

Response from the Employment Related Services Association (ERSA) to the Work and Pensions Select Committee inquiry into benefit sanctions policy beyond the Oakley review

December 2014



1. Introduction

- 1.1. Please accept this as a submission from the Employment Related Services Association (ERSA) to the Work and Pensions Select Committee inquiry into benefit sanction policy beyond the Oakley review. ERSA is the representative body for the employment support sector. It has around 180 members ranging from large multinational providers through to small specialist organisations and spans the private, public and voluntary sectors. It has all the prime contractors of the major Department for Work and Pensions' major programmes in membership, along with a high number of subcontractors.
- 1.2. This submission has been informed by two specific pieces of work. The first was a consultation across ERSA members specific to the terms of reference of this inquiry; the second was a piece of work, earlier this year, between ERSA and East London charity, Community Links. This took the form of a short survey targeted at members delivering mandatory employment programmes, including but not limited to the Work Programme. A copy of the survey results is appended to this response.
- 1.3. By way of background, it is worth the Committee noting that all providers of mandatory programmes are contractually obliged to raise a doubt where a customer has not attended a mandated appointment or intervention, no matter what good cause is evident. Advisors have no flexibility on this issue, unless a customer is deemed 'vulnerable'. This submission concentrates on the impact the conditionality regime has on the service ERSA's members deliver and makes recommendations for the improvement of this service.

2. Provider attitudes towards mandation and the sanctioning regime

- 2.1 ERSA believes that it is difficult to comment specifically on the sanctioning regime without reference to the role of mandation in relation to employment programmes. Views are mixed across membership on mandation. However, a clear balance of members believe that mandation can play an important role in some individuals' journey back to the workplace. Indeed, many organisations delivering both the Mandatory Work Activity and Community Work Placement schemes have ample case studies demonstrating the changes in attitudes that good quality mandatory activity can bring.
- 2.2 However, there is also a consensus amongst providers that there are circumstances when mandating a jobseeker either to a particular type of provision or to an activity within a provision is likely to be inappropriate. This is particularly the case when health conditions are present. ERSA notes that voluntary schemes such as New Deal for Disabled People achieved good levels of performance. However, it also notes that this level of performance was related to the fact that participants were self selecting and that its voluntary nature meant that many people with disabilities who may have been able to work were not accessing provision. Overall, ERSA believes that the evidence base on the effectiveness of mandation is weak and that future decisions regarding when and how mandation is used in the design of employment support provision should be radically strengthened.

- 2.3 A similar balance of opinion exists in the provider community regarding the sanctions regime. Opinions are mixed, but the majority of providers appear to favour the application of a sanctions regime for the majority of Jobseekers Allowance (JSA) customers as part of a wider mix of tools to encourage participation in employment support. That said, there is consensus that the regime for those on JSA could be significantly improved and that the evidence base related to the effectiveness of sanctions could be strengthened.
- 2.4 However, there is concern about the operation of the current sanctioning regime on those on Employment Support Allowance (ESA) and more vulnerable customers who are on JSA. These jobseekers may have more complex and hidden needs such as mental health and/or fluctuating conditions which may mean that engagement with back to work schemes may not be continuous. It is important to note that the balance of provider opinion does not believe that the ability to sanction should be removed altogether from the regime for jobseekers on ESA. However, there is concern about the process's current operation.

3. Concerns and recommendations related to the sanctions regime

- 3.1 ERSA supports the recommendations of the Oakley review of sanctions and believes these should be implemented in their entirety. However, ERSA also believes that there are policy and process issues that could be helpfully addressed. These are set out below.
- 3.2 First, too many jobseekers are being referred to the Work Programme without a sufficient understanding of what it involves and the mandatory nature of participation. This leads ERSA to believe that more can be done to 'warm up' jobseekers by Jobcentre Plus in order to promote its benefits, yet clarify the responsibilities that participation involves.
- 3.3 Second, the current system is insufficiently nuanced, whilst some providers report confusion about roles and responsibilities between advisers and Jobcentre Plus. At present providers are contractually obliged to raise a sanction doubt where a customer has not attended a mandated appointment or intervention, no matter what good cause is evident. Advisors have no flexibility on this issue unless someone is classified as 'vulnerable'. This limited form of discretion is the only means a provider has of making the sanctions process more appropriate. However, there appears to be a range of issues in relation to the concept of 'vulnerability' (see 4.6).
- 3.4 ERSA recommends the introduction of a 'first warning' system or similar which would provide jobseekers with a clear indication of the consequences of a continued lack of participation, plus the introduction of a greater degree of discretion if non adherence to the regime is clearly due to good cause. In addition, ERSA believes that there needs to be greater clarity in the system about what constitutes a 'vulnerable' jobseeker and thus the exemptions to the need to raise a sanction doubt which apply for this category of jobseeker. Importantly this should apply to jobseekers on JSA as well as ESA as there may be people in this category, particularly when they have moved from Incapacity Benefit or ESA, who have significant needs.
- 3.5 ERSA is aware that allowing Work Programme providers a greater degree of discretion in relation to the sanction regime risks changing the relationship between advisor and jobseeker. This relationship needs to be a positive rather than a policing relationship. As such, ERSA supports the actual responsibility for sanctioning remaining with Jobcentre Plus and also believes that there needs to be investment in both advisers and communication with jobseekers about roles and responsibilities.
- 3.6 It is worth the Committee noting that many providers believe that JCP decisions apply the sanction prior to assessing the cause. There is a strong feeling that this is not the right way round and that

JCP must routinely take an individual's circumstances into account prior to deciding to apply a sanction. This is particularly important in the case of fluctuating conditions.

- 3.7 ERSA members also believe that the timeliness of the sanction being issued must also be addressed. If there is a significant gap between raising a doubt and the decision coming through, this can have an adverse effect on customers, who may simply not connect the two issues. This is particularly the case if they have been participating positively more recently. Any sanction should therefore be as near to the time of the 'offence' as possible.
- 3.8 ERSA also supports the introduction of non financial sanctions, including requiring jobseekers to demonstrate a greater degree of compliance for a set period. However, ERSA believes that the DWP should properly assess the impact of such a move to ascertain whether non financial sanctions have a positive effect.

4. Jobseekers on ESA and the sanctioning regime

4.1 ERSA notes the particular concern of the Select Committee about the impact of the sanctions regime on jobseekers on ESA. Although a definitive answer is difficult to reach, providers believe that the increase in jobseekers on ESA being sanctioned, could be due to the following factors:

- **Increased volumes of ESA jobseekers.** The increase in the number of ESA sanctions is believed to be closely related to the increased volume of ESA referrals onto the Work Programme.
- **Increasing focus on ESA performance.** Providers have been trialling new and different ways to support ESA customers into employment. As a result, ESA performance has increased and is now hitting minimum performance levels. However, this increased focus on ESA customers may have led to an increase in the levels of sanctions experienced by this group.
- **Factors related to the Work Capability Assessment (WCA)** and its impact on jobseekers, explored below.

4.2 In relation to the WCA, providers report that some jobseekers who have been referred to the Work Related Activity Group (WRAG) and thus to the Work Programme may be unable, due to ill health, to engage positively with the programme. In these cases, some providers either help jobseekers to appeal this decision directly or signpost to others who can. ERSA recognises this can be sensitive as no provider wishes to be accused of 'parking' jobseekers. However, there is no easy process to 'back out' a customer for providers to pursue. Clearly it would be inappropriate for customers who find themselves in these circumstances to be sanctioned. However, if there has been no participation at all in the Work Programme and the provider has little knowledge of the customers' circumstances, doubts might be raised.

4.3 Providers also report that some jobseekers in the WRAG may concentrate on contesting the decision rather than engaging positively with employment support. This is perhaps not surprising as such customers may have spent many years believing themselves too ill to work and have therefore no history of participation in employment related activity. There is also some concern that the mandatory nature of the Work Programme may not have been fully communicated to this group.

4.4 There is a third, concerning, category of jobseeker who may accurately have been placed in the WRAG, but whose condition has deteriorated subsequently. Such customers may not have the wherewithal to ask for a reconsideration of their WCA, particularly if they suffer from a mental health condition. Again if there is simply no participation in the Work Programme it may be that the adviser feels there is little option than to raise a sanction doubt.

- 4.5 ERSA believes that in all these circumstances it is imperative that the decision maker at JCP undertakes a full review of an individual's circumstances before applying a sanction. ERSA also believes that it would be beneficial for the WCA outcome to be routinely shared with the Work Programme provider. This has been recommended repeatedly since the outset of the programme, but has not been mainstreamed.
- 4.6 Given the above, ERSA believes that, in its current form, the sanctions regime does not always effectively support ESA jobseekers into sustained employment. However, the balance of ERSA members believe that the ability to sanction should remain in relation to jobseekers on ESA in case of need. To help the operation of the system however, ERSA recommends:
- Greater clarity being provided on what might constitute a 'vulnerable' customer and thus who can be exempted from the need to raise doubts. Many of these customers will be on ESA, although it is important to note that some may be on JSA.
 - Routine agreement between JCP and Work Programme providers about this definition of 'vulnerability' to minimise the risk of different stances being taken by different parts of the system
 - Removal of any concept that providers have not raised sufficient number of sanction doubts from the DWP performance management regime. At present, there appears to be some concern that audit processes may inadvertently encourage sanctioning as providers believe that they may be deemed non compliant with the contract if sanctions are not raised on particular customers.

