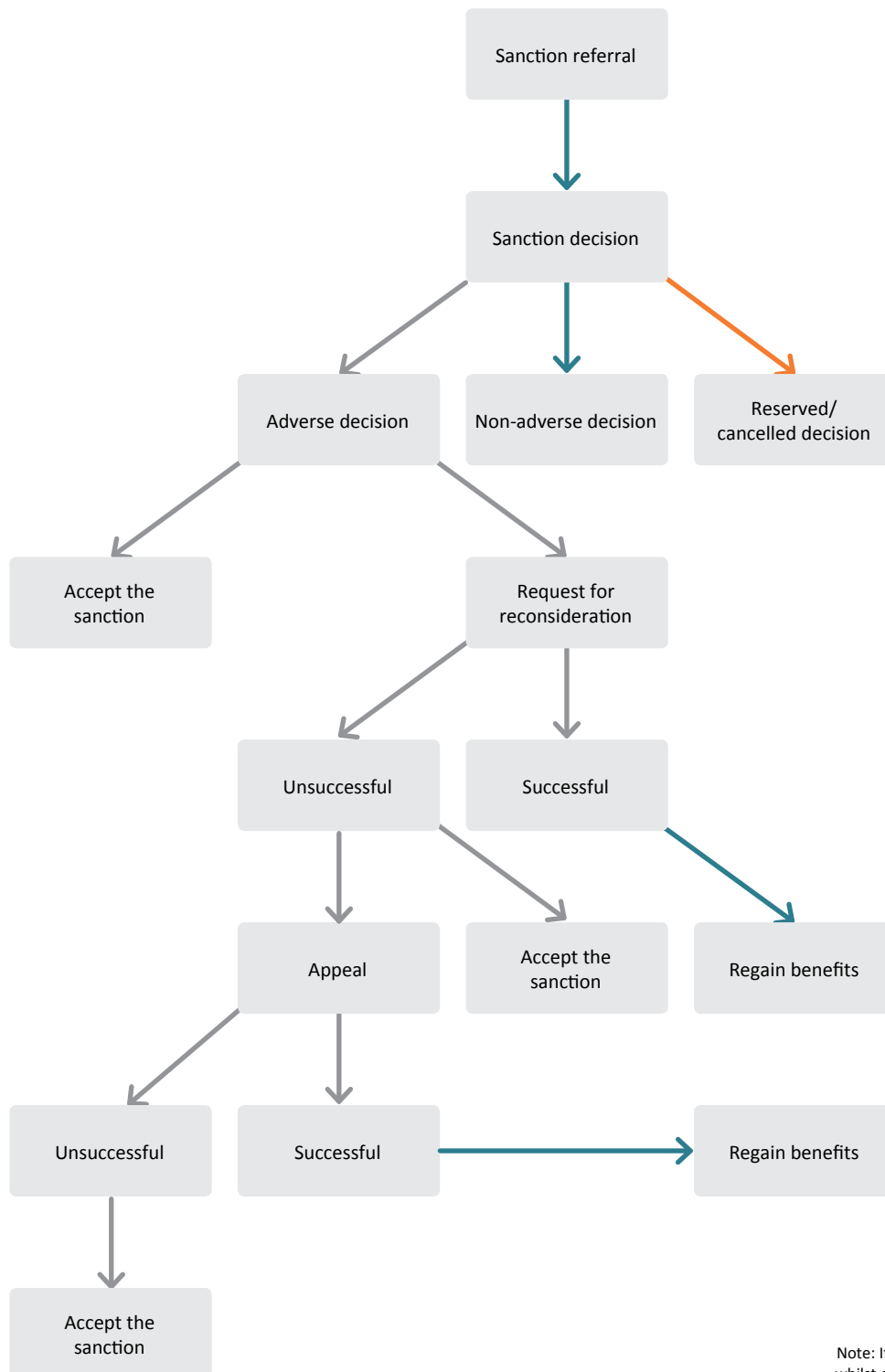
For all sanctions including 'first' lower tier sanctions.



