

Using Human Rights and Equality Legislation to Monitor, Analyse and Challenge Welfare Benefit Sanctions

Report of an Expert Round Table
Centre for Human Rights in Practice, School of Law,
University of Warwick

Monday 10th February 2014

Organised by Mary-Ann Stephenson and James Harrison

1. Summary of Report

This report summarises the key conclusions and recommendations of a round table discussion to explore ways in which equality and human rights legislation can be used to monitor, analyse and challenge welfare benefit sanctions policy and practice. It was organised and hosted by the Centre for Human Rights in Practice at the University of Warwick, School of Law. This report was written by Mary-Ann Stephenson, James Harrison and Alison Garton.

Those taking part in the workshop included representatives from advice organisations, welfare rights organisations, civil society and voluntary groups, lawyers, academics and trade unions. Some participants had policy expertise in the welfare benefits system and in particular benefit sanctions, others had expertise in the impact of sanctions in practice. Other participants were experts in equality or human rights legislation and in particular how it could be applied to the welfare benefit system (see full list of participants at section 2).

The workshop was divided into three main areas:

- 1. Monitoring the human rights and equality impact of benefit sanctions.** What work is already taking place to monitor the impact of benefit sanctions on particular equality groups and on the human rights of those affected and how can this approach be shared and promoted?
- 2. Using the Public Sector Equality Duty in action short of litigation.** How can welfare and advice organisations bring pressure to bear on Job Centres locally to have due regard to the impact of sanctions practice on equality groups?
- 3. Challenging sanctions using Equality or Human Rights legislation in court.**

Recommendations for future action are included throughout the report and the main areas where future action are required are summarised in section 6. The main recommendations are:

- **Providing accessible information** for those who have been sanctioned or who are at risk of sanction about their rights, particularly in terms of the process that should be followed, rights of appeal and rights of support if benefits are sanctioned
- **Establishing a network for** (1) organisations involved in benefits advice and advocacy; (2) groups and individuals researching the impact of benefit sanctions; and (3) lawyers bringing cases in relation to welfare benefit sanctions in order to share information, research finding and communicate about actual and potential cases
- **Undertaking research** to fill the gaps in existing knowledge about the extent and impact of sanctions, and to identify where sanctions decisions are being made inappropriately. Specific recommendations on research which is required have been made throughout this report.

The workshop was held under Chatham House rules meaning that individual comments are not attributed. However during the seminar participants referred to a number of projects and research reports which are publically available and where possible we have included brief summaries of the main conclusions of these reports.

2. Workshop Attendees

Paul Anderson	Homeless Link
Nony Ardill	Equality and Human Rights Commission
Michael Bates	Coventry Law Centre
Clive Baulch	Boycott Workfare
Sue Bent	Coventry Law Centre
Sally Brett	TUC
Kate Clayton-Hathway	Oxford Brookes University
Alison Garton	Centre for Human Rights in Practice, University of Warwick
Janet Gurney	Coventry Law Centre
James Harrison	Centre for Human Rights in Practice and School of Law, University of Warwick
Hannah Jones	Sociology Department, University of Warwick
Ava Lee	Fawcett Society
Ravi Mehta	Blackstone Chambers
Gay Moon	Equality and Diversity Forum
Daksha Piparia	Coventry Citizens' Advice Bureau
Ellie Roberts	Community Links
Desmond Rutledge	Garden Court Chambers
Mike Spencer	Child Poverty Action Group
Mary-Ann Stephenson	Coventry Women's Voices/Centre for Human Rights in Practice, University of Warwick
Nicholas Taylor	Department of Politics and International Studies University of Warwick
Jonathan Timbers	Equality and Human Rights Commission

3. Monitoring the human rights and equality impact of benefit sanctions

The first session concentrated on various projects to monitor the impact of benefit sanctions on particular groups or in particular areas. Some of these are detailed below in the case studies. As well as the particular impact on specific groups there were some common themes emerging from these case studies, and the contributions of other participants based on their experience of the impact of sanctions on their client base:

The scale of the issue

Over 850,000 benefit sanctions were imposed in the UK in the year to June 2013, a 24% increase on the previous year. People claiming Job Seekers Allowance now have a one in four chance of experiencing sanctions.

