SUMMARY

This submission argues that the current enthusiasm for sanctions arises from an over-emphasis on supply-side factors such as skills and motivation and that where sanctions achieve their objectives at all, they do so at high cost in human and economic terms. It points out that the sanctions drive of 2010-16 was completely unprecedented in the century since the introduction of social insurance. What is required is a reinstatement of social insurance principles and terminology, with a review of requirements on claimants and of the severity of penalties, and a genuine ‘last resort’ response to non-fulfilment of conditions.

Introduction

1. My locus for submitting evidence to the Committee’s inquiry lies in the special study I have made of the sanctions regime over the past 5 years. I have submitted evidence to previous inquiries on the topic by the Work and Pensions Committee and others, and since November 2013 I have published a quarterly briefing on the DWP’s sanctions statistics. These papers are available at www.cpag.org.uk/david-webster. I am also carrying out a longer term study on the history of conditionality within the UK unemployment insurance system since 1911.

Background: Overall perspective on sanctions and the labour market

2. My interest in sanctions is due to a longer, 25-year engagement in researching unemployment. It will be useful briefly to explain my perspective. I take an essentially Keynesian view of the labour market. I think it is obvious that the big changes in levels of unemployment have been due to changes in demand for labour rather than to changes in or choices by the unemployed. In my view, the contemporary enthusiasm for sanctions arises from an over-emphasis on supply-side factors such as skills and motivation.

3. People take jobs because they want the money. To get them, employers need to offer good enough wages and conditions. People wanting a job follow the search strategies which appear to them to be optimal in terms of costs and likely results; while open to suggestions, they generally know what to do. People needing better skills to get a better job, or any job, will undertake training if the expected returns from it, monetary and non-monetary, exceed its costs, monetary and non-monetary. All of this is a market economy functioning as it should. Sanctions are an interference in these processes by a State which believes it knows better, but which inevitably is frequently mistaken. By engaging in mistaken interference it is bound to do harm, even before one considers the negative effects of the sanctions themselves (all of which are well documented), such as undermining jobseekers’ confidence, creating a negative relationship between the jobseeker and the state employment services, damaging people’s health, wellbeing and family relationships by reducing their incomes below the essential minimum, putting them into debt, and making them resort to crime.
4. Of course there has always been a small minority of people who take unreasonable advantage of the social security system, just as there is a small minority who defraud it. But dealing with them does not require the juggernaut of a sanctions system which we currently have, and certainly does not necessitate sanctioning a quarter of all unemployed claimants, as happened in 2010-15 (National Audit Office 2016, p.5). A fairly minimal package such as was established by the Unemployment Insurance Act 1930 for contributory unemployment insurance and the Unemployment Act 1934 for non-contributory unemployment assistance would be perfectly sufficient, and in fact worked reasonably satisfactorily for the following half century. It is often claimed that sanctions have always been part of the unemployment insurance system. But in fact sanctions, as penalties for not doing something, were relatively rare until the 1980s and the word itself was not used. The overwhelming majority of cases where claimants have lost benefit have been due to insurance-style conditions, particularly those relating to voluntarily leaving a job or losing it through misconduct. These particular ‘disallowances’ were in effect additional ‘waiting days’, which could be avoided if the claimant showed a good reason.

5. There are recurrent assertions that there is something special about unemployed people which necessitates compulsion. These do not stand up to scrutiny. There is such a high turnover of people on the unemployed register that claims that they constitute a pool of ‘unemployables’ and the ‘workshy’ cannot be correct. During the years 2009 to 2014, 8.2m people claimed JSA, yet there were never more than 1.6m claiming at any one time. Noting the virtual disappearance of unemployment during the First World War, the Webbs (1929, p.669) commented ‘What had been freely called “work-shyness” was found, in tens of thousands of cases, to be amenable to nothing more recondite than a keener demand for labour and a higher rate of remuneration’. Similarly, while prolonged unemployment is certainly unpleasant and damaging, assertions that in the aggregate long-term unemployed people become less ‘employable’ are not borne out in the data (Webster 2005). Nor has empirical research managed to find evidence of ‘cultures of worklessness’ or families who have ‘never worked for three generations’ (Shildrick et al. 2012).

6. It is of course true that the State can deliver enormous positive value through good employment support services. But sanctions do not enhance this value. On the contrary, they tend to undermine it. Voluntary use of services by claimants is probably the most important evidence that they are genuinely useful. What would one think of a product which a private company could only sell to its customers by dint of a power to force them to buy it? Even if it was good to start with, everyone would expect product quality and customer relations to deteriorate drastically. Why should employment services be different?

How severe is the recent sanctions regime compared to historical experience?

7. The scale and severity of sanctions in recent years have been wholly without precedent. **Figure 1** shows the record for numbers of disallowances/sanctions of unemployed claimants for non-compliance with active behavioural requirements since 1986, when present levels of conditionality started to be built up. At their peak in 2013, sanctions as a percentage of claimants were over 20% per quarter. This far outstripped the previous peaks of 2.7% in the later 1980s, around 5.0% during most of the Labour government’s New Deal, and 9.5% in the later years of the Labour government, just before the great recession which started in September 2008. The later 1920s were the only other period of comparable pressure on unemployed claimants (Deacon 1976), but **Figure 2** (drawn to the same scale as **Figure 1**) shows that the maximum reached then was only 8.8% overall. Moreover, the same chart
shows that the really heavy pressure at that time was on women, who were usually well over three times more likely than men to be disallowed. This was because the aim at that era was not really to get claimants into work, but to refuse benefit to people who were thought not to need it, among whom the largest group were married women.

