

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2024

Public Authority: Department for Work and Pensions
Address: Caxton House
Tothill Street
London
SW1A 9NA

Decision (including any steps ordered)

1. The complainant has requested information about how the Department for Work and Pensions ("DWP") obtains and validates consent from Universal Credit claimants to issue a UC113 form to their GP. The DWP provided the complainant with some information within scope of their request for information on obtaining consent, however stated that information within scope of the remainder of their request for information on validating consent was not held.
2. The Commissioner's decision is that the DWP does not hold information within scope of the remainder of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 15 August 2023, the complainant wrote to the DWP and requested information in the following terms:
5. "Dear Department for Work and Pensions,

The DWP (via the CHDA [Centre for Health and Disability Assessments]) asks GPs to complete a UC113 form in relation to Universal Credit Work Capability Assessments. The letter asking a GP

to complete a UC113 form states that "your patient has given consent to allow us to approach you for this information".

Please provide any policy, guidance, or other documents you may hold which describe the procedures which the DWP (and the CHDA) follows in order to obtain and validate consent from claimants for UC113 forms."

6. The DWP responded on 30 August 2023. It stated that it held information within scope of the request however it was exempt under section 21(1) of FOIA as the information is reasonably accessible in the public domain. The DWP stated that:

"You have asked about the policy, guidance or other documents that allow DWP and CHDA to send the UC113 form to a claimant's GP. Consent for the issue of the UC113 form is given by the claimant during the Universal Credit (UC) claim process when completing the UC50 form.

On page 18 you will find details of the checkbox asking for consent to contact your doctor or other relevant professionals to obtain more information about your health condition."

7. The DWP provided the complainant with some information about how to submit a subject access request, but stated that it did not hold any further recorded information within scope of the request.
8. The complainant wrote to the DWP on 1 September 2023 to request an internal review in the following terms:

"My request stated "Please provide any policy, guidance, or other documents you may hold which describe the procedures which the DWP (and the CHDA) follows in order to obtain and validate consent from claimants for UC113 forms.

Guidance for GPs completing the UC113 form is available at <https://www.gov.uk/government/publications/dwp-factual-medical-reports-guidance-for-healthcare-professionals/dwp-medical-factual-reports-a-guide-to-completion>¹. Footnote 1 for that guidance states "Consent may be provided either in writing, electronically or verbally. DWP has procedures in place to ensure that consent is valid."

Clearly there are multiple methods for obtaining consent (your response

¹ <https://www.gov.uk/government/publications/dwp-factual-medical-reports-guidance-for-healthcare-professionals/dwp-medical-factual-reports-a-guide-to-completion>

only relates to one such method), and the procedures for validating consent are described separately from those for obtaining consent (while your response makes no reference to validating consent).

Your response does not provide any policy, guidance, or other documents you may hold which describe the procedures which the DWP (and the CHDA) follows in order to obtain consent in cases where the UC50 form is not returned.

Your response also does not provide any policy, guidance, or other documents you may hold which describe the methods that are used to "ensure that consent is valid"

9. Following an internal review the DWP wrote to the complainant on 15 September 2023. It stated that it was maintaining its original position, and provided the complainant with further information about where consent is requested in the Universal Credit Capability for Work Questionnaire UC50 form. The DWP also provided some narrative information about the processes triggered when the UC50 form is not returned by claimants, the Mental Health Flag and how this intersects with methods for obtaining consent, and about how it processes personal data.
10. On 15 September 2023 the complainant wrote to the DWP, querying its responses and reiterating their request for policy documents. DWP handled their correspondence as a second request for information. The complainant stated that the DWP had acknowledged that procedures existed for obtaining consent from claimants without returning the UC50 form but had not provided any policy or guidance in relation to these procedures, as per their request:

"What is the process for obtaining consent to contact a GP for more information where a claimant does not return a UC50?"

For the purposes of that question, you may presume that the mental health flag is ticked (that is to say that the WCA will be continuing without a UC50).

