

Sir Andrew Dilnot  
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27 July 2015

Dear Sir Andrew

### **DWP statistics: JSA and ESA sanctions**

On 6 July 2015 your Ed Humpherson replied to Jonathan Portes of the National Institute of Economic and Social Research concerning a complaint the latter had made about the DWP's benefit sanctions statistics press release of 13 May. Mr Humpherson's response did not adequately address the matter and I am writing now to pursue that complaint and also to highlight a range of other misrepresentations of, and inadequacies in, the DWP's benefit sanctions statistics.

The heads of complaint are as follows:

1. Systematic understatement of the number of sanctions and of the number of claimants affected.
2. Gross and systematic misrepresentation of sanctions as affecting only a small minority of claimants when the data show that they affect a large minority (this was Jonathan Portes' complaint but the problems go much wider than he indicated).
3. Systematically biased commentary on the question whether sanctions have been increasing or reducing.
4. Omission of key data on Universal Credit sanctions, 'hardship payments' and repeated sanctioning of the same individuals from the suite of publicly available statistics.
5. Misleading use of the phrase 'actively seeking work'.

Annex 1 to this letter has the details, together with recommendations for rectification of the statistics and their presentation. Annex 2 reproduces the DWP's press release of 13 May 2015, which is a key reference.

The metadata provided by the DWP are very inadequate and these statistics are not easy for a newcomer to understand. I publish quarterly briefings on the sanctions statistics, which are used by journalists, academics and the voluntary sector, and your staff may find it helpful to look at these for further explanation of the issues. They are assembled at <http://www.cpag.org.uk/david-webster>. I have referenced all my points, but if anything is unclear, I will be happy to provide further explanation as required.

The wide extent and systematic nature of the DWP's misrepresentations of the benefit

sanctions system make this a very serious matter indeed. I believe that ministers and officials are taking advantage of the fact that benefit claimants, and especially those who are accused of not meeting their obligations, are a stigmatized group who have relatively few defenders. However, in a democratic society it is vital that there should be sufficient integrity in public administration to protect the legitimate interests even of unpopular groups. I hope therefore that you will approach this matter with proper seriousness, and act promptly and vigorously to ensure that honesty is restored to the DWP's statistical activities in relation to benefit sanctions.

Yours sincerely

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## ANNEX 1

## **Benefit Sanctions: Statistical Misrepresentations by DWP Ministers and Officials**

### **1. SYSTEMATIC UNDERSTATEMENT OF THE NUMBER OF SANCTIONS AND OF THE NUMBER OF CLAIMANTS AFFECTED**

1. The DWP's published statistics on 'adverse sanction decisions' systematically understate both JSA and ESA sanctions, because sanctions which have been overturned on reconsideration or appeal are shown as 'non-adverse decisions'. Yet these overturned sanctions can do quite as much damage as those that are not overturned, because claimants lose their benefits immediately, prior to any challenge, and any refund takes place only after weeks or months. It is quite common for claimants to suffer a major disaster such as losing their home as the result of a sanction which is overturned on appeal. (For evidence on the damage done by benefit sanctions, see the vast range of material referenced on the Child Poverty Action Group's website at <http://www.cpag.org.uk/content/sanctions>.) The extent of the understatement is currently about 13% for JSA and 20% for ESA sanctions. Separate figures are available for the number of individuals subjected to sanctions in any given period; these are affected in the same way, although the extent of understatement is not necessarily the same. Compounding the mis-statement, all figures published by DWP, for instance in Freedom of Information responses, for the number of times individuals have been sanctioned are similarly understated since they only include those sanctions not overturned on reconsideration or appeal.

2. This understatement arises in the first instance from the design of the DWP's database, which dates back to April 2000. The basic concept of this database is that each sanction case appears only once, and is given its latest status and attributed to the date of the latest decision on the case. So, for instance, if a decision is made in January 2014 to sanction someone, this decision is reconsidered ('reviewed') in March 2014 with an outcome unfavourable to the claimant and is heard on appeal by a Tribunal in September 2014 with a decision favourable to the claimant, then:

- it appears in the statistics for the first time in January 2014 as an adverse decision
- in March 2014 it changes its status to a reviewed adverse decision and moves month to be with all the other cases where the latest decision has been made in March 2014
- in Sept 2014 it changes its status again to an appealed non-adverse decision, and moves month again to be with all the other cases where the latest decision has been made in September 2014.

