**IMPORTANT:** the address for service changed in February 2024, as below.

Please send your letter by post to DWP and by email to the Treasury Solicitor.

Please seek advice from JRProject@CPAG.org.uk if no response is received within 14 days, or consider referring to a solicitor to issue judicial review proceedings, see [this CPAG page](https://cpag.org.uk/welfare-rights/support-advisers/support-advisers-england-and-wales/support-judicial-review-process/pursuing-court-and) for more information.

Delete Box Before Posting

**This letter challenges** the DWP’s unreasonable delay in deciding the claimant’s request for a supersession of their legacy benefit award to include an SDP

Read and edit whole letter carefully, in particular change any text in [square brackets]

If you have any questions when using this letter please contact jrproject@cpag.org.uk

C’s partner is referred to as ‘W’ in this letter. This should be changed to the partner’s initials.

**DELETE BOX BEFORE POSTING**

**Only use this letter if your client:**

* Received legacy benefits and was entitled to but not receiving an SDP
* Has now claimed and is receiving UC
* Has a disability or is terminally ill
* You/your client has already contacted DWP to request a supersession, but no response has been received

**This letter assumes** and edits will be needed if this is not the case:

* C was in receipt of Income Support
* C has now claimed UC
* C has a partner who also receives PIP
* C was in receipt of Carers Allowance but this stopped before UC was claimed

**DELETE BOX BEFORE POSTING**

[address your letter to either the:

address on your client’s decision letter,

address your client sent their claim to, or

address on relevant DWP correspondence; or

request an upload link to post it to your client’s online UC account]

**And by email to:** thetreasurysolicitor@governmentlegal.gov.uk

**Our Ref:**

**Date:**

**Judicial Review Pre-Action Protocol Letter Before Claim**

**Dear Sir or Madam,**

**Re: Proposed claim for judicial review against the Secretary of State for Work and Pensions by [full name]**

##### We are instructed by [name] in **relation to [her/his] Income Support (“**IS**”) award. We write in accordance with the Pre-action Protocol for judicial review. Please note that we are requesting your response as soon as possible and in any event no later than by the date at the end of this letter.**

**Proposed Defendant: Secretary of State for Work and Pensions (“D”)(“SSWP”)**

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**Note on the address for Pre-action Protocol correspondence**

1. This letter is sent to you because in February 2024 a Senior Lawyer at Decision Making and Debt DWP Legal Advisers, Government Legal Department, Ground Floor Caxton House, Tothill Street, London, SW1H 9NA advised that:

*Pre-action correspondence should now be sent directly to DWP, not to DWP Legal Advisers. DWP Legal Advisers is part of the Government Legal Department, not DWP itself. Pre-action correspondence should be sent to the relevant section of DWP. This will normally be the section of DWP responsible for the decision which is the subject of the pre-action correspondence via their usual communication methods. For example if it relates to a particular benefit decision then the pre-action letter should be sent to the address at the top of that letter.*

1. **This letter is also sent by email to the Treasury Solicitor as** Cabinet Office practice direction ‘Crown Proceedings Act 1947’ (December 2023)[[1]](#footnote-1) requires:

*“****All documents*** *required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall, if those proceedings are by or**against an authorised Government department,* ***be served on the solicitor****, if any, for that department”*

(Emphasis added)

1. The practice direction provides that the solicitor for service in connection with civil proceedings against the Department for Work and Pensions is “The Treasury Solicitor”.
2. **The Government Legal Department webpage**[[2]](#footnote-2) **further instructs:**

***[…]***

*The email addresses above are for the service of new proceedings only.
They should not be used for letters before action, or pre action protocol correspondence. If sending such documents to GLD please email these to**thetreasurysolicitor@governmentlegal.gov.uk**.*

**The details of the matter being challenged**

1. The unreasonable delay on the part of SSWP in deciding C’s request for a supersession of [her/his] IS award to include the severe disability premium (“**SDP**”).

***Background facts***

1. C is [terminally ill/details of disability]. [S/He] made a claim for personal independence payment (“**PIP**”) on [date under the special rules process and his claim was supported by a DS1500 form].
2. C was awarded PIP on [date] from [date] (ie, before C and W’s subsequent claim for Universal Credit (“**UC**”).
3. Prior to becoming ill, C was in receipt of carers’ allowance (“**CA**”), as [s/he] was caring for [name, relationship to C], (“**W**”). W also receives [level of PIP award] due to [her/his] severe disability.
4. C’s CA was topped up with IS.
5. When C became ill, [her/his] illness meant that C could no longer care for W, and [her/his] CA stopped on [date]. This resulted in [her/his] IS award ceasing on [date], due to the change in circumstances.
6. C and W made a joint claim for UC on [date]. The decision on their UC award was made on [date].
7. C wrote to [Stockton] Benefit Centre on [date], requesting a supersession of C’s IS award, to include the SDP from [date], the date that [s/he] was awarded PIP.
8. The basis of this request was that, from the date that [s/he] was awarded PIP, C was a severely disabled person under para13(2)(b) of schedule 2 of the Income Support (General) Regulations 1987 (IS Regs). [S/He] was therefore entitled to have the SDP included in [her/his] IS award from that date.
9. C’s IS award may therefore be superseded under regulation 6(2)(e) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“**SSCS(DA) Regs**”)[[3]](#footnote-3), as C had been awarded a relevant benefit (PIP) that meant that [sh/e] was entitled to an increased rate of another relevant benefit (IS). Under reg 7(7) of the SSCS(DA) Regs, the supersession should take effect from the date that the entitlement to the other relevant benefit arose, which in this case would be [date PIP awarded].
10. Neither C nor [her/his] adviser have received a response to the letter of [date].
11. As stated above, [C is terminally ill] and so a prompt resolution to [her/his] benefit issues is needed.