This is clearly within the scope of my original request, yet neither your original response nor your internal review address that matter in any way."

11. The DWP responded on 28 September 2023. In its response, the DWP explained that FOIA does not confer on public authorities an obligation to provide answers to questions and provided some narrative information about obtaining consent in the given context and how DWP processes personal data, outside of its responsibilities under FOIA.

12. The DWP also explained the following with reference to the Mental Health Flag:

"Information was included in our previous response on the process DWP will follow where the claimant has not returned a UC50.

As explained, if the Mental Health Flag is set, the claimant will continue on the Work Capability Assessment journey even if they have not returned a completed questionnaire. In these circumstances, the Centre for Health and Disability Assessment (CHDA) may contact the claimant directly for further medical evidence or approach the claimant's doctor or healthcare professional if the claimant has provided consent."

13. On 28 September 2023 the complainant wrote to the DWP to request an internal review. The complainant argued that the DWP's response was contradictory, as it suggests that other methods for obtaining consent are available. The complainant reiterated their request for policy documents describing how consent may be obtained in such circumstances.

14. The DWP provided an internal review in respect of the second information request on 11 October 2023 in the following terms:

"At no point have we suggested that the UC50 form is the only way a claimant can provide consent. It may help if I explain the different ways a claimant can provide consent for DWP or CHDA to contact their doctor or medical practitioner:

- When declaring a health condition, either at initial data gather for a new claim or as a change of circumstance, the claimant is asked if they give consent;
- When completing the referral for a Work Capability Assessment, the agent is prompted to obtain consent from the claimant prior to making the referral, unless consent has already been provided;
- The UC50 form includes a checkbox asking for consent;
- CHDA may contact the claimant directly for further medical evidence or approach the claimant's doctor or medical practitioner if the claimant has provided consent."

15. On 11 October 2023 the complainant wrote to DWP expressing their dissatisfaction. The complainant stated that the DWP had not provided any information within scope of their request for copies of policy and guidance documents detailing the procedures for validating consent.

Scope of the case

16. The complainant contacted the Commissioner on 23 November 2023 to complain about the way their request for information had been handled.
17. The Commissioner wrote to the complainant to clarify their grounds of complaint. The Commissioner asked the complainant if they were satisfied with the material contents of the responses provided to their request for information about procedures followed by DWP in order to obtain consent from claimants to send UC113 forms to GPs, and to detail what kind of information they expected DWP to hold within scope of their request for information about validating consent from claimants.
18. In their response, the complainant stated that they were satisfied with the information provided within scope of their request for information about obtaining consent, however they requested that the DWP "acknowledge that that it mishandled this part of my request and apologises". The Commissioner will discuss this further in the Other Matters section. The complainant detailed their grounds of complaint as follows:

"The DWP issues guidance to medical professionals in relation to their completion of medical reports, including the UC113 form in question (the guidance is available [here](#)). This guidance states "DWP has procedures in place to ensure that consent is valid" (see footnote 1 for the quote and section 3.2.1 for related information). Clearly these procedures must be documented somewhere, yet the DWP has failed to make information about these procedures available to me. The documents outlining those procedures are the documents which I was most interested in when I made the request.

There does not currently appear to be ANY information directly available to the public about what is done by the DWP to validate consent (the information does not even appear to be made available through non-public channels to medical organisations who receive UC113 requests). Based on the claims it makes in the guidance linked above, I believe it is reasonable to assert that the DWP holds policy documents outlining the validation procedures. It is also likely to hold staff training materials, and there is potentially other information that I am unable to predict the existence of. I would be happy to accept a subset of the relevant information held by the DWP as long as it provides enough information so that I can understand how it actually validates consent for the UC113."

19. The Commissioner therefore considers that the scope of his investigation is to determine whether, on the civil standard of the balance of

probabilities, the DWP holds information within scope of the complainant's request of 15 August 2023 for policy, guidance, or other documents it may hold which describe the procedures which the DWP (and the CHDA) follows in order to validate consent from claimants to issue UC113 forms to GPs.

