

**Social Security Advisory Committee**  
**Minutes of the meeting held on 8 September 2021**  
**Caxton House**

Chair: Dr Stephen Brien

Members: Bruce Calderwood  
Matthew Doyle  
Carl Emmerson  
Chris Goulden  
Kayley Hignell  
Phil Jones  
Grainne McKeever  
Seyi Obakin  
Charlotte Pickles  
Liz Sayce

**1. Private session**

*[RESERVED ITEM]*

**2. The Jobseeker's Allowance and Employment and Support Allowance (Amendment) Regulations 2021**

2.1 The Chair welcomed the following officials to the meeting: Manjula Pelpola (G6 Conditionality, Health Conditionality, Sanctions and Hardship Payments Policy), Jon Lander (SEO, Service Design and Management), Rhonda Hackett (SEO, Sanctions and Hardship Payments Policy), Leana Scullion (SEO, Sanctions and Hardship Payments Policy) and Jo Howell (DWP Senior Lawyer).

2.2 Introducing the item, Rhonda Hackett explained the amendment is made to the Jobseeker's Allowance Regulations 2013 and Employment and Support Allowance Regulations 2013 to correct an error in S.I. 2016/678, which may cause ambiguity around whether a sanction can escalate.

2.2 The following main questions were raised by Committee members in discussion:

**(a) Why is the change happening now, if the problem has been present since 2016?**

The problem was recognised in 2018, but there was not an opportunity to make the amendment before now because of the restrictions on Parliamentary time. The reason for amending them now is because a process is being put in place to apply sanctions. This will allow a level playing field for sanctions across all

benefits. The timing is because restrictions are lifting, furlough is coming to an end, so there is expected to be a large uptick in numbers on these benefits.

**(b) What has the Department learnt from the cases where the sanctions have not been available, even anecdotally? What number would have been sanctioned?**

There have not been any sanctions applied previously for new style Jobseeker's Allowance (NS JSA) and new style Employment and Support Allowance (NS ESA). It has been the position to encourage work coaches to have more engagement with claimants. The nature of these claimants is that they may be closer to the labour market, and more likely to be self-starters in terms of labour market activity. There are no figures about sanctionable failures - as there was no sanction there is no data on them. Without the consequence of the sanction the focus has been on providing support through engagement on multiple channels. In terms of the consequences of not having sanctions there is no data on any of that. Anecdotally, there are some cases where sanctions do not come into the equation because they are self-motivated, however there are some customers who are not motivated, so whilst there are some customers that don't need the consequence of a sanction to engage, there is still the need for a consequence.

**(c) Why was no action taken between 2013 and 2018 in terms of applying sanctions?**

These are contributory benefits, and Universal Credit (UC) was prioritised. All the UC prioritisation was on getting people paid. The new style benefits are working within a legacy infrastructure but with UC legislation, they don't fit well, so there were many issues to overcome, such as letters having the wrong regulations on them. The new process is a mix of clerical and digital.

**(d) The objective is to make the sanctions in NS JSA and NS ESA align with UC, and have parity, is that correct?**

The aim is for consistency across all benefits with UC, treating all claimants the same.

**(e) How do the escalating sanctions operate?**

Sanctions only escalate when there is a previous sanction at the same level - higher, medium or low. A sanction will escalate if the earlier sanction is within 365 days of the current sanctionable failure, not within 14 days of the current failure and not a pre-claim failure. The length of escalation period depends on the level of sanction. For example, low-level sanctions tend to be for failure to

attend their mandatory appointment. If the claimant fails (without good reason) then an open-ended sanction is applied until they book and attend an appointment. Once they comply with that requirement a further seven-day fixed length sanction is applied. If they fail to attend another appointment the sanction increases to 14 days, and for any third or subsequent failures it is 28 days. For other medium and high level sanctions these additional fixed-length periods are for longer. These sanctions are the same as would apply in UC.

