**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](mailto: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](mailto: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 income related Employment and Support Allowance (“**irESA**”) 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*](mailto:thetreasurysolicitor@governmentlegal.gov.uk)*.*

**The details of the matter being challenged**

1. The Defendant’s failure to carry out an ‘any time’ or ‘specified ground’ revision at all or within a reasonable time.

***Background facts***

1. **CLAIMANT DETAILS, PARTNER DEPENDANTS, DISABILITY, HOUSING, OTHER INCOME ETC**
2. **WHAT HAS HAPPENED – DATE OF REVISION REQUEST**
3. **WHAT HAVE DWP SAID?**
4. **EFFECT ON C OF FAILUR EOT CARR OUT ANY TIME REVISION**

**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.

**Legal background and grounds for judicial review**

**Ground 1: Failure to conduct an any time / prescribed grounds review and frustration of appeal rights at all or within a reasonable time**

1. A decision on irESA entitlement, is made under s.8 of the Social Security Act 1998 (“**SSA**”), after an award is made, changes to the award can take place via decisions under s.10. Under s.9 SSA any decision made under ss.8 or 10 may be revised, and that revision carries a right of appeal under s.12

**.**

*Availability of an ‘any time’ revision*

***Revision of decisions***

***9****.- (1) Subject to section 36(3) below, any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State—*

*(a) either within the prescribed period* ***or in prescribed cases or circumstances****; and*

*(b) either on an application made for the purpose or on his own initiative;*

*and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.*

*…*

***Appeal to appeal tribunal***

***12****.-(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or* ***as revised under* *section 9 above****) …*

(Emphasis added)

1. The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“**SS (DA) Regs**”) are made under the SSA.
2. Reg 3 SS (DA) Regs provides that a decision may be revised on **any** grounds within one month of the date of the decision, or under reg 3(5)(a) may be revised on the grounds of ‘***official error’*** and no time limitapplies; an *‘any time revision’*.

***3.****- (5) A decision of the Secretary of State under section 8 or 10—*

*(a) […] which* ***arose from an official error****; or*

*(b) […]*

*(bb) which was* ***made in ignorance of, or was based on a mistake as to some material fact,***

*[…]*

***may be revised at any time*** *by the Secretary of State […]*

(Emphasis added)

1. The Defendant’s Decision Makers Guide confirms a decision may be revised at any time where there has been an official error and that a decision not to revise carries a right of appeal, with reference to *PH v SSWP (DLA)(JSA)*[2018] UKUT 404 (AAC):

***Revision for official error***

*03256 A decision made by the Secretary of State either initially or on a supersession can be revised at any time for official error1 […]*

*1 SS CS (D&A) Regs, reg 3(5)(a); 2 reg 3(5ZA)*

*03257 Where the claimant applies for a decision to be revised for official error outside the application period in DMG 03063 et seq, and the DM does not accept that there was an official error, the decision not to revise may still renew appeal rights against the original decision. This will depend on whether the application for revision discloses an arguable case for official error1 Please refer to DMG Annex F.*

*1 PH v SSWP (DLA) [2018] UKUT 404 (AAC;[2019] AACR 14*

***Meaning of official error***

*03258 An official error is an error made by*

*1. an officer of the DWP or*

*2. HMRC or*

*3. a person employed by a designated authority acting on behalf of the authority1*

*which no person outside the Department or authority caused, or materially contributed to1.*

1. *SS CS (D&A) Regs, reg 1(3)*
2. In *PH and SM v SSWP*, Judge Poole held that an appeal can be brought against a decision made in excess of 13 months ago, where that decision was incorrect because of an 'official error'.
3. WHAT WAS THE OFFICIAL ERROR IN THIS CASE? In this case the Defendant made WHAT DECISION which constitutes an official error (as set out below) and this decision can therefore be revised at ‘*any time’.*
4. The Claimant made a request for an *any time* revision on DATE and so date, HOW MANY WEEKS/MONTHS? later, has received no substantive response.

*Duty to make a decision within a reasonable time*

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 equally tos.9 of the SSA 1998 under which Secretary of State may “revise” any decision made under s.8 or s.10, 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 and the complexity of the case[[3]](#footnote-3).

