



**Social Security Advisory Committee
Occasional Paper N° 2**

**An examination of the ethical and legal
issues of 'piloting' in its widest sense in
the Department for Work and Pensions**

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An examination of the ethical and legal issues of ‘piloting’ in its widest sense in the Department for Work and Pensions

Summary

This paper has two linked aims: Firstly to consider the ethical and legal issues of ‘piloting’ in the Department for Work and Pensions (DWP) through the use of specific case studies, and secondly to develop an informal diagrammatic tool to support the Social Security Advisory Committee’s (SSAC’s) scrutiny of DWP pilots in terms of the balance between their potential risk to individuals and the robustness of their evaluations. It begins by considering the range of published ethical and legal guidance for social research. It focuses on the issues of avoidance of harm, informed consent and voluntary participation before considering their relevance to policy evaluation. The paper then explores the ethical and legal issues of ‘pilots’ and how they relate to the ethical guidance for social research and policy evaluation.

The ethical and legal issues are then considered in the context of a number of DWP case studies, including the Basic Skills pilots (2001 and 2004), Pathways to Work in Somerset and the Working Neighbourhoods Pilot. The case studies illustrate that similar ethical issues, such as the risk to participants in mandatory programmes, arise repeatedly in the context of recent DWP pilots. Although regulations confer the legal powers to undertake pilots, there is still a need to consider whether the pilot is proportional and able to generate robust evaluation results.

The paper also proposes a diagrammatic (informal) tool to help support the Committee in its scrutiny of pilot regulations in relation to the key elements of the debate about the ethics of pilots. This figure (Figure 2) allows pilots to be classified in terms of the relationship between the level of potential risk to participants inherent in the pilot and the potential of the evaluation to produce generalisable results. Finally, the paper reasserts the Committee’s belief that there may be a case for the Department to establish *standards of practice* for pilots that would complement the published ethical guidance for social research and evaluation.

Introduction

1 This paper has two linked aims:

- firstly to consider the ethical and legal issues of ‘piloting’ in DWP through the use of specific case studies; and
- secondly to develop an informal, diagrammatic tool to support SSAC’s scrutiny of DWP pilots in terms of the balance between their potential risk to individuals and the robustness of their evaluations.

The paper is motivated by concerns raised by Committee Members around the design and evaluation of a variety of DWP pilots, especially with respect to the ethical issues associated with the pilots. The paper, therefore, has a primary focus on pilots that have come before the Committee (although other pilots are included) and the key issues arising from discussions during SSAC meetings, referrals of regulations and Committee advice to Ministers. The paper does not attempt to answer the complex questions that arise when considering the ethics of pilots. Rather, it lays out the issues and identifies those that SSAC Members think will be key when scrutinising proposed pilots and their associated regulations.

2 Pilots are designed to allow policies or programmes to be tested thoroughly prior to widespread implementation and the number and scale of pilots has increased significantly in the UK since 1997. The rise in the use of pilots is linked to the increased support for the idea of ‘evidence-based policy’. The oft-quoted 1999 Modernising Government White Paper called for a greater and better use of evidence in policy making and a focus on policies that would deliver long-term goals (TSO 1999). The White Paper made specific reference to pilots, stating that, ‘*we must make more use of pilot schemes to encourage innovations and test whether they work*’ (quoted in Bullock et al., 2001:49). Given the high profile nature of the government’s welfare-to-work agenda, employment and welfare policy has been an important area for piloting. DWP and predecessor departments have, therefore, been involved in testing a number of large-scale programmes over the last nine years, including the New Deals and the current Pathways to Work pilot. There are also a wide variety of smaller-scale pilots in operation. The use of pilots to generate knowledge to support better policy making is not unproblematic. There are a number of issues, such as the political context and short timescales allowed for pilots, which reduce their efficacy in fully answering the question of ‘what works’ (Sanderson, 2002; Walker, 2001).

3 The first section of the paper considers the existing ethical and legal guidelines for social research that are set out by relevant funding and governing bodies. Although many of the ethical issues covered are common to all sets of guidance, it is not within the scope of this paper to explore the complete range of guidance. Instead, the paper draws out the key issues for DWP social research, such as informed consent and the avoidance of harm in Section 1. Section 2 considers the ethical and legal issues of ‘pilots’ while Section 3 considers a range of DWP case studies in relation to the ethical and legal issues set out in Section 1. The case studies include both experimental and quasi-experimental pilots. While the paper covers a range of pilots, it focuses on those that have raised particular issues for the Committee and so the case studies should not be viewed as a necessarily representative sample. The final section puts forward an informal ‘graphic’ to help classify pilots in relation to their potential to cause harm and the robustness of their evaluations (Figure 2).

Section 1 – Social research: Ethical guidance/frameworks

- 1.1** There is no shortage of ethical guidance for social research already available and much of the guidance is relevant to DWP. For example, the European Union, the UK Social Research Association (SRA), the Economic and Social Research Council (ESRC) and the Government Social Research Unit (GSR) have all published ethical guidance. DWP researchers themselves have produced a guide to research ethics that highlights some of the specific issues associated with DWP research and covers the main legal and ethical issues associated with commissioning, managing and using DWP social research.
- 1.2** The various sets of guidelines have slightly differing aims in terms of how strictly they should be adhered to. The ESRC guidelines need to be followed for projects funded by the ESRC, while the SRA members are exhorted to read and abide by their guidelines. The GSR guidelines state that *'all members of the Government Social Research (GSR) service... must be aware of and uphold basic ethical responsibilities (as well as their legal obligations) throughout the life of any research project conducted or commissioned for government'* (GSR, 2005:4). Although produced by different organisations, the various sets of guidelines naturally address many of the same key ethical issues. The following sections explore the key issues of avoiding harm to participants, informed consent, voluntary participation and confidentiality.

