

To Mr J Slater
C/o request-126477-230fcxxx@xxxxxxxxxxxxxxxxxxx

DWP Central Freedom of Information Team

e-mail: freedom-of-information-xxxxxxx@xxx.xxx.xx

Our Ref: VTR 3712-3229

DATE 18 September 2012

Dear Mr Slater,

Thank you for your Freedom of Information request that was received by the Department for Work and Pensions (DWP) Freedom Of Information Requests on 20 August 2012 and immediately forwarded on for response by DWP Medical Services Contracts Correspondence Team (MSCCT) Freedom of Information Officer (Fol).

In your email you asked to be provided with information answering the following questions:-

FOIA Request Regarding Recording / Refusal to Record WCA

1. *Is a change proposal form (CPF) under production by the DWP or Atos?*
2. *If a CPF is being under production, which organisation is producing it and what is the original and current forecast completion date?*
3. *Has the DWP submitted a completed CPF to Atos in relation to WCA being recorded?*
4. *Has Atos submitted a completed CPF to the DWP in relation to WCA being recorded?*
5. *If a CPF has been submitted by either party:*
 - a. *when was it submitted?*
 - b. *when does the DWP expect the a decision to be taken whether to accept the proposed change and issue a Change Control Note to Atos?*
 - c. *Does the DWP intend to extend the 14 day working day limit to respond in the contract in respect of this change?*
6. *Where a claimant requests that their WCA to be recorded and Atos subsequently refuse / claim it is unable to comply with the request; insist that the WCA cannot be delayed further and the claimant insists that the WCA be delayed to allow recording. Under which contractual category will Atos document the assessment (e.g. Claimant turned away unseen).*
7. *In the situation where a claimant attends their WCA and attempts to record the assessment (openly or covertly) and Atos refuse to carry out the assessment or terminate it after it has started. Under which contractual category will Atos document the assessment (e.g. Claimant turned away unseen).*

Given that the contract states that: "The CONTRACTOR shall make reasonable endeavours to examine all Claimants who attend for examination on the day of their scheduled appointment."

8. *On what basis (legal or contractual) is it not reasonable for Atos to allow the WCA to be recorded and as such refuse to carry out or terminate the WCA? In providing data related to this question the DWP should consider:*

- *The claimant is not breaking any law by recording the WCA (covertly or overtly).*
- *The courts (inc Tribunals) are allowed to accept the recording as evidence is they wish.*
- *The data obtained covered by section 36 of the DPA.*
- *The HCP has no expectation of privacy when carrying out a WCA as the information being processed is almost exclusively relating to the claimant.*
- *Recent announcements / answers to parliamentary questions by Government Ministers regarding recording WCA.*

If Atos, DWP or the HCP refuse to allow a WCA to be recorded and this resulted in the loss of benefits by the claimant then why does the DWP believe that it is not acting outside the law? Please provide references to relevant legislation and case law. I ask for this data as surely a government department would not allow decisions to be taken regarding the removal of benefits that were not checked beforehand to ensure it is legally sound?

I believe that Atos have stated publically that their contract with the DWP prevents it from postponing WCA to allow recording. Having looked at the redacted contract issued by the DWP I am unable to find the relevant section.

9. *Please direct me to the section/clause of the contract (this is required by the ICO) that prevents Atos from postponing WCA due to the claimant wishing for a recording.*

If Atos is referring to the impact of postponements on the completion targets built into the contract then it is within the gift of the DWP to allow postponements due to recording to be excluded from the respective metrics.

10. *If this is the case has the DWP considered this option or have any discussions taken place regarding any such changes?*

In response to **Qs 1, 2, 3, 4 & 5** no Change Proposal Form (CPF)s covering the audio recording of Work Capability Assessments (WCA) have been produced by either Atos Healthcare or any part of DWP.

In reply to **Q 6** failure or refusal to attend an appointment for a WCA if it not recorded will result in the case being referred back to the DWP Decision Maker (DM) and a form BF223 being issued to the claimant to complete the reason for non attendance. The DWP DM under the relevant legislation will consider a claimants reason for non attendance and decide if good cause can be considered.

In answer to **Q 7** Atos Healthcare would document assessments that were not completed where a claimant tried to record an assessment that required rescheduling, and would inform DWP of the reason for the abandonment of the WCA.

In response to **Qs 8, 9 & 10** Atos Healthcare is not contractually obligated to record WCAs, and where a WCA is required to be conducted in relation to a decision on benefit entitlement it is not a DWP requirement for the WCA to be recorded. If a claimant states that s/he wishes to record their WCA using their own equipment, for example mobile phone, the HCP will offer to reschedule the WCA for another day when Atos recording equipment is available.

If claimants refuse to cooperate and continue to record the assessment the HCP will terminate the WCA. The WCA will also be terminated if it is discovered that covert recording is taking place. Requests for recording of assessments can only be agreed with the

- prior consent of the HCP:
- approved recording equipment is used.

These criteria have to be in place so as to ensure that stringent safeguards are in place to produce recordings that are complete, accurate and that the facility provides for *simultaneous* duplicate copies to be made available to both the claimant and the HCP. HCPs are entitled to the same rights to privacy as the other individual(s) participating in the recording.

Audio recordings are considered to be 'documents' for the purposes of appeals and Social Security Tribunals (SSAT). Recordings may be admitted as evidence, if considered to be relevant to the point in question. Audio recordings submitted to SSATs as evidence will require transcription. Arrangement for transcription services and any associated costs usually fall to the party presenting the evidence, i.e. if a claimant is requesting that the recording being admitted, then this becomes their responsibility, therefore arrangement for and costs of transcription are likely to fall to the claimant. However, Social Security Appeals Tribunal Chairs may, at their discretion, attribute transcription costs to either party i.e. the claimant or DWP.

DWP's policy regarding the recording of WCAs has not changed: Atos Healthcare continue to make reasonable endeavours to accommodate requests from claimants for the recording of their WCA. DWP believe it would be unreasonable to delay the assessment indefinitely for this purpose. Therefore, due to the requirement to make a decision on benefit entitlement some claimants may be asked to attend an unrecorded WCA in order that their claim may be dealt with in a timely manner.

Individuals are within their rights to use any record of their personal business with DWP for domestic purposes, that is their personal, family, or household affairs. However, publishing the recordings e.g. on the internet, or in any other way, is going beyond domestic purposes. If individuals intend to make use of recorded information beyond domestic purposes they are required to notify the Information Commissioner of their intended actions. The Information Commissioner may take enforcement action to ensure that any intended actions comply with the Data Protection Act. It is important to note that publishing personal information without appropriate clearance may constitute a criminal offence.

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@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.

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