3. I do not know why this procedure was adopted. It will not have been with the intention of misleading the public, but clearly it will do so if totals of adverse decisions are quoted as equating to the number of sanctions imposed, and if no effort is made to provide figures for the number of sanctions before reviews or appeals.

4. My complaint on this head is that this is precisely what DWP systematically does. So, for instance, the DWP press release of 13 May 2015

(<https://www.gov.uk/government/news/benefit-sanctions-down-as-more-people-helped-into-work>, reproduced here as **Annex 2**), states without qualification that ‘New statistics show 606,000 sanctions were given to claimants on Jobseeker’s Allowance (JSA) in the past year’ (2014). But the actual number of JSA sanctions imposed, estimated as in my Briefing on the 13 May release (<http://www.cpag.org.uk/david-webster>) was about 702,000. The difference is due to the fact that about 96,000 sanctions were overturned on review, reconsideration or appeal, in most cases after having been fully served.

5. Sophisticated users of the statistics download data from the DWP’s Stat-Xplore at <https://stat-xplore.dwp.gov.uk/>. Here the statistics are correctly described as sanction ‘decisions’. However, the standard note IV which appears at the foot of downloaded tables is misleading. It reads ‘A non-adverse decision is a decision not to apply a sanction i.e. a decision found in favour of the claimant so a sanction or disallowance is not applied.’ This statement is incorrect in relation to decisions which have been overturned on review, reconsideration or appeal, since the sanction is always applied before the review or appeal process commences.

6. Less sophisticated users, including virtually all journalists, use the summary Excel spreadsheets published at <https://www.gov.uk/government/collections/jobseekers-allowance-sanctions>. These are bereft of any warning that ‘adverse decisions’ do not equate to ‘sanctions imposed’. Moreover they do not contain any estimates of the true number of sanctions imposed or any advice as to how such estimates could be derived from the data given. Consequently almost all media coverage, even by journalists who have gone beyond the misleading DWP press release to look at the actual data, understates the true extent of sanctions.

7. The DWP is also called on to provide information on sanctions under the Freedom of Information Act. Its responses concerning sanctions likewise fail to warn the reader that the numbers provided are underestimates. An example is FoI response 2014-4972, available at <https://www.gov.uk/government/publications/jobseekers-allowance-sanctions-apr-2007-to-mar-2014-and-jul-2013-to-jun-2014>. While finding space to issue irrelevant and misleading ministerial propaganda (‘Please note that the intention of the sanctions system is to encourage people to engage with the support being offered by Jobcentres by making it clearer to claimants what they are expected to do in return for their benefits. Sanctions are a necessary part of the benefits system used only as a last resort and the overwhelming majority of claimants do not receive a sanction.’), this response fails to mention that all the figures provided are underestimates because they exclude sanctions overturned on review, reconsideration or appeal. It also makes no attempt to provide the correct figures.

8. The same understatement occurs in *ad hoc* ministerial statements. A recent example was given by the former Employment Minister Esther McVey, appearing before the House of Commons Work and Pensions Committee on 4 February 2015 in connection with its inquiry into *Benefit Sanctions Policy beyond the Oakley Review* (Q.214). She repeatedly quoted 0.6% as the percentage of ESA WRAG claimants sanctioned per month. This is correct for post-review/reconsideration/appeal ESA sanctions for the

12 months to September 2014, but the estimated pre-challenge figure – which is the correct measure of impact – is substantially higher at 0.81%. This difference is very important. I recently encountered at first hand a case where an ESA claimant had suffered loss of their ESA ‘personal allowance’ of £73.10 per week for 5 months despite having the sanction overturned on challenge.

**Recommendation 1:** *The Stat-Xplore database should be redesigned to enable users to download all data on the basis of the actual number of sanctions applied, in addition to the existing data on reviews, reconsiderations and appeals. Pending this, all DWP publications of material on sanctions should be accompanied by a statement that the figures provided are underestimates, and be accompanied by estimates of the true figures.*

## **2. GROSS AND SYSTEMATIC MISREPRESENTATION OF SANCTIONS AS AFFECTING ONLY A SMALL MINORITY OF CLAIMANTS WHEN THE DATA SHOW THAT THEY AFFECT A LARGE MINORITY**

9. This was the complaint made by Jonathan Portes, responded to by Ed Humpherson of UKSA on 6 July 2015. However, neither the complaint nor the response go far enough.

