



Response to the call for  
information:  
Independent review of  
Jobseeker's Allowance  
sanctions

January 2014

## THE NATIONAL ASSOCIATION OF WELFARE RIGHTS ADVISERS

The National Association of Welfare Rights Advisers (NAWRA) was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations who provide legal advice on social security and tax credits. NAWRA currently has more than 240 member organisations.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

This document is a response to the call for information by Matthew Oakley who has been asked by the Secretary of State for Work and Pensions to carry out an Independent Review of Jobseeker's Allowance sanctions. This response is a collation of responses from the membership of NAWRA collected via email and through workshops and discussion forums at our most recent conference in December 2013.

NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public. Contact can be made via the Secretary at the address on the front cover.

## ISSUES RAISED BY THE REVIEW

The review focuses on sanctions applied where claimants have failed to participate in a mandatory back-to-work scheme. There are five key questions raised:

1. To what extent do JSA claimants understand that when they are referred to a 'back-to-work' scheme (such as the Work Programme) their benefit may be sanctioned if they don't take part?
2. To what extent does a claimant's failure to meet their conditions arise from them not having a sufficient understanding of what is expected? Are there ways in which this could be made clearer to them?

3. Do sanctioned claimants understand why they have been sanctioned, and if not are there ways in which this could be made clearer to them?
4. Do sanctioned claimants feel informed throughout the sanctions process, and if not how could their awareness be improved?
5. To what extent are sanctioned claimants aware of the help available to them from Jobcentre Plus? For instance are they aware of how to appeal a decision or how to seek help through hardship payments? Are there ways in which this could be made clearer to them?

Although the review is focusing on sanctions for failing to participate in a back-to-work scheme similar problems are encountered for failure to meet other jobseeker's requirements so examples of those are included where appropriate.

## RELEVANT LEGISLATION

Before participation in a scheme is required the Secretary of State must carry out two processes as set out in the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013.

Regulation 4 states that 'the Secretary of State *may* select a claimant for participation in a scheme'. It is a discretionary power and therefore must be exercised rationally, reasonably, and based on the circumstances of each individual case. It should not be an automatic process. This point was discussed in *R (Reilly and Wilson) v SSWP* [2013] UKSC 68 at para 65 which states:

*'Fairness therefore requires that a claimant should have access to such information about the scheme as he or she may need in order to make informed and meaningful representations to the decision-maker before a decision is made. Such claimants are likely to vary considerably in their levels of education and ability to express themselves in an interview at a Jobcentre at a time when they may be under considerable stress. The principle does not depend on the categorisation of the Secretary of State's decision to introduce a particular scheme under statutory powers as a policy: it arises as a matter of fairness from the Secretary of State's proposal to invoke a statutory power in a way which will or may involve a requirement to perform work and which may have serious consequences on a claimant's ability to meet his or her living needs.'*

Regulation 5 states that the claimant is required to participate in a scheme where the Secretary of State has given notice in writing to a claimant and that notice must include:

- (a) that the claimant is required to participate in the Scheme;
- (b) the day on which the claimant's participation will start;

- (c) details of what the claimant is required to do by way of participation in the Scheme;
- (d) that the requirement to participate in the Scheme will continue until the claimant is given notice by the Secretary of State that the claimant's participation is no longer required, or the claimant's award of jobseeker's allowance terminates, whichever is earlier; and
- (e) information about the consequences of failing to participate in the Scheme.

NAWRA is concerned that these two processes are routinely not happening as the case studies below highlight. Claimants are sent on schemes with no discussion about whether they are appropriate to their needs and no opportunity for them to make representations about it. Adequate notification is also not routinely being given.

**TO WHAT EXTENT DO JSA CLAIMANTS UNDERSTAND THAT THEY CAN BE SANCTIONED FOR FAILING TO TAKE PART?**

NAWRA members report that there is very poor communication between Work Programme providers and Jobcentre Plus. In some cases claimants are doing as they are required by the provider but due to miscommunication sanctions are applied by the decision maker at Jobcentre Plus. The claimant has no way of knowing they will be sanctioned because they have carried out all that they have been asked to. There need to be clear and reliable channels of communication between the Work Programme provider and Jobcentre Plus.

