

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 April 2022

**Public Authority:** Department for Work and Pensions  
**Address:** Caxton House  
Tothill Street  
London  
SW1H 9NA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about algorithms that may have been built into the assessment process for the granting of various state benefits.
2. The Commissioner's decision is that, on the balance of probabilities, the Department for Work and Pensions does not hold the requested information.
3. The Commissioner does not require the public authority to take steps to ensure compliance with the legislation.

#### **Background**

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4. The Department for Work and Pensions ("the public authority") provides certain benefits for people who are out of work due to long-term illness or as a result of a disability or health condition. As part of the claim process for those benefits, the claimant is required to have an assessment of eligibility through an independent health assessment.
5. The Work Capability Assessment (WCA) carried out is different to the more usual type of medical examination in which the Medical Clinician's

aim is to make a diagnosis and decide on appropriate treatment. The WCA aims to identify a person's capability for work.

6. Assessment Providers conduct the independent health assessments to assist DWP Decision Makers in determining a claimant's entitlement to Personal Independence Payments. Personal Independence Payments help towards some of the extra costs incurred because of a person's long term ill-health condition or disability.
7. There are three separate contracts for the delivery of Personal Independence Payment assessments. Independent Assessment Services (IAS) delivers two of the contracts and Capita deliver the third.

## **Request and response**

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8. In a letter dated 23 June 2020, the complainant requested information from the Department for Work and Pensions ("the public authority") of the following description.

"Re: Information Request - Use of Algorithms in PIP and WCA assessment process. On 3 February 2016 during an oral evidence session before the Public Accounts Committee Chris Stroud Divisional Managing Director, Capita stated: We have built an algorithm, so if an assessor picks a criterion that says that the claimant can wash unaided, and then picks another criterion later that says the claimant needs help to dress below the body, the tools we have now built will automatically flag that to the assessor and stop that happening. So, we have taken the learning from the mistakes that have occurred in the past and we are building that into the support tools that we have going forward, and that is showing benefits in what we are doing".

1. Please advise what individual algorithms have been built into the assessment process for (i) PIP and (ii) Work Capability Assessments for UC/ESA<sup>1</sup>.

2. Please outline how each of these algorithms function.

3. Please advise if it is possible to manually override such a programme and if there are any consequent actions as a result (such as referral to audit)."

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<sup>1</sup> Universal Credit/Employment and Support Allowance

9. On 22 July 2020, the public authority responded. It denied holding the requested information saying that there are no automated decision-making components or algorithms within the PIP Assessment Tool (PIPAT) which is the public authority's PIP assessment software system that health professionals (HP) / assessors use when conducting PIP and ESA consultations/assessments.
10. It then referenced the statement made in 2016 by Capita and explained that there have been changes made to their software since then. It explained that their system alerts assessors if they select descriptors that may not be likely for the assessment report they are completing. This prompt encourages the assessor to consider their choice and their supporting justification and advises the HP to seek support from their Quality, Learning and Support team if they need further guidance. It also confirmed that it does not mandate them to select a particular descriptor and that the HP is still able to select and justify the descriptor they feel is most appropriate for the individual.
11. The complainant requested an internal review by saying as follows:
  - "I am unhappy with your response to my FOI request dated 23 July 2020<sup>2</sup> and wish to seek a review for the following reasons: In my letter of 23 June, I quote Chris Stroud from Capita describing in 2016 one of the algorithms built into its assessment model to influence behaviour in certain circumstances. In your response you advise that there are "no automated decision-making components or algorithms within the PIP Assessment Tool (PIPAT) which is the Department for Work and Pensions (DWP) PIP assessment software system". You then proceed to describe a system of automatic 'alerts' or 'prompts' however it is not immediately clear how this differs from Mr Stroud's description of an algorithm. You write: The statement you reference in your request was made in 2016 by Capita and there have been changes made to their software since then. Their system alerts assessors if they select descriptors that may not be likely for the assessment report they are completing. This prompt encourages the assessor to consider their choice and their supporting justification and advises the HP to seek support from their Quality, Learning and Support team if they need further guidance. However, it does not mandate them to select a particular descriptor; ... This description is reflective of the type of algorithm that my enquiry relates to and therefore I

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<sup>2</sup> Sic, the letter is dated 22 July 2020.

request that you Review the original FOI to include these automatic systems generated prompts designed to influence behaviour. I believe that my original request has therefore not been satisfactorily answered, however in the alternative I am also willing to provide clarification below: 1. Please advise what individual algorithms/alerts/prompts have been built into the assessment process for (i) PIP and (ii) Work Capability Assessments for UC/ESA. 2. Please outline how each of these algorithms/alerts/prompts function.