**(f) What about hangover periods, where a previous sanction has not expired?**

If an award of UC ends while there is an outstanding sanction, the sanction will continue to run as if a daily reduction were being applied. If the claimant becomes entitled to a new award of UC or to an award of JSA or ESA before the sanction expires then the new award is subject to a reduction for the remainder of the outstanding sanction period. Any open-ended sanction terminates on the termination of an award, however any fixed period can be carried over to a new award.

**(g) Was it considered whether to incorporate these benefits into the UC computer system?**

That would have been the ideal but it was not a priority. There is a sizeable waiting list of all changes to be made, and the NS benefits were low in that priority list due to the focus on paying customers correctly and on time.

**(h) Can someone apply for hardship?**

Hardship is not available to NS only benefits, due to their contributory nature. If they want hardship to be considered they will need to go onto UC.

**(i) Is there an easy route for a claimant to go across to UC?**

Yes, they can just claim online, it is called a dual claim.

**(j) Regarding sanctions policy generally – has it changed over the last 10 years? Is this part of a wider change of strategy, involving looking at more sanctions being applied?**

There are larger caseloads, but in regard to the policy, although it is always under review, there are no plans for the policy to change in any way. There have been very few sanctions used during the pandemic, so there might be an increase but not due to a change in policy but due to individual circumstances.

**(k) Is there to be any evaluation of using sanctions, and labour market outcomes?**

Currently there are plans to look at the sanctions data a bit more, but we do not have a clear data set on some of these issues. Nothing is formally decided.

**(l) Moving to this clerical process might make things very difficult - will data be properly captured?**

That is the intention – there is work being undertaken to figure out at what point in the process is the best to capture it. The sanction data is input onto a number of different systems, and a payment system is used from which some data can be captured. There is a need to ensure that the Department keep abreast of things and ensure each jobcentre applies sanctions consistently.

**(m) If one is claiming UC and NS benefit, and a sanction is applied, is it the same person who makes decision?**

The sanction is applied to the UC element, so it is one person. In dual claims the decision will be made by the UC labour market decision maker, it is to the UC element that the sanction is applied. So, dual claims are not impacted by this change. There is no labour market decision on the NS JSA side of a dual claim.

**(n) The sanction could never eat into the NS JSA, only the UC?**

The JSA is paid by the JSAPs system, and only the UC element will be sanctioned. The JSA part of a dual claim is protected. This is set out in regulation 5 of the Jobseeker's Allowance Regulations 2013.

**(o) What occurs if the amount the UC recipient receives is less money than the NS JSA award – how is the sanction applied?**

That scenario will be looked into and the answer provided outside of the meeting.<sup>1</sup>

**(p) With the absence of sanctions in these NS benefits claimant advisors and claimants may have got used to this situation. What communications are planned for claimants and for third party advisors to let them know of the change?**

---

<sup>1</sup> The Department's response is held at annex B.

That is being considered. If there is a new claim after November, then the claimant is set up to expect sanctions to be applied. The plan is to identify the existing NS customers, and give out information in each of the two signing cycles prior to November, so people can be warned on more than one occasion about the change. There is also the intention to reach out to the third party benefit advisory groups, who are seen as partners in this.

**(q) Are you going to communicate in a blanket way? Can you share what you intend to say?**

Yes, and that can be shared in confidence.

**(r) The analysis states that there is no impact on claimants, and that there are no equality impacts. However, a group of people who have been sanctioned before will now get a greater sanction. Should there not be an analysis of these effects?**

The analysis was just about correcting the legislative error, not the implementation.

**(s) The Committee would welcome seeing an impact assessment and equality analysis of the implementation. Are there plans to measure and monitor the impact of the changes?**

There will be a review of the short term process of making the change, and we will continue to review the process and its impact as it unfolds.