8. The current severity of sanctions is also completely unprecedented. For 73 years from 1913 to 1986 the maximum duration of a disallowance for an unemployed claimant was 6 weeks. This was increased to 13 weeks in 1986 and to 26 weeks in 1988. The 2012 Regulations increased the length of all the most frequently occurring sanctions so that almost all are now initially for 4 weeks, with repeat ‘failures’ within a year triggering 13 weeks, 26 weeks or even 156 weeks. Prior to 1988 (for non-contributory claimants) and 1996 (for contributory claimants), people sanctioned were entitled to claim Supplementary Benefit or Income Support at a reduced rate but on the normal criteria, which for instance allowed them to retain reasonable savings. Since then, they have had to claim ‘hardship payments’, usually at 60% of the normal benefit rate, which are discretionary and assessed on harsh criteria which demand that all the financial resources of the claimant, and all possibilities of help from family, should have been exhausted. Moreover, most claimants are only allowed to apply for ‘hardship’ after two weeks have passed (one week for Universal Credit (UC)).

9. ESA claimants are sanctioned at a far lower rate than JSA, but they have also been subject to a dramatic increase in severity and a lesser but significant increase in scale. The milder sanctions for claimants of Income Support have not seen similar changes. But Universal Credit (UC) has started out with a very high rate of sanctions compared even to JSA, and it involves further drastic increases in severity. UC sanctions are lengthened by being made consecutive, not concurrent. Hardship payments must be repaid – a tall order when their very payment indicates that the claimant has nothing left. Given that repayments are made at the rate of 40% of benefit – the same as the amount by which a hardship payment is lower than the benefit – this means that for claimants receiving hardship payments, UC sanctions are in effect 2½ times as long as their nominal length. Hardship payments must be reapplied for in each 4-week period. The 80% hardship rate for ‘vulnerable’ claimants is abolished. Lone parents with a child aged 2-5 are now exposed to sanctions of 100% of their Standard Allowance, and with a child aged 1-2 of 40% of the allowance; previously both groups would have had maximum sanctions of 20%. UC sanctions also have a particularly low rate of challenge: only 16%. Only 29.1% of these challenges have succeeded, meaning only 4.7% of UC sanctions overturned, although 80.2% of challenges reaching a Tribunal have been successful, indicating that too few claimants are appealing.

10. An analysis of the reasons for the huge spate of sanctions in 2010-16 is in a separate paper by the author (Webster 2016).

The Committee’s questions

11. From the above starting point, this submission now considers the eight questions posed in the Committee’s call for evidence.
1. TO WHAT EXTENT IS THE CURRENT SANCTIONS REGIME ACHIEVING ITS POLICY OBJECTIVES?

12. The clearest statement of the objectives of the current regime is in the government’s response to the Committee’s previous inquiry (House of Commons Work and Pensions Committee 2015, p.1): ‘The purpose of the conditionality system is to encourage claimants to meet the reasonable requirements designed to help them to seek employment or take steps to move closer to work.’ The end-objective therefore is to get people into work, and securing their compliance with requirements is a means to that end.

13. The government’s response to Oakley (DWP 2014) added an objective ‘to ensure the system is fair to the taxpayer’ (p.5). It is not worth spending time considering this since it is based on a misrepresentation. The population is not divided between people who pay taxes and others who don’t. Everyone pays taxes. In particular, poorer people pay more via VAT and better off people benefit from more tax exemptions. Moreover, as the evidence quoted earlier shows, claimants only claim part of the time; effectively all are in employment for much of the time and pay tax and national insurance when they are. Moreover, anyone may become a claimant due to unemployment, sickness or age. The question whether the system is fair to the taxpayer is the same as the question whether it is fair to claimants.

14. In relation to the objective to help people into work, let us consider the evidence on effectiveness of sanctions for each benefit in turn.

Employment and Support Allowance

15. The NAO did its own study whether sanctioned claimants of JSA and ESA were more likely to get into work. For ESA, their finding was unambiguous: being sanctioned made an ESA claimant less likely to get into work (NAO 2016, p.41). The recent study by Geiger (2017) found that internationally, sanction regimes on sick or disabled people are rare, and there is very little evidence of their effectiveness. Hale (2014) found widespread negative effects of the sanctions regime on ESA claimants, whether they were actually sanctioned themselves or not. This evidence indicates that sanctions on sick or disabled claimants do not achieve their objectives.

Jobseekers Allowance

16. For JSA, the position is more complicated. The NAO found that sanctioned claimants were more likely to get into work. To this extent sanctions could be said to be achieving their objectives. But there are a number of problems:

(i) The NAO found that sanctioned claimants were as likely to leave benefit without finding work as to move into employment. This means that they also lose access to public employment services. Take-up of income-based JSA fell from 69% in 2009 to 56% in 2015/16 (DWP 2017b). Only 47.7% of unemployed young people (not counting students) are claiming JSA (Learning and Work Institute 2018). The majority therefore are not receiving official help with job search and work preparation. Young people are sanctioned at twice the rate of other people, and sanctions therefore probably play an important part in their low take-up of unemployment benefits and services. Not to reach more than half of one of the key target groups for employment services must be counted a serious failure.
(ii) A number of studies have shown that sanctions tend to drive people into worse jobs, in terms of pay, conditions and sustainability, than they would have got without them (Petrongolo 2009; Arni et al. 2012; Berg & Vikström 2014). The NAO evidence also suggested that sanctions encourage people to enter less well-paid jobs. The DWP is firmly wedded to a ‘work first’ approach, under which it is argued that any sort of job will set the claimant on an upward path. But this is contradicted by the evidence, which shows in particular that only good jobs deliver better health than being unemployed (Butterworth et al. 2011; Chandola & Zhang 2017). The UK’s disastrous recent productivity record also seems to owe something to the promotion of poor quality jobs via benefit conditionality (O’Connor 2017).