— Conventional payment    
 — No payment    
 — Benefits payment through card

## The proposed system

For 'first' lower tier sanctions only.



Note: If the claimant receives another sanction whilst on the 'benefits card' then this would be treated as an additional offence, and the appropriate sanction would be applied.

In total, using the DWP statistical package we estimate that around 19,000 claimants per month would be affected by this form of sanction.<sup>73</sup> Of this group, around 29% (5,600) are likely to later have their sanction lifted due to successful reconsideration or appeal.<sup>74</sup> This implies that an estimated 68,000 people a year wrongfully experience a lower tier first sanction and would benefit from this recommendation. Of the individuals who were correctly sanctioned for the first time, the emphasis on re-engagement, and the use of social pressure through yellow cards may be more effective at shaping behaviour. This is one of the questions that the pilot would seek to assess.

Another benefit of this mechanism is that the ongoing relationship and control over the payment mechanism means that the delivery of benefits can be quickly and effectively stopped if a claimant fails to meet their ongoing commitments, offering an ability to prevent the system from being gamed by those who have no intention of being compliant. We anticipate that after the duration of the sanction (eight weeks), the payment mechanism would revert to normal.

**Recommendation 4: The Sanction should have a greater duration of around eight weeks.** This should effectively mean that it offers a ‘route’ for those who want to respond positively to do so, whilst ensuring that the sanctions process is still effective for those who do not choose to promptly re-engage.

**Recommendation 5: Once a claimant has re-engaged with the system, any other further violations should be considered as an additional sanction.** Without this adjustment, it would be possible to abuse the leniency in the ‘first’ sanction to avoid additional sanctions in the future.

The resulting change would be small for those who were noncompliant, but would offer an ability to re-engage claimants at an earlier point as well as reducing hardship. Ultimately it would aim to create a more responsive system. This seems to be somewhat in keeping with the intent stated in the 2011 Equality Impact Assessment which mentioned that under the previous system:

*“There will be two components to a lower level sanction – an open ended component which will end when a claimant re-engages and a fixed period.”<sup>75</sup>*

The rationale for changing this was that a fixed period caused a level of confusion which in turn hindered the effects sanctions would have.<sup>76</sup> However, if it is possible to establish that the ‘sanction’ in the first case is a differing form of payment, which must then be claimed by complying with further conditionality, this confusion should be avoided. In sum, these recommendations would reshape the first ‘lower’ tier of the sanction to provide greater failsafe and an emphasis on re-engagement.

Despite this, there is the possibility it will make the situation slightly more amenable for those who are choosing to try and ‘game’ the system. For this reason, there is a need for more significant forms of sanction. Whilst non-financial sanctions in the forms of limited workfare might be an option, given the costs of large scale workfare, and its limited use when not targeted to specific groups,<sup>77</sup> this does not seem particularly advisable.

73 Author’s own calculations using ‘Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013’ – Calculated using the amount of total amount of first time sanctions which were in the low tier, and dividing this by the time period.

74 Author’s own calculations using ‘Jobseeker’s Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013’ – Calculated by taking the amount of lower tier decisions which are successfully reconsidered or appealed, and multiplying that by the percentage of sanctions in the lower category which are first time sanctions, followed by dividing that over the time period.

75 Department for Work and Pensions, ‘Conditionality Measures in the 2011 Welfare Reform Bill, Impact Assessment (IA)’, 2011.

76 Department for Work and Pensions, ‘Explanatory Memorandum to The Jobseeker’s Allowance (Sanctions) (Amendment) Regulations 2012’.

77 Holmes. E, ‘Work Fair?’.

Similarly, the application of the more moderated sanctions system to later sanctions risks diluting their effect. Assuming that claimants who are experiencing their second or third sanctions are persistently noncompliant, an inconvenient payment mechanism may not be sufficient. There should also be some graduation between a second sanction and an individual who has been consistently sanctioned more than three times. With that in mind, we recommend that:

**Recommendation 6: For the ‘lower’ category of sanctions, a third sanction should result in 26 weeks of loss of benefit. For a fourth sanction, there should be an additional 13 weeks, and this should cumulatively increase by 13 weeks for each additional sanction, with a maximum sanction length of 156 weeks.** This would increasingly shift the most troublesome cases onto more punitive sanctions, whilst keeping the maximum sanction in line with the top level for a ‘high’ sanction.