Please advise if it is possible to manually override such a programme and if there are any consequent actions as a result (such as referral to audit)."

12. Following an internal review, the public authority wrote to the complainant on 28 September 2020. It stated that it upheld his decision. It said as follows:

"I am satisfied that the original response was handled properly and that the outcome of your request was correct. The reasoning behind this decision is as follows;

The original response has explained there are no algorithms built into the assessment process which would require a manual over-ride.

The response also accurately describes the prompts to assessors to consider their choice of descriptors. The prompts are not based on an algorithm, but a simple rule set to identify potential conflicts in choices of descriptors. The Health Professional (HP) will then manually decide whether to change their choice of descriptors."

## **Scope of the case**

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13. The complainant contacted the Commissioner on 14 October 2020 to complain about the way his request for information had been handled.
14. The Commissioner considers he has to determine whether the public authority holds the complainant's requested information of 23 June 2020.

## **Reasons for decision**

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15. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the

information communicated to him or her if it is held and is not exempt information.

16. Section 3(2) sets out the criteria for establishing if information is held for the purposes of FOIA:

“For the purposes of this Act, information is held by a public authority if

(a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority”

17. The Commissioner has sought to determine whether the public authority holds the information, which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires him to consider the question in terms of on the balance of probability.

### **Public Authority's Submissions**

18. The public authority relies on the Cambridge English Dictionary definition of an algorithm, which is:

“a set of mathematical instructions or rules that, especially if given to a computer, will help to calculate an answer to a problem:

Music apps use algorithms to predict the probability that fans of one particular band will like another.”<sup>3</sup>

19. Due to the Commissioner's investigation, it had engaged all of the relevant areas to determine whether there are algorithms and associated recorded information in relation to the stated software. The areas that it engaged with were DWP Digital Group, Centre for Health and Disability Assessments, IAS and Capita.
20. DWP Digital Group has confirmed that that there is nothing built into DWP systems which make decisions on the assessment process.
21. IAS and CHDA have consulted with their technical teams and have categorically confirmed that there are no algorithms within the software that make decisions within the assessment process.

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<sup>3</sup><https://dictionary.cambridge.org/dictionary/english/algorithm>

22. It reaffirmed<sup>4</sup> that, Capita had provided it with the following information:

"Continuous improvement is very important to us; the statement referenced was made in 2016, and we have made changes to our software since then as we strive to deliver the highest quality of assessment report that we can. We can confirm that our IT system will alert our Assessors should they select descriptors that may not be likely for the assessment report they are completing. This prompt encourages the Assessor to consider their choice and their supporting justification and advises the DA to seek support from our Quality, Learning and Support team if they need further guidance. However, it does not mandate them to select a particular descriptor; the Assessor is still able to select and justify the descriptor they feel is most appropriate for the individual."

23. At the public authority's request, Capita has again considered the statement made at the Select Committee in 2016 and whilst unable to comment on the wording used by a specific person at the time and their interpretation of an algorithm, they have provided a detailed explanation of how their system works and why the information referred to is not deemed an algorithm. Capita considers the said explanation to be commercially sensitive and therefore the Commissioner has considered the same in the confidential annex attached to this decision notice.
24. It appreciated the complainant's view that there may be algorithms within the assessment system due to the wording used before the Public Accounts Committee in 2016. Whilst it was unable to comment as to why this term was used and on one person's interpretation of an algorithm, within the determination of this request it had used the dictionary definition of an algorithm and as such the public authority's response remains that there is no algorithm within the systems referred to that determine an outcome on a claim to benefit.

