

Freedom of Information request 175/2013

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Information request

With regards to your reply in my FOI 4915 you state. ..."If a complaint (of Procedural irregularities or failures of DWP to carry out its statutory obligations) is made to the Independent Case Examiner (ICE), Parliamentary Health Service Ombudsman (PHSO) or Information Commissioner's Office (ICO), any live claim will continue to be administered in the usual fashion"...

Section 6(1) of the Human Rights Act 1998 provides that it is unlawful for a public authority to act incompatibly with a convention right. By section 6(3)(b), a 'public authority' includes 'any person certain of whose functions are functions of a public nature' Section 6(1) of the Human Rights Act 1998 provides that it is unlawful for a public authority to act incompatibly with a convention right. By section 6(3)(b), a 'public authority' includes 'any person certain of whose functions are functions of a public nature'

By virtue of this and other legislation/case law, Atos is a public authority and must adhere to the requirements of the Human Rights Act, the Equality Act, and the Data Protection Act.

If the DWP who themselves are a public authority and who are charged with these duties are notified of such breaches, then as the supervisory body they would be further responsible for immediately preventing its continuation. Thus to continue to administer a claim "in the usual fashion" whilst being aware of ongoing and preventative breaches of the various Acts outlined above would condone, aid and abet the unlawful acts. The duty imposed is non-delegable and the DWP remain ultimately responsible for any failures by the third party.

1. As the complaints procedures would not provide an adequate remedy to prevent the ongoing and continuing unlawful act, (especially if the remedy required is urgent this could be too late), then in such circumstances what is the DWP guidance and/or policy?
2. If no standard guidance or policy is available then please could you provide any memos or internal communication sufficient to identify what actions are required to be taken.
3. What immediate remedies are available to the claimant to prevent ongoing unlawful acts or breaches of the above legislation by third parties?

4. Would the claim still be continued “in the usual fashion” even if this could not proceed without involving a potentially harmful and/or irreversible breach?

DWP response

The basis for these questions appears to be your belief that Atos constantly breaches the Human Rights Act, the Equality Act, and the Data Protection Act when making assessments in relation to benefit claimants. If that is your view then we do not accept it. Accordingly, and as explained in our previous reply, our policy is to use the Atos report provided in response to a claim or application as one part of the evidence used by the Secretary of State in making his decision on the claim or application. Also as previously explained, if a claimant believes that Atos has misrepresented his condition and thereby provided a report which is inadequate then that would be a basis for disputing the outcome decision.

There may be occasions where a claimant has left an examination and believes that he has not been given the opportunity to fully explain himself – possibly due to what may be considered a procedural irregularity. Consequently he assumes the worst i.e. that the report will be a negative one and the subsequent decision adverse. However, a decision maker must first consider the report, which he himself can challenge, and any other evidence provided by the claimant which may have been considered by the medical examiner or be new evidence, before making the final decision –see the links below from the Decision Makers’ Guide, Chapters 1 and 4; these explain the general principles of decision making, including at para 01540 et seq the Role of Medical Services and at para 42111 et seq, how a limited capability for work assessment is undertaken. And, of course, and as explained above the right of appeal is available once the decision has been made. So no claimant is left without redress.

If an allegation of procedural irregularity was put before the decision maker before he had made his decision, he would consider it. This of course is done on a case by case basis. As for more general complaints in relation to your concerns these are dealt with as explained previously.

In both FOI requests, you have not provided any specific, detailed examples either to this department or the Independent Case Examiner – something in particular the latter expects to see. As we have done we can respond to generalities but this limits what we can say and can appear unhelpful when that, of course, is not the intention.

<http://www.dwp.gov.uk/docs/dmgch01.pdf>
<http://www.dwp.gov.uk/docs/dmgch42.pdf>