Avoidance of harm within social research

- 1.3** A key theme in the guidelines is the issue of avoiding the risk of harm to the participant. This theme originally emerged from medical research and the associated concept of beneficence. In research involving humans, the ethical principle of beneficence is expressed in researchers' responsibility to minimise the risk of harm or discomfort to participants in research projects. It also expresses the idea that any risk to participants should only be justified if it is in proportion to the expected benefits arising from the research (Blustein, 2005).
- 1.4** The social research guidelines are all clear that researchers should ensure, as far as possible, that participants do not suffer undue harm as a result of their involvement in the research. The ESRC guidelines consider the issue of risk, to both researchers and the researched, in some detail. Risk includes potential physical or psychological harm or stress that participation might generate and, in addition, in social research it includes the risks associated with revealing sensitive information (ESRC, 2006). While all potential risks may be difficult to identify before the project starts, researchers should consider the range of potential risks and either alter the research design or seek to mitigate the risk. For evaluations, it is recognised that evaluators *be aware of and make every attempt to minimise any potential harmful effects* of the evaluation and should carefully judge when benefits arising from the evaluation would not outweigh the potential risk or harm (American Evaluation Society, 2004; UK Evaluation Society, 2006).

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- 1.5 There is recognition of this issue within the context of government sponsored research and the GSR guidance states that researchers should ensure that research is conducted in a manner that 'avoids personal and social harm'. It also states that government social research should *'meet a clearly defined, legitimate and unmet need to inform the conduct of government business'* (GSR, 2005:6). So, government research should only be carried out if there is a recognisable need for the information it will generate and if it avoids harm to the participants.
- 1.6 The guidance is clear that where possible, potential harm should be avoided or minimised. At the same time concern for *'individual rights needs to be balanced against the benefits to society that may accrue from the research activity'* (Social Research Association, 2003:15). In the context of government research, some degree of risk within pilots may be defended on the grounds that it will produce information that is likely to increase the 'common good'. Therefore, it is acceptable for a number of individuals to be mandated to participate in the pilot so that either the expected benefits can be rolled out to the rest of the eligible population or the policy can be altered or rejected at an early stage. This idea is echoed in the DWP guidance, which states that *'virtually any research potentially places a burden on the respondent and this imposes on us an ethical responsibility only to collect data that is going to be of real use'* (Bacon and Olsen, 2003:17).

Informed consent and voluntary participation

- 1.7 Another recurring theme within the guidance is that of informed consent and the linked principle of voluntary participation. Again, these ideas emerged from medical research, specifically the 1946 Nuremberg Code that was developed in response to the use of prisoners as involuntary participants in medical experiments. The Nuremberg Code made it clear that human subjects should be informed of what was involved in research and should not be compelled to take part (Homan, 2004). The principle of informed consent is central to the practice of social research and is discussed in the guidelines from all the research and evaluation organisations. The guidelines highlight that for consent to be valid, it should be freely given by a person who has the necessary capacity and is sufficiently informed. Researchers should inform subjects that they have a right to refuse to participate at all, or to withdraw from the research at any time and for any reason (ESRC, 2006). Participants should be provided with as much information as possible about what is involved in the research. For vulnerable groups such as children *'or those in a dependent relationship to the researcher or commissioning body'* it may be harder to achieve true informed consent (Social Research Association, 2003:30). Researchers should have respect for the persons involved and should treat them as autonomous agents.

1.8 Participation in almost all research is voluntary. However, this voluntary principle is sometimes compromised. The EU ethics code illustrates three occasions in which voluntary participation is not the case (Dench et al., 2004):

- government surveys that require people to participate by law, such as a Census;
- students who are required to participate in experiments as part of their course requirements; and
- institutions that require students, patients and those in receipt of benefits, etc to complete forms. The administrative data collected may be used for monitoring, planning or reporting¹.

Confidentiality

1.9 The principle of confidentiality in social research generally means that the identities and records of participants must be kept confidential. No participant(s) or non-participant(s) should be identifiable in the research, unless they expressly wish to be and this has been agreed (SRA, 2003). Data generated through the research must be kept secure and not released to any unauthorised person or organisation. The Data Protection Act applies in all cases of social research but it could be argued that special care is needed in the context of government research due to the large-scale and sensitive nature of much of the data held.

Ethical guidelines for policy evaluation

1.10 The guidelines discussed above tend to deal explicitly with ‘social research’ rather than policy evaluation and the question arises of whether social research and policy evaluation are sufficiently different to warrant different ethical frameworks. It has been proposed that policy evaluation:

‘uses a range of research methods to systematically investigate the effectiveness of policy interventions, implementation and processes and to determine their merit ... in terms of improving the social and economic conditions of different stakeholders.’ (Government Chief Social Researcher’s Office, 2003:3)

Accepting that policy evaluation employs recognised research methods means that the ethical guidance put forward for social research is largely relevant for policy evaluation. There is though, the additional consideration that the process of evaluating a policy may well bring associated risks for those either subjected to a policy (for example, financial sanctions) or denied it (for example, new support services). The balance between the potential harm to individuals and the potential benefit to society could be considered to be more sensitive in policy evaluation. Government pilots are one example of a policy evaluation that may bring with them a variety of potential risks for participants and where participation in the pilot itself may be mandatory. In evaluating a policy it is important that its anticipated results are judged socially desirable before the difficult ethical issues associated with its implementation are confronted (Federal Judicial Center, 1981).

¹ DWP benefit forms contain a section that states that the Department may collect and use data on recipients (See Annex A). Benefit receipt is used as a sample base for much DWP research and contact details of those selected for the sample are sent to external research contractors. Benefit recipients are not provided with the opportunity to opt out of being selected in their sample, although once the contractors have contacted them, individuals are provided with opportunities to opt out of the research (at any stage in the process).

1.11 The policy development itself and the associated evaluation are intimately related, and policy development should also follow ethical guidelines. Policy making involves choices that are influenced by values: the values of society, policy makers and Ministers. The Civil Service Code provides context for the development of policy and ideally, researchers should be involved from the early stage of policy development to ensure that it is indeed amenable to evaluation. In the case of DWP, although the Department has created joint strategy and analytical divisions in order to move towards the more integrated development of policy initiatives, there are still occasions when policy priorities emerge in a way that makes them difficult to evaluate effectively. As Walker (2001:321) highlighted:

‘The development of the evaluation design is nested within the policy process ... in the UK design issues take second place to policy concerns. Hence, researchers – both those inside the government machine and potential contractors – are typically presented with the task of devising an evaluation for a particular pilot implementation, rather than being asked to determine how best to evaluate a policy.’

Section 2 – Pilots: Legal and ethical issues

2.1 This section considers the ethical and legal issues associated with government pilots, with a focus on DWP pilots. This paper is concerned with DWP pilots in their widest sense, so that it explores a number of policies that were described as ‘pilots’. The Cabinet Office ‘Trying it out’ Report (2003:11) suggested that:

‘The term “pilot” should ideally be reserved for rigorous early evaluations of a policy (or some of its elements) before that policy has been rolled out nationally and while still open to adjustment in the light of the evidence compiled.’

