

UK ADMINISTRATIVE JUSTICE INSTITUTE (UKAJI) AND CENTRE FOR THE ANALYSIS OF SOCIAL EXCLUSION (CASE) JOINT SEMINAR ON THE IMPACT OF BENEFIT SANCTIONS.

Michael Adler
University of Edinburgh

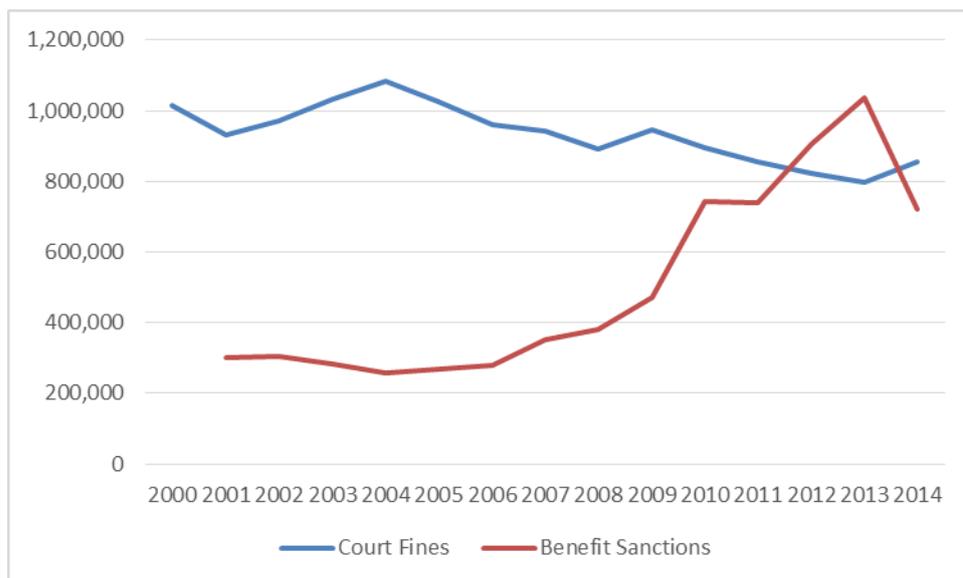
I thought it would be helpful to compare the phenomenon of benefit sanctions in the UK with other more familiar types of monetary sanction and with the situation in other countries.

1. THE INCIDENCE AND SEVERITY OF BENEFIT SANCTIONS IN THE UK

I recently wrote an article (entitled 'A New Leviathan: Benefit sanctions in the 21st Century', which will be published in the next issue of *Journal of Law and Society*) in which I compare three types of monetary sanction: court fines, parking penalties and benefit sanctions. As far as today is concerned, you should forget about parking penalties and concentrate on the comparison between court fines and benefit sanctions. In my article, I first compared the incidence of court fines and benefit sanctions and then their scope and severity.

(a) Incidence

David Webster has pointed out the enormous growth of benefit sanctions in the first decade of the new millennium and their recent decline. It may well surprise you that, at their peak, in 2013, the number of benefit sanctions actually exceeded the number of court fines. This can be seen from the graph below.



Most people find this surprising because, while courts are public forums and court cases get reported in the press and in the media, benefit offices are not and the public knows very little about benefit sanctions and how they are imposed.

(b) Scope and Severity

Over the last 20 years, there has been a dramatic increase in the scope and severity of benefit sanctions. This can be seen from the comparisons in the first table below:

THEN (before 1998)	NOW (1998 onwards)
only passive – mainly for <i>ex-ante</i> offences for example leaving work voluntarily, losing a job as a result of ‘misconduct’ or not being available for work	also active – mainly for <i>ex-post</i> offences, for example not ‘actively seeking work’, failure to participate in a training or employment scheme and missing an interview
applied to unemployed	also apply to single parents and long-term sick and disabled people
applied to applicants for insurance benefits	apply to applicants for all the main out-of-work benefits
applied for up to 6 weeks (1911-1986), 13 weeks (1986-1988) or 26 weeks (1988 onwards)	now apply for up to 156 weeks (three years)
sanctioned claimants had a right to claim means-tested social assistance (at a reduced rate) immediately	sanctioned claimants can apply for discretionary ‘hardship payments’ but, in most cases, only after a two week delay

(c) Imposition and Impact

Court fines and benefit sanctions are imposed in very different ways with quite different consequences. This can be seen from the comparison in the second table.

