

Complaining¹

It is important that claimants draw attention to failings in the process and to processes where they have not been offered or provided with reasonable adjustments, in order to improve the process for others.

Where the failing is around reasonable adjustments, it is important that claimants not only complain but draw attention to the fact that this is discrimination under the Equality Act 2010. Discrimination might be in processes, decision making and in eligibility rules themselves.

If a client believes

- they have been treated unfairly and
- that unfair treatment is linked to disability, and
- the unfair treatment is of a type made unlawful by the Equality Act,

They should cite the Equality Act 2010 in their complaint.

There are six types of disability discrimination:

- direct discrimination: discrimination because of a disabled person's disability
- indirect discrimination: discrimination arising from the imposition of a policy or rule provision, criterion or practice
- harassment
- victimisation
- discrimination arising in consequence of a disability
- failure to comply with a duty to make reasonable adjustments

A client may achieve one or more of the following by making a complaint:

- an apology for what happened
- an explanation of how the problem occurred
- an assurance that the problem will be put right, if this is still possible
- a change in procedure
- in certain circumstances, financial compensation.

In addition to these outcomes for the individual client, the adviser may want to consider social policy issues. Assisting a client, or series of clients, to make a complaint about similar problems can improve the treatment of claimants generally.

Regular liaison between advice agencies and the offices which administer social security can improve service for clients and claimants generally. This can help secure improvements and/or alert offices to problems which need to be addressed, resulting in, for example:

¹ This resource draws heavily on a previous guide to complaining developed by Paul Farnsworth at Derbyshire Districts CAB. It is reprinted with permission and we'd like to thank Paul for allowing us to use his work.

- a change in the guidance issued to offices
- a change in procedures
- improved waiting times for benefit claims to be processed
- improved efforts to provide a service which meets the needs of all sections of the community
- offices checking other cases to put right similar problems.

Public sector agencies have to record formal complaints **made about them and account publicly for their performance.**

How to complain

If your client feels that any part of the process of claiming ESA was badly managed or discriminatory, including the opportunity to request or the provision of reasonable adjustments, you can support them to complain.

Making a complaint will not jeopardise an on-going claim – there is no link between the complaints procedure and the decision making process.

They can **contact the Jobcentre Plus** office they've been dealing with if they are unhappy with the service they've received - their details will be at the top of any letters from Jobcentre Plus.

- The client will need to explain what has happened, how this has affected them and what they want to happen to put things right.
- Jobcentre Plus will try to resolve the issue over the phone or deal with the complaint within 15 working days.
- The client will be asked if they want their **complaint sent to the Director General of Operations for the Department for Work and Pensions.** They aim to deal with complaints within 15 working days.

If they are still unhappy, they can then ask the **Independent Case Examiner** to investigate <http://www.ind-case-exam.org.uk/> - they'll be impartial and this is free.

If they are still unhappy with the response from the Independent Case Examiner, they can ask their MP to send the complaint to **the Parliamentary and Health Service Ombudsman** - <http://www.ombudsman.org.uk/>

If the client is unhappy about their Work Capability Assessment they can also complain to the WCA provider – which is Atos until the end of 2014.

They can complain by phoning 0113 2309175 or by emailing customer-relations@atoshealthcare.com. However, we would recommend they make their complaint in writing.

A leaflet is available from Atos which includes a complaint form, or you could send a letter of complaint to:

Customer Relations Manager
Atos Healthcare
Block 1
Wing G Government Buildings
Otley Road
Lawnswood
Leeds LS16 5PU

The Atos complaints procedure states that staff and partners in the consultation centres will be able to advise claimants about making a complaint. If you advise them or contact Atos on their behalf, make sure that the client provides signed consent to the representation either on the attached form or on a separate letter.

- **Within 2 working days of receiving the complaint it should be acknowledged by Atos staff in writing.** The acknowledgement letter must include a paragraph explaining to customers when they should expect to receive a full response.
- **An interim response should be offered by Medical Services where a final response cannot be made after 20 working days.** Atos say if they need to obtain copies of any relevant documents from the Department for Work and Pensions; or obtain information from the Health Professional or other employee involved, it may take longer.
- Most complaints should receive a response after 20 working days, and no more than 3% should take more than 30 days.
- **If your clients complaint takes longer than 30 days to resolve, Atos should issue further interim updates every 10 days.**

If you or your client are dissatisfied with the investigation into your complaint you can contact the Customer Relations Manager named on the complaint response. You should explain to them which parts of the complaint you feel have not been dealt with to your satisfaction. The Customer Relations Manager will arrange for a Senior Manager to personally review the investigation into the complaint and undertake a further investigation by the independent tier of the complaints process if appropriate.

The independent tier is made up of two bodies, an independent assessor and a doctor. The independent assessor is a person from a private company and offers the DWP benefit claimant an independent review of the way their complaint has been handled by Atos Healthcare Medical services. An independent doctor will conduct medical quality reviews when there are issues within the complaint that relate to the quality of the medical report in question.