10. Jonathan Portes complained about the statement "*Sanctions are only used as a last resort in a small percentage of cases, with over 94% of JSA claimants and 99% of Employment and Support Allowance (ESA) claimants not being sanctioned,*" in the DWP's press release of 13 May. This is in fact only one out of a host of similar statements by DWP ministers and officials.<sup>1</sup> The claim that sanctions are only used as a last resort in a small (often stated as ‘tiny’) minority of cases is part of the standard DWP response to any media criticism of sanctions; it is absolutely routine and habitual and has been made dozens if not hundreds of times over the past few years.

11. In his response, Ed Humpherson correctly pointed out that ‘DWP’s press statement does not give the reference time period for the percentage’ (though he has understated the deception involved: since all other numbers quoted in the press release were annual figures for 2014, these percentages were bound to be read as annual also). However, he has missed the main point, which is that the monthly rate of sanctions after successful reviews, reconsiderations or appeals used by DWP could *never* be truthfully cited to support any statement about the proportion of claimants who are sanctioned. This is because

- (a) The typical duration of a JSA claim is around 5 months (based on the NOMIS figures for January 2015), and during each of those months the claimant has around a 6% chance of being sanctioned. The cumulative probability of not being sanctioned at all during the claim is therefore of the order of  $(0.94)^5$  or 73% (some qualifications need to be made to this calculation, e.g. that the probability is not the same for different individuals, but it is roughly right). ESA claim durations are known to be much longer, with monthly rates consequently being even more misleading.

- (b) A high proportion of JSA claimants experience what is often called the ‘low pay-no pay cycle’, in which they move repeatedly between jobs and JSA claims. Their probability of being sanctioned during a period of years is therefore substantially greater than the probability during a single claim.
- (c) As noted earlier, the figures quoted by DWP are for sanctions *after* successful reviews, reconsiderations or appeals and therefore understate the actual numbers of people sanctioned.

12. Reflecting these points, FoI 2014-4972 (quoted earlier) showed that no less than 22.3% of the 8,232,560 individuals who claimed JSA over the five year period 2009/10 to 2013/14 inclusive, were sanctioned: 1,833,035 people. As noted earlier, this is the figure *after* reviews, reconsiderations and appeals. The figure *before* these challenges will have been about one quarter of all claimants – a far cry from the 6% claimed by DWP.

13. In a new development, the DWP Minister of State Lord Freud on 21 July 2015 has refused to answer a Lords question (HL 1272) from Baroness Moulsecoomb asking for the percentage of claimants sanctioned in each calendar year 2010-14. He gave the reason that ‘The information is not readily available and to provide it would incur disproportionate cost’. This cannot be correct since exactly this information was provided in FoI 2014-4972 and 2012-5156, for financial years. FoI requests have a cost limit of £600 and answering the latest question could only involve no more than repeating an algorithm that has already been written. The refusal suggests a desire to conceal the truth from the public.

14. Ed Humpherson has misunderstood the issue of ‘last resort’. In his response to Jonathan Portes he says ‘The statement also describes the practice of using sanctions as a ‘last resort’, but it is not clear whether the calculation includes the initial decision to put a sanction in place, or the smaller number of sanctions which remain in place after review.’ The review process has nothing to do with the question whether a sanction is a ‘last resort’, because it does not start until after the sanction has been applied. In any case, it is solely confined to the question whether a sanction is lawful on the facts. The DWP’s statement that sanctions are a ‘last resort’ is in fact a simple falsehood. If they were a last resort, one would observe the following:

- (a) Documented processes would be in place to ensure that other avenues are explored before a sanction is imposed, such as the ‘warning letter’ which has been repeatedly suggested and repeatedly rejected by DWP.<sup>2</sup> There are no such processes. On the contrary, there is abundant evidence that DWP staff have been systematically pressurised since 2010 to apply the maximum possible number of sanctions.
- (b) The probability of sanction would increase with the duration of claim. This was in fact claimed by the DWP's Permanent Under Secretary, Robert Devereux, and Work Services Director, Neil Couling, to the Public Accounts Committee in 2013. They said that sanctions become more frequent the longer claimants go on claiming, because the DWP 'does more work' with longer standing claimants.<sup>3</sup> But the recent FoI response 2014-4134 (2 December 2014), taken in conjunction with Nomis data on

duration of claim, shows that the incidence of sanctions is the same irrespective of the length of claim.<sup>4</sup>