**Box 4.4: The current system and our proposed system**

Current system		Proposed system	
Sanctions in the ‘lower’ category are:		Sanctions in the ‘lower’ category would be:	
Sanction	Loss of benefit	Sanction	Loss of benefit
2nd	13 weeks	2nd	13 weeks
3rd	13 weeks	3rd	26 weeks
4th	13 weeks	4th	39 weeks
(n)th	13 weeks	(n)th	13(n-1) weeks

Practically, it is likely that a claimant would have ‘cycled’ off benefits, entered a specialist training programme for the long-term unemployed, or signed off before this ‘maximum’ is met. However, it should help provide a more extensive punishment for those who consistently abuse this system.

There is unfortunately little specific research on the effect this regime would have. This type of non-financial sanction has not previously been tried in great depth, and more to the point, it has not been tried in combination with other aspects of the U.K. welfare system. However, there is definitely the technology to pay certain benefits payment on specialist cards, and this has been trialed for specific groups in Australia, and on SNAP cards in America.

What the existing evidence base does point to, is the twin issues that poorly designed sanctions can create. Piloting the recommendations we have outlined would help determine whether or not there is a way to make sanctions ‘smarter’, and would hopefully reduce hardship and noncompliance in the future. Such a system could also promote a greater level of cooperation, and resolve issues earlier.

Some of the TANF programs identified that reengagement and conciliation were goals which should be incorporated into the sanction design. These attempts sum up what we believe the ultimate goal of the lower tier of sanctions should be, namely to:

“Determine the reasons for noncompliance, resolve participation issues, and ensure future compliance.”<sup>78</sup>

Another option which could be piloted is daily sign on. This could either be in conjunction with payment through the yellow cards, or as a separately piloted policy. Daily sign on is already due to be implemented for a cohort of unsuccessful

“The goal of utilising daily sign in as a sanction would be to create a level of inconvenience which would incentivise compliance with the conditionality regime”

Work Programme participants under the proposed ‘Help to Work’ scheme.<sup>79</sup>

The goal of utilising daily sign in as a sanction would be to create a level of inconvenience which would incentivise compliance with the conditionality regime, tied to a system

which promotes re-engagement, and allows effective monitoring. We propose that this approach is tested in order to determine its effectiveness, with a view to rolling it out more broadly.

**Recommendation 7: Another concept which should be piloted is that the sanction for the first ‘lower’ tier offence should be replaced with compulsory daily sign in. This could occur either in conjunction with the piloting of yellow cards, or separately.** Ideally both of these permutations would be tested so that the effects of each can be isolated.

### ESA sanctions

Unlike JSA sanctions, ESA WRAG sanctions have a greater level of proportionality. Whilst issues such as the outcome of ‘fitness for work’ tests may affect how legitimate sanctions are on a case by case basis, this report does not speak to that issue. Instead it focusses on whether the sanctions mechanism and level itself is fair.

The current system of sanctions focuses on a sanction which is “100% of the prescribed ESA amount open-ended until re-engagement, followed by a fixed period.”<sup>80</sup> This fixed period lasts for 1 week in the first sanction, 2 weeks in the second, and 4 weeks in the third.<sup>81</sup>

With this in mind, the fact that there is an open-ended 100% sanction until re-engagement seems sufficient to promote re-engagement and shape behaviour. However, 4 weeks is a comparatively short amount of time for claimants to be sanctioned if they are consistently abusing the system in the long run. As such, the only change we recommend is that:

**Recommendation 8: In line with recommended JSA lower tier sanctions, additional ESA sanctions beyond the third event of noncompliance should increase to eight weeks for the fourth sanction, and by four weeks for each additional sanction.**

78 Kauff. J, et al. ‘Using Work-Orientated Sanctions to Increase TANF Program Participation’.

79 BBC News, ‘Q&A: What will ‘Help to Work’ mean for claimants?’, BBC News, 2013.

80 Department for Work and Pensions, ‘Jobseeker’s Allowance: overview of revised sanctions regime’, 2013.

81 Provided that the ‘failure’ is within 52 weeks but not 2 weeks of the previous sanction, as per the rest of the sanctions program.