If the complaint concerns how an appeal was processed, the client will need to contact the Tribunals Service itself.

If they are concerned about the way in which members of a tribunal behaved towards them during an appeal hearing, contact the chair of the region where the tribunal was heard. To find out who this is, contact the Tribunals Service.

What can the client complain about?

Claimants can complain to DWP if reasonable adjustments are not offered or provided as part of the ESA claim process, or if the DWP acts unreasonably, inappropriately or in a discriminatory manner towards them.

Claimants can complain to Atos about the way the face to face assessment was carried out, problems with the test centres, about healthcare professionals or administrative staff and procedures. They can also complain to the Tribunals Service if the problem relates to the appeal process.

Here are some of the more common issues you may want to consider including in the complaint.

Client was provided with information in an inaccessible format

The DWP is responsible for ensuring that claimants are provided with accessible information about ESA eligibility and the process for claiming. They should ensure that information provided at all stages of the process, including communication of decision and further options, is available in a number of formats and, where it has been requested in a specific format by a claimant, is consistently provided in such a format.

Client should not have been required to attend a face-to-face WCA

If the client met thresholds for exceptional circumstances or has provided evidence of a severe disability then the assessment would be both inappropriate and unnecessary.

Client was not provided with notice/details to attend and/or is being unreasonably penalised for non-attendance

The DWP will treat the claimant as Fit for Work if they fail to attend their WCA AND:

- were sent written notice of the date, time and place of the medical at least seven days in advance; or
- agreed to accept a shorter period of notice, whether in writing or some other form.

If your client did not receive notice of their appointment from the DWP, or received a letter dated or postmarked within 7 days of their appointment they are entitled to complain. If their non-attendance as a result of this delay results in a fit for work decision or a sanction, they are likely to benefit from launching a formal complaint.

The client was not given made aware that they were entitled to reasonable adjustments or given the option to request them

Reasonable adjustments are not only a legal right but are a vital method of ensuring that all claimants can effectively participate in the WCA process. If the client was not informed of the opportunity to request such adjustments and feels disadvantaged by this omission they should draw this to the attention of Atos and DWP.

The WCA venue was an unreasonable distance from the client's home or was in other ways inaccessible.

Claimants have the right to receive a face to face WCA at a venue less than 90 minutes travel from their home. If they have difficulty travelling they should be offered an appointment at a closer venue or in their own home. Clients with physical impairments should be offered an accessible method of entering and moving around the building, with additional reasonable adjustments (such as ramps) provided as required. Clients with mental impairments should be offered clear guidance as to reaching and accessing the building, and may require reasonable adjustments such as 'easy words and pictures' materials of communication in Makaton.

Client was kept in the waiting room for an unreasonable length of time

Being kept waiting for extended periods not only runs counter to Atos' customer charter, it can also present problems for many claimants who find it difficult to sit for long intervals. Encourage the client to let Atos know if a prolonged wait has caused discomfort or pain.

There was not enough time to complete an accurate assessment

Atos assessors must allow sufficient time for the assessment to be carried out so that the report can be completed to the required standard. If the client required an interpreter, has difficulty processing information or expressing themselves verbally, then additional time should have been built into the assessment.

Clients companion was excluded

Claimants are allowed to bring a companion with them to the assessment, and where appropriate any relevant information they may have should be considered by the assessor.

Specific reasonable adjustments requested by the client were not provided or were offered in an inadequate manner

Provision of reasonable adjustments is a statutory duty for public service providers. If adjustments requested to ensure that the client is able to fully participate in the process are not provided or are offered in an inadequate manner then this should be brought up as a case of discrimination.

The assessor/assessment discriminated against the client by fact of their medical condition

If the client feels that they were treated inappropriately or received an inadequate examination due to the precise nature of their illness or disability this is discrimination. This might include an assessor failing to consider mental health issues or providing a substandard service to a claimant with a learning disability.

The assessor/assessment discriminated against the client due to them exhibiting a protected characteristic under the Equality Act

As in every other sphere of life, claimants have the right to be treated equally and with respect, regardless of race, gender, belief or affiliation. If your client feels that they were discriminated against for a reason unrelated to their

illness or disability this is still covered by the Equality Act and should be challenged.

The assessor was rude, confrontational or unhelpful

The interview should be carried out in a friendly, professional and non-confrontational way.

The assessor used terms that the client didn't understand.

Atos assessors must use clear and understandable language, so that misunderstandings can be avoided.

The assessor drew misleading conclusions about everyday tasks.

The assessor will ask questions about your 'typical day'. This is to establish how you cope with ordinary everyday tasks. This should be your own account of your abilities – the assessor must not put their own interpretation on your responses.