15. Misrepresentation by DWP of the proportion of claimants sanctioned has resulted in very widespread misunderstanding and has fundamentally distorted public policy debate on sanctions both in and out of Parliament. This is illustrated by the case of Margot James, the Conservative MP for Stourbridge. In a Westminster Hall debate on poverty on 4 February 2015 she said (col.105WH): ‘The last time I checked with my jobcentre, just before Christmas, fewer than 5% of all the people seen there had been sanctioned over the previous 12 months. We are talking about a minority, and she’ (Lisa Nandy MP, who in the preceding speech had criticised abusive sanctions leading to resort to food banks) ‘is talking about a very tiny minority of an already small minority’.

16. While the rate of JSA sanctions at Stourbridge Jobcentre is indeed somewhat below the national average, the ‘fewer than 5%’ figure quoted by Ms James was of course per month, not per year. The figure for the whole year 2014, after challenges, will have been not much below the GB figure of around 18%.

17. Margot James was not contradicted in the debate, but I took the issue up with her and she responded as follows: ‘I have looked into this issue and I was mistaken to say in the debate last month that less than 5% of people were sanctioned per annum. The (figure) I gave actually refers to the average monthly sanction rate for Stourbridge Jobcentre over the last year, which is in fact less than 5% of claimants in any one month. I understand that annual sanction rates are not routinely published by the Department for Work and Pensions. Thank you again for taking the time to email me, I will amend my statements on this matter in future to stress the point that I am talking about fewer than 5% of claimants in any one month.’ This is welcome, but does not address the point that monthly figures should never be quoted at all in relation to the question what proportion of claimants are sanctioned.

18. The Stat-Xplore database in its present form can never be made to yield figures on the proportion of claimants sanctioned over any period longer than a month; to do this requires access to the original data on sanctions and to unpublished data on the number of individuals claiming JSA. Therefore such figures need to be published separately by DWP.

**Recommendation 2:** *Use of monthly sanction rates in connection with the question of the proportion of claimants who are sanctioned must cease entirely. DWP should include in each of its quarterly sanctions statistics releases a statement of the proportion of claimants who have been sanctioned during the most recent 1 year and 5 years, and of the numbers on which these proportions are based (as in FoI 2014-4972 and the earlier 2012-5156 and 2012-4383). It should be unnecessary for private individuals to have to ask for this most basic of monitoring information via FoI.*

### 3. SYSTEMATICALLY BIASED COMMENTARY ON THE QUESTION WHETHER SANCTIONS HAVE BEEN INCREASING OR REDUCING

19. There is a large body of evidence that DWP ministers and officials have been driving up JSA and ESA sanctions. However they have not wished to acknowledge this, and instead have consistently downplayed the increase in sanctions since 2010. They have done this partly through the understatements discussed above, but also through systematically biased commentaries on the statistics. The following are the main examples.

- (a) Lord Freud, DWP Parliamentary Under-Secretary, told the House of Lords on 25 March 2013 (col.941) ‘There is not the clear trend in the growth of sanctions which some people have been claiming’ and that ‘prior to 2007, the rate was running at around 4% and has since fluctuated between 3%-5%’. I pointed out in a letter to the *Guardian* (29 March 2013), using the DWP’s own statistics as then published: ‘From 2000 until the end of 2006, the proportion of JSA claimants sanctioned each month ran at a fairly constant 2%, not 4%. After John Hutton was moved in as secretary of state to "toughen" the regime, there was a rise to around 3% by late 2007. James Purnell's tenure, which featured a sanctions review by Paul Gregg, saw a fall back to below 2% by early 2009. The last Labour secretary, Yvette Cooper, presided over a renewed rise but only to about 3%. Across all 121 months of Labour governments from April 2000, when the current statistics began, the monthly average was 2.6%. The coalition's monthly average to October 2012 has been 4.2%. This will be revised upwards when the Jobseeker's (Back to Work Schemes) bill releases cases "stockpiled" since the Reilly-Wilson (Poundland) judgment of August 2012. The coalition's figures were also temporarily held down by the transfer of responsibility for initiating work programme sanctions to private contractors in summer 2011. Overall, therefore, the coalition government has shifted monthly sanctions to a level more than 60% above that of its predecessor.’
- (b) In the Scottish Parliament Welfare Reform Committee on 29 April 2014 (col.1454), the DWP’s Work Services Director, Neil Couling, was asked by the Deputy Convener: ‘You say that you do not want more people being sanctioned as an outcome, but the number of people who are being sanctioned now is higher than it was previously, is it not?’ He replied: ‘The number is higher. As to whether that is a trend, we must wait for the next set of data so that we can understand that’. At that date the published statistics ran to September 2013; Figure 3 of my Briefing for 19 February 2014 on those statistics (<http://www.cpag.org.uk/david-webster>) clearly shows that strong upward trends in the rate of sanctions were already in place for both JSA and ESA.
- (c) The DWP’s written submission to the Scottish Parliament Welfare Reform Committee, 23 April 2014, WR/S4/14/7/11 (para.23) stated: ‘Since the new regime was introduced in October 2012 there has been little change in monthly sanction volumes - fluctuating between 3 and 5.5% of the caseload as they have done since early 2010. Between 2005 - 2010 it fluctuated between 2 and 4%. Latest figures for the three months to September 2013 show that the monthly rate increased to 6% as sanction volumes held constant while the