**Box 4.5: The current system and our proposed system**

Current system		Proposed system	
Sanctions in the 'lower' category are:		Sanctions in the 'lower' category would be:	
Sanction	Loss of benefit	Sanction	Loss of benefit
1st	1 week	1st	1 weeks
2nd	2 weeks	2nd	2 weeks
3rd	4 weeks	3rd	4 weeks
4th	4 weeks	4th	8 weeks
(n)th	4 weeks	(n)th	4(n-2) weeks

Achieving this step, would again, increase pressure on those who are serially noncompliant, though otherwise preserve a system which focuses on re-engagement.



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# 5

## Recommendations: The Process

There are still issues in terms of the communication and process behind sanctions. The recommended reforms from Chapter 4 require these areas to be investigated in order for implementation to be effective. Without effective design and communication, sanctions can frequently be viewed as unfair. Indeed, a review on the topic commented that:

*“Within the qualitative research, customers’ assessments of the ‘fairness’ of the system were linked to their perceptions of communication, primarily how successfully they felt the system had been communicated to them and how knowledgeable they were about their responsibilities.”<sup>82</sup>*

Unfortunately sanctions will occasionally be applied incorrectly due to incomplete information coming from a myriad of different providers. Whilst our recommendations regarding non-financial sanctions should alleviate this to some extent, it is worth noting some opportunities our proposed process would offer to improve the appeals and reconsideration process.

### Cancelled decisions

As noted previously, there has been a substantial ‘uptick’ in the number of reserved or cancelled decisions. Cancelled decisions represent individuals who are found to have left benefits before the referral occurs, meaning that failure to comply with requirements is because they are no longer obliged to.

It is unclear whether there is a barrier to determining the status of the claimant before referring them as a labour market doubt. If there is, then it would presumably be optimal to determine this before referral occurred to streamline the process and minimise the amount of information which has to go through the decision maker. As such, we recommend:

**Recommendation 9: DWP should investigate why the number of cancellations has increased and whether it is possible to arrange for benefit status to be checked before a referral occurs.**

These investigations may be inconclusive or it may be that the Decision Maker is best placed to analyse this point. However, if there was the ability to strip out ‘cancelled’ decisions which had legitimately occurred, it would allow greater clarity to be gained from the statistics released by DWP, thereby giving more insight into how sanctions are functioning.

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82 Peters. M, & Joyce. L, ‘A review of the JSA sanctions regime: summary research findings’, 2006.

## Reconsidering sanctions

Mandatory reconsideration is a positive step and is important in ensuring that the process is as accurate as possible. With the introduction of a system which focuses on non-financial sanctions, there is an opportunity to engage the claimant. If this offers the ability to ensure that more correct decisions are made then it should be seized. Currently the reconsideration request follows the journey demonstrated in Figure 5.1 below.

The necessary first and second steps for somebody who has been sanctioned and wants to appeal or ask for reconsideration involve requesting an explanation and then contacting DWP requesting reconsideration. It is obviously desirable that the situation is resolved as quickly as possible. Therefore, we recommend that:

**Recommendation 10: DWP should facilitate claimants requesting reconsideration and appeals when receiving their yellow card for the first time.** For many claimants, this would help them access the reconsideration process, increasing its speed, and helping resolve issues more quickly.

There is also the possibility that this ‘easier’ route for requesting reconsideration will be preferable for claimants, increasing their willingness to go to the initial meeting and re-engage with the system. If true, this would be another benefit of a more lenient system for a specific segment of claimants.

There is a chance that the yellow card may alter the incentive to request reconsideration or appeal a decision. This may occur as payment through a card is less punitive than the complete removal of benefits, meaning claimants may not feel that it is necessary to request reconsideration, or to follow it up with an appeal.