2.3 Following a period of private discussion, the Committee agreed it required further information about dual claims, communication plans and an impact assessment regarding the implementation of sanctions before it could reach a final view on the regulations. The Chair requested that the Department provide this additional information as soon as possible.<sup>2</sup>

### **3 & 4 Private sessions**

*[RESERVED ITEMS]*

---

<sup>2</sup> Following a further meeting between the Committee and DWP officials (minutes at annex C, and an exchange of correspondence between The Committee Chair and the Minister of Employment (held at annexes D and E), the Committee agreed that the regulations would not be taken on formal reference and that they may proceed as planned.

**Attendees**

Guests and Officials

Item 3: Manjula Pelpola (G6, Sanctions and Hardship Payments Policy)  
Jon Lander (SEO, Service Design and Management)  
Rhonda Hackett (SEO, Sanctions and Hardship Payments Policy)  
Leana Scullion (SEO, Sanctions and Hardship Payments Policy)  
Jo Howell (Senior Lawyer)

Secretariat: Denise Whitehead (Committee Secretary)  
Richard Whitaker (Assistant Secretary)  
Gabriel Ferros (Analyst)



Department  
for Work &  
Pensions

Sanctions and  
Hardship Policy,  
80 Hanover Way,  
Sheffield,  
South Yorkshire,  
S3 7UF

[www.gov.uk](http://www.gov.uk)

Denise Whitehead  
Committee Secretary  
Social Security Advisory Committee  
Caxton House  
Tothill Street  
London  
SW1H 9NA

September 2021

Dear Denise,

I am writing to inform the committee in response to a question outstanding from the meeting on 8<sup>th</sup> September 2021 to discuss The Jobseeker's Allowance and Employment and Support Allowance (Amendment) Regulations 2021.

The question, in relation to Dual Claims was 'What occurs if the amount the UC recipient receives is less money than the NS JSA award – how is the sanction applied?'

For Dual Claims, only the UC element can be sanctioned in-line with Regulation 5 of the JSA Regulations 2013 and Regulation 42 of the ESA Regulations 2013. Where the UC element is lower than the sanctionable amount, then only the UC amount can be taken and the New Style JSA or ESA award would continue to be paid in full. However, if the claimant ceases to claim UC while there is a sanction outstanding, the sanction is then to be transferred onto the New Style element to serve any remaining reduction.

I trust this satisfactorily answers the question posed.

Kind Regards

Leana Scullion  
Policy Adviser

**Social Security Advisory Committee  
Minutes of the meeting held on 4 October 2021  
(held via Microsoft Teams)**

SSAC: Dr Stephen Brien (Chair)  
Carl Emmerson (Member)  
Liz Sayce (Member)  
Denise Whitehead (Committee Secretary)  
Richard Whitaker (Assistant Secretary)

DWP: Ian Caplan (Director, Employment Policy),  
Victoria Hogan (Deputy Director, Employment Policy),  
Carmen Pardavila (G7 - Conditionality, Health  
Conditionality, Sanctions and Hardship Payments Policy),  
Manjula Pelpola (G6 - Conditionality, Health  
Conditionality, Sanctions and Hardship Payments Policy),  
Aimee Vickers (Analyst)

**1. The Jobseeker's Allowance and Employment Support Allowance  
(Amendment) Regulations 2021**

1.1 The Chair welcomed the attendees and explained that, while the Committee did not want to delay the regulations, it required further assurance on its residual concerns about dual claimants and sanctions, and on the equality analysis (EA) on the implementation of sanctions for new style (NS) benefits. The Chair invited initial thoughts from the policy officials on these points.

1.2 Victoria Hogan explained that, following the Committee's earlier comments, the Department has started to look into the dual claimant issue, however as this is quite a technical part of the regulations there has not been time to work through the different scenarios in enough detail. However, the policy itself has remained unchanged since the Jobseeker's Allowance Regulations and the Employment and Support Allowance Regulations were laid in 2013, and these regulations would not change that. The Department will continue working on this point but they estimated that this would be affecting a very small number of people so it creates less of a fairness imbalance as the current regulations do with the problem of escalating sanctions. In terms of the dual claimant issue it is not known if there was an original policy intent for there to be a difference – it may have been deliberate rather than a discrepancy.