claimant count fell. Month-to-month variability makes it hard to say if this is an increase that will be maintained.’<sup>5</sup> The figures available at that time were as shown in Figure 3 of my Briefing for 19 February 2014. What is objectionable about the DWP’s statement is (a) the arbitrary exclusion of the latest quarter’s figures from the description of the level since October 2012, resulting in the quite false claim that the fluctuation was ‘between 3 and 5.5%’ instead of the actual 3 and 6%; and (b) the comment that ‘sanction volumes held constant while the claimant count fell’. If there are fewer claimants there must be fewer sanctions, *ceteris paribus*. The red herring of ‘constancy’ in sanctions has been introduced here solely in order to create an impression that the rise which took place in the rate of sanctions was not really a rise.

- (d) A further example came from the Employment minister Esther McVey, appearing at the House of Commons Work and Pensions Committee on 4 February 2015 (Q.214). Her comment was not very coherent and was complicated by misquotation, but the gist of it was to take the statistics as published in November 2014 and compare post-challenge sanctions for June 2014 (60,219) with the same figure for June 2010 (56,394), pointing out that the difference was small. There are four things wrong with this. First, the Coalition took office in May 2010 and by June 2010 had already started to drive up sanctions; 56,394 was higher than the figure for any month prior to the Coalition. Second, in June 2010 the JSA claimant count was 1.39m, while in June 2014 it had fallen to 0.97m, so that the sanctions in the later month were being spread across fewer claimants and represented a correspondingly higher rate. Third, there was a bigger gap between the estimated pre-challenge figures for the two months than between the post-challenge figures quoted by Ms McVey. Fourth, comparisons of individual months are invalid anyway since there are big fluctuations from month to month, for various reasons. It is obvious from Figure 3 of my Briefing for 12 November 2014 (which shows the figures available at 4 February 2015) that the Coalition had in fact brought about a large rise in the rate of JSA sanctions.
- (e) The DWP press release of 13 May 2015 states ‘As claimants fulfil their commitments to look for work and take up the offer of employment support, the number of benefit sanctions has gone down ..... a drop of around 300,000 compared with the previous year’. This is a claim that sanctions have been effective in inducing claimants to change their behavior; such a claim would have to be supported by figures on the *rate* of sanctions, not by the absolute numbers which are cited. Using the absolute numbers has exaggerated the fall, which is mainly due to the fall in the number of JSA claimants from a mean 1.361m in 2013 to a mean 0.977m in 2014, and has also exaggerated the supposed efficacy of sanctions. There was in fact a modest fall in the estimated rate of sanctions before challenges, from 6.45% in 2013 to 5.94% in 2014, but this is too small to constitute a clear trend, and in any case there is no evidence to support the claim that this reduction was due to more compliant behavior by claimants rather than to other factors.

