

Written Evidence from Participation and the Practice of Rights to the Public Accounts Committee's Inquiry into Benefit Sanctions

1. Participation and Practice of Rights (PPR)

Participation and Practice of Rights (PPR) is a human rights organisation located in Belfast, Northern Ireland. Established in 2006 by the late Inez McCormack, trade union leader and human rights activist, PPR supports marginalised groups to use human rights tools to realise their social and economic rights. In 2012 PPR's unique human rights based approach was recognised by the United Nations Office of the High Commissioner for Human Rights as a good practice example of how communities can claim their rights.

The Right to Work: Right to Welfare Group (R2W) is a group of unemployed people who have been campaigning since 2012 against benefit sanctions and for human rights protections in the social security system, as well as the creation of real jobs through the use of public procurement. PPR supports R2W in their campaign – this submission is directly informed by the R2W campaign.

2. Focus of written evidence

This submission focuses on the imposition of benefit sanctions on benefit claimants claiming Job Seekers Allowance in Northern Ireland, including those claimants participating in Northern Ireland's mandatory employment scheme, Steps 2 Success, under threat of sanction.

Rather than rehearsing the myriad of evidence as to the harmful impact of sanctions, as well as the lack of evidence as to their efficacy in terms of changing job seeking behaviours or outcomes, this submission seeks to brief the Public Accounts Committee on a model developed by unemployed people which would ensure that benefit claimants' human rights are protected in the context of benefit sanctions.

Adoption of the 'People's Proposal' model, detailed below, would ensure that benefit sanctions not only comply with wider government policy obligations, in particular its obligations under international human rights law, but that it would bring an end to the blanket use of sanctions and the associated cost to the public purse.

Northern Ireland has parity with Great Britain in the area of social security, and while policy in this area is technically devolved, in practice the Northern Ireland Executive follows policy set by the Westminster Parliament to provide consistency across the UK. As was the case following the passage into law of Westminster's Welfare Reform Act 2015, the Northern Ireland (Welfare Reform) Act 2015 also heralded a harsher benefit sanctions regime, with the potential for benefits to be withdrawn for up to eighteen months.

We believe that the model of social security protections that has been developed by the R2W campaign can be equally applied within the Westminster social security system.

3. The People's Proposal

Based on evidence gathered directly from unemployed people outside social security offices across Belfast, coupled with international human rights standards, the People's Proposal outlines the specific steps the government should be required to undertake prior to any interference with an individual's right to social security. Its central tenets are the right to due process and to impact assessment, thus ensuring that nobody falls below the minimum essential level.

The Peoples' Proposal¹ sets out a step by step investigation and disciplinary process which guarantees: right to information, right to representation, presumption of innocence and transparent decision making prior to the appeal stage. In respect of benefit sanctions it requires the placing of a 'stay' on the implementation of any sanction decision until such time as a full investigation affording due process and proper impact assessment, including any appeals proceedings are completed.

4. Support for the People's Proposal

The People's Proposal has gained widespread support from both political parties and wider civic society in Northern Ireland. Endorsees include NIC-ICTU, the representative body for 34 trade unions in Northern Ireland, representing 215,000 members, NIPSA and the People Before Profit MLAs Eamonn McCann and Gerry Carroll.

¹ https://issuu.com/ppr-org/docs/peoples_proposal_-_final

5. Why the People's Proposal is required

The section below provides evidence of the current lack of compliance of the sanctions regime with international human rights obligations, in particular the right to due process and impact assessment and the impact of these failures on benefit claimants as well as wider impacts.

5.1 Lack of compliance with international human rights obligations

The UN Covenant on Economic, Social and Cultural Rights, which the UK government has ratified, provides a range of social and economic rights protections, including in respect of the right to work and the right to social security.

