**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

Edit whole letter, and in particular those sections marked in red. Return text to black lower case before printing.

We will be happy to review your letter before sending jrproject@cpag.org.uk

Delete this box and all comments before sending.

[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 X in **relation to his claim for Personal Independence Payment.  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 4pm on 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 the DWP in deciding C’s claim for Personal Independence Payment (PIP).

***Background facts***

1. C is a single disabled student, living alone, and does not have children.
2. C’s current income is WHAT and HOW MUCH. C’s rent is HOW MUCH. C’s living costs are HOW MUCH.
3. C’s entitlement to subsistence means tested benefits such as Universal Credit (UC) / income related Employment Support Allowance (ESA) or Housing Benefit (HB) is dependent on HIS/HER PIP entitlement[[3]](#footnote-3).
4. Student finance does not cover C’s full housing costs. C has extra disability related expenses and C is unable to work and make up the shortfall like other students because of HIS/HER disability.  In addition, student finance does not cover the summer vacation period.
5. On DATE C made an application for PIP HOW? (PIP1 processed) to meet the additional costs arising from HIS/HER disability.
6. DETAILS OF DELAY AND EFFORTS MADE TO CHASE PIP2 FORM IF RELEVANT
7. C attended a telephone medical assessment on DATE.
8. However, to date, no decision has been received.
9. As a result, C is without any income through PIP to meet the additional costs of HIS/HER disability, and is also as a consequence prevented from claiming means tested subsistence benefits to meet HIS/HER other essential costs including rent.
10. C has been left with insufficient income to support HIM/HERSELF, and the prolonged delay and uncertainty around the decision is having a negative impact on HIS/HER mental health.
11. C meets the conditions of entitlement for PIP as HE/SHE has care/mobility needs as described in the claim form and supported by the evidence provided.
12. It has been NEARLY ONE YEAR since C made the claim to PIP. There have been numerous complaints about the delay in processing HIS/HER claim and C has suffered prolonged hardship and distress as a result.  As no award has been made, C has been deprived of HIS/HER appeal rights by the failure to provide a decision.

**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.

**Ground for Judicial Review: Unlawful delay in deciding a claim**

1. The Defendant 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 toS.8 of the Social Security Act 1998 (SSA 1998) under which 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[[4]](#footnote-4)[1].

*Impact on the claimant*

1. C is particularly vulnerable due to the nature of his disability DETAILS
2. The delay relating to the PIP decision has caused C hardship to the extent that DETAILS
3. As a disabled student (with no children) C needs to have PIP in order to be eligible for, and receive, subsistence means tested assistance through social security including UC/irESA/HB which includes amounts for, or is provision for, housing costs.
4. Delays in PIP decisions can therefore have particularly severe consequences for disabled student such as C, leaving them with insufficient income to fall back on, without money for food or heating, unable to pay their rent and so at risk of homelessness and destitution.
5. The delay and uncertainty is causing C stress and anxiety which is having a significant impact on HIS/HER mental health.
6. C has provided clear and compelling evidence of his medical conditions which support the fact that HE/SHE is eligible for PIP.
7. The Secretary of State now has the evidence C submitted as well as the assessment report, and it should be straightforward for the Secretary of State to decide C’s claim yet is has BEEN NEARLY A YEAR SINCE HE/SHE started the claim process AND 6 WEEKS SINCE the telephone assessment took place.

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

* The Secretary of State should award C PIP immediately and from DATE in consideration of the delay already suffered.
* If the Secretary of State is unable to do so, she should provide a decision refusing entitlement immediately to enable C to exercise HIS/HER appeal right.

**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 the Defendant is willing to consider alternative dispute resolution.

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

**Proposed reply date**

We expect a reply promptly and in any event no later than NUMBER (LESS THAN 14 DAYS). This is less than the usual 14 days.  However, we consider this shortened timeframe to be entirely appropriate given the discriminatory impact of the Defendant’s failure to make an award sooner and that the Defendant has already been made aware of the Claimant’s destitution and had opportunity to remedy this.

**If you consider** that you require 14 days from the date of this letter to reply, please immediately inform us in writing, giving full reasons. S**hould we not have received such a request for further time nor a substantive reply by the given deadline we will 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. Reg 14(b) Universal Credit Regulations 2013; Reg 18 The Employment and Support Allowance Regulations 2008; Reg 56(2) Housing Benefit Regulations 2006. [↑](#footnote-ref-3)
4. [1] R(C and W) v Secretary of State for Work and Pensions  [2015] EWHC 1607 (Admin) [↑](#footnote-ref-4)