2.2 There have been a variety of terms used to describe policy initiatives including, pathfinders, prototypes and pilots. There seems to be a lack of clear standards on how these terms are chosen in terms of their relationship to the policy they describe and different terms are used across government departments. This paper takes policy initiatives described as pilots by DWP as its focus, although it is arguable whether they all adhere closely to the Cabinet Office definition above.

The legal context for pilots

2.3 The legal basis for pilots lies in the relevant Acts of Parliament and subsequent regulations. Pilots are designed following discussions between policy makers, departmental solicitors and evaluators. When relevant Acts are debated in Parliament (as Bills) they often lack the details of new policies that may emerge. For example, when the Jobseeker’s Act 1995 was debated, MPs raised the issue of the type of detailed policies that would emerge based on the eventual Act and the lack of definition of key terms such as ‘available for employment’ and ‘actively seeking employment’. During the debate Donald Dewar stated that ‘*one can read the text with great care and learn not a lot. Almost everything in the Bill is to be prescribed and will be done by regulation at a future and indeterminate date*’ (Hansard debates, 10 January 1995: column110).

2.4 The Basic Skills 2004 Regulations provide an example of how the Act conferred power for subsequent pilot regulations, regulations that caused the Committee considerable concern (see Section 3 for a discussion of the Basic Skills pilots). The regulations themselves were fairly brief and the key changes related to the final section that described the application of basic skills training. The subsection (d) below was added following SSAC's referral of the regulations and subsection (e) lays out the role of sanctions in the pilot.

Application of basic skills training

(2) This paragraph shall apply to any person -

(b) who, on the day he so attends, is aged 18 years or over and less than 60; and

(c) who has been receiving benefit for a period of not less than six months; and

(d) in respect of whom the Secretary of State considers it appropriate that he should participate in basic skills training; and

(e) who has been given or sent a notice in writing by an employment officer advising him that if he fails to participate in such training, his jobseeker's allowance could cease to be payable or could be payable at a lower rate.

2.5 The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is much less detailed than the research guidelines but it did (until 2006) include a statement about upholding ethical standards associated with particular professions (for example, social research). The current code that was reissued in 2006, states that civil servants should '*comply with the law and uphold the administration of justice*' (Civil Service Code, 2006). This would include considering the Human Rights Act in designing, implementing and evaluating pilots.

2.6 The 1998 Human Rights Act incorporates the European Convention on Human Rights (ECHR) into UK law. In general, the Act adds an important dimension for interpreting legislation and policy makers are advised to ensure that regulations are, as far as possible, compatible with the Convention Rights (Annex B sets out the rights included in the Act). A public authority should act in a way that is compatible with a Convention right unless it cannot do otherwise as a result of a provision of primary legislation (Treasury Solicitor, 2004). It applies to action by public bodies and so applies to research conducted by, or on behalf, of government departments. The DWP research guidelines suggest that it is important that '*policy colleagues have checked the legality of any proposed pilot in advance of setting up the pilot and its evaluation*' and when in doubt to seek legal advice (Bacon and Olsen, 2003:11).

2.7 A number of rights in the ECHR have implications for research and piloting. Article 8 stipulates a right to private and family life. There is a clear connection here to the Data Protection Act, so that researchers need to ensure that their research and data handling complies with both Acts. In the specific context of DWP pilots, Article 1, protection of property, could also be seen as relevant. For example, some pilots include sanctions for non-compliance and so an individual who felt that a sanction arising from a pilot had deprived them of the right to property might be in a position to bring a case against the Department. The relevant Act and subsequent regulations provide the legal basis for policy pilots and so any claim against them in terms of Human Rights would depend on a judge assessing the regulations' compatibility with the ECHR².

Issues of informed consent in pilots

2.8 There is a great deal of guidance on the importance of informed consent in social research. However, the issues within the context of government pilots are somewhat more complex and are worth reviewing here. The scope of informed consent, in terms advocated by the social research community, is not straightforward. There are three broad sets of circumstances in which informed consent is required:

- before participation in an experiment (a pilot or programme that involves random allocation);
- before participation in all research/evaluation (for example, surveys, qualitative interviews, focus groups);
- to allow data linkage (for example, to link survey and administrative data).

2.9 However, in the case of DWP, benefit recipients might be mandated to participate in an activity (including pilots), without their consent being required. In these instances the regulations mean that eligible claimants have to participate and that informed consent is not required. Participants are not however, obliged to participate in the associated evaluation of the policy (although administrative data about them may be used in the evaluation). Communicating this distinction can be a tricky issue for the researchers and they need to ensure that customers do not view participation in the research as being mandatory (as with participation in a mandatory pilot) and therefore, sign the consent form without being fully aware of their right to opt out of the research.

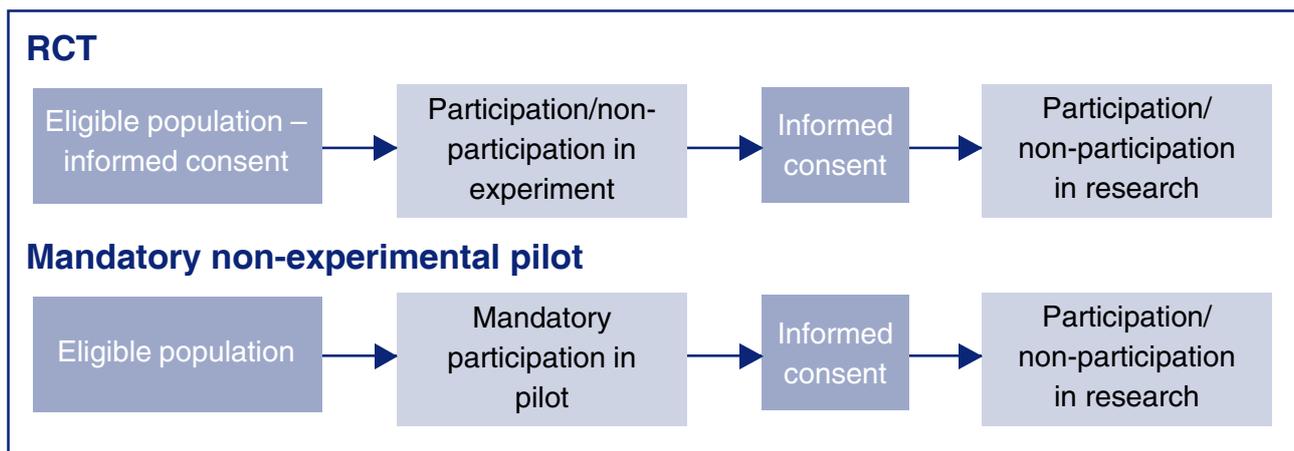
2.10 Pilots consisting of a Randomised Control Trial (RCT) require two elements of informed consent:

- Customers need to know firstly what will happen to them in terms of participating in the experiment, i.e. what treatment they might receive if allocated to the action group and what will happen if allocated to the control group, and secondly that they have the right to opt out of the experiment³.
- They also need to understand the process of gathering data about the experiment (for example, interviews and/or surveys) and understand that they can also opt out of this process at any point (some of the issues around informed consent in DWP pilots will be explored further in Section 3).

² A request for any information on cases brought on this basis was posted on the internet discussion group for the Appeal Tribunal Judiciary. As of October 2006, members of this discussion group had not cited an example of this but of course there is no guarantee that it will not happen in the future.

³ In this context, the question arises of whether the informed consent process is part of the policy or part of the research; as in social experiments, the research and policy design are so closely interlinked.

Figure 1 *Informed consent in RCTs and mandatory non-experimental pilots*



2.11 The preceding sections have considered the ethical guidance for social research and how this relates to the ethical and legal guidance for policy evaluation generally and pilots specifically. The ethical issues that generally apply are: avoidance of harm to participants, the need to balance potential harm with improvements to the common good and the centrality of informed consent and respect for the person. These issues are linked to the ethical and legal issues for pilots:

- Pilots should be designed in such a way as to have a potential benefit to society (or groups within society). Any potential risk to participants should be proportional and should be balanced by the potential benefits arising from the pilot.
- The evaluation of the pilot should employ robust methods so that any benefit to society can be measured (for example, the pilot should have a sufficient sample size and run for a sufficient length of time to allow meaningful evaluation).
- While participation in a pilot may be mandatory, the evaluation should be voluntary and this distinction should be made as clear as possible for individuals involved. The need for informed consent should be clearly articulated.

Section 3 – DWP case studies

3.1 The following section considers DWP case studies that highlight some of the ethical and legal issues discussed previously (the avoidance of harm, informed consent and voluntary participation). The case studies are drawn from the previous five years and include two that the Committee referred for external consultation (Basic Skills 2001 and 2004) and two where the Committee offered advice to Ministers. Five of the pilots involved some element of mandatory participation that was sanctionable (for example, Work Focused Interviews (WFIs) or training courses), while participation in the evaluation remained voluntary. The ethical issues are very closely related to the design of the pilots and the manner in which they were presented to the Committee.

Informed consent: the case of the Employment Retention and Advancement demonstration project and Job Retention and Rehabilitation Pilot

- 3.2** Two recent examples highlight some of the complex issues with informed consent in the context of DWP experiments. The Employment Retention and Advancement (ERA) demonstration project is designed to offer support for people to help keep them in work and to advance once in work. It started in October 2003 and is due to finish in 2008. It involved the randomisation of over 16,000 people. Those in the intervention group receive extra support from an Advancement Support Adviser (based in a jobcentre) and additional financial support for a period of up to 33 months. Those in the control group receive the normal level of support from Jobcentre Plus. ERA was targeted at out of work lone parents entering the New Deal for Lone Parents (NDLP), long-term unemployed people entering the New Deal 25 Plus (ND25+) and lone parents working less than 30 hours a week and receiving Working Tax Credit (WTC).
- 3.3** The random assignment process took place as part of a customer's regular interaction with DWP (for example, lone parent WFI or New Deal interview) and this may have had an effect on the level of understanding of the voluntary nature of the process. The evaluation suggested that many customers remained unclear about what ERA offered at the point they signed the consent form and many could not explain the different outcomes from being assigned to either the action or control groups. In this case, the risk to the participant of being assigned to the control group was relatively low, as they received the same support they would have received in the absence of the experiment (Walker et al., 2006). It appears that customers may find it difficult to recognise the transition from the role of claimant to that of research participant and that this may have implications on their ability to refuse to participate in voluntary pilots and/or research.
- 3.4** Similar issues around informed consent arose in the Job Retention and Rehabilitation Pilot (JRRP), which was a voluntary pilot for people who had been on sickness absence from employment for between six and 26 weeks. Volunteers were assigned randomly to one of three intervention groups or to a control group. The intervention groups were designed to support people back to work and included health-based and workplace-based support and a combination of the two. In total, 2,845 people entered the trial and were randomised, with an equal distribution across the three intervention and one control groups. The pilot had a comprehensive evaluation, including an impact assessment and process evaluation.
- 3.5** Unlike ERA, the initial randomisation process took place outside a customer's 'normal' Jobcentre Plus/DWP interaction⁴. Individuals who had heard about the pilot, and wanted to take part, initially phoned a contact centre where they had the process explained to them, including consent to participate in the experiment. Participants were later asked to consent to the research process. The evaluation suggested that participants found it difficult to remember what took place during the different stages of the consent process and that the understanding of the concept of randomisation varied across participants. However, for those in the intervention groups, there appeared to be a general recall of the consent process and participants described consenting to sharing medical records, signing disclaimers or signing forms to confirm they understood the services on offer (Farrell et al., 2006). Relatively little information was given to prospective volunteers prior to randomisation, and this might have limited their understanding of the implications of participation.

⁴ Providers of the interventions advertised the pilot in general terms in GPs' surgeries, with local employers and on the local media.

