What is wrong with the Targeted Compliance Framework (TCF)?

Abstract:

The TCF automates several Social Security (SS) decisions made by employment service (ES) Providers. Consequently, there has been a shift in the way SS decisions are being made under the TCF that requires elaboration. This article reflects on how these changes have impacted the actors who administer the TCF. The argument is the TCF outsources decisions in ways that have disempowered unemployed people and the agencies who work with them because they have reduced capacity for exercising discretion; and shifted the administrative burden of resolving issues to providers and job seekers. Furthermore, lack of internet and phone connectivity is an issue because the systems are designed on assumptions of ubiquity that have not been effectively accommodated within the rules of the TCF.

Outline of the TCF

The TCF was implemented in July 2018, replacing the job seeker compliance framework which had been based on the Disney Review 2010. The TCF was intended to target financial sanctions at those job seekers identified as being wilfully non-compliant.

It was accompanied by legislative reforms to the Social Security Act (SSA) that added to the delegated powers of ES agencies, and effected decision making through new forms of automation. Employment services were delegated these powers and the actual requirements they monitor are legislated via Social Security Administration Act, SSA, or related Instruments and Guidelines.

The TCF involves the accrual of demerit points which lead to financial sanctions after 6 demerit points have accrued. However, job seeker payments are suspended automatically when there is failure to self-report attendance at an activity in the job plan or by provider assessment of non-attendance. The suspension is lifted when job seekers meet the requirement for re-engagement. Job seekers interact with a 'self-service' digital dashboard through which they are expected to monitor their compliance status and report attendance at activities.

Self-reporting and digital ubiquity

Self-reporting attendance at activities via smartphone or online is one of the most problematic aspects of the TCF. Assumptions of telecommunications ubiquity underpin the logic of the TCF and reflect a workflow design that depends on access to either internet or telephone, thus placing an onus on citizens to be digital capable at all times. Yet supporting infrastructure in many parts of Australia is lacking.

A decision as to whether a job seeker is capable of self-reporting is arguably a Social Security 'decision' made by Providers. The TCF guidelines say Providers must make an assessment about job seeker capability and capacity to record/report their attendance and, based on this assessment, choose to keep the code PA03 in the digital Job Plan or remove it. As approximately 95% of job plans were updated to include the code of PA03 this suggest these decisions are being made without consideration of ubiquity. This also reflects the fact that the providers make these assessments

under time pressure and the guidelines explain that PA03 is hard-wired as the default code for all job plans.

There are a number of criteria used in the PA03 assessment of self-reporting capability, but these do not address the issue of ubiquity except for the provider to assess whether the job seekers have regular and reliable access to internet either at home, or at another location. By using the job plan PA03 code the Provider effectively conscripts the job seeker into agreeing to self-report as part of their *mutual obligation*. A 'commitment' printed on the job plan effective 'contracts' the job seeker into agreeing to take this responsibility. This commitment states:

> *"I agree to take responsibility to report and/or record my attendance at requirements set out in my Plan by close of business on the day of the requirement. I understand that if I am unable to record my own attendance using available technology, I am required to contact my provider by close of business on the day of the requirement to ensure my attendance is recorded. I understand that if I do not ensure my attendance is recorded, my payment will be affected."*

If the Provider does not think the job seeker has self-reporting capability, the job seeker may be considered not capable of meeting this requirement. In this case, the Provider must remove the Job Plan code PA03 from the job seeker's digital Job Plan. Somewhat bizarrely however, the guidelines state that even when job seekers do not have the PA03 code in their Job Plan or if they have forgotten their phone, they are still required to assist their Provider, including by being available for or initiating contact with their Provider to ensure their attendance is recorded that day. They are also responsible for reporting their attendance to their Provider or an Activity Supervisor to ensure that their participation has been recorded for that day.

This 'personal responsibility' becomes the way that the job seeker is responsible for self-reporting what is ultimately a social security decision hard-wired into the digital dashboard. This means that the delegated powers of Providers to make decisions about self-reporting becomes the mechanism through which job seekers assumes administrative responsibility for actions that are implicated in payment suspensions. These suspensions must then be resolved by the job seeker requirement to re-engage or reconnect. The demerit points that accrue as a result of these suspensions are precursor decisions that lead to financial sanctions.

Legal Issue?

The requirement to self-report is not in the SSAA therefore it is arguable that the imposition of this requirement does not have statutory weight. Furthermore, the Secretary cannot delegate de-facto social security decision making to citizens. Therefore, by not agreeing to self-report job seekers should not be subject to sanction if they do not agree to it in their job plan.

Job plan coercion and PA03

This leads to another legal issue with the TCF because job seekers report being coerced into agreeing to activities in job plan because think time is limited, and the provider has discretion to decide what the appropriate activity for them is as per the guidelines. If they do not agree with the requirements in the job plan they must identify alternative activities that they can undertake that meet their MO requirement and which the Provider agrees they can undertake.

Job seekers report feeling bullied into signing job plans and this reflects the pressure placed on providers to deal with a high volume of transactions. Provider appointments are time limited and

caseloads for individual employment consultants are as high as 300 people. While there is emphasis on negotiation of the job plan in the guidelines, it is clear that providers will choose activities that minimise administrative overheads, costs and risks. There are reports the activities providers are increasingly being provided inhouse such as training because of these risks.

Legal issue?

Job plan coercion has led to PA03 decisions. There are two issues here. Erroneous PA03 issues, and the way in which 'choice' is provided to job seekers as per the SSAA 1991.

