

Yasemin Yilmaz

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Date: 15 May 2015

Dear Yasmin,

Thank you for your Freedom of Information (Fol) internal review request received on 17 April 2015. You asked:

On 2 February 2015 I asked,

"On 4 December 2013 the Court of Appeal upheld the judgment of the Upper Tribunal in May 2013, that the Work Capability Assessment (WCA) process of Employment Support Allowance places people with mental health problems, learning difficulties and autism at a 'substantial disadvantage' compared to people without those disabilities. This was followed by an Upper Tribunal hearing on 7-9 July 2014 concerning 'reasonable adjustments' that could address the discrimination faced by the above groups undergoing the WCA. I understand that the outcome of the hearing in July is yet to be announced. However, my questions are:

- 1. Since 4 December 2013, has the DWP taken any steps to prevent the WCA from placing people with mental health problems, learning difficulties and autism at a substantial disadvantage?*
- 2. If the answer is Yes, please clearly specify what steps it has taken, including any relevant changes introduced to the WCA from that date?*
- 3. If the answer is No, please explain the reasons for this and indicate whether and when the DWP will be taking action in response to the court ruling?"*

You replied on 18 February 2015 but I am not satisfied with your response, which is evasive, unclear and raised more questions than provided answers. You have not directly answered my first question by specifying whether or not the DWP has, since 4 December 2013, taken any steps to prevent the WCA from placing people with mental health problems, learning difficulties and autism at a substantial disadvantage. However, you suggest it has done so by listing examples of changes made to the WCA in relation to this group. However, two of the examples you provided refer to changes made before December 2013 (with both introduced in 2011), and two refer to the recommendations of two parliamentary reviews of the WCA, which are separate from the court ruling. A further example you have listed refers to an Evidence

Based Review of the descriptors used in the WCA, but this does not appear to have been carried out as a result of the court ruling either.

The only remaining example you have given does seem to address my second question. This states,

“we are also redesigning the ESA50 claimant questionnaire to make it clear that evidence, particularly in mental health cases, from Community Psychiatric Nurses, Support Workers, Carers etc is valuable”.

Does this mean, then, that the only step that the DWP has taken to prevent the WCA from placing people with mental health problems, learning difficulties and autism at a substantial disadvantage in response to the court ruling in December 2013, is the introduction of the above change to the ESA50?

If that is correct, it is worth noting that information regarding the type of evidence to send with the ESA50 was only very recently added to the form in March 2015. I would therefore be grateful if you could please tell me why has it taken so long to make one relatively small adjustment to the WCA form? Furthermore, why it is taking so long to release the outcome of the hearing before the Upper Tribunal in July 2014?

DWP Response

It may help if I set out some of the background on the work the Department has undertaken when considering the question of collecting further evidence in relation to a WCA. In the third independent review of the Work Capability Assessment (WCA), Professor Harrington recommended that DWP Decision Makers give greater consideration to the need to seek further documentary evidence in individual cases. Following this, the Department planned to conduct two trials, the first in 2013 and again in 2014. However, the Department was unable to progress with these until the Court had made their final judgment.

The Upper Tribunal issued its judgment in the case of MM and DM v Secretary of State for Work and Pensions on 12 March 2015. The Tribunal found that the Department was not in breach of the Equality Act. A copy of judgment can be found at: <http://www.osspsc.gov.uk/Aspx/view.aspx?id=4439>

As set out in the previous response, the Department has been committed to improving the WCA and ensuring that it assesses people as fairly and accurately as possible. Since its introduction there have been numerous changes made to the WCA process, some of which are detailed in the previous response. There has been a department-led review (initiated in Oct 09), an Evidence-Based review and five statutory independent reviews (published 2010, 2011, 2012, 2013 and 2014). Over the course of five Independent Reviews, more than 100 recommendations have been made.

The vast majority of the recommendations from the first four Independent Reviews have been accepted and implemented and we have accepted all but two of the 28 recommendations that fall within the scope of DWP arising out of the fifth Independent Review. However, it is important to note that these improvements and changes to the process are not solely driven by instances of litigation but are instead part of a process of continuous improvement.

You have asked specifically about changes made to the claimant questionnaire (ESA50) to make it clear that evidence, particularly in mental health cases, from Community Psychiatric Nurses, Support Workers, Carers etc is valuable.

The Department regularly reviews and revises the ESA50. The recent update to which you refer was part of this regular review process. The Department worked with the Disability Benefits Consortium made up of representatives from a number of charities and stakeholder groups to make changes to the ESA50. The revised ESA50 has been in use since 2 March 2015.

Following the fifth independent review of the WCA, the Department has agreed to review its portfolio of alternative formats, which includes the ESA50.

Finally, in relation to your question on the length of time it took for the Upper Tribunal to release its decision, this is a question for the HM Courts and Tribunals Service.

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 happy with this response you may request an internal review by e-mailing freedom-of-information-request@dpw.gsi.gov.uk or by writing to DWP, Central FoI Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter. Please remember to quote the reference number above in any future communications.

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
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