



THE QUEEN
on the application of K
and

Claimant

SECRETARY OF STATE FOR WORK AND PENSIONS

Defendant

ORDER BY CONSENT

UPON the Defendant confirming, by letter dated 7 July 2021, that she has made changes to her policy concerning the “revising” of benefit decisions in the course of an appeal to the First-tier Tribunal (“FTT”), including *inter alia*:

- (i) The amendment of her “Best Practice Memorandum” (“BPM”) to say that it is “essential” that case workers who contact benefit claimants about the making of such a revision should tell them that, if they decide to agree to the proposed revision, they will have a right of appeal against that decision.
- (ii) The further amendment of her BPM to make clear that, where a benefit claimant indicates a wish to appeal any such revised decision, that should not prevent the making of the revision and consequential lapsing of the appeal.
- (iii) Further amendments to the BPM concerning discussions with formal and informal representatives and ensuring that benefit claimants do not feel “pressured” into making a decision.
- (iv) The issuing of a new “Memorandum – Lapsing by Presenting Officers” (“the PO Memo”), indicating that Presenting Officers should not make “partial lapse” awards (i.e. awards which would give benefit claimants more than the decision under appeal, but less than they claim to be entitled to, but which would have the consequences that the appeal would lapse and the FTT would have no jurisdiction to consider any higher award). The PO Memo included a statement that Presenting Officers (“POs”) “can” still concede points where they consider that the decision appealed is incorrect.
- (v) A statement that the Decision-makers Guide (“DMG”) and Advice to Decision-makers (“ADM”) would be amended (by 9 July) to “refer” to the updated BPM.

- (vi) Confirmation that the Defendant intends to deliver by the end of October a mandatory training session to all Disputes Resolution Service Decision Makers involved in lapsing to reinforce the messages in the BPM.

AND UPON the Defendant sending a further letter dated 9 July 2021, which was accompanied by updated versions of the ADM and DMG which (in paragraphs A5161 and 01612 respectively) continued to indicate that caseworkers should not make partial lapse awards if a benefit claimant indicated that they would appeal the revised decision.

AND UPON the Defendant confirming, in the letter dated 9 July 2021 that *inter alia*:

- (i) She intends to make further revisions to the ADM and DMG (by 30 July 2021), and that:

In particular, she intends to amend the first subparagraph of paragraphs 06162 of the DMG and A5161 of the ADM to make it clear that Decision Makers should only not revise the decision if the claimant indicates that they wish their appeal to continue, having been made aware of their right to appeal any revised decision.

- (ii) That the word “can” in the PO Memo will be amended to “must”.

- (iii) That her PIP Operating Instructions had been amended to remove inconsistencies between it and the BPM in terms of contact with representatives and that they will be amended again (by 30 July 2021) to include cross-reference to the BPM.

AND UPON Mrs Justice Foster ordering on 9 July 2021 that any costs occasioned by the Defendant’s application for an extension of time within which to file and serve her skeleton argument must be paid by the Defendant on the indemnity basis,

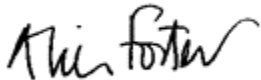
AND UPON the parties hereto agreeing to the making of this order by consent,

IT IS ORDERED:

By the Honourable Mrs Justice Foster DBE

1. The Claimant shall have leave to withdraw this claim for judicial review, and the claim is hereby withdrawn.

2. The Defendant shall pay 90% of the Claimant's reasonable costs of the claim on the standard basis, save for those costs covered by the 9 July 2021 Order of Mrs Justice Foster. Costs shall be subject to detailed assessment if not agreed.
3. There shall be a detailed assessment of the Claimant's publicly funded costs.
4. Pursuant to CPR r.39.2, in any report of these proceedings, there shall be no publication of the name and address of witnesses [REDACTED], nor any other particulars likely to lead to their identification. In the proceedings, the witnesses shall be anonymized and referred to as '[REDACTED]'.
5. Pursuant to CPR r.5.4C(4) any application by a non-party to inspect or obtain a copy of any document on the Court file shall be made on notice to the parties.



The Honourable Mrs Justice Foster DBE

Dated this 13th day of July 2021

BT THE COURT