

DWP Central Freedom of Information Team

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

Our Ref: VTR IR16

7 February 2014

Dear Mr Harris,

I am writing in response to your review request received on 12 January 2014. An internal review has been carried out by someone of a senior grade to the person who dealt with your original request. I am now in a position to respond to you.

In your review request you said that our response was incomplete. I apologise that the information that you were sent was not clear, however I have the following further guidance to provide.

ESA to JSA Transitions

Background

1. The vast majority of claimants who have made a claim for Employment and Support Allowance or Incapacity Benefit are required to undergo a Work Capability Assessment. For Employment and Support Allowance claimants, these are usually undertaken between 6 and 13 weeks into a claim. For claimants who previously claimed Incapacity Benefit, it forms part of the [IB Re-assessment](#).
2. The assessment of a person's ability to undertake any work is undertaken by Health Care Advisor but the overall decision on capability is made by a Decision Maker, who has regard to a number of evidence sources.
3. Claimants who are assessed as capable of some work will have their claims to Employment and Support Allowance or Incapacity Benefit terminated and they will be required to claim Jobseeker's Allowance if they wish to continue to receive benefit.
4. Claimants moving from Employment and Support Allowance or Incapacity Benefit to Jobseeker's Allowance following the result of their Work Capability Assessment, have been assessed as capable of work or some form of work.

Overview

5. The ESA to JSA Transitions process allows for a quick and easy transfer for claimants who are moving directly from income related Employment and Support Allowance (ESA(IR)) to income-based Jobseeker's Allowance (JSA(IB)) by conducting a shorter claim gather on Customer Management System.
6. If an ESA to JSA Transition claim is not applicable, a full information gather is conducted.
7. Claimants who attend the jobcentre to claim Jobseeker's Allowance within a month of an Employment and Support Allowance claim ending and refuse to telephone the contact centre, should be issued with a JSA1.

8. Some of these claimants will have already accepted that they should not remain on Employment and Support Allowance or Incapacity Benefit and many of these may have made the conscious effort to make themselves available for work. Others may still feel that they are unfit to work and therefore, may have submitted an appeal against the decision.
9. The purpose of this guidance is to support advisers conducting New Jobseeker Interviews for claimants who have transferred from Employment and Support Allowance or Incapacity Benefit to Jobseeker's Allowance.
10. It also advises how conducting an effective, diagnostic, work-focused interview helps claimants move forward into work and how to address any negativity or reluctance from claimants.

Sanctions

11. Sanctions that were applied to a previous Employment and Support Allowance claim cannot be transferred to a new claim for Jobseeker's Allowance.

Things to consider

12. It is important to remember that claimants do not 'pass' or 'fail' their Work Capability Assessment. They have been assessed by a medical expert and other evidence of capability is considered by a Decision Maker before being directed to the most suitable benefit. Taking a positive approach will encourage, support and reassure these claimants.
13. For some people attending their first New Jobseeker Interview, work will have been absent from their life for a long time and as such, they may not believe they are capable of work and working.
14. Helping the claimant to focus on what they can do, rather than what they cannot do, is the key to providing this belief and the New Jobseeker Interview can be the start of this process. Helping them to think through their abilities, their capabilities and capacities in relation to work and working in specific jobs, is the approach to be adopted.
15. Not all claimants who have transferred from Employment and Support Allowance or Incapacity Benefit will require this level of support. The New Jobseeker Interview has to be flexible and adaptable to the individual claimant's requirements.

Claimant behaviour

16. The chances are that many claimants will be apprehensive and worried about 'being forced' to find a job. If they haven't worked for a long time, that can be very worrying.
17. Although some may also be angry, it is important for the adviser to stay calm and professional and not get caught up in conversations that deviate from the New Jobseeker Interview.
18. There is no need or requirement to apologise for the outcome of the medical assessment and the decision. It was based on information from a medical expert and there is an appeals process that the claimant should be made aware of if they feel that the assessment is wrong.
19. If the claimant is upset or anxious, they may well have more difficulty than usual in paying attention and retaining information. Time should be taken to explain things carefully and to ensure that they understand and can therefore participate fully in the interview.
20. On rare occasions, a claimant may threaten a 'worsening of their symptoms' or 'you will make me ill again', or similar if 'you' 'make them' claim Jobseeker's Allowance. Again, it should be explained that this decision was made by the Decision Maker, based on evidence supplied by a medical expert.