Problems with the process

Participants reported:

- An increase in sanctions that appear particularly disproportionate, including sanctions for being late for a meeting or accidentally making an error on a form. There are also examples of people being sanctioned for not attending a meeting even when they had a good excuse for example being in hospital or attending a job interview.
- Unrealistic job-seekers' agreements that do not take account of the situation or needs of job seekers, for example their caring responsibilities, mental health problems or disabilities. Breaches of these agreements are leading to increased numbers of sanctions.
- Clients who are not aware that they are at risk of sanctions, do not know that they have been sanctioned until their benefits are stopped, do not know what they have been sanctioned for, or how long the sanction will last and do not know they have a right to appeal
- Clients who have not been advised of their entitlement to hardship payments
- A low level of appeals, despite the high success rate for appeals against sanctions. Most people are too focussed on dealing with their immediate needs (for food and to pay rent and bills) to consider an appeal.
- Claims by whistle-blowers from within Job Centre Plus that staff are being set targets to sanction people and that this is leading to the deliberate targeting of vulnerable groups for sanctions.

Impact of sanctions

Agencies are seeing an increase in people in crisis because of the application of sanctions. Impacts include increased stress, depression and other mental health problems, including increased suicide risk, an increase in homelessness and an increase in 'survival theft'.

Agencies working on women who are victims and survivors of violence are also seeing increase in financial abuse of women with perpetrators using false allegations that they are committing benefit fraud, or the threat of false allegations as a means of control.

Case study – Single Parent Action Network (SPAN) research findings

In 2012 and 2013 SPAN published two analysis reports looking at the experience of single parents on the Work Programme (2012 & 2013).¹ This involved interviewing single parents about their experiences including those that had been threatened or received sanctions

SPAN found that the Work Programme was not designed in a way that took account of the caring responsibilities of single parents. Particular problems included:

- A lack of childcare provision for lone parents required to attend training courses or meetings at the Job Centre. Meetings were set at a time when parents had caring responsibilities but they were told they must attend without their children, turned away if they did bring their children in, and then marked as not attending which put them at risk of sanction.
- Job Seekers agreements drawn up with little recognition of caring responsibilities which meant that they were unrealistic for lone parents, for example involving a commitment to look for full time work, take shift work that did not fit in with available childcare or travel long distances for work despite the lack of available child care.
- Little recognition of or protection for the well-being of children in the design or implementation of the work programme.

At the same time, the report recognised that where services are designed to take account of the needs of lone parents this can significantly increase their ability to return to work

SPAN has called for the Equality and Human Rights Commission to re-examine their inquiry into the Department of Work and Pensions compliance with the Public Sector Equality Duty and to look at the contracted services under the work programme for single parents. SPAN has also called on the Children's Commissioner for England to examine the compliance of the Work Programme with the Children Act and other legal protections for children.

Case study – research by Homeless Link

Homeless Link have researched the impact of sanctions on homeless people² and found that

- 31% of homeless people on Job Seekers Allowance have been sanctioned, compared to just 3% of typical claimants
- Nearly a third of homeless services report homeless people being sanctioned while facing poor mental health, learning difficulties or substance misuse problems
- The majority report clients being pushed into debt, food poverty and survival crime
- Homeless services report clients' existing problems getting worse as a result of sanctions, with only a minority being motivated by sanctions to find employment

Loss of benefits – up to £71.70 per week for JSA claimants – appears to be having a significant impact on homeless people. Of the services that responded to the survey:

- 98% reported homeless people falling into rent arrears;
- 87% reported homeless people experiencing food poverty;
- 86% reported homeless people getting into debt;
- 62% reported homeless people turning to crime to survive

According to the survey sample of homeless services, the single most common reason for clients being sanctioned was failing to attend a Jobcentre Plus interview. However, services also reported that clients often did not receive important communications that could have enabled them to avoid being sanctioned.

Homeless people are already trying to overcome complex problems, and 84% of services reported this group experiencing increased anxiety or depression when sanctioned. Only 18% of services believe that the threat of sanctions is motivating some clients to get into employment.