	court fines	benefit sanctions
how are they imposed?	imposed judicially (by judges) in an open forum	imposed administratively (by officials) ‘behind closed doors’.
relationship to adjudication	offenders either plead guilty or are found guilty <u>before</u> they are fined.	offenders can only challenge sanctions <u>after</u> they are imposed
socio-economic characteristics of offenders	mainly poor (many out of work)	very poor (all out of work)
relationship of sanction to offender	judges take nature of offence and offender’s circumstances into account	officials take little account of nature of offence and none of offender’s circumstances
Duration	apply once and for all	apply for periods ranging from 4 weeks to 3 years
immediate/delayed impact of sanctions	time to pay (few pay immediately, many pay by	take immediate effect

	instalments, by attachment of earnings or direct deduction from benefits), some don't pay at all	
impact on offenders	moderate – some hardship	very severe – extreme hardship

My normative position is that conditionality may be acceptable if the conditions are appropriate and if the sanctions for failing to meet the conditions are proportionate. Leaving aside the first issue, it is clear to me that benefit sanctions in the UK are totally disproportionate.

2. COMPARISONS BETWEEN THE UK AND OTHER COUNTRIES

Together with a Norwegian colleague (Lars Inge Terum), I am carrying out a comparative study of the impact of austerity on social rights in six European countries (France, Germany, Italy, Spain, Sweden and the UK), focusing on conditionality and benefit sanctions.

(a) Incidence

Unfortunately there are no comparative data on the incidence of sanctions on which we can draw. However, it would seem to be the case that, at its peak (in 2013) and taking the population and the number of claimants into account, the incidence of sanctions in the UK was higher than in any of the comparator countries.

(b) Scope and Severity

In relation to scope and severity, there is a data set on which we have been able to draw – a recent OECD report on conditionality and sanctions in unemployment benefit schemes (Kristine Langenbucher (2014) *How Demanding are eligibility conditions for unemployment benefits, quantitative indicators for OECD and EU countries*, OECD Social, Employment and Migration Working Paper No. 166). Many aspects of the extent of conditionality and the circumstances in which sanctions are imposed in (where possible) unemployment insurance schemes were assessed on a 1-5 scale in each of 28 OECD and EU countries.

Looking at the strictness of benefit sanctions in the subset of six countries, the UK was in the middle – Italy and Spain sanctioned in more circumstances, France, Sweden and Germany in fewer. However, it should be noted that this data set did not contain measures of the severity of benefit sanctions, i.e. data on the seriousness of the penalty or how long it applied. That said, it is my belief that the impact of benefit sanctions is greater in the UK than elsewhere. Let me briefly explain why.

In terms of protection against unemployment, countries may have any or all of three types of unemployment benefit scheme: unemployment insurance, unemployment assistance and (general) social assistance. In general, if a recipient of unemployment insurance is sanctioned, he or she can apply for unemployment assistance, and if a recipient of unemployment assistance is sanctioned, he or she can apply for (general)

social assistance (which is usually administered by a local authority). The UK is unusual because JSA is a unitary scheme with contributory and means-tested components and because there are no general social assistance schemes. Thus, if someone in receipt of JSA is sanctioned, they have nowhere to turn to – except, after a waiting period, to the very residual hardship fund referred to by David Webster.

3. THE IMPACT OF SANCTIONS

Finally, a few comments on the impact of sanctions. I was struck by Aaron Reeve's conclusion that relatively few of those who are sanctioned move on into work and that more probably drop out. I was also struck by his references to food banks and by Anne Power's references to payday loans.

These comments suggest that benefit sanctions are causing a great deal of hardship. I am rather perplexed that, although we have anecdotal evidence of this, there seems to be a lack of reliable data on the impact of benefit sanctions. The evidence for this is there for all of us to see. I live in Edinburgh which, together with Cambridge, has earned the unenviable reputation of being one of the epicentres of street begging in the UK. If you walk along Princes Street, you will encounter a beggar every 50 yards or so. Casual observation suggests to me that about half of the street beggars are foreigners (they are either Roma from Eastern Europe or asylum seekers from the Middle East) and that the other half are British. My hunch, and it is only a hunch, is that the British beggars are there because they have been sanctioned. Many of them claim to be homeless and are probably rough sleepers. My strong conviction is that we need to know far more about the relationship between benefit sanctions, street begging, homelessness, rough sleeping and food banks and that, if the links between them could be established, we might be in a better position to get something done about benefit sanctions.