Basic Skills pilots (2001 and 2004)

- 3.6** In September 2001 the Department introduced regulations for a Basic Skills pilot to run for one year. The aim of the pilot was to increase the basic skills levels of Jobseeker's Allowance (JSA) customers through the use of a mixture of sanctions and incentives. Eligible customers who were assessed as having a basic skills need could be sanctioned with the loss of two weeks' JSA if they refused to participate in a literacy and/or numeracy training scheme. Hardship payments were available for those who received a sanction and were considered to be vulnerable. The Committee referred the regulations for public consultation because of their concerns about the regulations, especially the use of sanctions for vulnerable claimants and their concerns that the pilot would not generate meaningful results.
- 3.7** In its report on the regulations, the Committee stated that it was unusual for it to report on pilot regulations as it generally supported the opportunity that pilots provided for testing out new arrangements and evaluating the impact of a new policy before decisions were taken on its future. However, the Committee felt that the pilot represented a significant development in benefit conditionality for customers with complex problems and needs. The Committee set out its wish to see Departmental standards for implementing pilots and expressed its concern that the pilot should be thoroughly evaluated:
- 'We therefore consider that there may be a case for the Department to establish standards of practice for pilots, setting out precisely how new rules are to be administered, how outcomes will be measured, and how the impact will be evaluated'* (SSAC, 2001:5)
- 3.8** The referral process raised a number of concerns with the pilot, including the complex relationship between basic skills needs and employment, the impact of sanctions on vulnerable customers and the Human Rights implications of compelling vulnerable people to undertake designated training. In this case, the Committee felt that the Department had not found an acceptable balance between risk to individuals and the potential benefits of the pilot. In the response to the Committee's report, the Secretary of State did not set out any standards for implementing pilots and maintained that officials believed that the proposals would not contravene the ECHR. The pilots went ahead with only a minor amendment (that the Secretary of State should consider that the training would be appropriate for a claimant before they were required to participate).
- 3.9** Overall, the evaluation results were inconclusive in terms of the impact of sanctions on training and employment outcomes. The evidence suggested that incentives may have had some impact in increasing participation but it was less clear whether sanctions had an impact (Peters et al., 2003). The Department itself recognised that the pilot had weaknesses, including being too small-scale, being of too short a duration and trialling too many variations of sanctions and incentives. It therefore set out to address these issues by introducing a new pilot in order to test the effectiveness of sanctions more thoroughly. An extended 12 month pilot was introduced in April 2004. Claimants in 12 pilot districts were subject to sanctions if they were referred to training and did not attend or they left provision without completing it (for any other reason apart from entering work).

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- 3.10** The regulations for this new pilot were brought before SSAC in 2003 and again, the Committee took the decision to refer them for public consultation. Although it recognised that some of the original deficiencies in the 2001 pilot design had been addressed and that it was more likely to generate meaningful results, the Committee still had considerable concerns about the design of the new pilot and its impact on vulnerable claimants. The question remained, given that the first pilot had not demonstrated robust impacts, why should further testing (even with an increased sample) necessarily do so (SSAC, 2004).
- 3.11** The Basic Skills pilots highlight a number of ethical issues associated with the design and evaluation of DWP pilots. The initial 2001 pilot was of inadequate scale to be able to measure robustly the impact of sanctions and incentives. This meant that a pilot (with a fundamental change in benefit conditionality) was introduced in a way that could not be fully evaluated. The pilot was legal, in that regulations had been agreed, but the question remains of whether a judge would have upheld a claim by a sanctioned customer that it breached their right to property (in the form of benefit) under the Human Rights Act.
- 3.12** A linked issue relates to the principle of beneficence as set out in Section 1, that is the need to balance the risk to the individual with any increase in the common good associated with the pilot and the evaluation. In the 2001 pilot it could be argued that the risk to vulnerable customers of losing their main source of income (through sanctioning) was not outweighed by the knowledge generated by the pilot in terms of what works in supporting the wider population to take up basic skills training courses and to improve employment outcomes. The sanctions themselves may have had impacts beyond the scope of the pilot and in fact the recent evaluation has found that sanctions resulted in some claimants moving to 'inactive' benefits or leaving benefits altogether (Joyce et al., 2005).

The Working Neighbourhoods Pilot

- 3.13** The Working Neighbourhoods Pilot (WNP) was established in April 2004 in 12 areas of multiple deprivation and ran for two years. It aimed to provide a programme of intensive, holistic and work-focused support to help people into employment. It was targeted at people on a variety of benefits including JSA, Income Support (IS) and Incapacity Benefit (IB) and included an increased number of mandatory WFIs for eligible claimants. The WFIs were mandatory and sanctionable, although subsequent participation in WNP support was voluntary. Jobcentre Plus ran half of the pilots with the other half being run by Employment Zone providers. The evaluation included analysis of administrative data, case study work with stakeholders in each of the pilot sites (and their matched comparison areas) and a quantitative survey of 1,200 residents across the pilot sites, followed up with qualitative interviews.
- 3.14** The complexity of the problem it sought to address meant from the outset that evaluation of the pilot would be difficult. In addition, the small number of participants, the short timescale (two years) and the problem of identifying matched areas or populations added to the difficulty of drawing conclusions about the effectiveness of the pilot. These issues again lead to the question of whether the risk to participants is justified by the knowledge generated by the pilot. SSAC addressed this issue in a letter to the Secretary of State that reiterated their belief *'that pilots are only justified if there is effective evaluation'* and particularly so in cases that use sanctions to enforce participation⁵.

⁵ SSAC letter to Secretary of State, 16 December 2004.

3.15 The pilots finished in April 2006 and the evaluation is still ongoing, with an impact assessment due in early 2007. There were problems with implementing the pilots, especially in terms of making use of the discretionary fund available locally. Jobcentre Plus procurement rules meant that the money could not be allocated easily to services and areas considered important by local managers. It is very telling that the summary of the year one evaluation report concludes that, *'anecdotally at least, the pilots appear to be making a positive difference to many of the people they were set up to help'* (Dewson, 2005:6). The evaluation of WNP is not yet complete but there are indications that it may not be able to answer some of the key questions about the pilot operation and impact. The use of increased sanctions (in this case more frequent WFIs) needs to be proportional and while pilots are necessarily time limited, attempts should be made to ensure that pilots are given sufficient time to address the key evaluation questions of 'whether' and 'how' a policy works. Where pilots have a strong political commitment and generous resourcing, then they may be unrepresentative of wider circumstances and impacts (Sanderson, 2002). This is especially true of pilots, such as WNP, that are located in areas with highly specific characteristics and complex needs.