5. Profile of jobseekers being sanctioned

- 5.1 Generally there is a lack of data on the demographics of jobseekers that receive a sanction. Information on the reasons for which a sanction has been applied does not appear to be collected in a systematic way and therefore it is difficult to ascertain if a particular group is being sanctioned to a higher degree than others.
- 5.2 Anecdotally, several members suggest that there may be higher levels of sanctions for jobseekers with a learning disability or mental health condition. This is fuelled by the fact that people with these conditions may have difficulty understanding correspondence, engaging with employment support, or understanding the impacts of not engaging. Given that WCAs are not routinely shared with providers, this lack of engagement may have led advisers to raise doubts.
- 5.3 Several of the homeless charities in ERSA membership report that sanctions disproportionately affect those who are homeless. Research from Homeless Link¹ found that a third of homeless people claiming JSA and nearly one in five claiming ESA had received at least one sanction.
- 5.4 According to a report by ERSA member, Gingerbread², a higher proportion of single parents receive a non-adverse sanction decision. Non-adverse sanctions can be applied at different points in the sanctions process. The majority of non-adverse decisions affecting single parents are made via the original decision. However, a significant minority of non-adverse decisions are applied at decision review stage, indicating that single parents are being inappropriately referred for a sanction in the first instance or wrongly sanctioned as a result of the decision making process.
- 5.5 It is worth noting that there are particular exemptions in place to prevent lone parents and people who are homeless from being sanctioned. It appears that these exemptions are not always being recognised within the system. Further analysis of why this may be is required.

¹ <http://www.homeless.org.uk/sites/default/files/site-attachments/A%20High%20Cost%20to%20Pay%20Sept%2013.pdf>

² <http://www.gingerbread.org.uk/uploads/media/17/9181.pdf>

6. Evidence of impact of sanctions

- 6.1. ERSA is supportive of a full, independent review of the existing conditionality regime in order to evaluate its purpose and how successful it is as a tool for moving jobseekers into employment. Many ERSA members feel that a review is necessary and report that, in its current form, the regime has the ability to cause a great deal of stress and anxiety if wrongly applied. ERSA members also report that a significant time lag often exists between when a provider raises a doubt for a sanctionable offence and the time it takes for that sanction to be applied. Some providers report that on occasions there has been a time lag of up to one year, defeating the purpose of an adviser issuing a sanction to change the behaviour of a jobseeker at that present time, as well as undermining the adviser's authority in the process.
- 6.2. Whilst some ERSA members believe sanctions are not effective for particular jobseekers, others report that they can play a role particularly when the reason for non engagement is motivational or behavioural. Conditionality is most successful when it is delivered as part of a wider package of support and through a partnership model that encourages people to take control and responsibility for their own journey into employment. Conditionality has a role within this, but in order to deliver it successfully staff must be skilled and confident in their ability to apply it. Furthermore, the set of activities with which a jobseeker is being asked to comply must be appropriate for their individual circumstances.
- 6.3. It is also worth noting the diverse objectives of the different bodies with an interest in the operation of the sanctions regime. These interests include HM Treasury, the Department for Work and Pensions, providers, frontline advisers and jobseekers claiming an employment related benefit. The aims of these different bodies range from managing public finances, preventing fraudulent activity, ensuring compliance with a set of activities and as a requirement in return for receiving benefit. With such diverse aims the regime must be designed so that it is fit for all purposes.
- 6.4. ERSA believes there is also a need analyse cases where repeat sanctions have not led to a change in participation. One ERSA member carried out a review of individuals who had been referred to the programme but had failed to engage. This provider found that 20% of those who had received sanction doubts had not responded. It therefore commissioned an independent agency, at its own expense, to carry out 1,000 home visits to individuals who had been referred to the Work Programme, but had failed to participate. The provider was able to re-engage 75% of these customers, but found that the DWP had the incorrect address for 13%. Other customers appeared to be engaged in economic activity. ERSA believes that far more such analysis needs to be undertaken by the DWP of this cohort.
- 6.5. Members report a number of wider impacts that jobseekers may experience as a result of a sanction. These include housing benefit being stopped, a greater reliance on food banks, and increased stress and anxiety that can exacerbate existing mental health conditions. These repercussions are highlighted in the joint ERSA/Community Links survey which is appended to this response. Evidence from the Shaw Trust also indicates that understanding of the appeals process in relation to the sanctions regime, plus the hardship payment regime, is low. Given these issues, it is clear that there is a role for Jobcentre Plus, providers, along with other agencies, to highlight the appeals process and signpost to hardship funds.

7. Conclusion

- 7.1 ERSA members support some level of conditionality in the employment support regime. However, they also believe that the current system is too binary in nature, gives too little discretion to frontline advisers and too often features a 'sanction first, investigate later' approach by Jobcentre Plus decision makers. In particular, it believes that the evidence base for the application of sanctions is weak and may, in many cases, be counterproductive. As such it would support an overhaul of the system, with future policy in this area being based on a greater level of evidence than exists at this point in time.

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