**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

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

* Has applied for PIP
* A face-to-face medical has (and could not therefore be finished), or will, cause significant distress so is not appropriate
* Sufficient paper evidence has been provided to enable the claim to be decided on the papers – this must be listed in the letter
* Has requested a paper-based assessment and this has been refused or no response has been received.

This letter assumes that your client:

* has made complaints (delete if has not)

**DELETE BOX BEFORE POSTING**

**This letter challenges** the SSWP’s failure to exercise their discretion to assess your client’s eligibility for PIP on the basis of their paperwork and the DWP’s failure to make reasonable adjustments to prevent disadvantage resulting from your client’s mental health disability.

Please read the whole letter carefully and amend as necessary, particularly and text in [square brackets].

**Delete all comments before sending.**

Feel free to send your letter to [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk) for review before sending to DWP.

**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 [full name] 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 by 4pm on [date] (14 days).

**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. C is challenging SSWP’s:
2. failure to exercise discretion to assess C’s eligibility for PIP on the basis of C’s paperwork when sufficient paperwork was available to do so; and
3. failure to make reasonable adjustments to prevent disadvantage resulting from C’s mental health disability

***Background facts***

1. C has been in receipt of ... since.... This is due to a diagnosis of .... S/He avoids social interaction as much as possible.
2. In recent years, C has noticed [her/his] conditions becoming more pronounced ... [her/his] doctor has diagnosed [her/him] with ...
3. C contacted SSWP on DATE to request a claim form for PIP.
4. C was invited to a medical assessment on DATE, which s/he attended. C knew that s/he would have difficulty at the assessment, WHY? S/He was therefore anxious prior to attending the assessment.
5. At the assessment, PROBLEMS WITH THE ASSESSMENT
6. The experience was very difficult for C and the assessment was not completed, as S/he became too distressed.
7. C found this experience exhausting and does not feel that s/he would be able to go through it again, either at an assessment centre or at home. C wrote SSWP on DATE, explaining this and requesting that [her/his] claim be assessed on the papers. S/He advised that s/he would have the same issues if the assessment was carried out in [her/his] home and asked to be contacted in writing.
8. C received no response to this letter and sent a complaint letter on DATE. In that letter, s/he provided details of the assessment and explained that s/he found it too difficult to go through the experience again.
9. DETAILS OF CONTACT WITH DWP AND HOW HAVE RESPONDED INC DATES, OR IF HAVE NOT RESPONDED. WHAT HAS BEEN SAID? WHAT EVIDENCE PROVIDED?
10. C is surviving on a very low income and receiving PIP would make a great difference to [her/his] finances. DETAILS OF FINANCIAL HARDSHIP
11. The delay in dealing with her/his claim is also causing C’s anxiety to increase, as s/he is concerned about having to attend another assessment and having to constantly follow up on correspondence with the DWP is very stressful.

**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***

***Legislation***

1. Under sections 78 and 79 of the Welfare Reform Act 2012 (“**WRA**”) eligibility for PIP at either the standard or enhanced rate depends on a person’s ability to carry out prescribed daily living and mobility ‘activities’.
2. The Social Security (Personal Independence Payment) Regulations 2013 (“**SS (PIP) Regs**”) are made under powers conferred by the WRA.
3. Under reg 4 SS (PIP) Regs a person’s ability to carry out prescribed activities is determined by an assessment:

***4****.—(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the Act, whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment.*

1. Under reg 9 SS (PIP) Regs (as amended) a claimant may (and may also therefore not), be called for a face-to-face assessment to determine ability to carry out the prescribed activities. If so called, a claimant must attend unless they have ‘good reason’ not to do so:

***Claimant may be called for a consultation to determine whether the claimant has limited or severely limited ability to carry out activities***

***9****.—(1) Where it falls to be determined whether C has limited ability or severely limited ability to carry out daily living activities or mobility activities,* ***C may be required*** *to do either or both of the following–*

*(a) attend for and participate in a consultation in person;*

*(b) participate in a consultation by telephone or by video.*

*(2) Subject to paragraph (3), where C fails* ***without good reason to attend*** *for or participate in a consultation referred to in paragraph (1), a negative determination must be made.*

(Emphasis added)

##### Under s.19 of the Equality Act 2010 (“EA 2010”) it is indirectly discriminatory to claimants with protected characteristics, which include disability, to apply a criterion or practice to all claimants, which places claimants with that protected characteristic at a disadvantage where that criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim.