Further Medical Evidence was not considered

Atos assessors must read documents that have been submitted and all evidence should be considered. This includes any evidence brought by the claimant to the assessment – this should be copied and passed on to the decision maker. The report should make reference to the evidence that has been considered and justification should be given if there is a conflict between the opinion of the assessor and the other medical evidence.

The assessor gave no opportunity for client to explain their answers.

Assessors often use 'closed' questions, which don't give you the opportunity to fully explain your circumstances. For instance, the question 'Do you do your own shopping?' can be answered by either a yes or a no, and may give a wrong impression. An 'open' question, such as 'How difficult do you find it to do your own shopping?' can paint a much more accurate picture of the day to day problems that you encounter. Assessors must use both types of questions; limited response and leading questions should be avoided.

The assessor's findings did not reflect clients everyday level of functioning

It is important that the assessor does not base his/her findings on a 'snapshot' of your performance during the assessment, but that they reflect your functional ability over a period of time.

The assessor ignored information because it was inconsistent

The assessor is obliged to investigate all information, even if it may at first seem contradictory. For example, if you have claimed that you are able to get on a bus by yourself, but need to be accompanied when going shopping, the assessor must still explore this inconsistency, and any conclusions they make must be justified.

The assessor did not consider the pain or difficulty arising from repeated activities

The assessor may observe you performing a simple physical task, such as rising unaided from a chair. It is not enough for them to note that you are capable of this, they must also consider how much pain this may cause, your

ability to repeat the action, whether you need to take time to recover, and whether you can perform the action without danger to yourself or others.

The assessor only considered my limitations on 'good' days

Many conditions vary from day to day, and in these cases the assessor should use all the available information to consider what you are capable of doing most of the time.

An appropriate physical examination was not carried out

Where it has been indicated that you have a physical restriction, a detailed and appropriate examination must be carried out - for example you may have limited movement in your shoulder. This should be properly investigated.

The examination caused unnecessary pain

Pain should be avoided during the examination. You should have been advised to inform the assessor if any movements were uncomfortable, and further discomfort should have been avoided.

Client was not given an opportunity to ask about the procedure

At the end of the interview and examination, you should be given an opportunity to ask about the ESA procedure. The assessor can tell you how your claim will proceed, but they usually won't be able to give you an idea of timescales.

Clients condition(s) was not identified in the report

The assessor must include all your conditions (diagnoses and symptoms) in the report. This includes those listed in your application plus any other additional evidence and symptoms reported during the assessment. The assessor should also note any deterioration since these diagnoses were first made. They should note 'no other conditions claimed or identified' once they have clarified that there are no further symptoms to discuss with you.

Clients medication and medical history was not fully recorded.

The assessor should note all the medication you are taking, both prescription and over-the-counter drugs. They should also include a concise report of relevant clinical history, eg hospital treatment.

Unacceptable delays have occurred during the claim period

The DWP does not set guaranteed timescales for any part of the ESA process. However, guidelines are available and where these are substantially exceeded (for example, in the case of a Mandatory Reconsideration taking more than two months where the guidelines suggest a period of two weeks) it would be valid for the client to raise a complaint.

Clients claim details or personal information was lost

Where public bodies or those acting for them have lost information pertaining to an ESA claim which has materially impacted on the time taken to make the claim, the decision made on eligibility or the security of personal data related to the client there may be cause for complaint – particularly if this has had a financial implication for the claimant or caused hardship.

Campaigning on complaining

Complaints aren't just part of client casework. If you record details of incidences where you support clients to complain about the ESA process you can build up an evidence base illustrating the key failures in the system.

You can also determine the types of complaint that are rarely upheld, those that DWP or Atos regularly fail to respond to, or share with other advice agencies to explore any examples of good practice in response to complaints which could be shared across the network.

This type of evidence will be useful in supporting the overall ESA campaign, reporting your concerns about ESA to your MP or mounting a 'supercomplaint' on a shared issue.

Some additional resources:

- We would love to hear from clients unhappy with the quality of their ESA experience on our blog – point them at <https://blogs.citizensadvice.org.uk/blog/topics/fit-for-work/>
- Clients can highlight their complaint directly to their MP using www.theyworkforyou.com/mps/
- For more information on supercomplaints, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284441/oft514.pdf

This is part of a pack on ESA and reasonable adjustments.

Get the full resource at: <http://bit.ly/1yhUWs1>

Template complaint letter

Claimant address: _____

Recipient address:

Date: _____

Dear

RE: Formal complaint regarding _____

My name is _____

My National Insurance Number is _____

I am writing to raise a formal complaint in reference to my recent application for Employment and Support Allowance. This complaint relates to the application and claim process and is not intended as an appeal against the decision as to my eligibility for the benefit.

My complaint relates to

I feel that the following actions should be taken to remedy this issue

I would like a full written response to this complaint within 20 working days, outlining the action being taken to address the issue raised above and further steps in place to ensure that this issue does not impact on others in the future.

Yours,