### **Complainant's submissions**

25. The complainant stated that the public authority's reasons imply that the "prompts" which are acknowledged to be used are not based on any algorithm.
26. He added that the description of these prompts is virtually the same as what the assessment provider has previously described as algorithms.

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<sup>4</sup> See paragraph 13 above

These prompts are automatic, and computer generated. They are dependant on certain data being entered and result in predetermined responses. He does not accept that these are not algorithms.

27. The Commissioner asked the complainant (a professional, whose work is concerned with state benefits) if he had any (further) evidence, regarding the use of algorithms, other than the statement given on 3 February 2016 during an oral evidence session before the Public Accounts Committee by Chris Stroud of Capita. The complainant was unable to provide that evidence of the use of algorithms, in the context of this matter.

### **Commissioner's reasonings**

28. The Commissioner has considered the public authority's representations in this matter. On the balance of probabilities, he accepts as correct its explanations why it does not hold the requested information.
29. The complainant is seeking information he believes is held by the public authority related to algorithms utilised by medical assessors to determine whether a person can be awarded a state benefit. Given that this belief stems from remarks made by a witness before a Select Committee, the complainant's belief is in itself a reasonably held one.
30. As to what an algorithm is, the Commissioner accepts and agrees with the definition cited by the public authority as opposed to the one propounded by the complainant. The complainant's definition considers that prompts and algorithms are virtually the same in the context of this matter. However, the Commissioner is satisfied that while there may be similarities between the two, they are nevertheless different.
31. The public authority has explained that the medical assessors are in effect asked to check again when they input a particular term, they are not told by the prompt what input should be made and what decisions should be made. Accordingly, the Commissioner finds that algorithms were not in use by the medical assessors.
32. In addition to the above the Commissioner also takes cognisance of the fact that the relevant third parties maintain that they do not use algorithms in the context of this matter. The Commissioner does not speculate as to why the witness used the word 'algorithms' before the Select Committee but accepts that his use of the word does not correspond to the actuality as expressed by the public authority and the relevant third parties.

33. The Commissioner further took heed that in the "Ten years of the Work Capability Assessment"<sup>5</sup> a House of Commons debate pack the word "algorithm" does not appear in that paper. The Commissioner also word searched "algorithm" through some of the contributory submissions to that paper. This includes the written submissions from;

- Citizens Advice
- Disability Benefits Consortium
- Disability Rights UK

and

- Scope

34. Only in the Disability Rights UK's submission, does the word algorithm appear (twice). The Commissioner's reading is that they are talking about algorithms they wish to be incorporated in the assessment process. They do not appear to be considering or acknowledging existing algorithms in the then assessment process.

35. In addition to the above, the Commissioner also word searched "algorithm" in "Mental health and the benefits assessment process"<sup>6</sup> (a further HOC debate pack (2019)) and the word is also not present.

36. Having regard to the above considerations, the Commissioner finds on the balance of probabilities that the public authority does not hold the requested information as regards algorithms.

### **New request**

37. When the complainant sought an internal review of the public authority's original response, he also in effect submitted a further new request to include information held by it regarding prompts as it had described in its original response. The new request being as follows.

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<sup>5</sup> <https://commonslibrary.parliament.uk/research-briefings/cdp-2019-0092/>

<sup>6</sup> <https://commonslibrary.parliament.uk/research-briefings/cdp-2019-0005/>



1. Please advise what individual algorithms/alerts/prompts have been built into the assessment process for (i) PIP and (ii) Work Capability Assessments for UC/ESA. 2. Please outline how each of these algorithms/alerts/prompts function.

Please advise if it is possible to manually override such a programme and if there are any consequent actions as a result (such as referral to audit)."

38. The public authority has submitted to the Commissioner that the internal review request altered the focus from algorithms to include alerts/prompts that had been explained within the original response to the complainant and a review into the issue of prompts had not been comprehensively explored at the internal review stage, as it was not deemed to be required. An analysis of whether recorded information is held relating to prompts has not taken place, nor any consideration to potential sensitivities.
39. At the request of the Commissioner, the public authority issued the complainant with a specific response to this new request on 10 March 2021.

## **Right of appeal**

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40. 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: Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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 .....**

**Gerrard Tracey  
Principal Adviser FOI  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**