##### *Indirect discrimination*

##### *19.- (1 ) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

##### *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

##### *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

##### *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

##### *(c) it puts, or would put, B at that disadvantage, and*

##### *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

##### *(3) The relevant protected characteristics are—*

##### *[…]*

##### *disability;*

##### Under s.20 EA 2010 the SSWP and SSWP’s contractors (here IAS) have a duty to make reasonable adjustments in the way contact is made and the way assessments for PIP are carried out to avoid disadvantage to claimants with disabilities, such as C:

##### *Duty to make adjustments*

***20****.- (2) The duty comprises the following three requirements.*

*(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

1. Under s. 21 EA 2010, failure to comply with the s.20 duty to make adjustments constitutes discrimination:

##### *Failure to comply with duty*

***21****.-(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

*(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

1. Under s. 29 EA 2010 the duty to make reasonable adjustments applies to service providers and persons exercising public functions:

*(7) A duty to make reasonable adjustments applies to—*

*(a) a service-provider (and see also section 55(7));*

*(b) a person who exercises a public function that is not the provision of a service to the public or a section of the public.*

***Defendant’s Guidance***

**Paper Assessment**

**Advice for Decision Making: Chapter P2 ‘Assessment for PIP’**[[3]](#footnote-3) **(“Assessment for PIP”)**

1. The information gathered by an assessment carried out under reg 9(1) SS (PIP) Regs informs the Decision Maker’s (“**DM**”) decision on entitlement to PIP, as confirmed by SSWP’s guidance ‘Assessment for PIP’, which also confirms SSWP’s discretion (delegated to the Health Professional (“**HP**”)) to require, or not, a face-to-face assessment:

***P2006*** *The assessment will be in the form* ***of either****1*

*1. a face-to-face consultation* ***or***

*2. a telephone consultation* ***or***

*3.* ***a paper based assessment*** *or*

*4. video consultation* ***or***

*5. fast track if under the special rules for terminally ill persons* ***or***

*6. a combination of any of 1. – 5.*

***Once all the evidence is gathered the DM will also assess the claimant using the same criteria as the HP.*** *The DM at this point may also ask the HP* for additional information if required, to help the DM make their decision.

1SS (PIP) Regs, reg 9(1)

(Emphasis added)

1. The ‘Assessment for PIP’ chapter goes on to note when a paper-based assessment will be appropriate at P2046:

***Note****: A paper based assessment may be available for some claimants, and* ***may be made where there is sufficient evidence*** *for the HP to advise on all aspects of the claim.*

(Emphasis added)

**PIP Assessment Guide Part One - The Assessment Process’[[4]](#footnote-4) (“Part One”)**

1. Under the SSWP’s guidance ‘Part One’ the HP’s role includes determining whether an assessment can be carried out on the papers alone:

*1.2.2 The key elements of the HP’s role in PIP are to:*

*[…]*

* *Determine whether a claim can be assessed on the basis of a paper review and provide appropriate advice*

*[...]*

1. Part One goes on to give examples of when a face-to-face consultation should **not** be required:

***Cases that should not require a face-to-face consultation***

*1.5.5 Although* ***each case should be determined individually****, the following types of case should not normally require a face-to-face consultation:*

* *[…]*
* *There is strong evidence on which to advise on the case and* ***a face-to-face consultation is likely to be stressful for the claimant*** *(for example, claimants with autism, cognitive impairment or learning disability).*
* *The claimant questionnaire indicates a high level of disability, the information is consistent, medically reasonable and there is nothing to suggest over-reporting – (examples may include claimants with severe neurological conditions such as multiple sclerosis, motor neurone disease, dementia, Parkinson’s disease, severely disabling stroke).*
* ***There is sufficient detailed, consistent and medically reasonable information on function.***

(Emphasis added)

**Vulnerable claimants**

1. Under SSWP’s guidance ‘Part One’ HPs should consider the needs of ‘vulnerable claimant’s such as C and then record how they have done so. ‘Vulnerability’ includes life events and personal circumstances such as [“*a previous suicide attempt, domestic violence, abuse, or bereavement”] as in C’s case.*

***1.3.11****HPs should also consider the needs of vulnerable claimants. A vulnerable claimant is defined as ‘someone who has difficulty in dealing with procedural demands at the time when they need to access a service’. This includes life events and personal circumstances such as a previous suicide attempt, domestic violence, abuse, or bereavement. If a claimant has been in contact with DWP and has threatened self-harm or suicide, information about the incident will be included in the PIPCS – Medical Evidence screen comments box.*