Quarterly WFIs in Extended Schools Childcare pilot areas

3.16 The Extended Schools Childcare (ESC) pilot was developed to address particular issues associated with lone parents, workless couples and childcare. The ESC pilot aimed to improve the availability and accessibility of childcare to enable more parents to enter work. The pilots ran from April 2004 until March 2006 in three local authorities with additional pilot areas coming on stream in October 2004. The Department for Education and Skills (DfES) Sure Start Unit centrally managed the pilots, and worked with DWP, Jobcentre Plus and the local authorities.

3.17 Linked to the ESC pilots was the introduction of Quarterly WFIs for lone parents whose youngest child was aged 12 or older and who had been receiving IS for at least 12 months. Quarterly WFIs were mandatory (and therefore sanctionable) and required lone parents to meet with an adviser at their local jobcentre at quarterly intervals. The pilots began in October 2004 in local authority districts in which an ESC pilot was operating. The Quarterly WFIs were announced in the 2003 Pre-Budget report, where an explicit link was made between the two pilots (Cm 6042:82):

'in April 2004 the Government will be introducing extended schools childcare pilots in three areas. As a result of the availability of quality childcare, from September 2004 parents in workless households whose children could benefit from these pilots...will be required to attend quarterly work focused interviews.'

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- 3.18** An early implementation study of the first three ESC areas in England showed that the pilots were very slow to get off the ground and suggested that, because of the need to recruit and train staff and establish relationships with stakeholders, the original timescale for the pilot had been unrealistic (Barnard and Knight, 2005)⁶. The early evaluation also suggested that the networks of childcare being developed under the auspices of the pilot were focused on primary schools, rather than secondary schools (although this may have changed as the pilots progressed). In Scotland, one pilot area did focus on developing non-registered childcare for the over-twelves but overall, the evaluation concluded that the take-up of the new childcare provision by lone parents on benefit referred by Jobcentre Plus was extremely poor (York Consulting, 2006). The evaluation of the Quarterly WFIs will hopefully reveal the extent to which lone parents who experienced them were aware of the extra childcare provision supposedly available to them and the rationale for their more frequent, mandatory Jobcentre Plus interventions.
- 3.19** The Quarterly WFI pilot was ostensibly linked to the provision of improved childcare information and increased childcare provision, and lone parents could be sanctioned for not participating in the more frequent WFIs. This pilot raises similar concerns to the other case studies in terms of the potential harm to participants in the pilot but it also highlights the additional issue associated with multiple viewpoints about the nature of the pilot goals and how to achieve them. DWP and Jobcentre Plus could be expected to be clear about the desired outcomes from the Quarterly WFIs (benefit off-flows and job entries) and the link between the pilots (the outcomes would be partially supported through increased childcare provision). However, the early evaluation suggested that stakeholders involved in the ESC pilots would have liked greater clarity from DfES/DWP about the aims of the pilot, how success should be defined and the link between the two initiatives. The full evaluation of both pilots is still to report but early indications are that a group of lone parents were subjected to Quarterly WFIs (and therefore put at risk of financial sanctions), with little evidence that extra childcare provision had been developed in a timely fashion.

Somerset Pathways to Work extension

- 3.20** The extension of Pathways to Work in Somerset is a recent example of a pilot that has come before the Committee and one that raised a significant amount of discussion amongst Members as to its validity as a pilot. The Pathways to Work pilot itself is currently undergoing a comprehensive evaluation and positive early results have prompted a further roll-out of the pilot. The current pilot is aimed mainly at new and repeat IB claimants and these who have been on the benefit for a short period of time. The Department wanted to understand how the Pathways model works with long-term benefit recipients and therefore took the decision to roll out the pilot to all IB recipients in Somerset, regardless of how long they have been in receipt of IB (or its equivalent). This means that IB recipients will need to interact with Jobcentre Plus staff and, unless offered a waiver or deferral, participate in a series of mandatory WFIs that carry with them the possibility of a benefit sanction.

⁶ DfES is due to publish research on the English childcare pilots in early 2007 and DWP is due to publish research on the Quarterly WFIs in mid-2007.

3.21 There are a number of issues in terms of the extension to long-term claimants in Somerset. The key issue is arguably whether the balance will be met between risk to the individual, in terms of participation in the pilot, and what generalisable results can be learned from the pilot in a county that has an atypical labour market. It could be argued that long-term IB recipients are placed at greater risk of harm under a mandatory WFI regime than new and short-term claimants. Their personal circumstances and distance from the labour market suggest that WFIs may have less to offer them and bring with them a greater risk of sanctioning. The unequal treatment of long-term claimants in Somerset, compared to elsewhere, is not justified in terms of increasing knowledge about whether the Pathways model is appropriate for all IB customers, irrespective of length of claim.

3.22 An additional issue with the Pathways extension was the way that officials justified the pilot when they presented it to the Committee. The Explanatory Memorandum (EM) stated that the Somerset extension was primarily about finding out about the long-term benefit population and what support claimants needed to move towards work. This clearly suggested that the pilot was not about testing a work-focused policy (as with the original pilot) but instead about undertaking research. Using mandatory WFIs in order to facilitate research would clearly breach the ethical guidelines governing social research, in terms of both voluntary participation and avoidance of harm. One of the Committee's key concerns is that pilots should not be presented as being primarily driven by research or evaluation when the regulations come before the Committee (as was the case with the Somerset Pathways). A stated wish to undertake research should not be used to justify a policy intention that has a different rationale.

