

Date:

Dear Sir or Madam,

Name:

National insurance number:

Re: having my assessment recorded

I wish to have my work capability face-to-face assessment recorded and I understand that this will be done by Atos using dual recording facilities and at no cost to me, as has repeatedly been stated by the minister of state for employment, Chris Grayling. If recording facilities are not available on the date of my assessment, I wish to have it postponed until they are.

Right to a recording

In a debate on the work capability assessment on 1 February 2012, Grayling told MPs that:

“On audio recording, we will offer everyone who wants it the opportunity to have their session recorded.”
(Hansard citation: HC Deb, 1 February 2012, c291WH)
<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120201/halltext/120201h0001.htm#12020157000270>

On 17 July 2012, in reply to a written question by Frank Field MP, Grayling stated that:

“As part of this process we are also reviewing Atos capacity to provide recordings for those claimants who currently request one. Additional machines have been ordered. However a large scale purchase of machines in the absence of an evaluation of the process is not effective use of public money. Although there have been increases in requests these still represent only a small percentage of overall work capability assessments.

“In the meantime, while Atos will do all that they can to accommodate requests for audio recording there may be times when the service cannot be offered, for example where it has not be possible to get access to recording equipment on the date/time of the WCA. In these circumstances clients will be told in advance that their request cannot be accommodated and offered a later date.”

(Hansard citation: HC Deb, 17 July 2012, c783W)

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120717/text/120717w0007.htm#12071870026688>

If recording facilities are not available

If recording facilities are not available on the date of my face-to-face assessment, I wish, to be offered a later date rather than be obliged to attend an assessment which is not recorded, as the minister has said is my right.

I understand, however, that on a number of recent occasions Atos staff have claimed that following revised instructions from the DWP they will no longer cancel appointments if it transpires that recording equipment is not available, in spite of a proper request having been made.

Complaint to my MP

I wish to make it clear that, should you seek to oblige me to attend an assessment without recording facilities I will immediately make a formal complaint to my MP and ask them to urgently ask the minister whether the statement he made to MPs on 12 July was truthful and, if so, why it is not being followed by the DWP and Atos.

Right to written details of conditions

If you seek to oblige me to attend a face-to-face assessment at which recording facilities are not available I wish to be provided with copies of any instructions or guidance issued by the DWP to Atos as to when they are permitted to decline to meet a request for an assessment to be recorded.

In Upper Tribunal Case No. CIB/3117/2008, which concerned a claimant who refused to attend a medical unless he was permitted to record it, the upper tribunal judge held that:

“It has not been established that the appellant failed to show ‘good cause’ for failing to submit himself for a medical examination on 22 October 2007.”

The tribunal judge went on to instruct that:

“The Secretary of State shall ask Medical Services to arrange for the appellant to be provided with details, in writing, of the conditions under which an interview or examination may be tape-recorded;

“The Secretary of State shall ask Medical Services to offer the appellant a further appointment for a medical examination.”

Should these written details not be provided to me I will seek legal advice as to whether I may have good cause to refuse to attend a medical. I shall also seek advice on whether I have grounds to seek compensation should I suffer financial hardship or emotional distress as a result of failure by the DWP or Atos to follow their own proper procedures, legal rulings or ministerial undertakings.

Reasonable adjustments

In some instances, such as where a claimant has difficulties with concentration caused by physical pain, fatigue or a mental health condition, it may be a reasonable adjustment under the Equality Act 2010 for the claimant to have the assessment recorded because they will be unable to take notes or properly recall what was said at the assessment.

Should you refuse to allow me to have my medical recorded I will seek legal advice as to whether I can take action against Atos or the DWP for breach of the Equality Act. As a preliminary to that action I shall seek evidence of whether reasonable adjustments were considered in my case, such as inviting me to use my own recording device or postponing the assessment until a departmental device was available.

Appeal hearing

Should I be unhappy with the decision in relation to my capacity for work I will appeal the decision and ask the tribunal to make a finding as to whether the failure of the DWP and Atos to follow their own guidelines in relation to recording medicals should be taken into account when assessing the reliability of the Atos medical report.

This letter is sent without prejudice as to any other legal remedies I may seek if I am refused the opportunity to have my assessment recorded.

Yours faithfully,