

To Mr M Giblin  
C/o [request-131408-5031a834@whatdotheyknow.com](mailto:request-131408-5031a834@whatdotheyknow.com)

DWP Business Management Team

DATE 17 December 2012

Our Ref: VTR 3923-3778

Dear Mr Giblin,

Thank you for your Freedom of Information request response that was received by the Department for Work and Pensions (DWP) Freedom of Information Requests on 28 September 2012 and immediately forwarded for response by DWP Business Management Team Freedom of Information Officer.

Please accept my apologies for the delay in responding.

In your email you asked:

- 1. Please supply the name of the person(s) responsible for sending people to be reassessed by AToS after they have won an appeal at tribunal.*
- 2. Please supply the name of the minister(s) responsible for making this policy decision on sending people to be assessed again after winning a tribunal appeal.*
- 3. Please supply the details of the cost of having a person reassessed after they have won a tribunal.*
- 4. Please supply the piece of legislation that states that a person has to be reassessed after they have won a tribunal appeal.*

In answer to **Q 1** where an individual is found fit for work, but their decision is reversed at a Tribunal, their case will be returned to the Decision Maker (DM). At this point the DM reviews the case, considers whether an appeal to the next tier is appropriate and if it is not they set the WCA re-referral date.

In setting the re-referral date, the guidance states that a DM should take into account:

- The type of Limited Capability for Work (LCW)
- Whether the LCW is likely to change for better or worse
- Whether the Tribunal has suggested a re-referral date
- Factors the Tribunal took into account in reaching their decision
- The original prognosis
- Any comments by the medical adviser
- Whether any surgery is likely that may offer a significant improvement.

In making this decision, DMs can consult a Atos Healthcare HCP through the telephone advice line when further advice would be helpful on a particular case.

This guidance was updated in February 2011 to ensure DMs were actively considering an appropriate re-referral date. Re-referral dates chosen can be 3, 6, 12, 18 or 24 months, with 3 month representing individuals who are expected to recover quickly.

Following an appeal, there is often little evidence provided by the Tribunal to the Department to explain the reasons why a decision has been overturned. As a consequence, DMs may entirely reasonably choose a 3 month re-referral date in the absence of evidence that may lead them to apply longer period.

Our aim is that individuals with a three month prognosis will be reassessed at the three month point (rather than referred at that point). Operationally, this means starting the process two months earlier, or around one month after the Tribunal's decision for those with a three month prognosis.

Once the process starts, if a claimant returns the ESA50 questionnaire quickly and once Atos are in a stable work position, this could mean that an assessment takes place about 7 weeks after the original decision.

Staff not employed in a public facing role, and who are not senior civil servants, would not expect their name to be routinely published in this way. It is not Departmental policy to publish the names of such civil servants since it would compromise their right to privacy. This information constitutes third party personal data and is exempt from disclosure under section 40(2) of the FoI Act.

In reply to **Q 2** the decision to refer a claimant for a medical assessment to assess their ongoing entitlement to Employment & Support Allowance (ESA) is contained in the ESA Regulations and it is the decision of the DWP Decision Maker to make a decision in accordance with the relevant ESA legislation as provided in answer to question 4

The Right Honourable James Purnell MP was the Secretary of State for Work and Pensions at that time was the time the ESA Regulations were introduced in 2008.

In answer to **Q 3** the Department has decided not to disclose the information you requested regarding the price of a medical assessment and a domiciliary visit, in accordance with Section 43(2) of the Freedom of Information Act 2000; this exemption covers Commercial Interests. The medical services Contract will in due course be re-let by means of a competitive procurement exercise. Releasing details of Atos Healthcare's underlying financial model, in particular details of the unit cost of each assessment that they have factored into the contract would, or would be likely to prejudice their commercial interests.

In applying this exemption the Department has balanced the public interest in withholding the information against the public interest in disclosing the information and considers that release of the information would prejudice the interest of Atos Healthcare and the Department's future dealings with Atos Healthcare or other service providers.

In reply to **Q 4** the Parliamentary Act which sets out the way in which ESA is administered – with particular reference to arrangements governing a capability for work assessment, is the Welfare Reform Act 2007 and the ESA Regulations 2008 provide how limited capability for work shall be determined. You can access the ESA Regulations 2008 via the attached link:

Please see Part 5 19 (8) of regulations which I have provided below regarding periodic review of ESA: 10.11 ESA periodic reviews

(7) Where a claimant:

- (a) has been determined to have limited capability for work; or
- (b) is to be treated as having limited capability for work under regulations 20, 25, 26, 29 or 33(2),

the Secretary of State may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.

(8) This paragraph applies where—

(a) the Secretary of State wishes to determine whether there has been a relevant change of circ

- (b) of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of MED-RNEX-NEURO-001(a), some material fact; or
- (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

Version: 3 Final

6 July 2011

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

Yours sincerely,

DWP Business Management Team

e-mail: [freedom-of-information-xxxxxxx@xxx.xxx.xxx.xx](mailto:freedom-of-information-xxxxxxx@xxx.xxx.xxx.xx)

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**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@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk) or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, London 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](http://www.ico.gov.uk)