

## Building legal capability to avoid and challenge benefits sanctions

A project funded by Awards for All

### Introduction

Due to recent changes to the welfare system, an increasing number of people are finding themselves sanctioned.<sup>1</sup> In addition to being 'largely ineffective' in facilitating people's access to employment, sanctions have a number of negative effects including poverty, destitution and homelessness.<sup>2</sup> Sanctions have a disproportionate impact on people who are more vulnerable and find it particularly challenging to comply with the conditionalities of the welfare system, as well as to deal with the effect of sanctions on their lives. People with complex mental health needs are among those most negatively affected. This is due to a system that often does not adequately recognise mental health issues -imposing unrealistic conditionalities- and which increasingly requires digital literacy and communication skills which many vulnerable people don't have.

We sought **funding from Awards from All** to help people understand and build the skills needed to avoid and deal with benefit sanctions. The funding allowed us **to develop a Survival guide to benefits sanctions and deliver community based public legal education (PLE) workshops for intermediaries working with people who are more likely to be sanctioned, particularly those with mental health needs.** The workshops were delivered in partnership with the [Bridge Mental Health Support](#) and the [Public Law Project](#).

### Background to the project: how sanctions affect people with mental health needs

By February 2017, over 1.6m claimants of Job-seeker Allowance (JSA), Employment Support Allowance (ESA) and Income Support (IS) or Universal Credit (UC) were exposed to sanctions. In recent years, particularly with the introduction of Universal Credit, there have been major changes in the legal rules and the system of welfare entitlements which make people even more prone to being sanctioned.<sup>3</sup> These changes relate particularly to conditionality requirements applied to people with disabilities and illnesses who have different degrees of work capability.

A large body of research indicates that sanctions have many damaging effects.<sup>4</sup> Those who suffer most are the people who are most disadvantaged to start with, and have no financial or family

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<sup>1</sup> In 2018 alone, the rate of people facing a sanction under the Universal Credit system was higher than the rate of people sanctioned under previous schemes such as the Job Seekers Allowance. See R. Keen, 'Universal Credit: Why are sanctions' rates higher?', Briefing Paper, House of Commons Library, 2018; and Trust for London, *London's Poverty Profile: Benefit sanctions*: <https://www.trustforlondon.org.uk/data/benefit-sanctions/> (last accessed 15th August 2019)

<sup>2</sup> University of York, Department of Social Policy and Social Work, Welfare Conditionality Project 2013-18, available at [http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/06/40475\\_Welfare-Conditionality\\_Report\\_complete-v3.pdf](http://www.welfareconditionality.ac.uk/wp-content/uploads/2018/06/40475_Welfare-Conditionality_Report_complete-v3.pdf) (last accessed 15 August 2019).

<sup>3</sup> See f 1 above

<sup>4</sup> Webster, D. (2014) The DWP's JSA/ESA sanctions statistics release, 19th February 2014, available at <http://refuted.org.uk/2014/02/22/sanctionstatistics/>, and University of York, f 2 above.

resources to fall back on. For instance, young people aged 18-24 incur JSA sanctions at twice the rate of other groups. Ethnic minorities are at higher risk of sanctions, and disabled JSA claimants are at higher risk of repeat sanctions. The Universal Credit sanction rate is higher than JSA for every age group and the Government's continuing roll out of Universal Credit is likely to exacerbate this situation.

In his recent visit to the UK, the United Nations Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, found that "compassion for those who are suffering has been replaced by a punitive, mean-spirited, and often callous approach", ignoring the wellbeing of the most dependent and socially excluded populations.<sup>5</sup>

The introduction of Universal Credit has left many worse off, with a five week waiting period that "pushes many who may already be in crisis into debt, rent arrears, and serious hardship, requiring them to sacrifice food or heat" (Alston, 2018). Alston notes that some claimants "take inappropriate low-paid, temporary work just to avoid debilitating sanctions" risking their health for their income (Alston, 2018).

It is also not merely the haphazard introduction to Universal Credit that is damaging, but also the fact that "The UK government made Universal Credit the first major government service that is 'digital by default,'" thereby leaving those "most vulnerable and those with poor digital literacy" dependent on a system they are often unable to navigate (Alston, 2018). It is "women, older people, people who do not speak English and the disabled" who are most likely to be digitally excluded and therefore harmed by this move (Alston, 2018).

