

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2013

Public Authority: Department of Work and Pensions ("DWP")
Address: Caxton House
6-12 Tothill Street
London
SW1P 3GE

Decision (including any steps)

1. The complainant has requested information from the DWP concerning the responsibilities of a recipient of job seekers allowance in relation to Job Centre Plus, the obligations of the DWP in relation to Job Centre Plus programmes of work and specific questions relating to the Pontypool Jobcentre Plus Office. The DWP provided information to the complainant. The complainant was not satisfied with the responses to the majority of his requests as he believed he had not been provided with satisfactory answers to his questions. Further he believed that the DWP had not complied with certain procedural requirements of the FOIA.
2. The Commissioner's decision is that the DWP has failed to provide a full response to the request within the statutory time frame of 20 working days. He upholds the complaint in part but requires no further action to be taken as a detailed response has been provided to the complainant.

Request and response

3. On 22 June 2012 the complainant wrote to the DWP and requested information. The wording of this request can be found in Appendix A. The complainant also raised issues in relation to data protection matters which have been considered separately by the Commissioner.

4. On 5 July 2012 the DWP provided a response to the request. In addition Pontypool Jobcentre Plus Office also sent a letter to the complainant acknowledging his request and advising that it would be answering that part of his request that related to local matters by 18 July 2013. It should be noted that the complainant disputes that this letter was sent to him on the date indicated and advises that it was provided at a later date.
5. On 10 July 2012 the complainant sent a further letter to the DWP asking for a response to his request.
6. On 13 July 2012 the Pontypool Jobcentre Plus provided a response to the request.
7. On 19 July 2012 the complainant advised that he was not happy with the responses he had received from the local office and requested an internal review. In addition he asked further questions by way of clarification to the responses he had received from the DWP in relation to his request. This was treated as a new request by the DWP and the wording of this request can be found in Appendix B.
8. On 9 August the DWP provided a response to the request for an internal review. It provided additional information that it had not provided previously in relation to the request dated 22 June 2012. It also advised the complainant that it was treating the additional questions submitted on 19 July 2012 as a new request.
9. On 10 August 2012 the complainant received a response to his request dated 19 July 2012.

Scope of the case

10. The complainant wrote to the Information Commissioner on 26 September 2012 stating he was not satisfied with the responses that he had received to his requests for information. He advised that he was not satisfied with the quality of some of the responses received, the language used which he felt was misleading, the lack of acknowledgement by the DWP of his original request and the fact that the DWP had failed to provide the requested information within the timescales permitted.
11. As part of the investigative process in dealing with this complaint the Commissioner has attempted to clarify with the complainant what information he considers to be still outstanding in relation to the requests dated 22 June 2012 and 19 July 2012. However, it has not been possible to establish this. Therefore the Commissioner will limit

the scope of this matter to whether the DWP has met its obligations under the FOIA and matters raised by the complainant as noted above.

Reasons for decision

12. Section 1(1) of FOIA requires a public authority in receipt of a request for information to confirm whether it holds the requested information, and, if so, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
13. The Commissioner has considered whether the DWP responded to the requests of 22 June 2012 and 19 July 2012 in line with the provisions of the FOIA.

Request dated 22 June 2012

14. From the information provided to the Commissioner by both the complainant and the DWP it would appear that requested information which is held has been provided.
15. However, the Commissioner notes that initially only a partial response was provided by the DWP in its letter of 5 July 2012. In this letter points 1-9 and 18-22 inclusive were dealt with. Responses to points 10 – 17 and 23 and 24 were not provided in full until 9 August 2012 in the response by the DWP to the request by the complainant for an internal review.
16. Attempts were made by the Pontypool Jobcentre Plus office to deal with the queries raised in the initial letter (points 10 – 17 and 23 and 24) but the response provided on 13 July 2012 did not deal with all parts of the request that were outstanding and had not been answered previously.
17. This was acknowledged by the DWP in its internal review response where it apologises for the omission and provides the requested information.
18. Therefore, the Commissioner finds that, in respect of the request dated 22 June 2012, the DWP did not fully respond to the complainant within the statutory time frame and so it is in breach of section 10(1) of the FOIA.

Request dated 19 July 2012

19. Having considered the information provided the Commissioner is satisfied that the requested information which is held has been

provided and that this information was provided within the statutory time limit of 20 working days.