(iii) A further question that arises is whether the ‘reasonable requirements’ enforced by sanctions really are reasonable, in terms of achievability and effectiveness. The 2010-16 sanctions drive produced many examples of unreasonable requirements. For instance, it is well known that the commonest way of finding a job is by word of mouth. But Jobcentre Plus only recognises search activity which can be formally documented. The effect is to divert claimants’ efforts into less efficient search methods, the worst of which is blanket cold-calling.6

(iv) The other damage done by sanctions, to both sanctioned and non-sanctioned claimants, also needs to be taken into account.

17. For JSA, the conclusion therefore is that sanctions for the unemployed only partly achieve their objectives, and do so at high cost.

Income Support

18. DWP research reported in Joyce & Whiting (2006) and Goodwin (2008) found that the sanctions of 20% of personal allowance on lone parents which applied at that time for missing work-focused interviews had negligible effects. They also found that there was in any case no reluctance to attend these interviews, though it was thought they became less useful with repetition. The latest statistics (DWP 2017a) indicate that in the year to September 2016, 604,800 WFIs were conducted with lone parents on IS, and 31,400 sanctions were imposed. The proportion of interviews which were required but not attended is not reported, but on the assumption that most claimants not attending were sanctioned, the attendance rate was about 95%. This would be a good score for any programme. We do not know, but it does not appear that it owed much to sanctions.

Universal Credit

19. No information is available specifically on the effectiveness of sanctions under Universal Credit, which draws together existing benefits but changes the sanctions regime considerably and therefore may not have the same effects. It should be noted that under UC, sanctions on lone parents with young children aged between 1 and 5 are much more severe and requirements are extended to include work-related activity as well as WFIs. The earlier evidence on IS sanctions on lone parents therefore does not apply.

20. Universal Credit extends sanctions to those in low paid or part-time work, with the objective ‘to encourage people to increase their earnings and hours ..... helping (them) along a journey toward financial independence from the state’ (DWP 2010 p.31). No systematic
evidence is yet available on this novel provision, although there have been a lot of complaints from people sanctioned for not attending interviews because they were working.

2. IS THE CURRENT EVIDENCE BASE ADEQUATE AND IF NOT, WHAT FURTHER INFORMATION, DATA AND RESEARCH ARE REQUIRED?

21. The main features of the current sanctions system are not evidence-based. The NAO (2016, p.10) commented ‘With little evidence for its design choices the Department must use its data to assure itself that sanctions work as it intends. It cannot simply rely on international evidence suggesting that broadly some form of sanction has an effect.’ This section will identify the most important gaps in the evidence base, in terms of research and statistics.

22. However there is certainly enough evidence on the negative effects of the sanctions regime to make it possible to propose sensible reforms, and this will be done in the following section.

Gaps in research

23. The key gaps in research are:

(i) Effects of sanctions on claimants and their families The last comprehensive government study of the effects of sanctions on sanctioned claimants was carried out in 2005, when sanctions were at a low point, and were much milder than they have been since 2012 (Peters & Joyce 2006). Due to its methodology, this study was unable to contact one third of its target sample, and it is likely that this included many of the most deprived people. For instance, it did not find anyone who was homeless, and homelessness was not mentioned in the report, although it has featured strongly in recent controversy over sanctions.

(ii) Effects of longer and more severe sanctions The 2012 JSA and ESA sanctions Regulations and Welfare Reform Act drastically increased the length and severity of sanctions. The DWP Permanent Secretary told the Public Accounts Committee (2017, Oral evidence Q.74-75) that this decision was made without any information on the likely effects and that its effects remain entirely unknown. The question of doing randomised controlled trials does not seem to have been considered: he simply said that most minister do not like doing different things in different parts of the country. It is not obvious why trials of milder sanctions could not be done now. The DWP does not even appear to have done any systematic review of the comparative severity of sanctions in other countries. A lot of the international evidence for the effectiveness of sanctions relates to relatively mild penalties.

(iii) Wider effects of sanctions The NAO (2016) pointed out the need for a comprehensive assessment of the costs and benefits of sanctions, and this recommendation was taken up by the PAC (2017). The DWP has now rejected this but the need remains. This issue is discussed further in Section 7 below.

Gaps in the published statistics

24. The key gaps in the published statistics are:
(i) Universal Credit sanctions. Published statistics on UC sanctions remain very inadequate. The number of people in each conditionality category is in the DWP’s Stat-Xplore but there is no breakdown of sanctions by conditionality category. The estimate of the overall UC sanctions ‘rate’ published by DWP understates the likelihood that a UC claimant subject to conditionality will be sanctioned because it uses a denominator including people not subject to conditionality (currently one third, 32.8% of UC claimants). This overall ‘rate’ also conflates groups with high rates of sanction with groups with low rates, and the user cannot make any estimate for the individual types of claimants separately, i.e. unemployed, sick, lone parents etc. Nor can the all-important comparisons be made with rates of sanction under the individual ‘legacy’ benefits (JSA, ESA and IS). This is a massive gap in the statistics.

The DWP statistics also currently omit all UC sanctions imposed in ‘full service’ Jobcentre areas. As recently as March 2017 there were only 50 of these, out of about 700 areas. But by October 2017 there were 147 and all Jobcentres will be ‘full service’ by December 2018. Also, to date no information has been published on hardship payments to Universal Credit claimants (and nothing has been published on JSA or ESA hardship payments since November 2015).