1.3 Committee members raised the following main questions in discussion:



- (a) **If the Department is not clear on what the original policy intent was then that is an issue as the Committee requires a clear articulation of the policy intent. Do you need time to do that and come back to the Committee once you know the intent?**

On the specific regulations change for the escalating sanctions amendment there is a clear policy intent - it is removing the mistake which created ambiguity around escalating sanctions. The 2013 original regulations set up and included the whole sanction regime, that included escalation. In 2016 it was realised that some of those escalations were not working, so a further amendment was laid – but when those were passed there was an erroneous paragraph which created this problem – all that is changing now is the removal of that paragraph.

- (b) **What was the situation for dual claimants in 2013 and 2016?**

The situation was that in the 2013 regulations the sanction will apply to the UC award only, and that remains the case.

- (c) **This discrepancy existed from the outset – was it deliberate or accidental? If it was deliberate you would want to leave things as they are, but if accidental wouldn't you propose correcting things now?**

Even if intentional then if it is the right thing to change it now it would be considered.

- (d) **Does the Department have a timescale for establishing whether this discrepancy was intended or not, and whether it should change either way?**

It will be a few weeks before there is a better idea of the impact and the effect on different groups. At that stage it can be reported what progress has been made, but there might not be a complete answer at that point.

- (e) **Is the logical follow on that it would make sense to delay for the period whilst the Department does that? As sanctions for NS benefits have not been in place in 2013 it does not seem pressing but there may be other complicating issues.**

These regulations are seen as correcting a technical drafting error in 2016. Ministers are keen to reintroduce the employment regime in its full respect and want to do this sooner than later and Ministers would expect us to be getting on with this. Whilst resources can be put into dealing with the issues you raise that is separate from correcting the drafting error from five years ago.

- (f) Is there not also a potential drafting error from eight years ago that should be addressed?**

The Committee's advice is welcomed on whether there was a drafting error in those original regulations, however they have been debated and have gone through parliament. The present regulations before the Committee do not mark a policy change, so the Department is keen to investigate SSAC's points, but to do so as a separate issue from the current policy intent.

- (g) There is a difference between legislative intent and policy intent. If there was a deliberate policy regarding dual claimants on sanctions would DWP not have been able to present that to the Committee already?**

These regulations are narrowly focused on the escalation of sanctions – trying to enable something not done correctly 5 years ago – and although your questions are legitimate, they are not germane to these specific regulations.

- (h) It is odd to think a claimant receiving new style Jobseeker's Allowance and an award of £0 Universal Credit (UC) could not be sanctioned. It would be surprising if that was the policy intent, rather it seems unintended. The Committee has to consider the consequences around the edges of regulations, of what is not intended. Can it really be that someone is protected from sanction because they have a low UC award?**

As the Department gets to the bottom of the issue it will look at what happened in 2013 and 2016, and also what happened when getting clearance for those regulations from the Committee.

- (i) There may have been mistakes in the past but the Department still wants to get things right now regardless. On to the EA – whilst the Department looked at protected characteristics, there was a lack of analysis of outcomes in relation to these characteristics. There is a need to have considered whether there any disproportionate outcomes.**

The impact assessment referred to is the EA for the implementation of sanctions, not for these regulations themselves. There are constraints in the information due to Stat X-plore – e.g. you can't get sanction rate details.

- (j) Was DWP restricted to publicly available data? Cannot all data available to the Department be used?**

This EA used publicly available data only. There is a requirement to use publicly available data as it is robust and reliable - it has gone through a rigorous quality assurance process.