Matters pertaining to both requests

20. The complainant has advised the Commissioner that he is not satisfied with the quality of some of the responses received; the language used which he felt was misleading; and the lack of acknowledgement by the DWP of his original request.
21. In considering the obligations of the DWP under the FOIA the Commissioner is mindful that the FOIA is concerned with the provision of recorded information which is held by a public authority. It is not concerned with the accuracy or quality of the information which is held.
22. In this instance both requests were answered in full, a fact acknowledged by the complainant in later correspondence where he states his main concern is the quality and timeliness of the responses he has received.
23. In relation to the alleged lack of acknowledgement by the DWP of the original request dated 22 June 2012, the FOIA only provides a time limit requirement for the response to the request itself not the initial acknowledgement to the request by the public authority. The DWP has also advised that this acknowledgment was sent in the post and later provided to the complainant when it became aware that the original letter had not been received.
24. As noted above, from the information provided to the Commissioner in this case it is evident that the DWP did not respond fully to the complainant within the statutory time frame in respect of the request dated 22 June 2012 and so it is in breach of section 10(1) of the FOIA in respect of this request. The Commissioner requires no further action to be taken as he is satisfied that the information held has been provided to the complainant.

Right of appeal

11. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

12. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
13. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix A

Request of 22 June 2012:

"Under the terms of the Freedom of Information Act – Freedom of Information Request, I request the following information;

- 1. Please detail what Jobcentre Plus appointments and what kind of Jobcentre Plus related appointments a JSA claimant is obligated to attend whilst in receipt of Jobseekers Allowance?*
- 2. Please detail what Jobcentre Plus appointments and what kind of Jobcentre Plus related appointments a JSA claimant is obligated to attend whilst NOT in receipt of Jobseekers Allowance, if any? If a JSA claimant is obligated to attend any jobcentre related appointments please state why and give specific examples, and include any guidance?*
- 3. If you are not obligated to attend any jobcentre related appointments (for Q2) please state why?*
- 4. Please detail if there is any obligation to attend an introductory appointment to an "employment programme" e.g. the Work Programme if in receipt of Jobseeker's Allowance.*
- 5. If so (re Q4) detail which parts, areas, activities of it are voluntary and which are mandatory?*
- 6. Please detail if there is any obligation to attend an introductory appointment to an "employment programme" e.g. the Work Programme if NOT in receipt of Jobseekers Allowance?*
- 7. Please detail whose responsibility it is to cancel any future Jobcentre or Jobcentre related appointments if a JSA claimant signs off?*
- 8. Relating to the Jobcentre Plus Work Programme documents;*
 - a. Is there any obligation to sign the data protection waiver for the provider?*
 - b. Which Work Programme provider documents are mandatory to sign and which are not?*
- 9. If the Work Programme provider or a related work/work experience activity or placement company do NOT have or can NOT provide an up to date and current health and Safety Certificate, is the JSA claimant obligated to attend?*

10. *Who is the line manager of yourself, [Name and Employee position redacted] of Pontypool Jobcentre Plus?*
11. *When is your next performance review and who will be conducting it?*
12. *How many complaints has Pontypool Jobcentre Plus received? Please provide a break down of the last five years, including verbal, written and formal complaints etc?*
13. *If (re Q12) there is no record of verbal complaints, why is this?*
14. *How many complaints have been made against or concerning you, [Name and Employee position redacted] of Pontypool Jobcentre Plus?*
15. *How many sanctions has Pontypool jobcentre Plus attempted against its claimants and customers? Please provide a break down of the last five years, including successful, unsuccessful and those won or lost on appeal.*
16. *Is it acceptable for a Jobcentre Plus manager to make a threat or veiled threat to a JSA claimant? Or to threaten their financial position?*
17. *In making a threat or veiled threat to a JSA claimant which part of the DWP/JobcentrePlus employment contract/agreement is this in breach of and what likely disciplinary action would be recommended/required in such a case?*
18. *If there is a pre-existing complaint and/or ongoing complaint regarding provision e.g. with DWP/JobcentrePlus Flexible New Deal or The Work programme, is the JSA claimant complainant obligated to take part in another provision (e.g. Work programme) if it will potentially or possibly affect/thwart/scupper complaint resolution and/or act against the claimants complaint resolution interests?*
19. *If there is a pre-existing complaint and/or ongoing complaint regarding provision e.g. with DWP/JobcentrePlus Flexible New Deal or The Work programme, are JobcentrePlus allowed to take actions that will or may affect the outcome and/or resolution of the complaint?*
20. *What actions (re Q19) can they take and what action can they not take?*
21. *Which guidance prevents a Jobcentre employee or manager from interfering and/or trying to derail an ongoing or previous complaint?*
22. *Are Jobcentre Plus allowed to refer a JSA claimant to the Work Programme if a pre existing provision arrangement is still outstanding and yet to be delivered, one which the JSA claimant has previously agreed to and awaiting delivery of?*

