

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: VTR: 3674

DATE: 23 August 2013

Dear Julie Hutchinson,

Thank you for your Freedom of Information request of 06/08/2013. You asked:

Your department often informs claimants that they cannot appeal a decision.

I find this totally misleading, as it is up to the judge at a tribunal to make a decision if whether an appeal is acceptable, and not you!

You even stated this within a FOI response:

The Department cannot provide a definitive reply to your question. As stated in the previous reply, the decision on whether or not to accept an appeal is for the Tribunal judge to make.

Why do you therefore persist in telling people that they cannot appeal, knowing full well, it is not in your remit to do so?

The Department for Work and Pensions in its Guidance states that: The customer has the right to dispute, or appeal against, any decision of the Decision Maker (DM) that carries appeal rights. These are decisions which in law clearly carry the right of appeal. Neither the department nor the tribunal can interfere with these rights – nor give approval for them to apply.

However, there are decisions which do not carry the right of appeal, and this is set out in law (see Schedule 2 of the Social Security Act 1998). But it is not unknown for claimants to appeal against one of these decisions. When this happens the Secretary of State will ask a tribunal Judge to strike out the appeal because it is out of jurisdiction, that is, it should not be put before an appeal tribunal because there is no right of appeal. So here the final decision lies with a tribunal Judge. Indeed, the Tribunal's own procedure rules provide for this process. Again, this is not the Secretary of State interfering with the appeals process.

A more relevant example perhaps can be seen when we consider the time limits for appealing. If an appeal is received late then in law the Secretary of State can admit it as made in time if

there are special reasons for the delay. However, if he doesn't admit that is not the end of the matter. He must forward it to a tribunal Judge to consider. The Judge has the final word. If he also refuses to admit it there is in effect no appeal.

I hope this has shown that there was nothing misleading about the previous reply. There are many instances where a tribunal Judge will decide whether a person has a right of appeal or not.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk