If your client has experienced ‘gatekeeping’ via the telephone, request a form via post ASAP as well as sending this letter. DWP website states:

*Claim by post: You can get a form to send information by post (although this can delay the decision on your claim). Write a letter to ask for the form.*

*Personal Independence Payment New Claims
Post Handling Site B
Wolverhampton
WV99 1AH*

Delete box before posting

**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

[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 her/his claim for Personal Independence Payments (“PIP”). 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 **DATE**.**

**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. C challenges the Defendant’s failure to follow its own guidance to send a paper claim form when approached by the Claimant, who does not have and has not already applied for a NINo, to claim PIP.

***Background facts INCLUDING:***

1. FAMILY DETAILS INC DoB AND IMMIGRATION STATUS
2. DATE CLAIMED PIP
3. DATE RETURNED PIP2
4. CONTACTS WITH DWP, HOW, WHAT WAS SAID
5. ANY REQUESTS FOR ASSISTANCE BY X
6. DWP CONFIRMATION THAT ELIGIBLE FOR PIP?
7. Detail DWP ADVICE THAT ‘NEED NINO’ TO MAKE PAYMENT
8. EFFECT ON X

**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**

**Ground 1: Defendant’s failure to follow own guidance**

1. The Defendant’s Advice for Decision Making (“**ADM**”) states at A2148*[[3]](#footnote-3)*:

*There is no entitlement to benefits unless the claim is accompanied by sufficient information or evidence*

*…*

*3. to enable a NINO to be allocated where the claimant or adult does not have a NINO and they apply for one.*

1. **The Defendant is aware that C does not have a a NINo, yet refused to accept C’s claim for PIP stating:**

**“…QUOTE DWP RESPONSE HERE..”**

1. **The Defendant’s learning guide “**PIP17 Paper Claims”[[4]](#footnote-4) (made available in response to a Freedom of Information request by Jessica Strode from Child Poverty Action Group), makes clear procedurally what should happen where a claimant makes a claim without a NINo:

*A paper version of the initial claim form (PIP1) will be issued where the claimant or their PAB:*

*…*

*does not have a National Insurance Number (NINO)*

1. The date of claim is then the date that the claimant telephoned to make the claim providing the claim form is retuned within one calendar month:

*Claimants have one calendar month from date of issue to complete and return the paper claim form to the issuing office. If returned in time, the date of claim will be the date that the claimant telephoned the Department to request the form or the date a letter requesting the form was received.[[5]](#footnote-5)*

1. **The Defendant’s staff guide “**PIP New Claim telephony data gather”[[6]](#footnote-6) (also provided in response to the FOI request by Jessica Strode) **confirms that a NINo is not required to issue a paper form:**

***29. There is a requirement for minimum data to issue a paper claim form:***

* ***Name, address and either date of birth or NINO of claimant***

**(Emphasis added)**

1. **The Defendant’s ‘**PIP17 Paper Claims’ and ‘PIP New Claim telephony data gather’guides f**or Department for Work and Pensions (“DWP”) staff are clear that where a claimant does not have a NINo, procedurally a paper claim form should be sent out to the claimant on provision of the claimant’s name, address and date of birth. Provided this is returned within one month, the claim will start from the date of the telephone call.**
2. **The Defendant’s guidance “Missing NINO**”[[7]](#footnote-7) (also provided in response to the FOI request by Jessica Strode) states that following completion of paper PIP1 and PIP2 forms, where no NINo is held by the claimant, the Defendant will trigger a NINo application on the claimant’s behalf by completion of the DCI1 form:

*If a PIP award is appropriate, the CM creates a manual task on PIPCS for the NINO allocation specialist team to take the appropriate action to establish the claimant’s NINO. On receipt of such a task, the Specialist user will complete specialist trace action and if appropriate make further enquiries with the claimant to identify the NINO. If the NINO has still not been established following these enquiries,* ***the Specialist user will complete form DCI1 and refer it to the NINO Centre*** *(NC)… In all cases where a NINO is allocated, the Specialist user will change the Prospect Person record to a Person record in PIPCS and update the Communication Record and create a task to the CM to input the decision.*

1. **The Defendant’s webpage (as amended) “Personal Independence Payment (PIP)”**[[8]](#footnote-8) **and guidance “PIP handbook”**[[9]](#footnote-9) **further confirm a NINo only need be provided when making a new claim where the claimant already has a NINo; a NINo is not therefore required to make a claim where a claimant does not already have one:**

## Calling to start your claim

*Call the ‘PIP new claims’ phone line.*

*[…]*

*You’ll need to give the following information:*

* *your National Insurance number, if you have one (you can find this on letters about tax, pensions and benefits)*
1. **On DATE C contacted the Defendant by telephone to make a claim for PIP. By refusing to accept C’s claim because C does not yet have a NINo, and by failing to send out a paper claim form (followed by** completion of form DCI1 and referral to the NINO Centre **once the PIP1 and PIP2 are received) the Defendant is unlawfully failing to follow her own extensive** guidance.

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

**The Defendant is requested:**

* **without further delay to award PIP from DATE;**
* **to ensure staff are trained to initiate the NINo allocation process and to send a paper form when a claimant claims PIP without a NINo.**

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

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

* **Form of authority signed by the Claimant**
* **WHAT ELSE?**

**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**

**ADVICE AGENCY NAME AND ADDRESS**

**Proposed reply date**

We expect a reply promptly and in any event no later than **DATE** (14 days).

S**hould we have received neither 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,

Enc

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. Accessed at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957493/adma2.pdf> [↑](#footnote-ref-3)
4. Page 17, PIP 17 Paper Claims, May 2019, version 8.2 (available at: [www.whatdotheyknow.com/request/711877/response/1695681/attach/6/PIP17%20Paper%20Claims%20v8.2.pdf?cookie\_passthrough=1](http://www.whatdotheyknow.com/request/711877/response/1695681/attach/6/PIP17%20Paper%20Claims%20v8.2.pdf?cookie_passthrough=1) ) [↑](#footnote-ref-4)
5. Ibid, page 12. [↑](#footnote-ref-5)
6. ‘PIP New Claim telephony data gather’ (accessed at: [www.whatdotheyknow.com/request/259097/response/640061/attach/6/03%20Telephony%20New%20Claim%20data%20gather.pdf?cookie\_passthrough=1](http://www.whatdotheyknow.com/request/259097/response/640061/attach/6/03%20Telephony%20New%20Claim%20data%20gather.pdf?cookie_passthrough=1) ). See also page 28, PIP03 PIP Claims Telephony – Personal Independent Payment Learning Programme, February 2020 v7.6. [↑](#footnote-ref-6)
7. Missing NINO – Extractions of the learning on Missing Nino’s” (accessed at: [www.whatdotheyknow.com/request/711877/response/1695681/attach/9/Missing%20Nino.pdf?cookie\_passthrough=1](http://www.whatdotheyknow.com/request/711877/response/1695681/attach/9/Missing%20Nino.pdf?cookie_passthrough=1)) [↑](#footnote-ref-7)
8. https://www.gov.uk/pip/how-to-claim [↑](#footnote-ref-8)
9. https://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook [↑](#footnote-ref-9)