This is undoubtedly likely to be the case for at least part of the group in question, though it is not clear if a greater or lower amount of reconsiderations and appeals is a good thing. Ultimately it is desirable that:

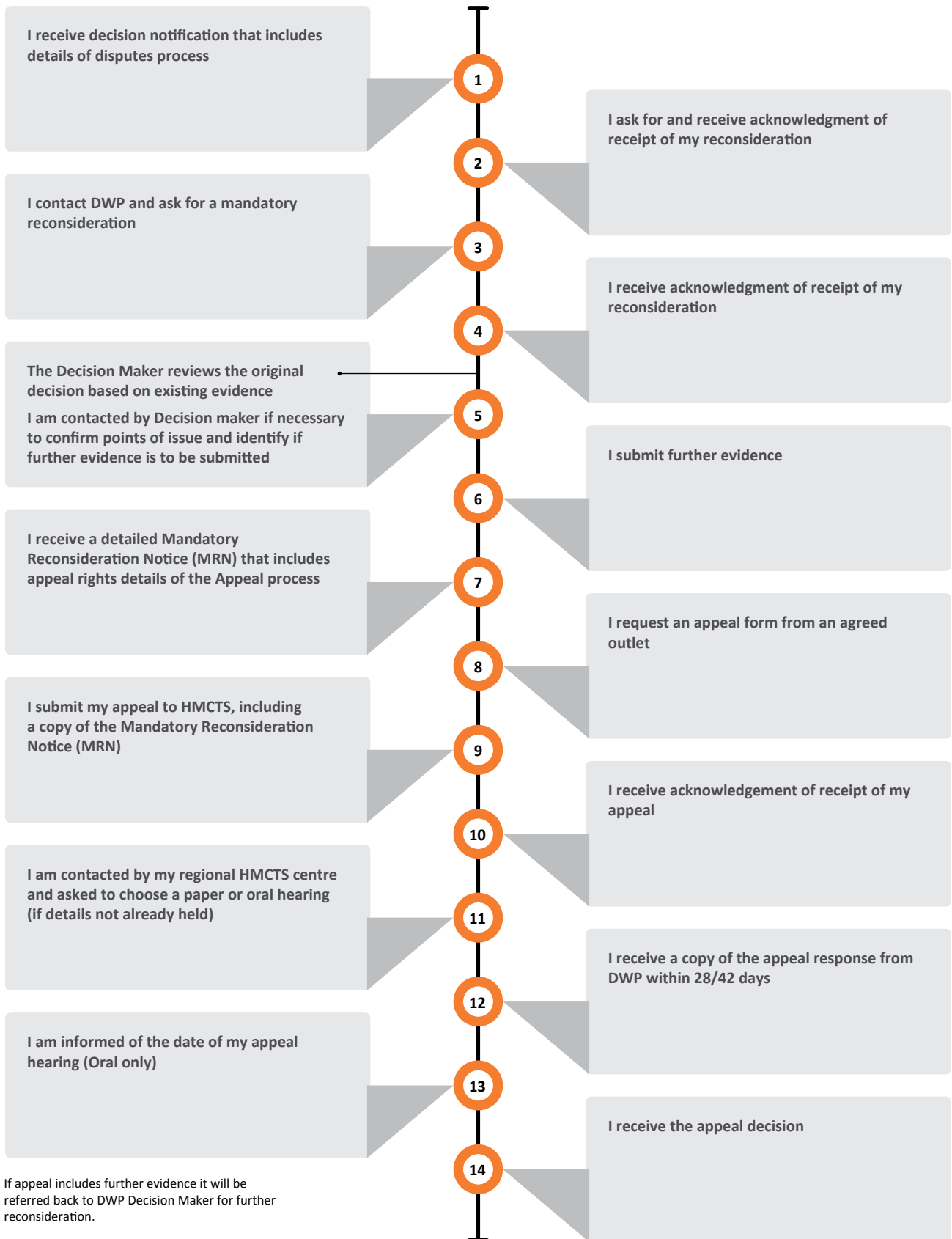
- There are fewer appeals from those who have little legitimate reason to request reconsideration or appeal.
- Those with legitimate reasons to request reconsideration or appeal continue to do so.