**Recommendation 3:** *Professionals within DWP have failed to ensure that statistical commentary emanating from the Department is honest and unbiased. It is the responsibility of the UK Statistics Authority to ensure proper standards in future.*

#### **4. OMISSION OF KEY DATA ON UNIVERSAL CREDIT SANCTIONS, 'HARDSHIP PAYMENTS' AND REPEATED SANCTIONING OF THE SAME INDIVIDUALS FROM THE SUITE OF PUBLICLY AVAILABLE STATISTICS**

20. It is vital that, subject to cost and availability, the regularly published suite of statistics should provide information on the main areas of public concern. Current DWP statistics on benefit sanctions have unacceptable gaps. In relation to two of these, the DWP currently states that it is working towards publication, or considering publication. This is not satisfactory. These areas are:

- (a) **Universal Credit** The number of jobseekers claiming Universal Credit (UC) rather than JSA reached about 51,500 in June 2015. But to date, no figures at all have been published on UC sanctions. On 16 June 2015 Lord Freud responded to a question from Baroness Lister (HL 402) on plans for UC sanction statistics by saying 'The Department published its strategy for releasing official statistics on Universal Credit in September 2013. As outlined in the strategy, officials are quality assuring data for Universal Credit and formulating a definitive list of what statistics will be provided in the future.' The strategy of September 2013 did not in fact mention sanctions at all. A further question from Baroness Lister simply asking for the number of UC sanctions in each month since rollout began (HL 799) produced the response from Lord Freud (6 July 2015) 'I refer the noble Baroness to the answer I gave on 16 June 2015 to her Question number HL 402'. Currently, therefore, there is no commitment to publish data on UC sanctions at all.
- (b) **Hardship Payments** JSA sanctions remove all benefit for the period of the sanction; ESA 'work related activity group' sanctions remove all of the 'personal allowance', leaving only the 'work-related activity component' of £29.05 per week (although this is to be abolished from 2016 under the 2015 Summer Budget). Some claimants are given 'hardship payments', which are paid at 60% or 80% of the normal benefit (for UC, 60% only). This is a very unsatisfactory system; see the comments in para. 36-37 of my evidence to the House of Commons Work and Pensions Committee Inquiry into *Benefit Sanctions Policy beyond the Oakley Review*, and the Committee's own comments in its report. However, it is a vital lifeline for many people and information about it is correspondingly important. Data on the number of sanction cases in which hardship payments have been made have never been published. Up to February 2005, there was quarterly publication of the number of persons receiving hardship payments at a point in time, derived from the JSA Quarterly Statistical Enquiry. But the last publication of the QSE was in February 2005 and since then, there has been no publication of hardship payment data other than in a DWP FoI response 2013-1443.<sup>6</sup> In its consultation on sanctions statistics of October 2012, the DWP said 'Please note that although we haven't published hardship statistics in the past' (which as noted above is not quite correct) 'we think there may be interest in this topic in the light of the new

sanctions regime and are investigating making statistics available. Once we are in the position to take the work forward we will consult again.’ A DWP FoI response 2014-2050 of 26 June 2014<sup>7</sup> refused hardship payment information on the ground that ‘as the requested statistics are intended for future publication this information is exempt from disclosure’. However, to date there has not been any publication of hardship payment data, or indeed further consultation on it.

### **Repeated sanctions imposed on the same individuals**

21. The question of repeat sanctions is important for three reasons: (i) under the harsher regime introduced in 2012, second and subsequent sanctions within a 12-month period escalate dramatically in length; (ii) repeated and longer sanctions often have the effect of degrading individuals’ capacity to cope with the demands on them, including those of the benefit regime itself; (iii) while advocates of sanctions claim that they are effective in changing behavior, repeated sanctions constitute evidence that they are not. The information published by the DWP on repeated sanctions imposed on the same individuals is very inadequate.

### **Repeat JSA sanctions within the same ‘level’**

22. Even for JSA sanctions within each of the three ‘levels’ – lower, ‘intermediate’ and higher - data can only be extracted from Stat-Xplore for repeats during particular time periods which are of little practical interest, namely for the whole period since October 2012, and (on a less satisfactory basis) for each individual month. Repeats during 12 month periods cannot be extracted. But it is these that trigger the hugely escalated JSA penalties of 13, 26 or 156 weeks brought in by the Coalition in October 2012.

23. The 156 week (3 year) sanctions, imposed for three higher level ‘failures’ within 12 months, have been one of the most controversial features of the 2012 sanctions regime. Yet even FoI has failed to elicit information on the number of people subject to them. Part A(i) of FoI request 2014-4972 was for the number of people subjected to three-year sanctions. In response DWP stated that it would be too expensive for them to find out. This does not seem credible and I challenged it. I was told on 16 February 2015 that this challenge had been logged as a request for an Internal Review with reference number FOI 2015-IR77, but have heard nothing further.