Prior notice and acceptable reason decisions

A new feature of the TCF is the requirement for reception staff to assess whether job seekers have valid reason or acceptable reason when they cannot attend appointments or activities. This is effectively another shift in the characteristics and capability of social security decision making actors. Valid reason or acceptable reason made by contracted employment service agencies are arguably social security decisions (see *Bond*) because the accrual of demerit points leads to a mutual obligation failure and payment preclusion period. Therefore, the acceptable reason is a critical delegated social security decision and draws on the Instrument for Reasonable Excuse.

In order to avoid a payment suspension and/or demerit point job seekers are required to provide prior notice that are unable to attend which meets the definition of a valid or acceptable reason. That means they are required contact their Provider before a requirement is due to start (e.g. before their activity begins) or before a requirement is due to be completed, and explain what is preventing them from meeting their requirements.

The TCF guidelines say that when assessing whether the job seeker has given an Acceptable Reason, the Provider needs to consider whether the given reason would be accepted by an employer if it had been given by an employee and take into account what they already know about the job seeker and their personal circumstances. This could include knowledge of family or caring responsibilities, transportation limitations or ongoing medical issues.

This is where reception or call centre staff now play a significant role in these decisions. Yet as they are rarely also the job seeker's employment consultant they lack the knowledge to apply these criteria. These initial decisions about whether there was or was not a reasonable excuse/notice are then reviewed to make a demerit point decision. These decisions are usually based on the information provided to the reception staff and matched against the list of valid reasons and acceptable reasons. This means that provider discretion based on knowledge of the job seekers circumstances is not used when determining whether demerit points will accrue.

Case study

A case study helps to illustrate the problematic nature of the TCF decision making. In this example the problems reflect the issues identified in this article of self-reporting ubiquity, the providers interpretation of guideline material (the TCF guidelines), and rules around re-engagement requirements.

This case study involves a ParentsNext participant whose phone was stolen on a Sunday night and who was unable to report that they would not be able to attend their MO requirements on the Monday. The participant reported that they had been told by their provider that their payment would be suspended for an entire month. This was because no re-engagement appointment was available at the provider due to a bottleneck in referrals.

This is problematic for several reasons. Firstly, no suspension should last more than two days if a re-engagement appointment cannot be booked in that time. This is referenced in the TCF Guidelines (p.14).

Secondly, ParentsNext (PN) participants' payments are supposed to be reinstated when they contact their provider to make the re-engagement appointment, NOT when they attend it.

This is referenced in Social Security Administration Act 1999 Section 42SB.

The problem seems to be the TCF guidelines don't reflect the PN re-engagement requirement under section 42SB so it is easy for the provider to make that mistake.

Thirdly, the guidelines were interpreted literally in that the job seeker's phone had been stolen and the list of valid reasons did not include it as a reason. The guideline is prescriptive and says *if the reason the job seeker gives does not appear on the list of Valid Reasons, then the job seeker does not have a Valid Reason for non-compliance.*

Why is this a problem?

The main problems with the TCF are IT ubiquity, decision making 'errors' and transaction costs of fixing them especially for vulnerable people. Firstly, the assumption of telecom/wifi ubiquity is problematic as it is the default option in digital job plans. This decision about access does not reflect real time experiences of capability of job seekers to self-report. Since the introduction of the TCF there is evidence that payment suspensions are occurring due to provider errors or when job seekers lose access or have been incorrectly assessed as having the capacity to self-report. Furthermore, the onus remains on job seekers to contact their provider when for example they have no telephone for self-reporting is unreasonable. Lifting the suspension requires making contact with the provider or the customer service line which again unreasonably presumes access to telephones or internet. All of this has led to a blow out in the transaction costs of resolving compliance issues that has been borne by job seeker and providers.

Secondly, job seeker recourse to review of demerit points is limited as they have been described as administrative decisions, not social security decisions. Demerit decisions have no substance in social security law yet it is arguable they are precursor decisions to financial decisions (as per Bond etc).

It is also of concern that providers make decisions that lead to job seekers entering the penalty zone. When job seekers have accrued 3 demerit points the provider undertakes a Capability Interview to assess if the job seeker can meet the requirements of the job plan. It is arguable that this assessment replicates the decision-making steps of ensuring the nature of the activity in the job plan is appropriate and whether the job seeker can self-report. So again, the provider makes a de facto assessment of ubiquity and job plan processes etc on which basis the job seeker may move closer to receiving a financial sanction.

Furthermore, data supplied to the Senate estimates points to some worrying trends about who the TCF affects and provider decision making. The data that 47 per cent of original job plans have been updated during the Human Services Capability Assessment suggests that this process is leading to disclosure or provider error. This last observation is based on evidence that Provider errors with the job codes in Job Plans initially resulted in high levels of demerit points being removed. This overturn suggests complexity in the administration of job seeker notification, attendance reporting and valid and reasonable excuse interpretation.

It is also of concern that TCF demerit points are concentrated on people with vulnerabilities such as Stream B participants, homeless job seekers, and indigenous job seekers. Analysis of demerit strike rates also shows job seekers undertaking Work for the Dole and EST are also receiving demerits disproportionately. These activities depend on job seekers being able to scan QR codes to prove their attendance twice a day which is highly problematic.

Conclusion - problems with outsourced decision making

If internet ubiquity is an underpinning requirement for the TCF, then this ubiquity must be resourced by providing job seekers with data plans and devices. Further, outsourcing decision making according to the TCF requirements has reduced the ability of provider staff to exercise discretion. The quality of decision making by ES agencies is compromised by the competitive nature of their contract survival mechanisms, and the sector is further beleaguered buy high levels workforce turnover and capability attrition.

All of these factors point to worrying concerns about the transfer of social security decision making that has reduced the capacity for human intervention and discretion in decisions that affect the financial welfare and well-being of unemployed people already experiencing poverty.

Furthermore, there are grounds for challenging these arrangements as unlawful transfers of social security decision making to non-competent actors.