The UN Committee on Economic, Social and Cultural Rights' General Comment No 19² sets out clearly the steps the state party is required to undertake **prior to** any interference with an individual's right to social security:

Before any action is carried out by the State party, or by any other third party, that interferes with the right of an individual to social security the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include:

- (a) An opportunity for genuine consultation with those affected;
- (b) Timely and full disclosure of information on the proposed measures
- (c) Reasonable notice of proposed actions
- (d) Legal recourse and remedies for those affected
- (e) Legal assistance for obtaining legal remedies

Evidence gathered by the R2W group, coupled with policy analysis carried out by PPR on the Job Seekers Allowance (JSA) sanctions decision making process, clearly indicates that none of the above measures is undertaken.

In fact it is common for survey respondents in the R2W monitoring to relate experiences of being sanctioned for arriving early or late for appointments because of having to attend a funeral etc.

People also report only becoming aware that they have been sanctioned at the point of going to withdraw money from a cash machine and thereby realise that their benefits have not been electronically transferred into their bank accounts. See Appendix A for two case studies of sanctions applied to JSA claimants.

Human rights monitoring undertaken during 2014-2015 by the R2W group at social security offices across Belfast found that of 296 people surveyed, 58% had their social security entitlement stopped or reduced because of a sanction

² UN Committee on Economic, Social and Cultural Rights (2009) General Comment No 19 on Right to Social Security paragraph 78.

or benefit. Of those, 84% stated that they did not feel that they were given sufficient information on their right to appeal.

In June 2016 the UN Committee on the Rights of the Child³ expressed concern at the cumulative impact of social security reforms, including benefit sanctions, on children. It directed the UK government to conduct a comprehensive assessment of these reforms on children, with a view to revising those welfare reforms to ensure that they fully respect the right of the child to have his or her best interest taken as a primary consideration.

Reinforcing that finding, in June 2016 the UN Committee on Economic, Social and Cultural Rights expressed its concern about the use of sanctions in relation to social security benefits and the absence of due process and access to justice for those affected by the use of sanctions. That Committee recommended that the government '*review the use of sanctions in relation to social security benefits and ensure that they are used proportionately*'.⁴ It also placed a requirement on the government to provide it with disaggregated data on the impact of social security reforms on vulnerable groups, including children.

5.2 JSA Sanctions – lack of due process

In respect of JSA claimants, the list of grounds under which a person on JSA can be sanctioned are set out in guidance for civil servant decision makers⁵, the basis for which is underpinned by domestic legislation.⁶ The decision to sanction is taken by an adjudication officer within the Social Security Agency (Decision Maker) who is required to establish if the incident under investigation took place and if there was 'good cause'. While guidance for Decision Makers provides practical examples of 'good cause' it is not defined in legislation. This guidance assumes that prior to any sanctions being implemented due process has been respected and that there is a responsibility and obligation on the decision maker to consider evidence presented, including that put forward by the claimant themselves.

However, at the point when a decision is taken to implement a sanction, Decision Makers appear to rely solely on evidence presented either by the Social Security Agency or a private work programme provider. As a result the JSA claimant is denied their fundamental right to due process – for example, to avail of representation and a formal hearing and to either deny the allegation or argue 'good cause' prior to the decision being taken to stop their benefit payments.

³UN Committee on the Rights of the Child Concluding Observations on the 5th Periodic Report of the UK of Great Britain and Northern Ireland CRC/C/GBR/CO/5 12 July 2016

⁴ UN Committee on Economic, Social and Cultural Rights Concluding Observations on the 6th Periodic Report of the UK of Great Britain and Northern Ireland E/C.12/GBR/CO/6 14 July 2016

⁵ Social Security Agency (2012) Decision Makers Guide , Volume 6, Chapter 34

⁶ The Jobseekers (Northern Ireland) Order 1995 (article 21).

It is worth noting that in Northern Ireland there are 51 'Decision Makers' responsible for making JSA sanction decisions. In the period 1 April 2016 – 30 June 2016 a total of 2827 JSA sanctions were imposed on claimants, averaging almost 100 sanctions a month. This volume of decisions raises a question as to the quality of decisions made.