In this sense, the incentive structure created is not necessarily problematic; having the potential to reduce the amount of less credible appeals or reconsiderations. However, there is a concern that the same incentive will reduce the amount of appeals with legitimate grounds. If they failed to and later had another sanction applied, then they would receive a harsher penalty than would be appropriate.

As a result, there would be a large role for jobcentre plus advisers to play in informing claimants of their opportunity to challenge the decision, and encouraging them to do so if appropriate. We suggest that this could occur as part of the process of facilitating claimants requesting reconsideration or an appeal suggested above.

Figure 5.1

## High Level Appeals Journey (Mandatory Reconsideration and Direct Lodgement)



If appeal includes further evidence it will be referred back to DWP Decision Maker for further reconsideration.

Source: Department for Work and Pension, Appeals Reform – An Introduction, 2013.

## Crunching the data

There is little longitudinal data in terms of the effects that certain sanctions have on claimants or their destination once they have left benefits. This means that the analytical conclusions which can be drawn from current data are limited.

Whilst the DWP are to be commended on the most recent statistical release which contained a large and useful amount of data which this report drew upon, there are specific questions which could be answered by more data. Therefore, we recommend that:

**Recommendation 11: DWP should collect and publish information on the reasons for claimants leaving benefits in the case of ‘reserved’ or ‘cancelled’ decisions.** This would help identify what ‘deterrent’ affect sanctions are having, and the reasons for individuals signing off welfare.

There are also a number of other sources of data which would expand our understanding, including greater up-to-date data on hardship caused by different forms of sanctions, likely outcomes after sanctions, and what effects of non-financial sanctions may have.

Whilst it is unlikely this data can be feasibly collected within the current systems, analysis in the pilots we have proposed should evaluate these wider metrics in order to get a holistic view of the effects sanctions, and our recommendations, are having.

**Recommendation 12: During the proposed pilots, a range of information should be collected from both the treatment and the control group. This should include the long-term effect that different treatments have on being employed, earnings, and experiencing hardship.**

This format is similar to a number of evaluations which were carried out in aftermath of the 1996 US welfare reforms, which emphasised rigorous testing of the differences between the pilot and control groups.<sup>83</sup> However, this has one caveat, namely that this adjusted ‘regime’ which is tested should be the only program under consideration at the time, rather than bundled in with a wider set of reforms. Otherwise, it will become impossible to effectively isolate the effects of any single intervention.

At the heart of this report is a desire to move towards a more responsive system of sanctions. However, the existing data and evidence can only take us so far. Building effective evidence and rigorously testing this approach is key and, in the future, will help us get a more effective and accurate system.

## Universal credit

So far, this report has primarily concerned itself with sanctions under the existing system of benefits. However, under the planned implementation of Universal Credit, these benefits will obviously become components of an overall monthly payment, rather than a distinct and separate benefit. Evidently if a family unit is receiving multiple benefits, it may be unfair to prevent receipt of all of them due to one sanction. As such we recommend that:

<sup>83</sup> Examples include the use of random assignment in: Scrivener, S, et al. ‘WRP – Final Report on Vermont’s Welfare Restructuring Project, Manpower Demonstration Research Corporation’, 2002, and; Knox, V, Miller, C, & Gennetian, L.A. ‘Reforming Welfare and Rewarding Work: A Summary of the Final Report on the Minnesota Family Investment Program’, 2000, and; Freedman, S, et al. ‘The Los Angeles Jobs-First GAIN Evaluation: Final Report on a Work First Program in a Major Urban Center, Manpower Demonstration Research Corporation’, 2000.

**Recommendation 13: DWP should consult on how sanctions would operate under Universal Credit, and which components of the payment the sanction should apply to.**

Similarly, as previous Policy Exchange research has noted, one of the implications of Universal Credit will be the extension of a single payment to those who are in employment. This, in turn, means that there will need to be a conditionality regime to encourage in work progression and discourage sustained dependency on the in-work component of Universal Credit. A conditionality regime necessitates sanctions, and we recommended that those who fail to meet the obligations outlined in our report were subject to them.<sup>84</sup>

Obviously the in-work component of universal credit should be subject to the sanction in this case as the conditionality regime is being applied to encourage progression. However, given that this is likely to be a different sum, it may be worth considering that the sanction should take a different form and potentially be applied to only a part of the in-work component. Ultimately, exactly what the correct design is will depend on what form the in-work conditionality element takes.

**Recommendation 14: DWP should consult on how the sanctions regime should be applied to in-work conditionality.**

This will depend on exactly what form in-work conditionality takes, and the implementation of Universal Credit. As such, it may not be entirely relevant until the planned implementation date. However, it will influence many of the strategic decisions made around in-work conditionality, and thus should be considered prior to this date.

84 Garaud, P, & Oakley, M. 'Slow Progress – Improving progression in the UK labour market', Policy Exchange, 2013.

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# 6

## Summary of Recommendations

**Recommendation 1: Government should pilot non-financial sanctions for some claimants in order to make sanctions more responsive to the differing circumstances of claimants.** They should focus on attempting to alleviate possible hardship in the case of wrongful sanctions, promoting re-engagement and changing behaviour. The details of the proposed pilots are set out below.

**Recommendation 2: One policy piloted should be replacing the sanction for the first 'lower' tier offence with payment of benefits through a 'yellow card' rather than the withdrawal of benefits.** This card would be awarded at the point where the individual had re-engaged with Jobcentre Plus and started complying with conditionality. This could be done in tandem with reconsideration or appeals.

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**Recommendation 4: The Sanction should have a greater duration of around eight weeks.** This should effectively mean that it offers a 'route' for those who want to respond positively to do so, whilst ensuring that the sanctions process is still effective for those who do not choose to promptly re-engage.

**Recommendation 5: Once a claimant has re-engaged with the system, any other further violations should be considered as an additional sanction.** Without this adjustment, it would be possible to abuse the leniency in the 'first' sanction to avoid additional sanctions in the future.

**Recommendation 6: For the 'lower' category of sanctions, a third sanction should result in 26 weeks of loss of benefit. For a fourth sanction, there should be an additional 13 weeks, and this should cumulatively increase by 13 weeks for each additional sanction, with a maximum sanction length of 156 weeks.** This would increasingly shift the most troublesome cases onto more punitive sanctions, whilst keeping the maximum sanction in line with the top level for a 'high' sanction.

**Recommendation 7:** Another concept which should be piloted is that the sanction for the first 'lower' tier offence should be replaced with compulsory daily sign in. This could occur either in conjunction with the piloting of yellow cards, or separately. Ideally both of these permutations would be tested so that the effects of each can be isolated.

**Recommendation 8:** In line with recommended JSA lower tier sanctions, additional ESA sanctions beyond the third event of noncompliance should increase to eight weeks for the fourth sanction, and by four weeks for each additional sanction.

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**Recommendation 12:** During the proposed pilots, a range of information should be collected from both the treatment and the control group. This should include the long-term effect that different treatments have on being employed, earnings, and experiencing hardship.

**Recommendation 13:** DWP should consult on how sanctions would operate under Universal Credit, and which components of the payment the sanction should apply to.

**Recommendation 14:** DWP should consult on how the sanctions regime should be applied to in-work conditionality.



Conditionality in welfare cannot exist without sanctions. However, too frequently the system in the U.K. can be unresponsive to the needs of individual claimants. This report estimates that each month around 5% of JSA recipients are sanctioned. After reconsideration and/or appeal, 29% of those who receive their first 'lower' tier sanction have the sanction overturned, meaning around 5,600 of them a month are wrongly sanctioned.

To reduce hardship, instead of removing benefits for four weeks, we propose that this sanction is replaced with trials of benefit payments on card and daily sign in. We also suggest much harsher punishments for those who are repeatedly sanctioned. This would help create a more responsive system and make wrongful sanctioning less problematic.

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