- (k) Using publicly available information is understandable, but in circumstances where there is an absence of publicly available information on a subject, and there is non-publicly available information would not it be wise to draw on that? Any data that can provide useful insight would be valuable, whilst acknowledging where there are weaknesses in that data. Please could you look into this?**

Yes, it would be better to use whatever appropriate data we can.

- (l) The Committee appreciates what DWP is doing, it is solving most of the problem, but not quite all of it. With that in mind instead of rushing at this perhaps give it a little more time, complete the EA, check the policy on dual claims, and re-draft to capture that?**

Fundamentally, Ministers will see it as two things – introduce these sanctions, and if there are other things that is separate. An EA for the regulations themselves would reveal nothing, as it is just striking out a few lines. If you want to look at things in broader way that should perhaps be done as another matter. Is it possible for the Committee to approve this specific change but whilst doing so draw attention to these issues and that can be put to Ministers - then the Department can take those issues away and do solid work on them.

- (m) A pragmatic approach for moving forward, and which would enable the Department to continue to lay the regulations to its current deadlines, may be to arrange a public commitment from the Minister, through an agreed exchange of letters within the next few days. The Committee is not quorate, therefore we would need to get the agreement of other Committee members overnight. It would be desirable to have specificity around when there would be an EA produced, and an answer in the dual claims question.**

That can be figured into the exchange of letters. If the EA can be written using non-publicly available data then that part can be done quickly. The EA is still a draft, so it could be done by November when NS sanctions come into force. The Department will share the products with you.

- (n) The Committee values an EA that is realistic – the Department is changing regulations, but those regulations make changes in operations, those changes allow sanctions to occur - so an EA should show the ultimate reality of the change rather than the narrow legality of the change.**

The EA for implementation does go wider than just the regulations. For the letter exchange the responsible Minister is Mims Davies (Minister for Employment).



The logo for the Social Security Advisory Committee, featuring the text "SOCIAL SECURITY" in white on a blue background and "ADVISORY COMMITTEE" in white on a green background.

Mims Davies MP  
Minister for Employment  
Department for Work and Pensions  
Caxton House  
Tothill Street  
London  
SW1H 9NA

7 October 2021

Dear Minister,

**The Jobseeker's Allowance and Employment and Support Allowance  
(Amendment) Regulations 2021**

The above regulations were presented to the Social Security Advisory Committee for scrutiny at its meeting on 8 September. The stated policy intent of these regulations is to allow for escalating sanctions to be applied in 'new style' Jobseeker's Allowance (NS JSA) and Employment and Support Allowance (NS ESA), in order for the regulations to support the introduction of sanctions for NS JSA and NS ESA. These regulations seek to make escalated sanctions for new style benefits consistent with other benefits. While we understand the rationale for that approach, the Committee identified areas of concern on which we have continued to engage with officials.

Following those subsequent discussions, and careful consideration of the narrowly defined proposals presented to us, the Committee has decided that it will not take the regulations on formal reference and that they may proceed as planned. However, we have continuing concerns about two aspects of the effective introduction of sanctions to new style benefits, and would welcome your observations and assurance on these points.

*Dual claims*

In cases where a new style benefit claimant is also in receipt of Universal Credit (UC), the application of escalating sanctions would not be entirely consistent under the proposed regulations. In such cases, a sanction would be applied to the UC element only, with the new style benefit continuing to be paid in full. Therefore, in circumstances where the value of UC element of the benefit was lower than the

sanctioned amount, the claimant would be in a more favourable position than a claimant solely in receipt of either UC or a new style benefit who would be impacted by the full force of the sanction. As it is possible that the UC element of a dual claim could be zero, this presents a significant inconsistency. Officials are currently exploring whether or not this was the then government's intent when the policy was originally introduced in 2013 (or is the current government's intent today), but either way the Committee is of the strong view that this inconsistency be reviewed and addressed at the earliest opportunity.