(ii) Longer ‘repeated failure’ sanctions. Under UC, JSA and ESA longer sanctions are imposed if the claimant has already had a similar ‘failure’ within the previous 12 months, this being measured as the time between the dates of the ‘failures’, not the time between sanction decisions. DWP does not publish any information on how many sanctions there are of each duration. A DWP Freedom of Information response 2015-IR 77 of 13 August 2015 explained that DWP does not record the date of the ‘failure’ for which the claimant is sanctioned. Consequently it cannot produce any figures on claimants who suffer the longer sanctions for second or successive ‘failures’ within 12 months. This is a truly astonishing gap in the statistics. DWP has never expressed any intention to fill it or even made any comment on it. The latest DWP letter to the UK Statistics Authority (Davies 2018) still gives no commitment to publish anything further on repeat sanctions. Filling this gap should be a high priority. No policy evaluation of the increased length of sanctions can take place without knowing how many of each length there are.

Since November 2017 DWP has started to produce what it says is a measure of the actual duration of sanctions, defined in terms of the length of time for which a claimant has a drop in payment following a sanction. This is not a substitute for statistics on the length of sanctions imposed, because it measures something different: it is analogous to a measure of the time prisoners actually spend in jail, as opposed to the lengths of sentences that are handed out. There are several problems with this measure, which were discussed in the author’s Sanctions Statistics Briefing for November 2017 (pp. 6-8). In particular, it does not distinguish between people who leave benefit for a job and those who stop claiming and in effect sanction themselves. And it does not include the unspent portions of sanctions that are reimposed if a claimants claims.

(iii) Ethnic and disability monitoring. Current statistics permit monitoring of the sanctions regime by gender but not by ethnic group or disability, because statistics on the numbers of claimants in ethnic and disability groups are not available.
3. WHAT IMPROVEMENTS TO SANCTIONS POLICY COULD BE MADE TO ACHIEVE ITS OBJECTIVES BETTER?

25. There is no case for behavioural conditionality for sick or disabled claimants. For them, conditionality should be scrapped. I also think that conditionality for lone parents has extended much further at the expense of child care responsibilities than can be justified, particularly since the Welfare Reform and Work Act 2016, and should be rolled back. The following refers only to the unemployed.

26. The current objective ‘to encourage claimants to meet the reasonable requirements designed to help them to seek employment or take steps to move closer to work’ puts too exclusive an emphasis on employment. Raising employment levels is important, but other things matter too, particularly the quality of jobs, the enhancement of human capital, the promotion of health and wellbeing, and the fulfilment of duties of care within the family. The State should be slow to interfere with the balance between these considerations chosen by individuals. This wording also wrongly implies that there is a significant problem of claimants not doing the reasonable things to get work. As we have seen, even during the period of the most extreme sanctioning in the history of the system, from 2010-15, 76% of claimants were not sanctioned – and a high proportion of those who were, were sanctioned unreasonably. This formulation insults the great majority of claimants by implying that they only act sensibly if forced to do so, and implies that punishment should be the first choice in ‘encouraging’ people to do things. The Universal Credit White Paper (DWP 2010, Chapter 3) claimed that ‘...strong and clear sanctions are critical to incentivise benefit recipients to meet their responsibilities’. This was never based on evidence. It makes no sense to design the whole employment service around the problems of a minority.

27. Moreover, incremental improvements are not going to make the current system acceptable. The fundamental philosophy, as set out for instance in the extraordinarily arrogant Chapter 2 of Part 1 of the Welfare Reform Act 2012 is all wrong. It claims that benefits are a gift to the claimant which entitles the State to impose behavioural requirements in return. They aren’t. This is a social insurance scheme. People contribute when they are in work and draw benefits when they are out of it. The only question should be whether their claim is valid.

28. The first requirement therefore in my view is to restore the dignity of the claimant by reinstating the fundamental conception of social insurance. This requires dropping the language of ‘failure’, ‘offence’, ‘transgression’ and ‘sanction’ itself which has grown up over the last 30 years but which is only appropriate to a penal system. The terms ‘disqualification’ and ‘disallowance’ should be brought back.

29. The second key requirement is to restore the independent adjudication which had been a feature of the system since the start in 1913 but which was abolished by the Social Security Act 1998. Without this, there can be no real safeguard against the kind of arbitrary sanctions drive by DWP ministers and officials which was seen in 2010-16.

30. The issues for reform then fall into three groups: the requirements on claimants, the penalties imposed, and the procedures followed.

Requirements on claimants
31. In approximate order of contemporary importance, the following requirements need to be considered.

**Interviews** Since Restart in 1986, far more emphasis has been put on interviews than before. It seems reasonable to require claimants to attend interviews as a condition of claim in order to ensure that employment services and opportunities are known about. However rather than treating non-attendance as a ‘failure’, there is a strong argument, subject to safeguards, for simply closing a case if the claimant does not attend for interview about their claim. This was the usual practice up to April 2010, when the Labour government changed to imposing a sanction. Its reasons as set out in its White Paper (DWP 2008, p. 113) did not appear convincing and it seems that DWP has ended up thinking better of this change, since, apparently without announcement, it has restored the practice of closing JSA claims in these circumstances (DWP 2017c, p.4). DWP argues that it cannot close UC claims in these circumstances but this would require only a minor legislative change to permit closure of the unemployment element of the claim without terminating housing and child related entitlements.

**Training and employment schemes** These should be voluntary, as they often have been. Compulsion was legislated for in 1920 but was not used for adults until 1930 and then dropped two years later.