**Case study 1**

A claimant was sanctioned after the headquarters of the Work Programme provider notified the Jobcentre that he had failed to attend. In fact he had attended and the local office of the Work Programme provider acknowledged this. However, they said they would not confirm this in writing 'as they do not do this'.

Other examples include where standard instructions are given to all claimants regardless of circumstance and with no information about sanctions for failing to comply.

**Case study 2**

At the Barnsbury Road Jobcentre in Islington everyone signing on was given a notice which said the following: 'You are now required to **either** do your job searches on universal jobmatch **or** copy your searches **from** other sites of papers into the comments box in **universal jobmatch**. You need to spend **35 hours** per week doing job searches and show evidence of **50** to **100** job searches or job applications per week.'

## TO WHAT EXTENT DOES A CLAIMANT'S FAILURE TO MEET THEIR CONDITIONS ARISE FROM NOT UNDERSTANDING WHAT IS EXPECTED OF THEM?

NAWRA members again report that poor communication between Work Programme providers and Jobcentre Plus results in claimants not understanding what is expected of them. They may reach an agreement with their adviser at the Work Programme but this is not reported through to Jobcentre Plus. The problems can arise not so much because the claimant does not know what is expected of them but that Jobcentre Plus are not aware of the agreements in place. Or, in other circumstances, the Work Programme provider does not advise the claimant that they are not carrying out the required activities adequately so that the claimant does not have a chance to change what they are doing.

### Case study 3

The claimant was a single parent who had been claiming JSA following recovery from a serious illness. She had been offered a job as a care assistant pending a satisfactory CRB check. She was advised that she need not continue to apply for further jobs but must continue to sign on. She used the time to carry out some e-learning packages via her Work Programme provider to enhance her potential in the job market. She was subsequently sanctioned and told she had not followed all the required steps in her jobseeker's agreement.

Other problems arise because the claimant is not clear or because there is minimal flexibility. Examples reported included a young person turning up for an appointment where he thought he was five minutes early but it transpired he was five minutes late; he was sanctioned. Another claimant asked for an appointment to be rescheduled as he had a job interview later in the day and wanted to prepare – this was refused.

## DO SANCTIONED CLAIMANTS UNDERSTAND WHY THEY HAVE BEEN SANCTIONED?

Considerable difficulties are reported with notices regarding sanctions. The claimant is not clear. One NAWRA member reported a claimant who had 14 separate letters for three sanction decisions. One of these was for allegedly failing to sign on although the claimant had signed at a neighbouring Jobcentre and this had been confirmed in writing. Claimants are not invited to explain any good reason they may have. When they do it is often ignored or not followed up. Members reported examples where claimants had conflicting appointments, eg with probation, which could easily be verified but no attempt was made to do this.

#### Case study 4

Claimant had learning difficulties and had been sent on a work placement to a charity shop. When he got there it had closed down. He was sanctioned for 'failing to engage with his work placement'.

Because claimants do not understand why they have been sanctioned it makes it very difficult for them to effectively challenge the sanction either by mandatory reconsideration or through the appeal process. This goes against the interests of natural justice as they are not able to make informed and meaningful representations.

#### DO SANCTIONED CLAIMANTS FEEL INFORMED THROUGH THE SANCTIONS PROCESS?

NAWRA members report that all too often the first a claimant knows of a sanction is when their benefit has been stopped. There is a continual lack of proper notification and information from before the sanction is even applied. No opportunity is given for the claimant to explain any good reason.