24. This gap in the statistics has further consequences in that the actual lengths of sanctions served, and the money lost, are made difficult to estimate. The government has compounded the resulting problems by discontinuing its own published estimates of the money lost to claimants through sanctions: see the House of Commons adjournment debate 18 December 2014, col.1662ff.

### **Repeat JSA sanctions disregarding level**

25. For many purposes the question of interest is how many sanctions people have been subjected to in total during a particular period, disregarding their ‘level’. Here

the only information that can be extracted from Stat-Xplore is for the whole period since April 2000. Information for other periods can only be obtained via FoI requests. So, for instance, the FoI response 2014-4972 revealed that, disregarding any distinctions between levels of sanction, of the 539,225 individual JSA claimants sanctioned in the year to June 2014, 372,461 (30.9%) were sanctioned more than once, and 67,143 (one in eight or 12.5%) were sanctioned three times or more.

### **Repeat ESA sanctions**

26. Information is available from Stat-Xplore on repeat ESA sanctions only for the whole period since their introduction in October 2008. The DWP does not publish any information on the number of people receiving the lengthier sanctions that are imposed for repeated ‘failures’ during a 12-month period. Also, ESA sanctions have an ‘until compliance’ element and there is no information at all on the actual lengths of sanctions served under this provision.

**Recommendation 4:** *In relation to Universal Credit sanctions and hardship payments, the UK Statistics Authority should seek assurances from DWP that adequate data will be published, with a commitment to a firm timetable. In relation to repeat JSA sanctions on the same individuals, DWP should modify Stat-Xplore so that numbers of sanctions on the same individuals, both within ‘level’ and at all levels, can be downloaded for 12-month periods. In relation to ESA sanctions, DWP should ensure that numbers of sanctions on the same individuals within 12-month periods can be retrieved from Stat-Xplore, and should periodically publish information on the actual lengths of ESA sanctions served including ‘until compliance’ periods.*

## **6. MISLEADING USE OF THE PHRASE ‘ACTIVELY SEEKING WORK’**

27. The DWP’s press release of 13 May stated: ‘in the year to December 2014, the most common reason for a JSA sanction (32%) was failing to actively look for work’. This is a misrepresentation. Almost all of those sanctioned for this reason will in fact have been actively seeking work, both in the literal meaning of the phrase and in terms of the definition used to derive the UK official measure of unemployment, in which (in line with the ILO definition) ‘actively seeking work’ means having taken *an* action to look for work within the past four weeks. The actual reason why these people will have been sanctioned is not fully complying with jobseeking requirements imposed by the DWP (see the large amount of evidence on this at <http://www.cpag.org.uk/content/sanctions>). For instance it is very common for people to be told to apply for, say, 30 jobs in a fortnight, and to be sanctioned if they only apply for 29. The distinction between ‘not actively seeking work’ and not complying with requirements imposed by DWP is very important, not least because the citizens concerned will often have had a different view from the DWP about the best or most practicable way to find a job, and they may well have been in the right. The inaccurate wording used by the DWP has the effect of reinforcing popular stereotypes of unemployed people as lazy or feckless.

28. The corruption of the phrase ‘actively seeking work’ into meaning something different from what it says arises from S.7 of the Jobseekers Act 1995, which states:

‘(1) For the purposes of this Act, a person is actively seeking employment in any week if he takes in that week such steps as he can reasonably be expected to have to take in order to have the best prospects of securing employment.

(2) Regulations may make provision—

(a) with respect to steps which it is reasonable, for the purposes of subsection (1), for a person to be expected to have to take in any week....’

29. It is most regrettable that the ministers responsible for this Act – Michael Portillo and Peter Lilley – chose to attempt to redefine the obvious meaning of the phrase ‘actively seeking employment’ rather than just to provide that people who do not do certain things will lose their money. However this does not excuse the DWP in misleading the public. It would be unduly cumbersome, and not helpful to public understanding, for a press release to say ‘failing to actively look for work within the meaning of the Jobseekers Act 1995 and subsequent Regulations’ or similar. But clarity and accuracy can readily be achieved by using a phrase such as ‘not meeting the DWP’s jobseeking requirements’.