***Impact on the claimant***

1. Detail hardship
2. The circumstances of and the impact on the claimants in *R(C and W) v Secretary of State for Work and Pensions* led Mrs Justice Patterson to conclude, with the agreement of both parties, that the delay in deciding their claims *“*was not only unacceptable, as conceded by the defendant, but was unlawful”[[4]](#footnote-4) as:

*“Both claimants’ cases called for expeditious consideration. They each suffered from significant disabilities… They were each properly to be regarded as amongst the most vulnerable in society.”[[5]](#footnote-5)*

1. C is HOW VULNERABLE and is clearly also a case which would call for ‘expeditious consideration’.
2. The delay is causing C / the family hardship. The delay relates to a decision on irESA, irESA is a subsistence benefit providing a basic income for living costs. Delays in irESA decisions can therefore have severe consequences for the claimant, leaving them with no income to fall back on, without money for food or heating, and so at risk of destitution. C’s is living on ...and the delay is causing C stress and anxiety which is having a significant impact on his/her mental health. DELETE IF UNTRUE

***Not a complex case/all information available***

1. WHAT WAS THE ANY TIME REVSION REQUEST ?
2. This is not a particularly complex case and the Defendant has given no reason for the continued delay, apart from …. IF RELEVANT The decision letter gives no specific reasons as to why the Secretary of State considers C IS NOT / IS no longer be eligible for TYPE OF BENEFIT. C has provided clear and compelling evidence to the effect that C is eligible for irESA. It should be easy for the Secretary of State to re-consider whether or not her initial decision was correct.

**Ground 2: Breach of Article 6 of the European Convention on Human Rights (ECHR)**

1. Article 6(1) ECHR provides:

“*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*.”

1. There is no statutory time limit for making revision decision, however it is implied by way of Article 6 ECHR that a decision will be made within a reasonable timeframe.
2. A decision by the Secretary of State whether to revise under s. 9 of the 1998 Act is a determination of a civil right which give rise to rights under Article 6[[6]](#footnote-6) and a delay in providing a revision decision can interfere with a claimant’s right to a fair hearing[[7]](#footnote-7).
3. The Secretary of State has a duty under Section 6 of the Human Rights Act 1998 to comply with Article 6 of the Convention.
4. We submit that the failure to consider the Claimants’ revision request within a reasonable timeframe amounts to a breach of Article 6 of the Convention.

ALTERNATIVLY IF DWP HAVE RESPONDED ‘YOU HAVE NO APPEAL RIGHTS”:

1. C has requested an ‘any time revision’, on the grounds of ‘official error’ under Reg 3(5) SS (DA) Regs and the refusal to carry to this revision carries a right of appeal under *PH and SM v SSWP*, also confirmed in the Defendant’s own guidance. Refusal to carry out a revision because it is out of time fails to apply the law, Reg 3(5) SS (DA) Regs, and unlawfully takes account of irrelevant factors (ie, the length of time since the official error).
2. Further the unequivocal advice that C cannot appeal fails to apply the law, s. 12 SSA and *PH and SM v SSWP*, and frustrates C right to a fair hearing protected by Article 6 of the European Convention on Human Rights (ECHR). The Secretary of State has a duty under Section 6 of the Human Rights Act 1998 to comply with Article 6 of the Convention.
3. Article 6(1) ECHR provides:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

1. A decision by the Secretary of State whether to revise under Section 9 of the 1998 Act is a determination of a civil right which give rise to rights under Article 6 and a refusal to carry out a revision and advice that C cannot appeal that decision frustrates C’s right to a fair hearing in breach of Article 6 of the Convention.
2. C is entitled to irESA, DETAILS OF REVSION REQUEST, and it should not be difficult for the Defendant to carry out any time revision as WHAT? reason constitutes an ‘official error’.

**Alternative remedies**

1. It does not appear that the Claimant has any suitable alternative means of obtaining redress. While there is a right of appeal against a refusal of an any time revision request, C has not been provided with notice of any decision or HIS/HER appeal rights; frustrating this appeal right.

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

**The Defendant is requested: EDIT AS APPROPRIATE**

* **To review immediately their decision of DD/MM/YY to terminate C’s RELEVANT BENEFIT award, and reinstate the payments.**
* **To backdate the payments to DD/MM/YY, giving C her correct entitlement for the period that she was not paid.**
* **To pay C compensation for the stress, anxiety and severe hardship that has been caused to her and her family as a result of the Defendant’s ongoing failure to reinstate her RELEVANT BENEFIT award, despite knowing that the UC claim was made fraudulently.**

**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 ADDRESS AND EMAIL**

**Proposed reply date**

We expect a reply promptly and in any event no later than **DD/MM/YY** (14 days)**. Should we not have received a reply by this time 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. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-3)
4. Ibid at at p93 [↑](#footnote-ref-4)
5. Ibid at p94 [↑](#footnote-ref-5)
6. 8 R(IS) 15/04 at paragraph 46 [↑](#footnote-ref-6)
7. *MM v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 36 (AAC) [↑](#footnote-ref-7)