21. If necessary, the claimant should be advised to contact their doctor or other support professionals. Using the skills learnt from the 'Handling Difficult Situations' is essential.

22. Access to a Disability Employment Adviser or Work Psychologist is also available.

23. Although suitable work and jobsearch activities are diagnosed for claimants with health conditions or disabilities, under no circumstances should an opinion be expressed about whether that health condition means they are capable of work, or not. That decision has already been made by a Decision Maker, based on evidence supplied by a medical expert.

24. If the claimant questions whether they are fit enough to work, it should be explained to them that while claiming Jobseeker's Allowance, they have to be actively seeking and available for work. If they do not feel that they can meet either of these requirements, or cannot agree the types of jobs they will look for and the activities they will undertake to do so, the claim cannot be continued.

Conducting the New Jobseeker Interview

25. If the claimant still has an open Employment and Support Allowance or Incapacity Benefit record on Jobseeker's Allowance Payment System at the start of the interview, arrangements must be made to have this closed before it ends. Otherwise, the transfer of information from Claimant Management System will not be successful.

26. The New Jobseeker Interview should be conducted in the usual way, in terms of the actions that must be taken. However, the claimant must be made aware of the implications of being in receipt of Jobseeker's Allowance and extra emphasis should now be given as to what the claimant is capable of doing, rather than what they are not capable of doing.

27. The focus must be on moving the claimant to become job ready by overcoming any things that would make it harder for them to find work.

28. The discussion should be tailored around finding work. Specifically, to find out if the claimant is capable in each of the five major stages of jobsearch, which are:

- Getting Ready for Working;
- Deciding a Realistic Job Goal(s);
- Finding Vacancies;
- Obtaining the Job Offer; and
- Keeping the Job.

29. The discussion should identify if there are problems in any of the five jobsearch areas and so create the opportunity to offer them advice, support, or training to help them undertake active, effective, and persistent jobseeking across all five areas.

30. All of Jobcentre Plus' provision and support is aimed at some aspect of jobseeking effectiveness. Diagnosing the needs for better jobseeking will help to match provision to those needs.

31. When the claimant attends for their New Jobseeker Interview, arrangements must be made to have their Employment and Support Allowance or Incapacity Benefit claim on Jobseeker's Allowance Payment System closed, if not already done.

32. The [New Jobseeker Interview](#) is conducted as normal, taking account of any [health condition](#) they may have.

Agreeing a Jobseeker's Agreement

33. Account should be taken that some claimants may only have had limited contact with the labour market and the Jobseeker's Agreement should be tailored to meet the claimants needs.

Any health condition they may have should be taken into account but still remain realistic for getting them work ready.

Claimants who have appealed against the outcome of their Work Capability Assessment

34. Where a claimant has lodged an appeal against the outcome of their Work Capability Assessment, their rights to appeal should have been explained to them previously. This should have been initially communicated by a phone call from the Decision Maker and followed up with a letter.

35. If exceptionally, a claimant still maintains they are still uncertain as to their Employment and Support Allowance rights, or wants a further explanation of the Work Capability Assessment decision, arrangements should be made for a Decision Maker to contact the claimant by 'phone, to offer a further explanation of the original decision and advise on any outstanding potential appeal rights, or to consider any new evidence provided. However, in advance of any revised decisions, the claimant should still be retained on the Jobseeker's Allowance claimant journey.

Claimant asks to be referred back to Employment and Support Allowance

36. During an advisory interview, or a Jobsearch Review, the claimant may request to be referred back to Employment and Support Allowance. This should only be considered if the claimant presents a different illness or condition to the one they originally claimed Employment and Support Allowance or Incapacity Benefit for and has appropriate medical evidence to support this.

Ex Employment and Support Allowance or Incapacity Benefit claimant declares they are sick and unable to attend

37. Claimants who previously claimed from Employment and Support Allowance or Incapacity Benefit, who declare that they are sick and are unable to attend the Jobcentre should be treated no different to a normal Jobseeker's Allowance claimant. See the [Labour Market Conditions guide](#) for further details.

If you have any queries about this letter please contact me 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 www.ico.gov.uk