**Note on D’s duty of candour**

1. As D will be aware, the duty of candour arises as soon as a public authority becomes aware that someone is likely to test or challenge a decision or action. The duty is engaged at every stage of the proceedings, including the pre-action stage, as confirmed in *R (HM, KH and MA) v Secretary of State for the Home Department* 3 [2022] EWHC 2729 (Admin).
2. If any guidance, policy or guidelines exists concerning any of the matters raised in the Background section above, we consider that compliance with the pre-action protocol and the duty of candour requires that it be i) disclosed and ii) provided in full for inspection, as part of the response to this letter.

**Grounds for Judicial Review**

**Unreasonable delay in providing a supersession decision**

1. SSWP is under a duty to consider all claims for benefit within a “reasonable time” – *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).
2. The duty to make a decision within a reasonable time applies equally toS.10 of the Social Security Act 1998 (SSA 1998)[[4]](#footnote-4) under which Secretary of State may “supersede” any decision made under s.8 or s.9, as to the analogous provision at s.8 under which the Secretary of State shall “decide any claim for a relevant benefit”.
3. What counts as a reasonable time depends on the circumstances, including the impact on the claimant[[5]](#footnote-5).

*Impact on the claimant:*

1. C is [terminally ill] and this is clearly also a case which would call for ‘expeditious consideration’.
2. The delay is causing the family hardship. The request for supersession relates to a decision on entitlement to SDP from [date]. Shortly after this date, C and W had no choice but to make a claim for UC, because of the ending of C’s IS award. Had C’s IS award correctly included the SDP, the couple would have been awarded UC including an SDP transitional amount.
3. The delay in dealing with the supersession request is preventing C from receiving the transitional SDP amount which will leave the couple financially better off than they are under UC at a time when [s/he] and [her/his] [relationship to C] are under considerable financial and emotional strain.
4. The delay is also causing additional stress for C and W at what is already a difficult time as they deal with C’s terminal diagnosis.

*Non-complex case/all information available:*

1. **C is in receipt of PIP and [her/his] award started on** [date]**.**
2. **At the start of [her/his] PIP award, C was receiving IS. W also receives PIP and nobody is claiming CA for caring for C.**
3. From [date] therefore, C was entitled to have the SDP included in [her/his] IS award and the IS award should be superseded under reg 6(2)(e) of the SSCS (DA) Regs, as requested in the letter of [date].
4. C’s case is not particularly complex and SSWP has given no reason for the continued delay. C has provided clear and compelling evidence to the effect that C was eligible for the SDP from [date]. It should be straightforward for SSWP to re-consider whether or not the IS award should be superseded from this date.

**The details of the action the defendant is expected to take**

* SSWP should supersede the previous IS award and award the SDP from [date] immediately,
* If SSWP is unable to do so, SSWP should provide a decision confirming that the award will not be superseded and giving reasons for this decision in light of the evidence provided.

**The details of documents that are considered relevant and necessary**

**Please find enclosed copies of the following documents:**

* **Correspondence with the DWP**
* **Signed form of authority.**

**ADR proposals**

Please confirm in your reply whether SSWP is willing to consider alternative dispute resolution.

**The address for reply and service of court documents**

**[Adviser name and advice agency address and email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than[date]. We appreciate that this is a shorter timeframe that the usual 14 days. However, we consider this shortened timeframe to be appropriate given C’s terminal illness and the need to get [her/his] benefits in order as quickly as possible.

**If you consider** that you require normal 14 days from the date of this letter to reply, please immediately inform us in writing, giving full reasons. **Should we not have received a reply by this time our client has the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

1. assets.publishing.service.gov.uk/media/657c891d83ba380013e1b66c/List-of-Authorised-Government-Departments-under-s.17-Crown-Proceedings-Act-1947-15.12.2023.pdf [↑](#footnote-ref-1)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-2)
3. www.legislation.gov.uk/uksi/1999/991/contents [↑](#footnote-ref-3)
4. www.legislation.gov.uk/ukpga/1998/14/contents/enacted [↑](#footnote-ref-4)
5. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-5)