Reasons for decision

20. Section 1(1) of FOIA provides that a person requesting information from a public authority is entitled to be informed whether the authority holds that information and, if so, to have that information communicated to them.

The DWP'S position

21. The Commissioner wrote to the DWP to query the searches it had undertaken when responding to the complainant's request. The DWP explained that it had "originally interpreted the complainant's request as seeking information about consent, which is the checkbox on the UC50 form, therefore searches were conducted and a link provided to a copy of the UC50 form available on the internet". Further narrative information about other methods of obtaining consent was provided in later internal reviews and therefore the DWP concluded that it had satisfied the complainant's request.
22. Following receipt of the grounds of complaint, as outlined at paragraph 15 above, the DWP conducted additional searches of its intranet and Google for any information relating to the validation of consent. While these searches returned documents referring to consent in general terms, none of the documents contained information on validating consent for sending a UC113 form to a GP.
23. The DWP also conducted an internal investigation with the relevant guidance and policy teams within the authority and the assessment provider (CHDA) to ascertain if there is any formal guidance for validating consent that is not published, however it was unable to locate any specific document detailing a process or procedure for validating consent for the DWP to send the UC113 form to a GP.
24. The DWP provided the Commissioner with screenshots of the intranet/internet searches and copies of the internal consultation email chains.
25. The DWP confirmed that the requested information, were it held, would be in an electronic format on either SharePoint, the DWP intranet or the gov.uk website, as the DWP does not retain manual records of policies

or procedures. It also stated that:

“DWP retains all its recorded information in line with GDPR data retention policies. Documents are held in areas on SharePoint for each individual team and data retention labels are set in line with the relevant data retention period.

At the end of the retention period the documents are automatically deleted by SharePoint and no manual record is kept.

Due to this it is not possible to ascertain whether previous versions were held...

For DWP’s internal intranet, documents related to original policy/guidance are kept in a Registered File for one year, otherwise they are not retained.”

The Commissioner’s position

26. The Commissioner’s position is that, on the civil standard of the balance of probabilities, the DWP does not hold information within scope of the complainant’s request for policy, guidance or other documents that describe the procedures followed for validating consent from claimants for the DWP to issue a UC113 form to GPs.
27. The Commissioner has reviewed the searches and internal consultations conducted by the DWP and considers these measures to be reasonable and appropriate for the purposes of identifying information within scope of the request. He takes the position that these searches would have returned any information sought by the request, were it held.
28. He notes that, within one of the internal DWP emails, reference is made to sections of the Work Capability Assessment handbook² published by the CHDA in which valid consent is mentioned at numerous points, however he cannot locate within the handbook any policy or guidance that explains the process for validation.
29. Per paragraph 3 above, the Commissioner does not require any steps.

² <https://assets.publishing.service.gov.uk/media/653108e60b5392000da929a0/wca-handbook.pdf>

Other matters

30. The complainant has expressed general dissatisfaction with the DWP's handling of their request for policy, guidance or other documents about obtaining consent from claimants and has asked that the DWP apologise for this. The complainant states that the DWP's has provided contradictory information, as it had insinuated that the only method of obtaining consent to issue the UC113 form was via a checkbox on the UC50 form, however their later responses to the complainant's requests detailed alternative methods for collecting consent.
31. The Commissioner recognises that the DWP does not appear to have considered the full scope of the complainant's request from the outset and this has, unfortunately, led to information being provided piecemeal over a number of weeks. He would remind the DWP to ensure that it undertakes a clear and objective reading of requests in future.
32. That being said, the Commissioner does not have any statutory power to require the DWP to provide the complainant with an apology, nor does he consider that it would be appropriate for him to make such a suggestion in this case. If the complainant wishes to make a customer services complaint the Commissioner suggests that they raise it via the appropriate channels at the DWP.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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