### *Equality analysis*

As the effective introduction of sanctions to new style benefits is a significant departure from the current practice, we consider it important that there is a robust and comprehensive equality analysis to inform fully the Department's implementation of these proposals. While acknowledging that the equality analysis presented to us was a work in progress and informed solely by publicly available data, there were a number of areas in which it could be strengthened. In particular, it should analyse which individuals – including persons with protected characteristics, such as age and race – are relatively more likely to be impacted by these changes.. Hence, we recommend that the Department should explore other internal available data to ensure that it has a strong understanding of likely impacts of these proposed changes.

We would welcome your early response to these points. We understand that, given the arrangements already being put in place to deliver this change, a deferral of the regulations by a short period to enable these issues to be addressed could involve some disruption. We would therefore welcome your commitment for officials to report back to the Committee once both these issues have been reviewed, alongside an indicative timetable for doing so.

I would, of course, be very happy to discuss further any of the issues raised in this letter if that would be helpful.

A copy of this letter goes to the Baroness Stedman-Scott, Katie Farrington, Jonathan Mills and Ian Caplan.



Dr Stephen Brien  
SSAC Chair



Department  
for Work &  
Pensions

**Mims Davies MP**  
Minister for Employment

**Department for Work and Pensions**  
Caxton House  
Tothill Street  
LONDON  
SW1H 9DA

**Tel: 0207 340 4000**

**Email: [minister.employment@dwp.gov.uk](mailto:minister.employment@dwp.gov.uk)**

**[www.gov.uk/dwp](http://www.gov.uk/dwp)**

07 October 2021

Dr Stephen Brien  
Social Security Advisory Committee Chair  
Social Security Advisory Committee  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Dear Stephen,

**The Jobseeker's Allowance and Employment and Support Allowance  
(Amendment) Regulations 2021**

Thank you for your letter of 7<sup>th</sup> October 2021 confirming that the Committee does not intend to take the above regulations on formal reference. I note that you have outstanding concerns regarding the draft regulations to enable escalated sanctions to take place for New Style benefits. I would like to thank the Committee for their thorough scrutinising of the regulations and raising to our attention these important and valid points.

I am committed to looking into the two aspects that you have continuing concerns about and have asked my officials to further investigate the matters and report back to me.

**Dual Claims**

The issue you raised regarding dual claims cuts across a number of policy areas such as UC policy, deductions and sanctions. Due to the complexities and intricacies of dual benefits, my officials have not yet been able to investigate it fully as this issue could also apply to other reductions.

We will investigate this further to understand if this was the policy intent or, if it was not, look at the extent of the issue.

I have asked my officials to present their findings and proposals to me to ensure your concerns have been addressed. My office will ensure you are kept up to date with the progress. Once we have an agreed position I will write to you about next steps.

## **Equality Analysis**

The Equality Assessment uses data from Stat-Xplore, which is publicly available and has gone through rigorous quality assurance processes. This data is also presented in an accessible and consistent way, an important consideration for the Department's Equality Assessment. I am keen to provide reassurance to the Committee that the process for developing our equality analysis has been thoughtful and considered, and that it is predicated on comprehensive and robust data. With that in mind, and considering the Committee's questions, I have asked DWP's analysts to provide an informal briefing to Committee members.

As discussed in the meeting on 4<sup>th</sup> October, my officials will update the Equality Analysis for the New Style benefits sanctions process to ensure that it is robust and comprehensive and includes, where available, the best and most relevant sanctions equality data and that it draws out the impact and mitigations for the different groups.

I have been advised that while the process will be applied equally to all claimants, the general discretion afforded to Decision Makers as to whether or not a claimant has good reason for the failure will enable individual circumstances to be taken into account and for any discrimination to be avoided. As such, they are continuing to work towards the 3<sup>rd</sup> November 2021 as the introduction date for the New Style sanctions process and claimants are already being informed that a new sanctions process will be in place from that date.

I will write again once this further work has been completed.

A handwritten signature in cursive script, appearing to read 'Mims', written in black ink.

**Mims Davies MP**  
**Minister for Employment**