Freedom of Information request 1976/2013

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Information request

In its response VTR 1861 dated 25 April 2013 the DWP confirmed that it is aware that:

- Civil Servants must comply with statute and the rule of law.
- Ministers / Secretaries of State must comply with
- Statute.
- The Rule of Law.
- Exercising their powers fairly and reasonable.

Given that, by their very nature, these are proactive obligations (i.e. Civil Servants and Ministers cannot carry on blindly and wait to be told they are in breach of their legal obligations) what steps does the DWP take to confirm that the creation and execution of departmental policy (i.e. those actions that have no statutory backing but rely upon the Secretary of State's common law rights) comply with the legal obligations cited above?

It is worth remembering that ignorance of the law is rarely accepted as a defence, especially within organisations such as the DWP, so an answer stating that no such action is ever undertaken would be worrying and provide compelling evidence in a judicial review of any such departmental policy.

DWP response

First, as it is unclear what the context is for your reference to departmental policy, then I have assumed that you are thinking here about those polices which affect the department's users, that is, those who claim and receive benefit and pensions. In which case these will in the main be based on statute law. Through guidance to staff, training and with advice from its legal services ignorance in this area is eliminated – with Ministers advised accordingly. Of course, it doesn't mean that errors are not made in the application and interpretation of the law, but that is not through ignorance or lack of available advice. If the common law does come into play, which happens infrequently, then legal advice would be sought and given as appropriate. As is clearly explained in the codes of conduct previously sent to you those who work in the department are more than aware of their obligations and responsibilities. They are also aware of the criticisms which would rightly come their way,

possibly via Judicial Review, if they behaved in the manner implied in your request.