#### Case study 5

Claimant is 18 years old with learning difficulties and a former care leaver. He claimed JSA as he wants to work but asked to see the Disability Employment Adviser (DEA) due to his particular needs. However, due to long waiting times to get an appointment with the DEA, an appointment for the Work Programme was arranged first. The claimant needs support to attend an appointment and failed to attend. He was sanctioned but no written notification was sent and no opportunity for him to explain. No account was taken of his particular needs even though he had specifically requested to see a DEA. The claimant only found out about the sanction when his benefit stopped.

Before any sanction is applied the issue should be discussed with the claimant and reasons given fully explored. This would prevent a lot of unnecessary hardship.

Lower level sanctions incur a penalty of a fixed period *after the claimant has re-engaged*. It is not made clear to claimants what is required of them to re-engage. This results in open ended sanctions that can go on for weeks or even months purely because the claimant is not clearly told what they need to do.

## TO WHAT EXTENT ARE SANCTIONED CLAIMANTS AWARE OF THE HELP AVAILABLE TO THEM THROUGH JOBCENTRE PLUS?

NAWRA members routinely report a failure by Jobcentre staff to advise of the existence of hardship payments and how to apply for them, or about how to appeal. Examples include claimants being told '*there is no point appealing*' or told to go to their family for help. Further when a claimant has successfully appealed this is not recorded. Therefore, if a further sanction is later imposed, it is treated as a second sanction and not a first one.

### Case study 6

Claimant had a son with severe behavioural difficulties. On the day in question he was refusing to go to school and damaging the house and the claimant was unable to attend her appointment at the Jobcentre. She tried to phone but the line was engaged for 15 minutes. When she did get through the call had to be transferred from the switchboard and music would play. She was cut off six times and put through to the wrong section on two occasions. After an hour she had still not been able to speak to anyone. She was sanctioned for missing her appointment.

Her support worker helped her write an appeal letter but she had still not had a response a month later. Pending this she asked for a hardship payment at her local Jobcentre. She was told you have to ring to apply for one. She rang the number given and was told she had to attend the Jobcentre! Her support worker went with her and the form was completed. A week later nothing had been heard.

After 4 weeks the sanction came to an end – no response had been received either about the hardship application or the appeal.

There is frequently confusion about who claimants should contact at each stage of the process and also difficulty making contact. This can be at the point problems arise, when applying for a hardship payment, or when appealing. Claimants get sent from pillar to post between the Work Programme provider, the Jobcentre, and the JSA processing centre.

Furthermore when cases do go to appeal it can sometimes be for more than one sanction. This is because a claimant is likely to receive a second sanction during the course of the first sanction as it is virtually impossible to maintain 'jobseeking' activity with no money. NAWRA members report appeal papers being poorly put together with not all the relevant decisions identified and listed for very short hearing slots. This means the claimant is unlikely to be able to adequately answer the case and put forward their argument.

## CONCLUSION

The over-riding picture presented by NAWRA members is one of sanctions being applied inappropriately, without proper consultation and without proper notification. Claimants are given minimal, if any, support in challenging these. In particular a number of problem areas are identified:

1. Lack of discussion with the claimant prior to being placed on a back to work scheme.
2. Inappropriate placements being made.
3. Failure to discuss or properly notify implications of not attending.
4. Lack of communication between Work Programme provider and Jobcentre causing sanctions to be applied even when claimant is meeting all requirements.
5. Failure to discuss any issues of non-compliance with the claimant to identify if there is good reason prior to a sanction being applied.
6. Difficulties for claimants in contacting Jobcentre. No free number to use.
7. No clear channels of contact provided for the claimant to use if problems arise, or they wish to appeal, or to apply for hardship payments.

As a result of the above claimants are experiencing extreme hardship through no fault of their own. NAWRA members report claimants having to use foodbanks, being unable to top up gas or electricity meters, and falling into rent arrears in some cases leading to eviction. Claimants in this level of hardship are in no position to find or maintain work. There is no money for bus fares and maybe even no hot water to get washed. By far the majority of those claimants sanctioned want to find employment but the application of sanctions is actually making it harder for them to achieve this.