This approach which can be described as 'sanction first, investigate later' constitutes a fundamental breach of human rights which does not occur in other criminal or civil proceedings.⁷ Benefit sanctions are not preceded by legal proceedings. While there are established reconsideration and appeals procedures, these procedures only kick in 'after the fact'. In effect what this means is that the human rights protections set out by the Committee in General Comment No 19 paragraph 78 (a) – (c) are rendered null and void.

5.3 No Impact Assessment

The UN Committee on Economic, Social and Cultural Rights has stipulated that '*under no circumstances should an individual be deprived of a benefit on discriminatory grounds or of the minimum essential level of benefits as defined in paragraph 59(a)*'.⁸

Yet Decision Makers do not carry out assessments regarding the impact of their decisions to sanction on the individual or on any dependents they may have.

Instead, there is an assumption that anybody who is sanctioned can apply for and be awarded a Hardship Payment or some form of Discretionary Support which would prevent a person from falling below the Minimum Essential Level of Benefits. There are a number of problems with this including:

- a) the sanction takes effect prior to any application being made, which means there is a significant intervening period where a claimant and their family have to try and get by with no income whatsoever. The sanction can also trigger loss of other benefits, such as housing benefit therein making a person homeless⁹
- b) our case work tells us that many people who have been JSA sanctioned go on to be unsuccessful in their application for crisis loans or other forms of emergency, short term financial support.
- c) Changes introduced through Welfare Reform will further limit the applicant's recourse to hardship or crisis funds.

The UN Committee on Economic, Social and Cultural Rights has stated that the state must guarantee the right to a remedy and legal assistance for

⁷ This approach is also in evidence within other aspects of the social security system. See for example <https://www.theguardian.com/society/2016/dec/01/mps-damn-us-firm-over-cut-first-think-later-approach-to-tax-credit-claimants>

⁸ Op cited at note 2 paragraph 78

⁹ Advice NI (2015) Benefit Sanctions in Northern Ireland

obtaining such legal remedies for all those affected by interference with their right to social security.¹⁰ However, as referenced above, 84% of those surveyed by the R2W group stated that they did not feel they were given sufficient information on their right to appeal.

5.4 No assessment of impact of sanctions on children

As noted above, the UK government has been instructed by the UN Committee on the Rights of the Child to assess the cumulative impact of social security reforms, which includes benefit sanctions, on children.

A Freedom of Information request to the Department for Communities by PPR seeking information on the impact of sanctions on children was refused – on the grounds that it would cost in excess of £8000 to ‘identify, locate, retrieve and extract’ all of the relevant information. The Department indicated that the information requested was spread across in excess of 4000 records. The only conclusion that can be drawn from this response is that the Department for Communities is not in fact conducting any impact assessment or monitoring of the impact of benefit sanctions on children.

The NI Executive is therefore in breach of the UN Committee’s recommendation, admitting as it has done that it does not systematically assess or monitor the impact of benefit sanctions on dependent children of benefit claimants. The question should also be raised as to whether the responsible Westminster department is conducting any impact assessment of the impact of benefit sanctions on children?

5.5 Mandatory work programmes and the imposition of sanctions

Internationally there is limited evidence that mandatory employment programmes, in which benefit claimants are forced to participate under threat of sanctions, have a positive impact on helping people into employment.

Summarising a wide range of research studies from Europe and the US, researchers Eichorst, Werner and Konle-Seidl¹¹ argue:

“ some studies point at the fact that activating interventions based on the threat potential and demanding principle may help move benefit recipients to low-skills, low-pay and instable jobs so that they run the risk of continued partial reliance or repeated return to benefits”

The recent National Audit Office report into Benefit Sanctions concludes that while studies show people who receive sanctions are more likely to get work,

¹⁰ Op cited at note 2 paragraph 78

¹¹ Eichhorst, Werner and Konle-Seidl, Regina, Evaluating Labour Market Policy IZA Discussion Paper No 996, Available at SSRN: <https://ssrn.com/abstract=2790004>

the effect can be short-lived, lead to lower wages and increase the numbers of people moving off benefits into inactivity.¹²