Case study – impact of benefit sanctions in Coventry

Coventry Law Centre, Coventry Citizen's Advice Bureau, the Centre for Human Rights in Practice at the University of Warwick and Coventry Women's Voices are carrying out a project to monitor the impact of sanctions on people in Coventry via a questionnaire through local advice and support services.³

Although this work is ongoing initial findings include:

- People who have been sanctioned are not informed about their rights to hardship payments but instead referred to the food bank.
- Sanctions are for increasingly long periods but few people are intending to appeal since they are focussed on meeting their immediate needs.
- People who have been sanctioned are often not aware why they have been sanctioned or what they can do about the sanction.

Areas for future monitoring – Gaps in research

Impact of sanctions and other welfare benefits on other policy areas: There is little evidence to date of the impact that benefit sanctions are having in relation to broader social issues, e.g. on crime and community safety. However based on anecdotal evidence and evidence from welfare reform programmes in other countries it is particularly important to monitor the affect that welfare benefits sanctions are having on:

- Increases in individuals committing specific criminal offences, particularly 'survival crime' such as shop lifting and prostitution and
- Problems for victims and survivors of domestic and sexual violence who may be less able to access support services if they are dealing with the impact of benefit sanctions.

Co-ordination of what monitoring is taking place. There are a number of monitoring projects but these are often small scale/local and not everyone is aware of the findings. There is a need to develop mechanisms for sharing information between organisations and publicising composite results of monitoring to policymakers and other key stakeholders.

Monitoring to support legal challenge. If lawyers are considering challenges under the Equality Act on the grounds that sanctions are being imposed in a discriminatory way then they need reliable sources of statistical information to support their claims. They would be greatly assisted by the collection of large scale data broken down by different equality groups.

Reasons why sanctions are imposed. Clients are often not clear why they have been sanctioned and the letters they receive often do not provide a great deal of information. There is a great deal of anecdotal evidence of what seem to be harsh and in some cases unreasonable sanctions decisions. However

the data available from the DWP does not provide sufficient information to identify the actual reason for a sanction making it difficult to challenge the claim that these are individual cases rather than part of a general pattern.

Potential impact of universal credit rules. Universal credit will include requirements for people to try to increase their working hours if they are working part time. This may bring working people into the sanctions regime for the first time. It will be important to monitor the extent and impact of sanctions on this group.

Impact of sanctions on people's job seeking behaviour. There is a lack of clear evidence about whether benefit sanctions have acted as a motivator to people seeking work or in fact prevented them from seeking work.

Impact of sanctions on engagement with the welfare benefit system. There was a suggestion that some people are dropping out of the benefit system altogether as a result of the sanctions regime, but there is little evidence about whether this is widespread, who is dropping out and what they are living on if they are not claiming benefits

4. Using the Public Sector Equality Duty in action short of litigation.

This part of the round table focussed on how the Public Sector Equality Duty could be used by welfare organisations to bring pressure to bear on Job Centre Plus locally to have due regard to the impact of sanctions on equality groups.

Case study – freedom of information request

Coventry Law Centre, Coventry CAB, the Centre for Human Rights in Practice at the University of Warwick and Coventry Women's Voices have been using Freedom of Information Requests to obtain a breakdown of the number of people who have been sanctioned from each equality group (as defined by the Equality Act).

At the time of the workshop the group were planning to write to the Job Centre Plus asking what they intended to do to meet their obligations under the Public Sector Equality Duty. Since the workshop that letter has been sent and is included below. The organisations who produced the letter are happy for it to be utilised by other groups seeking similar information:

"I am writing to request further information on how the Job Centre Plus intends to discharge its duty in s.149 of the Equality Act 2010 with regard to welfare benefit sanctions policy and practice.

As you know S.149 requires a public authority in the carrying out of all of its functions to have due regard to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations across the protected characteristics of age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.

Advancing equality of opportunity is defined as including the need to: remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; and take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.

We believe that welfare benefit sanctions practice could have a negative impact on equality and may result in discrimination that is prohibited by the Equality Act 2010. We are concerned that people with physical disabilities, learning difficulties and mental health problems may be disproportionately vulnerable to sanctions and disproportionately affected by sanctions when they are applied. We are also concerned by national research suggesting that lone parents may find it particularly difficult to meet job search and other requirements placed on them by the Job Centre.

Therefore, the s.149 is duty clearly engaged.