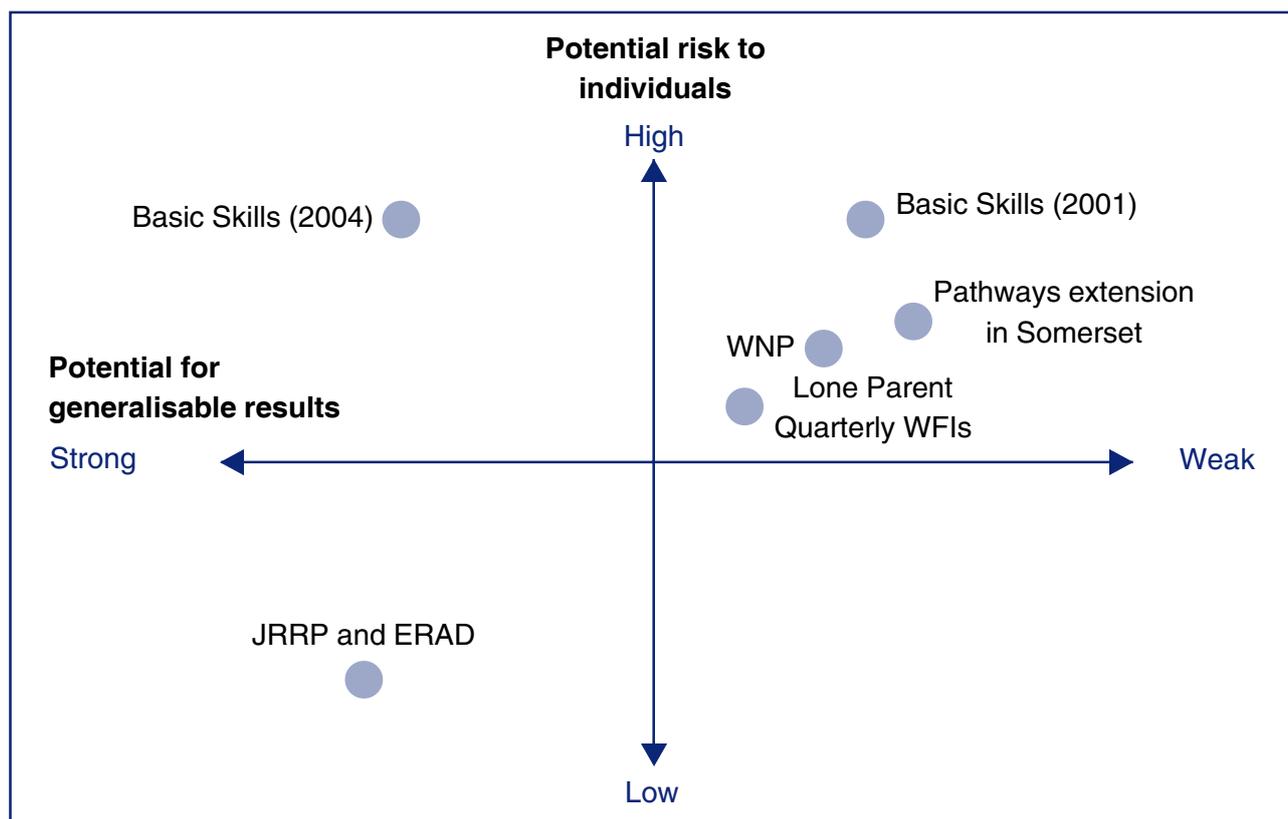
3.23 Key ethical issues emerging from the case studies:

- A number of the pilots involved elements that had **the potential to cause harm** to vulnerable participants (for example, through loss of benefit, stress caused by having to participate in a meeting or a course that was inappropriate for the individual). While it is not possible to eliminate all potential harm in pilots, the potential harm should be balanced with the potential benefit to society arising from the pilot. In a number of cases cited previously, it could be argued that this balance was not achieved (for example, the Somerset Pathways' extension).
- In the case of the 2001 Basic Skills pilot, the design of the pilot (for example, sample size and duration) meant that **the evaluation did not generate meaningful results** about the impact of sanctions on training and employment outcomes. In the WNP and Quarterly WFIs in ESC areas, claimants faced additional WFIs (and associated sanctions) in the absence of an evaluation that would produce generalisable results (WNP) or the additional support in place to allow the extra WFIs to achieve their intended outcome (Quarterly WFIs).
- **Informed consent** is central to ethical pilot evaluations, yet gaining informed consent is not necessarily straightforward. For example, in the case of ERA, potential participants may have found it difficult to understand that they could choose to participate or not, because of their dependent relationship with DWP and their previous involvement in mandatory activity (for some claimants the point at which they were asked to consent to ERA would have been during a mandatory meeting with a Personal Adviser).
- In the case of Somerset Pathways, the policy intent was presented to the Committee in terms of 'finding out' about the long-term IB claimants through the use of mandatory WFIs. This would breach the ethical guidelines about **voluntary participation in research**.

Section 4 – Assessing the ethical concerns of pilots

4.1 One of the aims of this paper is to put forward a graphical (informal) tool to help support the Committee in its scrutiny of pilot regulations in a way that highlights the key elements of the previous discussion about the ethics of pilots. One possible way of trying to classify pilots with regard to ethics and evaluation would be to look at level of potential risk to participants compared with the potential of the evaluation to produce generalisable results (see Figure 2). A high level of potential risk relates to a greater, negative and mandatory change in benefit entitlement for those affected by the pilot (for example, the loss of benefit through sanctions). A low level of potential risk means that there is negligible change in benefit entitlement or that participation in the pilot is voluntary (so risk can be avoided). The potential for the evaluation to produce generalisable results relates to how integral the evaluation has been during the design of the pilot and the likelihood that the evaluation will be able to produce meaningful results that have a genuine impact on policy development.

Figure 2 Potential for risk to individuals and potential for generalisable results from the evaluation



4.2 The Committee will continue to assess each pilot on its individual merits but it is anticipated that it will use the diagram to support its scrutiny of pilot regulations. Pilots considered by the Committee will be ‘placed’ on the diagram. A pilot that involves a high level of potential risk to the individual with a low potential for the evaluation to produce generalisable results (upper right sector) is likely to raise more concerns than a pilot with a low level of potential risk and a robust evaluation (lower left sector). The situation is more complicated for pilots with high potential risk and a robust evaluation (upper left). In this case the risk of harm to participants is perhaps mitigated by the potential increase to the common good generated by the research. However, a robust evaluation is no guarantee that the pilot will not raise ethical issues, especially when it involves vulnerable claimants.

Conclusions

4.3 This paper has highlighted some of the key ethical and legal issues associated with DWP pilots and offered a potential way of classifying pilots according to the potential to cause harm and the robustness of their evaluations. There is a great deal of guidance to support ethical social research but guidance on ethical pilots is comparatively scarce. Many of the ethical principles for social research can usefully be applied to pilots, such as balancing the risks to participants with the wider benefits arising from the pilot. There are also complex issues around government research and the nature of voluntary participation and informed consent. Regulations confer the legal powers to undertake pilots but this does not reduce the need to consider whether the pilot is proportional and able to generate robust evaluation results.

4.4 As the case studies in Section 3 have shown, similar ethical issues, such as the risk to participants, arise repeatedly in the context of recent DWP pilots. The Committee is concerned that the intention of pilots should be clearly articulated when regulations are presented to them – so that mandatory participation is never used primarily for research. Vulnerable individuals should not be placed at risk that is not justified by the potential benefits to society emerging from the pilot. Assessing the level of risk that is justified is difficult but, at the very least, the outcomes from the pilot evaluation should be measurable.

