

# Benefit conditionality and equality law



CHILD  
POVERTY  
ACTION  
GROUP

Ayaz Manji- Mind



Katy Watts- Public Law Project

Martin Williams- Child Poverty Action Group



Public  
Law  
Project

# Mental health, conditionality and sanctions



- “I can't count the number of times I've had panic attacks in Jobcentres or how anxious even the thought of them makes me feel.”
- “Sanctions heaped on the pressure and made my mind more muddled and less able to cope with day to day activities as well as job hunting.”
- “It made me not trust the Jobcentre staff and not want to tell them anything. I was also more worried about going to the Jobcentre in case I had done something wrong without knowing.”

# Mental health, conditionality and sanctions



- “I can't count the number of times I've had panic attacks in Jobcentres or how anxious even the thought of them makes me feel.”
- “Sanctions heaped on the pressure and made my mind more muddled and less able to cope with day to day activities as well as job hunting.”
- “It made me not trust the Jobcentre staff and not want to tell them anything. I was also more worried about going to the Jobcentre in case I had done something wrong without knowing.”



# But first... challenges generally

- 81% of UC sanctions appeals allowed- *Benefit Sanctions Statistics to October 2017* (perhaps to do with fact that overturn rate at revision is only 28%- not right first time... or even second)
- There is no time limit to seek a revision in a sanction case
  - reg 14(1)(a) to (c) UC etc. (D&A) Regs 2013 (SI No. 381)
- However, if decision not revised and time not extended may be issue with appeal right
  - R(IS)15/04, *Beltekian v Westminster CC and Anr.* [2004] EWCA Civ 1784
- *Challenging all sanctions imposed always worthwhile:*
  - *As sanctions for same reason “stack” overturning an older one can reduce a current one.*

# Challenging sanctions v challenging conditionality and arguing discrimination



- Although appeals against sanctions work, many people have inappropriate conditionality imposed.
- Challenging inappropriate conditionality pre sanction requires public law remedies.
- Even where sanction successfully appealed may have an additional discrimination claim.

# Conditionality for carers





# Conditionality by age of child- UC system

---

**Age of youngest child / (other groups)      Conditionality Regime**

<1	No conditionality (s.19(2)(c) WRA 2012)
Age 1	Work focussed interview requirement only (s.20(1)(a))
Age 2	Work preparation requirement (s. 21(1)(aa))
Age 3+	Full conditionality (but up to 13 limited to school hours re work search) and in general limited to hours compatible with childcare (reg 88(2)(a) and 97(2) UC Regs)

---

# Reducing work search/availability requirements on carers:



- Reg 88(2)(a) allows deduction from expected hours of work search if DM thinks “compatible with [...] caring responsibilities” and reasonable prospects of obtaining paid work (J3056 effectively puts in guidance what used to be Reg 10 of the JSA Regs).
  - No longer needs to be at least 16 hours per week (JSA Regs 13(4)(c)).
  - Loss of specific statutory rule that DM must take account age and physical and mental health condition of the person being cared for (JSA Regs 13(5)(c)).
- Reg 88(2)(b) – responsible carer for a child under 13 can restrict hours to those compatible with normal school hours plus travel (J3058- says this will typically be 25 hours).
- Reg 95(2)(b) allows “relevant deductions” for “temporary childcare responsibilities, a domestic emergency, [...]”
- Reg 96(2) and (3) allows carer to count as meeting a work availability requirement if DM is satisfied the person needs up to 1 month of notice to take up paid work or up to 48 hours notice to attend an interview (taking into account alternative care arrangements).
  - JSA current rule is 48 hours automatically and up to 1 week automatically before needs to start work- extendable to 1 week and 1 month respectively- see reg 5(1) and (1A) JSA Regs.



# Examples of dodgy conditionality for carers



- Claimants simply not having caring responsibilities taken into account at all.
- Claimants having to attend JCP/work related activity with children during school holidays with no appropriate childcare.
- Claimant who is “friend or family carer” not being given the 1 year of reduced conditionality.
- Imposition of work search for those with pre-school age kids when free childcare not available.

-----

- See also: *Unhelpful and Unfair- The impact of single parent sanctions*  
Gingerbread, March 2018



# Using the Equality Act to challenge sanctions and conditionality



# When a discrimination claim may arise in conditionality cases

- s29 Equality Act 2010: prohibition of discrimination by service providers and in the exercise of a public function
- s15 Equality Act: discrimination arising from disability
- s20 Duty to make reasonable adjustments
- Also s19 – indirect discrimination as a result of a provision or practice which puts persons with protected characteristics at a disadvantage compared to persons who do not



# Protected characteristics

- A high proportion of claimants subject to conditionality are likely to have protected characteristics under s4 Equality Act, in particular:
  - Disability
  - Gender (as lone parents)
- What is reasonable for an individual claimant must be determined with care in order to avoid discriminating against them



# Where to bring a claim

Will depend on:

- What you are challenging, and
- What your client is seeking.