We would like to ask whether you have already carried out an EIA of sanctions practice in Coventry and if we can see a copy of this assessment.

If you have not carried out an EIA could you explain the reasons why and how you intend to have due regard to the requirements listed in s.149. In particular, in the absence of an EIA, could you explain how you intend to:

- gather and consider information about the people affected by sanctions, what protected characteristics they have and the extent to which either the requirements of the Job Centre plus, or the impact of sanctions themselves affect them differently from people who do not have those characteristics;
- ensure that the information gathered is sufficient to enable a proper, informed view to be taken about the impact on equality and good relations generally and the risks of prohibited discrimination;
- and, if there is a particular impact on people who share a protected characteristic, give proper consideration to the extent, nature and duration of that impact; and, if there is a negative impact, give consideration to how that could be eliminated or at least mitigated?"

Key points from the discussion

- Staff within Job Centre Plus are reporting fears that they will face disciplinary action if they do not sanction a sufficient number of people and this may be the cause of targeting of vulnerable groups
- Individual Job Centre Plus offices often appear to be unaware of their obligations under the Public Sector Equality Duty as shown by SPAN's research into the experience of lone parents
- There have been examples in the past of Job Centre Plus staff recognising the particular needs of vulnerable groups. For example some JCPs have worked closely with homeless hostels, where this happens sanctions can be reduced by up to 90%. However the experience of disabled people and lone parents has, in many instances, been less sympathetic.
- There is a problem with the competency of advisors to support people with specific needs. For example there used to be specialist advisors for lone parents but these roles have largely disappeared within Job Centre Plus.
- Advisors need training in issues like access to childcare. Currently provision of childcare for the work programme is discretionary but this means that it is often not provided, preventing lone parents from taking part in the work programme.
- There was disagreement among participants about whether the handbook for Job Centre Plus staff should be tightened to make the obligations and rights of job seekers less ambiguous or whether flexibility allows for more sympathetic judgements on the part of the job advisor.
- The Public Sector Equality Duty can only have a limited impact on sanctions since it only contains a duty to have due regard to equality, so long as the Job Centre Plus can show they have had due regard they don't actually have to do anything as a result of it.
- Most legal challenges have been around a failure to make reasonable adjustments

Areas for future work

Develop a pre-action toolkit for organisations wishing to put pressure on Job Centre Plus locally. This might include

- a check list for equality issues to be monitored
- various letters covering issues such as highlighting where equality considerations have not been properly taken into account, questioning whether a work placement is appropriate for particular individuals or group of individuals and so on.

Producing a brief guide to Job Centre Plus obligations under the Public Sector Equality Duty that could be shared on advice agencies' websites.

Challenging the equality impact of sanctions at a national level via DWP and at a local level via individual Job Centre Plus offices

Working with trade unions representing Job Centre Plus staff who have been put under pressure to unfairly sanction people.

Sharing information about how the Public Sector Equality Duty has been used effectively at a local or national level to bring pressure to bear on Job Centre Plus to have due regard to the impact of sanctions on equality groups.

5. Challenging sanctions in court using Human Rights or Equality legislation

Key points made during the discussion were

There is no general right to social security under the Human Rights Act 1998. However there have been a handful of successful welfare benefit challenges under the 1998 Act on the basis that where domestic legislation creates an assertable right to a welfare benefit, this must be distributed in a non-discriminatory way under Article 14 (the right not to be discriminated against) when read with Article 1 of Protocol 1. For example in *Burnip v Birmingham City Council* and *another*, [2012] EWCA Civ 629, [2013] the Court of Appeal held that the bedroom criteria used to restrict the amount of housing benefit payable in the private rented sector was discriminatory against those who needed an extra bedroom for a carer due to their disability or because their children could not share a room as a result of disability, and that the rule could not be objectively justified. The *Burnip* ruling appears to have had an impact on judicial attitudes at tribunal level as First-tier Tribunals are now more open to human rights arguments in these types of cases.

The Government has however, successfully defended a human right challenge to the policy of applying bedroom criteria to social sector housing (aka the bedroom tax) on the grounds that their actions are justified by other public policy concerns i.e. the need to address under occupation – see the Divisional Court's decision in *R (MA and others) v Secretary of State for Work and Pensions* [2013] EWHC 2213 (QB) which was subsequently upheld by the Court of Appeal. Research evidence of the impact of sanctions policy and in particular whether or not it achieves its stated aim of reducing dependence on benefits would be very important in a challenge based on there being no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

An Equality Act case could also be brought on the basis of a failure to pay due regard to equality.