**Actively seeking work** In principle this is a reasonable requirement since to be looking for work is part of the internationally agreed definition of unemployment. But in practice it has led to major abuse, both in 1928-30 as ‘genuinely seeking work’ and again in 2010-16, in spite of the assurances given to Parliament at the time of the renewed legislation in the Social Security Act 1989. Its positive benefits are also doubtful (Manning 2009; Petrongolo 20019). The DWP currently appears to be applying the new ‘claimant commitment’ much more reasonably than appeared likely, but if the legislation is left in its current form it will surely only be a question of time before abuse recurs. Much trouble has also been caused by making this an entitlement issue rather a behavioural requirement – those drafting the 1989 Act do not seem to have thought through the administrative difficulties this would cause.

**Jobseeker Direction/Written instructions** This was introduced as part of the 1930 reform package that abolished ‘genuinely seeking work’. It has never been controversial, probably because it has been used relatively rarely.

**Refusing a suitable job** This has been in the National Insurance scheme since the start and is uncontroversial, even in the additional form of ‘neglect to avail of an opportunity’ added in 1934.

**Availability for work**, added to the scheme in 1920, also appears a reasonable requirement as it is in principle part of the definition of unemployment, although it shades over into an active condition when the question of restrictions on availability arises. It appears to have been abused in the later 1980s (Bryson & Jacobs 1992, pp.80-91) but has not generally been controversial.

**Mandatory Work Activity and Compulsory Work Experience** ‘Workfare’ is highly controversial. These requirements were introduced for the first time in 2011 but it appears that DWP itself has lost faith in them since sanctions on these grounds have dwindled to practically nothing – only 12 sanctions in the whole of Britain since October 2016.
**Voluntary leaving and Misconduct** These have been in the scheme since the start. They are not active behavioural requirements but relate to the circumstances in which the claimant became unemployed. Currently, with a minimum sanction of 13 weeks they are oppressive, but with the previous maximum disallowance of 6 weeks and entitlement to a reduced rate of benefit on normal criteria they never attracted much controversy. On the other hand they can operate to discourage a claimant from taking a job they are not sure of, but which might be worth trying.

**Penalties**

32. The 2012 Act and Regulations have caused a lot of trouble by conflating behavioural requirements with entitlement conditions and turning everything into a ‘failure’ with a sanction attached. The first requirement is to restore the disentitlement/sanction distinction. If a claimant does not meet entitlement conditions then the logic is that their claim should simply be closed.

33. There is then the question of the length of disallowances. A maximum disallowance of 6 weeks worked perfectly well for 76 years and there has never been any evidence to suggest that longer penalties do any good, while there is plenty of evidence that they do harm.

34. Finally, there is the question of what happens to claimants if benefit is withheld. The ‘hardship payment’ system is indefensible because of the way it deliberately creates destitution and debt. It should be scrapped. The previous system of entitlement to a reduced rate of benefit on normal criteria should be restored. The former system of unemployment assistance also included some stronger powers in relation to claimants who persistently rejected any moves towards employment, which were used in very few cases indeed. Something similar would be necessary as a backstop.

**Procedures**

35. It is then necessary to establish procedures to ensure that disallowances genuinely are a last resort. DWP ought to welcome this, because it constantly maintains that ‘sanctions are only ever imposed as a last resort in a tiny (or ‘small’) minority of cases’. This is fine as a statement of what should be done; the problem is that it is not what DWP does. Sanctions are currently a first resort.

36. A genuine ‘last resort’ system would involve:

(i) The first step would be to take a reasonable view of what constitutes a breach of conditions. Much of the trouble of the past few years has been caused by the DWP putting in place automatic triggers for sanction referrals even where they were inappropriate. In particular, Work Programme contractors were told that if a claimant missed any requirement at all, even once, then they had to be referred to DWP for sanction, even when the contractor knew that there was a good reason and that the claimant was participating fully in the programme. This procedure was criticised by Oakley (2014). The DWP claimed that the legislation obliged it to do this but their legal argument was far-fetched because the statute refers to non-participation in a programme, not to non-participation in an individual event within a programme (Webster 2014, p.9 and 20-21). Similarly, the recent
Improving Lives White Paper (DWP Dept of Health 2017, p.57) says ‘We have now provided guidance to work coaches in UC to support them to make decisions not to sanction a customer in specific straight-forward cases if good reason is shown for not attending an interview.’ This implies, astonishingly, that work coaches were previously being told to do the opposite. Automatic referral is wrong because once a referral for sanction is made, a sanction is overwhelmingly likely to be imposed irrespective of the merits of the case, simply because the onus shifts to the claimant to show why they should not be sanctioned, and they will often not have the time, expertise, or confidence to do so. Although ‘decision makers’ do not impose a sanction in all cases following referral, they do not do anything to ensure that a sanction is a last resort, and in some cases they act as virtual rubber stamps (for instance, 96% of JSA referrals for ‘not actively seeking work’ result in a sanction).

(ii) A disqualification should only be considered if there is an established pattern of non-compliance with reasonable requirements. One-off so-called ‘failures’ are really not important.

(iii) If a pattern of unreasonable behaviour is established, the first stage would be an assessment of the type envisaged in the Benefit Claimants Sanctions (Required Assessment) Bill unsuccessfully promoted by Mhairi Black MP in 2016. The evidence is that a high proportion of cases of non-compliance are not deliberate but are due to various difficulties the claimant has. The priority of the employment service should be to find out about these and provide appropriate support rather than withdrawing income, which is likely to make things worse. This stage would involve the claimant fully, in contrast to the present system where there is no requirement for assessment and decision makers apply sanctions without ever having communicated with the claimant.