People with limited capability for work are also made to wait longer to receive the amount they are entitled to with the Scottish Association for Mental Health's report on *Universal Credit and Mental Health* stating that "In June 2018 the median time from application to final decision following a WCA [work capability assessment] was 15 weeks" (SAMH, 2019).<sup>6</sup> This waiting time not only increases uncertainty, distress and anxiety for claimants but can also lead to unfair sanctions because under UC people waiting for their assessment can be required to perform job searches and work related activities that their health condition doesn't allow them to do. According to SAMH this is "unacceptable" especially because the risk of sanctions "exacerbated both physical and mental health problems and did not promote behavioural change in regards to moving towards employment" (SAMH, 2019).

## Our project

Against this background, we sought to increase people's knowledge and improve their skills to avoid and challenge sanctions as well as deal with their practical implications. The project began with needs assessment research that led to the development of an online [Survival guide to benefit](#)

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<sup>5</sup> Statement on the visit to the UK of Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, November 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E> (last accessed 15th August)

<sup>6</sup> Scottish Association for Mental Health, Universal Credit and mental health: recommendations for change, March 2019, available at [https://www.samh.org.uk/documents/ItWasAConfusionReport\\_ONLINE\\_VERSION.pdf](https://www.samh.org.uk/documents/ItWasAConfusionReport_ONLINE_VERSION.pdf) (last accessed 15th August)

[sanctions](#) for the general public and two workshops for frontline workers supporting clients who are likely to face sanctions. We sought to focus particularly on addressing the needs of people with mental health issues by partnering with the Bridge Mental Health, a charity based in the London Borough of Greenwich providing mental health and wellbeing services.

#### Legal education workshops and guide on benefit sanctions

##### a) Needs assessment:

Our needs assessment focused on identifying challenges that people with mental health issues face in relation to the welfare system and the needs of frontline workers to help them avoid and challenge sanctions. To do so, we ran a consultation consisting of an online survey and a focus group discussion with staff and managers at the Bridge Mental Health Support. We had 26 respondents to the survey who were asked if their service users were benefit claimants, if they had faced sanctions, the reasons they have been sanctioned, their ability to challenge them, the effects of sanctions, and what support the respondents felt they needed in order to best address these issues.

**Respondents described a system not designed for people with mental health problems and one which does not take into account people's mental health status when they struggle to comply with the conditions for their benefit.** The answers suggested that the **effects of benefit sanctions on mental health service users fall into two main overlapping categories. The first is financial hardship. The second is the impact that sanctioning had on service users' mental health, which in turn reduced their ability to engage with both the benefits system and their mental health care plan.** Examples were given of people leaving the service and becoming homeless. Many respondents were also concerned with the impact of Universal Credit and the uncertainty caused by the process of moving from existing benefits such as JSA, ESA, Housing Benefit, and Pension Credit, to the new system which is much more complex and almost completely digital.

The additional support users require to engage with the system demands more intensive inputs from staff at the trust to help service users avoid or deal with benefit sanctions. A clear majority of respondents gave answers that suggested the **need for effective referral channels, advice sessions, and information resources.** Interestingly, these all pass on an element of responsibility to another agency, and this reflects a perfectly reasonable concern amongst workers themselves about their capacity (both in terms of time and expertise) to do this work themselves. The consultation also pointed at the need for a broader understanding of Universal credit and the benefit system and although this was beyond the scope of the project, the training did include a brief overview over UC.

##### b) A survival guide to benefits sanctions

We wanted to create online legal information on sanctions in order to complement the legal education workshops and to reach a wider audience. We began by using learning from the survey with workers at Bridge Mental Health to focus the scope of the guide. It was decided that it was important to **include information which would build the skills of readers to both avoid and deal with benefit sanctions.**

The next step was to recruit a panel of intermediaries and others with an interest or experience in sanctions to inform and shape the development of the guide. We were fortunate to get a lot of interest in the panel from very experienced and committed people. We also did well in making sure that the panel had good geographic coverage, although Wales was underrepresented, so this is a learning point for the future.

Desk research, particularly around the sanctions and mandatory reconsideration/appeal process and rates, was vital in filling in the gaps of our content plan. We were then able to send this to our panel for comments, and we then reviewed those comments to refine and improve it. It is very useful to get feedback at this early stage to make sure the focus of the guide is the right one.

We then went on to produce drafts that were sent to the panel for comments which we then reviewed, and incorporated into a final draft.

#### c) Development and delivery of PLE workshops:

Public legal education seeks to build legal capability to understand and use relevant aspects of the law to address issues affecting everyday life. In the context of sanctions, this entails **understanding key legal concepts underpinning the sanctions (and benefit) system, identifying concrete ways to avoid sanctions and learning how to challenge them through existing legal mechanisms.**

We began to develop the workshop from our consultation findings, using our survival guide, as well as research and expertise from the [Public Law Project](#), which provides representation and advice on benefit sanctions and training resources for other advisers and legal professionals. In April 2019 we held two workshops, the first to 17 people with the majority from the Bridge, and the second a week later to 12 people solely from the Bridge.

The workshop focused on building an understanding of what a sanction is, why one can be sanctioned, what commitments benefit claimants have, the different levels of sanctions for different categories of claimants, and how to avoid and challenge sanctions. It also addressed the basics of Universal Credit. While many participants had a grasp of the problems claimants face while on UC, many were shocked at the length of time sanctions can be imposed for.

We used a number of group activities designed to apply the information received to real life situations and help participants think about how they can support clients and users in their jobs. We looked at the process step by step from when claimants are awarded UC until they are sanctioned. We discussed what support workers can do to negotiate or change claimant commitments so that they truly reflect people's needs and capabilities, as well as the arguments that can be used to challenge a sanction and the process involved. We also dedicated time to discuss the challenges participants face as support workers, and participants went on to share learning and experiences amongst each other. Lastly, the session also addressed external resources providing legal information and representation, and financial support that clients can avail themselves of during their sanction period.

#### **Evaluation and further work:**

Both the guide and the workshops were well received among users.

The survival guide was published in April 2019 and has had about 2000 unique views so far. Early indications are positive: it has been described as a 'clear and easy to follow guide' and an 'excellent guide to avoid sanctions.'

The workshops helped frontline workers support users and clients in dealing with sanctions, as well as with benefits more generally. Following the two workshop sessions:

- 90% of participants felt they were able to provide general information on sanctions
- 90% of participants felt they were able to help clients to avoid sanctions

- 95% of participants felt they would be able to help clients challenge a sanction
- 95% were able to identify one or more sources of legal information and advice for dealing with sanctions

The approach grounded on legal capability (as opposed to simply providing legal information) was perceived as particularly useful:

*“The training was designed in a very helpful way. **The exercises they gave us made me having to think practically about how to apply this knowledge in our work.** I remember an exercise with scenarios on what kind of sanctions people could get. I am a very practical person and that was useful for me because it made me have to try to see the reasons why the person in each scenario, who could be my client, would get sanctioned.” [training participant]*

As one of the participants noted, the training focused on skills and know-how useful to dealing with other benefit-related issues, as well as improving the way support workers can advocate on behalf of clients more broadly:

*“The training helped me **understand better how to support my client answering questions in an application related to their benefits.** Most of these questions are very tricky – if you reply ‘yes’ or ‘no’ you need to understand the implications of that.*

*One of the activities in the training was about writing a letter to challenge a sanction and that really helped understand how to explain effectively what my client is able and not able to do. Recently, thanks to the knowledge I acquired I was able to support a colleague whose client had been denied PIP. I used knowledge from this training to write the appeal which was upheld and the client received a high score. Sometimes our clients reply yes to things that they actually find it challenging to do but now am able to help them fill in the applications and appeals in more effective ways.” [training participant]*

In light of this workshop, participants also requested further training on other benefits-related issues, including around processes to seek Personal Independent Payment and Employment and Support allowance, filing effective appeals and dealing with housing benefits.

Benefit sanctions have a number of negative personal, financial, and health impacts, pushing already vulnerable people into further poverty and destitution. This project highlighted the need for and the effectiveness of improved legal capability to equip people with the knowledge and skills to navigate a complex and often inaccessible system in order to defend themselves from unfair sanctions. Public legal education can involve claimants directly, such as through our online guide, or through in person workshops for frontline workers and intermediaries who support particularly vulnerable groups such as people with mental health needs.

While in the long-term it is important to pursue policy changes towards a fairer and more inclusive welfare system, in the short to medium term increasing legal capability around benefit sanctions enables people to avoid and challenge unfair sanctions.