It is important to find the right test case for both Equality Act and Human Rights Act challenges – for example if there was an instance where a lone parent was sanctioned for not taking part in a work programme activity for which childcare was not provided, this type of scenario would provide a strong basis for a case to be brought. Another example would be the position of a claimant with a learning disability or mental health problems who have been issued with a sanction based on their inability to deal with complex or unclear instructions.

Cases are also stronger if they involve a group of clients, where the problem is clear cut and where clients are willing to appeal or issue judicial review proceedings.

It is often difficult to find clients who are willing to get involved in 'test cases' which can take more than a year to resolve in the higher courts, as potential clients are usually faced with more immediate personal financial and other circumstances, and court processes can exacerbate this.

A test case needs a strong enough argument to win but not so clear cut that it is likely to be settled by the DWP.

In addition to Human Rights Act and Equality Act challenges, there is also the possibility of bringing a judicial review case against sanctions decisions based on traditional public law grounds, if it can be shown that the decision making processes have not been properly followed or the decision maker has acted beyond their statutory powers.

Areas for future work

Further Research: In order to support cases there is a need for evidence of the number of people affected by sanctions (which may help in arguing for funding on the grounds of public interest), the proportion of people affected in different groups (to show evidence of indirect discrimination) plus individual case studies to provide 'flesh' to the claim.

Better Co-ordination: There is a need for better co-ordination between advice agencies, lawyers and other key stakeholders to ensure that the evidence lawyers need is available and to prevent conflicting cases being brought. Current co-ordination is informal and not that common.

Information on Taking Legal Challenges: Alongside test cases there is also an urgent need for more basic information to encourage individuals to appeal against sanctions decisions and to support them through the process.

6. Actions going forward

Recommendations have been at the end of each section of this report for further action that is needed in order to effectively monitor, analyse and challenge inappropriate sanction decisions. Overall, there are three main types of actions that the workshop identified as particularly important:

Provision of information

- **For individuals** who have been sanctioned to inform them of their rights, including the right to appeal. Information should not only be available on line (many of those affected by sanctions will not have access to the internet) but in hard copy in places like food banks (since these are one of the main agencies who are contacted by people who have been sanctioned) as well as libraries, doctors surgeries etc.
- **For organisations** to help them challenge inappropriate sanctions on an individual basis and challenge inappropriate sanctions policy in their local area

Networks

Networks of key actors are vital to improve sharing of information, research findings, lobbying strategies and examples of legal challenges between local and national agencies and lawyers and help coordinate work in this area. Any network established needs to include (1) organisations involved in benefits advice and advocacy; (2) groups and individuals researching the impact of benefit sanctions; and (3) lawyers bringing cases in relation to welfare benefit sanctions in order to share information, research finding and communicate about actual and potential cases

At its most basic this could be some form of on-line portal, and/or email network. However there would be a strong benefit in an organisation co-ordinating this work. There are already a number of sub groups, for example the Welfare Reform consortium has a sub group on conditionality of sanctions, but this is small and does not involve all the agencies and organisations working in the field.

Research

Research is required to fill the gaps in existing knowledge about the extent and impact of sanctions, and to identify where sanctions decisions are being made inappropriately.

Specific recommendations on research which is required have **been** made throughout this report. Research is needed both to support advocacy on behalf of vulnerable groups who are being inappropriately sanctioned and to support legal challenges.

(Endnotes)

- 1 See Is the Work Programme Working for Single Parents? An Analysis of the Experience of Single Parents on the Work Programme (June 2013) at <http://spanuk.files.wordpress.com/2013/07/finalwp-june140613-amended.pdf>
- 2 See A High Cost to Pay: The impact of benefit sanctions on homeless people at: <http://homeless.org.uk/news/benefit-sanctions-hitting-homeless-people-hardest#.UyhXHYXKjgs>
- 3 Information about the sanctions survey can be found at <http://covlaw.org.uk/welfare/surveysanctions.html>