(iv) The next step would be a warning that a disallowance may be imposed.

(v) Any actual decision to disallow would be made by a statutorily independent adjudicator, with right of appeal to a Tribunal as now.

4. COULD A CHALLENGE PERIOD AND/OR A SYSTEM OF WARNINGS FOR A FIRST SANCTIONABLE OFFENCE BE BENEFICIAL? IF SO, HOW SHOULD THEY BE IMPLEMENTED?

37. Use of the term ‘offence’ in this question is revealing in that it shows how far advocates of sanctions have managed to gain acceptance for their recasting of national insurance as a penal system. The word ‘offence’ is not appropriate in this context, and in fact is not used anywhere in the legislation. Stabbing someone, for instance, is always an offence. But the things that people get sanctioned for are not offences. Most of them are instances where the claimant does not do something that the State thinks they should do to look for or prepare for employment. This is just a difference of opinion between the citizen and the State, in which it will frequently be the citizen, not the State, who is right. Even where the claimant has clearly directly caused their own unemployment, as in the case of ‘voluntary leaving’ or ‘misconduct’, this is still not usually an offence. Anyone is entitled to give up a job. The question at issue is a different one, whether they are entitled to claim on social insurance to compensate them for a situation they have created.

38. Many commentators, including this Committee, the PAC, Paul Gregg, David Freud, Matthew Oakley and many voluntary organizations, have advocated the use of a warning as
the first response before proceeding to an actual sanction. The DWP has consistently refused, partly on the ground that it would require legislation. I think that that is incorrect in relation to sanctions. The principle that every offence does not have to be prosecuted is well established in British law, and the English system of police ‘cautions’ dates from the nineteenth century when it never had any statutory basis. However, it is true that applying warnings to disentitlements such as for ‘not actively seeking work’ would require legislation, because of the principle that a ministry cannot pay out money without being satisfied of the legal basis for payment. As argued under Section 3 above, warnings would have a place in a genuine ‘last resort’ system. However they would not function as a first response since this should be an assessment of the claimant’s circumstances and issues. An inappropriate warning could well do serious harm, for instance to a claimant with mental health issues.

39. As a substitute for warnings, the Secretary of State in his response of 22 October 2015 to the Committee’s March 2015 report announced the trial of what was misleadingly described as a ‘yellow card’ system. This, applying only to sanctions and not to disentitlements, was not a genuine warning since the decision to sanction was already taken before the ‘warning’ was given. It was in effect just a fast-track reconsideration process, in which the claimant was given an extra 14 days to show ‘good reason’ – in other words it was a ‘challenge period’. As noted in this author’s commentary at the time (Webster 2015, pp. 13-14), it was in effect no more than a reversal of a change made by the 2012 Regulations which speeded up the implementation of sanctions following a decision in the belief that this would make them more effective.

40. The trial was carried out in Scotland during 2016 and an Interim Report was published that December (DWP 2016). As noted in the author’s February 2017 Briefing (p.10), the results were weak. Only 13% of people who were sent the warning letters provided further information within the 14 days allowed, of whom only about half succeeded in preventing the sanction. This is a lot less than the proportion who eventually challenge the types of sanctions included in the trial, which is about 22%, of whom about three-quarters succeed in overturning the sanction (16% of those sanctioned). DWP promised a final report to be published in Spring 2017 but it seems that it has never appeared.

41. The sensible conclusion is that a ‘challenge period’ is a minor distraction from the real issue of how to design a genuine ‘last resort’ system.

5. ARE LEVELS OF DISCRETION AFFORDED TO JOBCENTRE STAFF APPROPRIATE?

42. This question has effectively been addressed in Section 3 above. Rules and practices which require automatic referral for sanction in the event of apparent non-compliance with a requirement (as for the Work Programme) or which require indefinite continuation of a sanction ‘until compliance’ (as for ESA or UC), are a source of injustice and damage to claimants. Consideration of sanction referrals by decision makers is perfunctory and is bound to be ill-informed when, as now, there is no contact with the claimant. Genuine last resort procedures such as are outlined in Section 3 above would be characterised by substantial discretion, but exercised at several different stages by different people of increasing seniority and specialisation.
6. ARE ADEQUATE PROTECTIONS IN PLACE FOR VULNERABLE CLAIMANTS?

43. There is much evidence that vulnerable claimants are particularly damaged by the sanctions system, and that often they are disproportionately likely to be sanctioned. For instance, figures published recently by Ben Baumberg Geiger (2017) show that in 2010-14, the JSA sanction rate was 25-50% higher for self-assessed disabled than for other claimants. Remarkably, the DWP’s own figures show that the mean actual duration of sanctions on ESA claimants – who are by definition sick or disabled – is much longer than for JSA or UC (mainly unemployed) claimants (Sanctions Statistics Briefing, Nov 2017, p.8 & Figure 4).

When DWP started publishing figures on ESA sanctions by medical condition, they showed that, although they were a small group, pregnant women were particularly likely to be sanctioned in 2011-17 (Sanctions Statistics Briefing, Aug 2017, p.12 & Table 1). DWP does seem to have improved its treatment of people with mental illness or who are homeless, but stories of appalling treatment continue to occur, e.g. of the ESA and then UC claimant Tony Rice, at http://www.bbc.co.uk/news/stories-42789610

44. The fundamental problem lies in the automaticity of the current system, together with the scale of sanctioning. It is only a genuine ‘last resort’ system such as that proposed in Section 3 above that can genuinely protect vulnerable people, because that is the only way that their issues will be properly investigated.