23. *If a JobcentrePlus manager is fully aware that a pre existing complaint by a JSA claimant is ongoing and/or outstanding but attempts to alter its outcome and/or resolution e.g. by referral to the Work Programme, what is the procedure to report and prevent this from happening? And what typical disciplinary action would be taken against the manager in this case?*
24. *If a Jobcentre manager or an employee or manager in the data controller department or any employee or manager responsible for replying to Subject Access requests and/or Freedom of Information requests were aware that another employee or manager was responsible for making, organising or taking part in a threatening, malicious and abusive phone call to a JSA claimant, (which would constitute an offence Under s43 of the Telecommunications Act 1984 and Section 92 of the Criminal Justice and Public Order Act 1994) and using and accessing their private details for that purpose, what would the process and consequences of such actions be for that employee or manager? (NB I wish to report such an incident)."*

Appendix B

Request of 19 July 2012:

*"For **Question 7**, I accept there is no obligation to attend any meeting if a claimant has signed off however*

- 1. Can you confirm for what purpose or reason any meeting would be kept open, and why?*

Question 8-

- 1. Please supply the DWP guidance, which stipulates that there is no obligation to sign any work provider documents.*
- 2. Also please confirm that by not signing any of these documents a JSA claimant can be or cannot be sanctioned; please provide the relevant DWP guidance.*

Question 9, thank you for explaining some of the H&S background, however if I may make the question more clear,

- 1. Can a JSA claimant referred to the work programme request to see a current health & safety certificate? Yes or no and does it have to be produced?*
- 2. If one is not produced does that claimant have the right not to attend that place therefore?*
- 3. Can a claimant be sanctioned for not attendance if a current health and safety certificate cannot be produced for that work programme provider or work related activity?*
- 4. Can a claimant be sanctioned for not attendance if a current health and safety certificate cannot be produced for that work programme provider or work related activity but is later produced (I.E. they have one but choose not to show it to the attendee, thus a word against theirs situation)?*

Question 18, Not happy with response to 18 and 19 the civil service code would seem to contradict that I assume. If I rephrase the question;

- 1. What DWP"specific" guidance (please provide relevant paragraphs) would acknowledge that if a previous complaint (I.E. re provision) were still ongoing and unresolved (even if now outside of DWP) can the jobcentre, knowing that, still dictate or not, another provision, form of provision and/or lesser provision?*

Question 19, you refer to the "Civil service code" as a highlight link (on paper), can you supply this information or a proper link to it. You also refer to guidance "in the following "what is this referring to pls?

I accept this as a partial answer but I would like to expand,

1. *How does Q 19 and your answer relate to a complaint that is now taken further outside of DWP?*
2. *You state the "code" would prevent any compromising of a complaint by the jobcentre, how exactly?*
3. *And if compromise were taking place (as it currently is) how could this be prevented (given the abject and complete failure of any "alleged" complaint "process"?)*

Question 20, can you please expand if this also relates to a complaint taken further outside of the DWP/Jobcentreplus?

Question 21, also refer to the "code" which is not supplied. If I might expand on this question;

1. *If a jobcentre manager or employee were interfering in complaint resolution (now external) by trying to make a claimant go on the work programme when a decision re pending already agree bespoke provision is due would that be a breach of the civil service code?*
2. *If so how could that be stopped given the already failed complaint "process"?*

Question 22, This answer I find contradictory and confused. Whilst answers already given (with the example given) seem to indicate a breach of the civil service code here you say it is "discretionary". Discretionary re work programme referral but then with a maximum deferral is 90days! How can it be therefore that a pending decision from say the Ind-Case Examiner or the Ombudsman can be investigated and a decision made during this time.

1. *Should not the deferral in this case be until a result is delivered?*
2. *If not what does the 90 days pertain to?*
3. *What is the specific justification for the 90day period?*
4. *How does deferral of a decision take into account complaints taken to ICE or the Ombudsman?*
5. *If not why not? And would this not be a breach of the CS Code?*
6. *Please clarify therefore specifically as possible what would and would not constitute a breach of the code when a complaint is still ongoing and is with an external and more senior part of the complaint process?"*