4.5 The political influence on the nature of pilots is ever present and the policy context and motivation for the pilots play important roles in generating these ethical concerns. However, there is scope to make a statement about the key principles of ethical pilot design, especially for non-experimental pilots. Given the political nature of most pilots, this statement may not have a noticeable impact on the high level design of pilots but it will highlight key questions that policy makers and analysts should ask before presenting papers to the committee. Finally, the Committee reiterates its belief that there may be a case for the Department to establish *standards of practice* for pilots that would complement the existing ethical guidance for social research and evaluation.

Annex A

Information on the Data Protection Act – as set out on claim forms for Income Support and Incapacity Benefit

How we collect and use information

The Department for Work and Pensions collects information for the purposes of dealing with social security, child support, vaccine-damage issues, employment and training, private pensions' policy, retirement planning and Financial Assistance Scheme. The information we collect about you depends on the reason for your business with us, but we may use the information for any of these purposes.

We may check information about you with other information we have. We may get information about you from other people and certain organisations. We may give information to certain organisations, as the law allows, to:

- check accuracy of information
- prevent or detect crime
- protect public funds in other ways, and
- use in research and statistics.

These other organisations include other government departments, local authorities, and private-sector bodies such as banks and organisations that may lend you money. We will not give information about you to anyone outside our department unless the law allows us to.

The Department for Work and Pensions is the data controller for the purposes of the Data Protection Act.

If you want to know more about what information we have about you, or the ways we use information, please contact us. You can contact any of our offices and ask for leaflets GL33 Data Protection Act 1998 – it affects you. Or you can find a copy of the leaflet on our website. The address is www.dwp.gov.uk

Claim forms available at: http://www.dwp.gov.uk/advisers/claimforms/a1_print.pdf

Annex B

Classification of Convention Rights in the Human Rights Act 1998

Unqualified rights

- A. Absolute rights** (no restriction)
- Right to life (Article 2) (except in case of death from lawful act of war)
 - Prohibition of torture (Article 3)
 - Prohibition of slavery and forced labour (Article 4.1 only; 4.2 is limited)
 - No punishment without law (Article 7)
- B. Limited rights** (restricted only to the extent indicated in the Convention)
- Right to liberty and security (Article 5)
 - Right to a fair trial (Article 6)
 - Right to marry (Article 12)
 - Prohibition of discrimination (Article 14)
 - Protection of property (Article 1 of the First Protocol)
 - Right to education (Article 2 of the First Protocol)
 - Right to free elections (Article 3 of the First Protocol)

Qualified rights (restriction if within ‘margin of appreciation’ and ‘proportionate’)

- Right to respect for private and family life (Article 8)
- Freedom of thought, conscience and religion (Article 9)
- Freedom of expression (Article 10)
- Freedom of assembly and association (Article 11)
- Right to property (Article 1 of First Protocol)

Annex C

The US experience of Social Programme Evaluation

The US has been ahead of the UK in terms of using experiments to evaluate social programmes but there has been relatively little debate on the ethics of experiments in the context of social programmes (Stafford et al., 2002). In the 1970s the basic ethical principles that should underlie the conduct of biomedical and behavioural research were set out in the Belmont Report. The Belmont Report set out three principles to guide research in the US: respect for persons, beneficence and justice (Blustein, 2005). The principle of respect for persons means that participants should be treated as autonomous agents and led to the idea of informed consent. Beneficence was articulated as meaning that the expected benefits arising from the experiment should offset any potential risk to the participants. Justice refers to the fair distribution of the benefits and burdens of research in an attempt to avoid the main burden of research falling on vulnerable groups within society.

However public social programmes were exempted from following the Belmont principles, as the issues relating to social experiments were viewed as differing significantly from those of biomedical and behavioural research. Blustein (ibid: 843) argues that this exemption needs to be reconsidered and that a discussion might *'yield a greater clarity of purpose and a more explicit sense of the ethical bounds of research in the very important – and perhaps unique – federal social programme evaluation context'*.

The situation in the UK in terms of evaluation is somewhat different. A useful illustrative contrast surrounds the issue of informed consent. In the US, legislation allows people participating in a mandatory policy to also be subjected to any component of the pilot and/or research. In the UK, even though someone may be legally obliged to participate in a mandatory activity (for example, the New Deal for Young People (NDYP)) they are not obliged to participate in the associated research.

In the case of random assignment social experiments in the US, there have been few examples of legal challenges to the experiment. One example of a successful legal challenge involved the Job Corps experiment. In this case, young people who were assigned to a control group were denied services that could have helped them and would have been available to them in the absence of the experiment. Since 1964, Job Corps has been a central part of federal efforts to provide employment support to disadvantaged young adults aged between 16 and 24. The programme provides a mixture of academic education, counselling, vocational training and job placement. The majority of the support is provided at residential Job Corps centres. In the mid-1990s the US Department of Labor funded the National Job Corps Study to provide a robust assessment of the programme impacts.

The study involved random assignment of those eligible for Job Corps, to either the programme or control group. Between November 1994 and February 1996, a total of 80,883 eligible young people applied to the programme with 5,977 (approximately seven per cent) allocated to the control group. Those allocated to the control group could not participate in Job Corps for three years but they could find alternative sources of employment-related support. The study found that participants received considerable levels of support from the programme, each receiving an average of 1,000 hours of education and training that they would not have received otherwise. Overall, the programme had a positive impact on employment outcomes and also had other positive impacts such as reducing the rates of offending among participants (Schochet et al., 2001).

All eligible young people who wanted to join the programme had to agree to participate in the experiment and those who did not sign a consent form would not be eligible to participate in the programme. Three years into the evaluation a class action suit was filed by some of those allocated to the control group and hence denied the support provided by the programme. The experiment was temporarily halted by a judge under the narrow, technical argument that officials had violated the Administrative Procedure Act by failing to give public notice of a change to the programme rules. There was little debate about the ethics of the experiment in denying the control group access to beneficial services. In the settlement, the government offered to track down those in the control group and offer them Job Corps if they were still eligible and paid those from the control group who brought the case to court \$1,000 as compensation for their participation in the lawsuit (Blustein, 2005).

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