7. WHAT EFFECTS DOES SANCTIONS POLICY HAVE ON OTHER ASPECTS OF THE BENEFITS SYSTEM AND PUBLIC SERVICES MORE WIDELY? ARE CONSEQUENTIAL POLICY CHANGES REQUIRED?

45. The operation of social insurance as a penal system naturally has an effect in lowering the status of all working-age claimants, and alienating from the system anyone who can afford not to use it.

46. The DWP has consistently claimed that the sanctions regime has no wider adverse effects. For instance, the Explanatory Memorandum to the 2012 Regulations, which drastically increased sanction lengths, stated that ‘A full impact assessment has not been published for this instrument as it has no impact on the private sector and civil society organisations’. This confident denial was shortly followed by a raft of evidence from the voluntary sector, much of it still available at http://www.cpag.org.uk/content/sanctions, of the devastating impact of sanctions on both their service users and their own organizations.

47. The Public Accounts Committee took up this issue in their report (2017, Recommendation 4), referring to ‘knock-on effects that others pay for, such as using food banks or needing advice from local authorities or charities for dealing with debt’. The NAO (2016, pp.43-44) put the issue in the broader terms of the need for an overall assessment of costs and benefits of the sanctions regime.

48. The DWP has responded to the PAC recommendation, saying it has held discussions with other government departments and made no robust findings (HM Treasury 2018). But it has apparently made no effort to assess the abundant evidence from the voluntary sector or from the various studies of the Oxford University Sociology Department or for instance that from the Chief Medical Officer for Scotland, who recently wrote ‘Since 2008, the Scottish Health
Survey has collected data on the prevalence of anxiety among the adult population in Scotland. Examination of these data before and after the new welfare sanctions regime (was) introduced indicate a potential adverse impact on mental health .... Among adults living in households in receipt of JSA or IS in 2008-11 (before the change), 19% had moderate to severe anxiety symptoms. Among those in a similar position in 2012-15 (after the change), the proportion was 28%. Adults living in households not receiving JSA/IS, who were unlikely to be affected by these changes, showed only a minimal increase in anxiety symptoms over the same period’ (NHS Scotland 2018, p.55). DWP states that ‘only 0.2% of Scottish Welfare Fund applications were from claimants indicating they were undergoing a benefit sanction’. But Scottish Government reporting on the Welfare Fund does not have a category for benefit sanctions (Scottish Government 2018), so the number of people applying due to their effect cannot be judged from those who happened to mention them. A much more reliable source is the Rowntree study which found that 30% of destitute service users had experienced a sanction in the past year (Fitzpatrick et al. 2016, Table 4 p.29).

49. As argued in Section 3 above, what is required is a genuine ‘last resort’ system, with the reinstatement of social insurance principles and a reassertion of respect for the dignity of the claimant.

8. TO WHAT EXTENT HAVE THE RECOMMENDATIONS OF THE OAKLEY REVIEW OF JOBSEEKERS’ ALLOWANCE SANCTIONS IMPROVED THE SANCTIONS REGIME? ARE THERE RECOMMENDATIONS THAT HAVE NOT BEEN IMPLEMENTED THAT SHOULD BE?

50. It should be remembered that Oakley had restrictive terms of reference. His inquiry was only into JSA sanctions imposed in relation to mandatory back-to-work schemes, which constituted only 23% of all JSA sanctions in 2012 and 33% in 2013. It omitted ‘not actively seeking work’ sanctions, one of the most important types in terms both of numbers and problems caused. It did not consider ESA sanctions at all. And even in relation to the sanctions that were considered, it was restricted to issues of communication and process. Therefore it was by no means a comprehensive guide to necessary reform. The author wrote a comprehensive review of the Oakley report and the government’s response at the time (Webster 2014), and more detail will be found there. The following review uses the numbering in the government’s response (DWP 2014).

51. Recommendations which Oakley did make and which have improved the system are:

1, 2, 4 & 7 Improved communications There does seem to have been an improvement in communications and fewer complaints are heard about lack of information on hardship payments. However, the heavy emphasis now put on sanctions in communications with claimants from the outset has been very damaging. Sanctions have come to dominate customer relations in the whole service. Most claimants should never be aware that there are any sanctions at all. They are irrelevant to them. The first anyone should know about the existence of sanctions is if and when they have shown a pattern of abuse of the system.

3. Wrongful termination of Housing Benefit following a sanction – The situation seems much improved although it still appears to be a problem in ‘actively seeking work’ cases and was recently discussed by the PAC (2017). This problem should not exist in UC.
17. **Making sure the claimant is informed before benefit is stopped** – This seems to have been done.

52. Recommendations not implemented but which should be are:

11. **Warnings** – As discussed in Section 4 above, the DWP has been advised to consider warnings by most or all of the bodies that have looked at sanctions in recent years, but has refused to do so. (Recommendation 11 also proposed trialling non-financial sanctions. But there have never been any convincing suggestions about what they might be. For instance, extra signing-on in most cases is really a financial sanction because of the cost of getting to the Jobcentre.)

12 & 14 **Allowing contractors to use their common sense on ‘good reasons’** – The DWP has always set its face against this, as discussed in Section 3 above.

16. **Timescales for sanction decisions and reconsiderations** It appears that these have still not been introduced. A severe backlog built up in the UC sanction system during 2016, which accounts for the huge fall and then rise in sanctions shown during that year in Figure 3.

53. I am not sure about the following:

5 & 6 **Support for vulnerable claimants** – There appears to have been an effort on this but I do not know how effective it has been.

8, 9, 10, 13 & 15 **Co-ordination with external contractors** – The DWP declined to do much if anything about this within the Work Programme. I do not know whether anything has been done in relation to newer programmes.