Results achieved by Northern Ireland's mandatory employment programme bear out this finding. Statistical data published by the Department for Communities indicate that private contractors delivering the Steps 2 Success programme are falling significantly below the moderate performance targets set by the Department, both in relation to claimants moving into employment and remaining in employment.¹³ In the months October 2014 and March 2015 only 14% of those who moved into work remained in work for 6 months.¹⁴ The Department does not gather information on how many of these jobs were zero hour contracts or on how many of those who left employment moved back onto benefits.¹⁵

Regardless of its poor results, there has been widespread use of benefit sanctions against Steps 2 Success participants since its inception in October 2014. In the period up to 31 August 2016 a total of 5333 sanctions have been imposed on Job Seekers claimants taking part in the Steps 2 Success (or it predecessor) programmes. The vast majority of these sanctions, 3,830, have been for 'failure to attend an interview' with a Steps 2 Success provider.

The lack of proper analysis of the impact of sanctions on claimants and the employment outcomes they achieve, highlighted in the National Audit Office report, is also a major issue in Northern Ireland. The Department for Communities refused to provide the following information under Freedom of Information all on the basis of costs, suggesting a lack of systematic data collection and analysis:

- Length of time people have had their money stopped for
- The number of individuals sanctions as opposed to the number of sanctions administered
- Which administrative areas are imposing the highest number of sanctions

PPR applauds the recent signal by the Scottish Government that it intends to embark of a programme of non-compliance with the Department for Work and Pensions over the benefit system. Following the devolution of responsibility for employment programmes in 2017 the Scottish government intends to remove the mandatory element of participation in employment programmes. With responsibility for employment and skills already fully devolved in Northern Ireland under the 1998 Northern Ireland Act, the NI Executive has the power to act as Scotland intends to do, a move PPR would support and strongly recommend.

¹² National Audit Office (2016) Report by the Comptroller and Auditor General Benefit Sanctions. HC628 Session 2016-17 Published 30 November 2016

¹³ <https://www.communities-ni.gov.uk/publications/steps-2-success-key-performance-indicators-and-performance-indicators>

¹⁴ <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/steps-2-success-statistical-bulletin-november2016.pdf>

¹⁵ <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=278636>

6. Conclusions and Recommendations

The existing benefits sanctions regime does not comply with basic human rights principles and standards, including the right to due process, the right to an impact assessment prior to a decision being carried out and the right to protection from destitution.

Despite claims by government that there are safeguards in place to ensure that vulnerable claimants are protected from hardship and destitution, the reality as documented by the R2W group is very different, highlighted by the two case studies appended.

The adoption of the principles and administrative procedures contained in the People's Proposal would ensure that people are provided with real protections in the face of benefit sanctions. It would also help to address the current situation where there is widespread and arbitrary use of benefit sanctions, with the wider implications of this for the public purse.

We urge the Public Accounts Committee to examine the People's Proposal in full and to recommend its adoption by the Department of Work and Pensions.

Case Study 1: Jobseekers Allowance sanctions leading to homelessness

My name is X. I am 22 year old man. I worked as a labourer until I was laid off.

I then went on Jobseekers Allowance and was paid £72 a week.

I also got housing benefit to help pay my rent. After being on Jobseekers for a while I was sent to Ingeus.

On Thursday 20th August my money was stopped. I only found out when I went to the bank machine.

It wasn't until I went to Corporation Street on the 27th of August - at my usual sign on time - that I was told my money would be stopped for 6 months for not attending appointments with an Ingeus advisor on the 23rd July and the 27th August!

I told the woman who was signing me on that I didn't know anything about the appointments and that one of them was today – the same day as my sign on day.

She told me that letters were sent out to me. I told her that I didn't receive any of the letters. All letters go to my landlord and he gives me everything.