**Recommendation 5:** *The phrase ‘not meeting the DWP’s jobseeking requirements’, or similar, should replace ‘not actively seeking work’ in all DWP statistical publications, except where the UK official unemployment definition of the latter phrase is genuinely applicable.*

## ANNEX 2: THE DWP'S PRESS RELEASE OF 13 MAY 2015

<https://www.gov.uk/government/news/benefit-sanctions-down-as-more-people-helped-into-work>

# Benefit sanctions down as more people helped into work

From:

[Department for Work and Pensions](#) and [Priti Patel MP](#)

First published:

13 May 2015

Part of:

[Welfare reform](#), [Employment](#), [Employment](#) and [Welfare](#)

The number of benefit sanctions has gone down by a third over the past year.



As claimants fulfil their commitments to look for work and take up the offer of employment support, the number of benefit sanctions has gone down.

New statistics show 606,000 sanctions were given to claimants on Jobseeker's Allowance (JSA) in the past year – a drop of around 300,000 compared with the previous year.

Sanctions are a necessary part of the benefits system, with more than 70% of claimants saying they are more likely to follow the rules if they know they risk having their benefits stopped.

Employment Minister, Priti Patel said:

Our welfare reforms are transforming the lives of some of the poorest families in our communities and giving people the skills and opportunities to get on in life.

We offer tailored employment support to jobseekers, and these figures show that more people are taking up that support and moving into work with the security of a regular wage.

Sanctions are only used as a last resort in a small percentage of cases, with over 94% of JSA claimants and 99% of Employment and Support Allowance (ESA) claimants not being sanctioned. If someone disagrees with a sanction, they can ask for a reconsideration or appeal to an independent tribunal.

The figures give the number of sanctions up to December 2014. They show that:

- there has been a significant fall in the number of JSA sanctions compared with the previous year – between January 2014 and December 2014, there were

606,000 sanctions, compared to approximately 900,000 in the same period the previous year

- in the year to December 2014, the most common reason for a JSA sanction (32%) was failing to actively look for work
- 27% of sanctions were for failing to participate in employment programmes designed to help people back to work, including the Work Programme
- 24% of sanctions were because the claimant did not have a good reason for missing a meeting at the Jobcentre

The Claimant Commitment was introduced in Jobcentres in October 2013. It is tailored to the person's individual circumstances and clearly sets out what their responsibilities are while job hunting. Jobseekers are helped by their work coach to create a personal work plan which clearly sets out achievable goals and also explains the risks they face if they don't fulfil them.

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<sup>1</sup> Other examples, out of many, are 'Sanctions are only used ..... for a tiny minority who don't follow the rules' (DWP), *Guardian*, 23 October 2014, at <http://www.theguardian.com/society/2014/oct/23/benefit-sanctions-investigated-mps>; 'The vast, vast majority of people don't get sanctions' (Employment Minister Esther McVey), *Guardian*, 6 November 2013, at <http://www.theguardian.com/society/2013/nov/06/benefits-sanctions-jobseekers-allowance>.

<sup>2</sup> See for instance this author's *JSA Sanctions: A Guide to the Oakley Report and the Government's response* (Sept 2014), p.22, available at <http://www.cpag.org.uk/david-webster>

<sup>3</sup> Public Accounts Committee, Fifth Report of Session 2013–14: *Department for Work and Pensions: Responding to change in jobcentres*, May 2013, Q131, Ev 18 and Q146, Ev20.

<sup>4</sup> For fuller details see the author's written evidence to the House of Commons Work and Pensions Committee report *Benefit Sanctions Policy beyond the Oakley Review*, para.16 and Figure 5, available at <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Work%20and%20Pensions/Benefit%20sanctions%20policy%20beyond%20the%20Oakley%20Review/written/16442.html>

<sup>5</sup> available at

[http://www.scottish.parliament.uk/S4\\_Welfare\\_Reform\\_Committee/Written\\_submission\\_-\\_Department\\_for\\_Work\\_and\\_Pensions.pdf](http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Written_submission_-_Department_for_Work_and_Pensions.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/jobseekers-allowance-claimants-with-a-sanction-or-disallowance-1-january-2005-to-21-october-2012>

<sup>7</sup> <https://www.whatdotheyknow.com/request/209018/response/533544/attach/3/FOI%202014%20050%20Response.pdf>