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APPENDIX: Sources and methods for the Figures

All figures are for Great Britain.

Figure 1

This chart includes all the sanctions and disentitlements imposed in relation to ‘active’ requirements, defined as including 'not actively seeking work', non-participation in training & employment schemes, missing interviews, non-availability for work, refusing/neglect to avail of a job, non-compliance with a Jobseeker Direction or written instructions, and non-participation in mandatory work activity or work experience. Figures for disentitlements/sanctions from April 2000 onwards are taken from the DWP’s Stat-Xplore, February 2018 release. The original figures show decisions after challenges; those shown here are estimates of the pre-challenge figures using the published figures for challenges. Figures for disallowances/sanctions from January 1986 to March 2000 are taken from the paper series of Adjudication Officers’ Decisions published successively by the Department of Health and Social Security, Department of Social Security and Employment Service. They are all pre-challenge figures. This series does not have any male/female split. Decisions in relation to non-contributory claims prior to April 1991 were not fully published and the method followed by Bryson & Jacobs (1992, Chapter 4) has been used to estimate them. In all cases the denominator is total unemployed claimants of unemployment benefit/Supplementary Benefit/Income Support/JSA, whether contributory or non-contributory, as shown by NOMIS, for the middle month of the quarter.

Figure 2

This chart includes all the disallowances imposed in relation to the ‘active’ conditions applying at that time, namely refusing a job, not genuinely seeking work and not making a reasonable effort to obtain work. Figures for disallowances include those by Insurance Officers, taken from Ministry of Labour (1931) and the Ministry of Labour Gazette; by Local Employment Committees (LECs), taken from Ministry of Labour (1923), Ministry of Labour Annual Reports and the Ministry of Labour Gazette; and by Courts of Referees (1928-30) taken from the Ministry of Labour Gazette. All are pre-challenge figures. Reporting for much of the time was for uneven periods and adjustments have been made to derive figures for the four calendar quarters. Some figures for LECs up to 1925 are estimated. The denominator in all cases is the total of insured unemployed for the middle month of the quarter shown in Ministry of Labour (1931). In Figure 2 there is a period (1921-24) when the ‘both sex’ figures are above both the male and the female figures. This is because LEC decisions for this period are not broken down by male and female.

Figure 3

This chart includes all sanctions and disentitlements, whether in relation to ‘active’ or other conditions. It is taken from the author’s Sanctions Statistics Briefing, February 2018 at www cpag.org.uk/david-webster and further information on methodology is contained there.
Figure 1

Quarterly disallowances/sanctions for breach of 'active' conditions as a percentage of unemployed claimants, before challenges, 1986 - 2017

- Male
- Female
- Total

Chart includes: 'Not actively seeking work', non-participation in training & employment schemes, missing interviews, non-availability for work, refusing/neglect to avail of job, non-compliance with Jobseeker Direction/instructions, and non-participation in mandatory work activity or work experience.

Sources & methodology: See Appendix.
Figure 2

Unemployment benefit: Quarterly disallowances for refusing a job, not genuinely seeking work, & not making reasonable effort to obtain employment, before challenges, as % of insured unemployed 1920-1930

Sources & Methodology: See Appendix.
UC, JSA, ESA and lone parent IS monthly sanction rates before challenges (sanctions as % of claimants subject to conditionality)

- JSA monthly sanction rate before challenges
- UC monthly sanction rate before challenges, adjusted
- ESA monthly sanction rate before challenges
- LP-IS monthly sanction rate before/after challenges - old series
- LP-IS monthly sanction rate before challenges - new series

Notes: The UC sanction rate is adjusted for the exclusion of 'full service' cases. The old LP-IS sanction series shows sanctions not overturned by the time of first publication but is not updated for later successful challenges.
Sources: DWP Freedom of Information response 2014-4972, 9 February 2015; NOMIS.

2 ‘Active’ requirements are those where the claimant must do or not do something after lodging their claim. Non-active conditions are those specifying that the claimant must belong to a particular group, have particular characteristics or have behaved in a particular way in the past. ‘Voluntary leaving’ and ‘losing a job through misconduct’ are excluded from Figures 1 and 2 because in the vast majority of cases they are not active requirements.

3 Other than for a short period in the late 1920s when it appears that some people may have been disallowed for ‘not genuinely seeking work’ for two years or until they had had 30 weeks’ employment. This was not legislated by Parliament but was the result of ‘Umpire’ decisions which were criticised by the Morris Committee (Ministry of Labour 1929, pp.23-24).

4 Figure 3 includes all sanctions and disentitlements, whether in relation to active or non-active requirements. Details are in the author’s Briefings on the DWP’s sanctions statistics, available at www.cpag.org.uk/david-webster

5 Repayment is suspended for any month when the claimant earns more than their threshold, and any remaining debt is written off if the earnings threshold has been met for 26 weeks, whether continuous or not.

6 A graphic account ‘Why I am signing off’ of the experience of unreasonable requirements by a Scottish jobseeker was printed in the author’s August 2015 Sanctions Statistics Briefing, pp. 31-32, at www.cpag.org.uk/david-webster. A similar account was given to the Scottish Parliament’s Welfare Reform Committee by two claimants Donna and Jacqueline on 27 October 2015, at http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/95156.aspx

7 There obviously are cases where the ‘misconduct’ causing loss of a job is also correctly described as an ‘offence’, but people do often get sacked for things that are definitely not ‘offences’.

8 As noted in Section 2, there are many problems with these DWP ‘actual duration’ figures but they appear to be reliable in this respect.