

Dear Mark Abraham,

Thank you for your Internal Review request of FOI2019/42619 received on 3 January 2020.
You said:

Thanks for your reply. Please can you let me know how many 'pre-action protocols' have been received by the DWP.

To help, if you are unclear of the term, I, (being of an older generation) used to call these 'solicitor's letters'.

This means communications which would have been referred to the DWP legal department about the possibility of legal action being taken.

*I'd suggest a period of a year (or less, if the cost to reply is onerous), or alternatively the last easily available information. I'm looking for information at this stage.
As to your statement in your reply:*

"You may be interested to note that county court/small claims, do not apply to government departments only Tribunals and Appeals".

I am interested, thank you. A reputable law firm, have recently stated in a Supreme Court case, that the government argued in the Appeals court level that appropriate remedies are available to citizens in the civil courts for compensation, and that these should be used instead of the Tribunal and Appeals path. My understanding is the Law firm felt that the Appeals route was the way to bring actions, in certain cases, but not all. So there appear to be other routes.

I would be interested therefore in knowing from where you draw your information from, as this appears to contradict my understanding, and I'd be obliged for your clarification of your source.

On 9 January @ 00:28 - You said:

Following up on my earlier reply to your first response, I thought it might help you if I specify the quote I'm referring to you.

It comes from:

<https://www.supremecourt.uk/cases/docs/uksc-2018-0224-judgment.pdf>

If you look at 8. on page four you'll see the following contained:

"The appeal was allowed. The majority (Sir Brian Leveson PQBD and Flaux LJ) held that the UT did not have power to direct as it did, as this would amount to an impermissible rewording of the regulation: any remedy for the violation of Convention rights was to be found in an action for damages under section 8(2) of the HRA."

I hope that information is helpful to you, as an action for damages can be taken out in the County Court as far as I'm aware. High Court action is also possible, but that depends on the amount claimed, and the methods chosen also to pursue the claim by the claimant.'

If you have information that advises that an action in the County Court or perhaps even the High Court isn't possible, I'd be delighted if you could share your source, if it's possible to do so.

With thanks for your time, and I look forward to hearing from you.

On 9 January @ 1:55 - You said:

Further to my response to your reply today, I thought it might be beneficial if I referred you to the source of the Human Rights Act 1998 that appears to be part of the decision making by the Secretary of State, namely section 8 (2) as follows:

"8Judicial remedies.

(1)In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2)But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings."

Again, I hope this information aids you with your response in due course.

DWP Response

In response to your request, I can confirm that the handling of your original request and response has now been appropriately reviewed by someone unconnected with the handling of your original request.

As a result of this review I am satisfied that the original response was handled properly and that the outcome of your request was correct.

The reasoning behind this decision is as follows.

The Freedom of Information Act gives you a legal right of access to any recorded information held by a public authority. We do not have to provide opinions or explanations, generate answers to questions, or create or obtain information we do not hold.

Your review request asks questions and makes statements which you want us to respond to which would need answers or new information to be created.

As originally explained in our response to FOI2019/42619 we do not hold any recorded information to answer your request and as such the Department cannot process your request any further.

If you want a reply outside of the Freedom of Information Act further you can make a policy enquiry via the DWP ministerial correspondence team by following the guidance at the following link:

<https://www.gov.uk/government/organisations/department-for-work-pensions>

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

Yours sincerely,

DWP Central FOI Team

Your right to complain under the Freedom of Information Act

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

Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745