I told her that I know what happens when you don't do what you're meant to for Ingeus and I definitely wouldn't miss an appointment that I knew about. I told her that I had no other money or way of getting money.

I told her that a mistake had obviously been made and that my Ingeus Personal Advisor had cancelled loads of appointments with me during the months I'd been going to Ingeus.

I told her that my Personal Advisor had also promised me he would get me a labouring job as part of some scheme weeks ago. I never heard anything back about that either.

The woman at the Bru was nice but just told me she had no decision making power and that decisions were made at a place called Royston House.

I asked for a crisis loan and I was told 'No'. I wasn't entitled to one because I had been sanctioned.

I was told that my only option was to fill in a hardship form and that I would have all of my money stopped for 6 months 'commencing immediately'. She told me that I would still have to attend Ingeus meetings and sign on during the 6 months if I wanted to be able to get money again.

I took the hardship form, filled it in and brought it back the next day on the 28th August. My application was knocked back.

After the meeting I went to Royston House to ask to meet the decision maker to sort it out. I was informed by the security guard at Royston House that no one was allowed to make an appointment with the decision makers.

Overnight my money was reduced from £115 a fortnight to nothing. The Housing Executive then stopped my housing benefit because the Bru stopped my Jobseekers.

I went into arrears and lost the flat and had to move back in with my Ma who has enough on her plate.

I explained all this at the time to the woman at the Bru and the guy at Royston House.

They both just said there is nothing else they could do.

Case Study 2: Sanctions during Steps to Success programme

My name is B.

I am long term unemployed and on Jobseekers allowance and Disability Allowance (DLA) for a heart condition. I am also severely dyslexic. I attended a special school to to receive support for specific educations needs. I struggle with figures, dates, times and all written material.

Despite my conditions I receive numerous written letters on an annual basis from the Social Security Office and other agencies which I struggle to understand without support, which I cannot always access. No accommodations are made for my needs and I am further disadvantaged as a result.

I receive £180 fortnightly from the Social Security Office while I seek employment.

During the time I have spent on JSA I have been referred to many different programs and schemes via the Social Security Office as a condition of my continued receipt of unemployment benefit. I have repeated processes such as CV writing many times.

Most recently at a mandatory meeting in Ingeus in June 2015 I was told to fill in 5 application forms and send them to employers and an Ingeus email address for verification. Despite my difficulties reading and writing I was afforded no support. I struggled to do four application forms and sent them tot he email address provided under very stressful circumstances.

Through the Princes Trust in Belfast I was told that I would be guaranteed an interview for TK Maxx. I was hopeful that participation in this scheme could result in a job for me as a friend of mine gained employment in Marks & Spencer through the scheme. I was however declined a place and I was told that I was ineligible as I was registered on the Steps to Success scheme. I was upset by this as I was denied a definite job opportunity because the Social Security Office had placed me on a programme which made no guarantee of an interview or a job.

I was still keen to find a job. A close relative of mine died and the funeral was on the 22nd the same day as a scheduled 'Steps to Success' meeting I tried to contact the Social Security Office to explain and reschedule. I called numerous times the day before and was transferred from the switchboard to the Hollywood office many times, but was unable to speak to anyone.

A few days after the funeral I received a letter saying that my benefit would be stopped if I did not contact the Social Security Agency. I did so and was advised it would be fine and my benefit would not be stopped so long as I informed my Adviser at the next sign on date which was the following Tuesday.

I received my benefit that week in full. A few weeks later I received a letter saying that my benefit would be stopped for two weeks resulting in a deduction of £180 for not attending the Social Security Agency within the 5 day timeframe stipulated in the previous letter.

Despite my dyslexia I filled in two appeal forms. They were unsuccessful. I tried to apply for a crisis loan but was informed by Social Security Agency staff that I had 'no chance' because I had already had one some months prior. I have spoke with many Social Security Agency representatives but each person said it is another persons responsibility. As a result of this decision I have had to skip meals and borrow money.