In claims brought under the Equality Act the county court has the power to grant any remedy that could be obtained in the High Court in judicial review proceedings.

Both the High Court and county court have jurisdiction to award damages

# How to bring a claim: County Court



- County court is the primary forum for claims concerning discrimination in relation to services or the exercise of a public function: s114 EA 2012
- Claims must be brought within six months of the date of the act to which the claim relates: s118 EA 2012
- Conduct extending over a period is treated as done at the end of the period: s118(6)(a) EA 2012
- Pre-action: practice direction on pre-action conduct and protocols



# How to bring a claim: small claims track

- All claims issued in County Court Money Claims Centre
- Value of below £10,000: allocated to small claims track
- No legal aid available
- Fixed costs



# Funding

- Legal aid may be available – see workshop on funding this afternoon
- Equality and Human Rights Commission is currently running a Legal Support Project to fund advice and representation in Equality Act claims in housing and social security, see: <https://www.equalityhumanrights.com/en/legal-casework/legal-support-project/legal-support-project-housing-and-social-security>





# Judicial review

- Means of challenging decision by a public body where other remedies are unavailable or ineffective
- Also appropriate where challenge is to a policy or practice of a public body
- Some public law claims can be brought in specialist tribunals – MM and DM v Secretary of State for Work and Pensions (Mind and Others intervening) [2013] EWCA Civ 1565



# Judicial review and sanctions

- Where there is no other right of appeal, eg the failure to take into account the circumstances of sick and disabled claimants in the claimant commitment or the failure to take caring responsibilities into account
- Where the alternative remedy is not suitable, eg where the remedy required is not something the FTT can grant, such as remedying systemic problems
- Where the alternative remedy is not effective, eg where a sanction decision presents an immediate risk of destitution



# Judicial review: some practical points

- Judicial review cases must be brought promptly and in any event within **three months** of the date of the decision
- Pre-action protocol for judicial review: pre-action letter template
- 
- Legal aid is available for judicial review

# Mental health, conditionality and sanctions



“For Employment and Support Allowance claimants we found sanctions had less effect. However, sanctions reduced claimants’ time in employment, particularly part-time employment. Most of the reduction meant people spent more time claiming, suggesting sanctions may have discouraged some claimants from working.”

*National Audit Office (2016)*



# Future threats and challenges

“We need to consider whether the Work Capability Assessment is the right vehicle for deciding access to personalised employment support”

“For instance, trained work coaches could have discretion to make case-by-case decisions about the type of employment support a person is able to engage with. To do this effectively, they would work closely with the person, building on information gathered at early discussions such as the Health and Work Conversation to ensure they are signposted to help that is appropriate to their needs.”

*Work, health and disability green paper (2016)*

# Opportunities for positive reform



“Look at sanctions. We need sanctions, and I don’t agree with those who would abolish them. But I am always keen to improve the system and in particular I do not want sanctions to discourage those with mental health problems from engaging fully with the welfare system. So we will ensure that they work for people with mental health problems.” *Damian Green (2016)*

“As well as scrapping the Conservatives’ punitive sanctions regime, we will change how -Jobcentre Plus staff are performance-managed.” *Labour General Election Manifesto (2017)*

# Opportunities for positive reform



- Cutting through the complexity on Universal Credit and sanctions
- Using data and media pressure to drive changes in practice
- The disability employment gap and new debate about ‘voluntary engagement’
- Parliamentary pressure and the role of the Work and Pensions Committee

# Opportunities for positive reform



“Look at sanctions. We need sanctions, and I don’t agree with those who would abolish them. But I am always keen to improve the system and in particular I do not want sanctions to discourage those with mental health problems from engaging fully with the welfare system. So we will ensure that they work for people with mental health problems.” *Damian Green (2016)*

“As well as scrapping the Conservatives’ punitive sanctions regime, we will change how -Jobcentre Plus staff are performance-managed.” *Labour General Election Manifesto (2017)*



# Opportunities for positive reform



- Cutting through the complexity on Universal Credit and sanctions
- Using data and media pressure to drive changes in practice
- The disability employment gap and new debate about ‘voluntary engagement’
- Parliamentary pressure and the role of the Work and Pensions Committee