***1.3.12*** *The HP should complete a PA1 – review file note or an equivalent form or relevant IT system notes explaining the action taken on the case, how the decision was made on the type of assessment and the evidence used to support the decision.*

1. The SSWP’s internal guidance, made available in response to a Freedom of Information request from John Slater,[[5]](#footnote-5) provides further guidance and states under “02 Vulnerable or special types of customers”[[6]](#footnote-6):

***9****. The following personal factors can be associated and identified with being vulnerable, however this list is not exhaustive:*

* ***mental health conditions***
* *sensory impairments*
* *drug or alcohol dependency or both*
* *physical disabilities*
* *learning disabilities*
* *literacy Levels*
* *language skills*
* *difficulty in communicating*

***Providing extra support***

***24****. Ensure that you take into account the individual needs of the claimant.* ***The claimant knows best what their needs*** [sic]***. Ask claimant rather than assume what they might need*** [sic]***.*** *It might be appropriate to offer or arrange another appropriate service.*

(Emphasis added)

1. Under “Vulnerability Instructions (additional support for individuals)” DWP guidance further states:[[7]](#footnote-7)

***4****. When making a judgment about whether an individual requires additional support,* ***it is essential that you communicate with them and record their additional requirements.*** *If, and what, support is required can only be determined as part of a measured assessment.*

***6****. You should* ***use a flexible approach to put additional support/special arrangements in place that are tailored to the specific needs of the individual.*** *This will provide them with equal access to our products and services and enable them to follow the standard Customer Journeys.*

***7****. This support may be put in place once; for a short, medium, long period of time; or recurring dependent upon their needs.*

***9****.* ***All service providers, including DWP, have a legal duty to make ‘reasonable adjustments’ to ensure their services are accessible to disabled people****.*

(Emphasis added)

**Grounds for judicial review**

**Ground 1: Unreasonable delay and/or Failure to exercise discretion and/or take account of relevant information in not deciding C’s claim on the paperwork available when all the evidence needed to make an award was available and a face-to-face assessment is too stressful**

1. SSWP’s discretion to require a face-to-face assessment, or not, is clearly set out in reg 9 SS (PIP) Regs and elaborated upon throughout their own guidance as set above.
2. C has provided the following evidence which confirms that [s/he] has a “*high level of disability*” and details [her/his] ability to carry out prescribed daily living and mobility ‘activities’ in a “*sufficient(ly) detailed, consistent and medically reasonable*” way (as per Part One guidance):

* X
* Y
* Z

1. This evidence was all sent to the DWP [date]. It was received and signed for by the DWP on [date]. Yet there is no indication that SSWP has taken this into account and ‘*consider[ed] the needs* of’ C, a vulnerable claimant in accordance with SSWPs guidance ‘Part One’, or if SSWP has done so, no record how SSWP has done so in accordance with SSWPs guidance ‘Part One’.
2. It is apparent from the non-completion of the face-to-face assessment on [date] that a face-to-face consultation is too stressful for C. [S/He] made this clear in [her/his] written request for an assessment of [date] and in [her/his] [two complaint letters of 19/12/2019 and 30/1/2020 respectively. However, those letters and [her/his] request have received no substantive response to date].
3. This delay in responding to the request, resulting in C not being able to move forward with [her/his] claim for PIP, is a breach of the requirement to make a decision within in a reasonable time, taking account all of the material considerations (*R (C and W) v SSWP* [2015] EWHC 1607). It is now almost [6 months] since C requested a paper-based assessment. On [date] it was recognised that the matter needed to be escalated because of the delay and yet C has still not received any communication from DWP. There is no complexity in deciding whether or not to proceed with a paper-based assessment yet the result of not so deciding means that C has not been able to access the additional income from PIP that would help [her/him] live with [her/his] disabilities.
4. If in fact a decision has been taken (albeit not communicated to C) not to proceed by way of a paper-based assessment, this amounts to an unlawful failure to exercise the discretion available to the SSWP under reg 9 SS (PIP) Regs and to follow SSWP’s own guidance as to when to decide C’s claim on the paperwork available given that C has provided sufficient evidence in support of [her/his] claim and it is apparent that a face to face assessment is too stressful for [her/him]. SSWP is aware of C’s medical conditions, daily living and mobility needs, and has been provided with evidence of these. C’s condition does not vary and SSWP has requested no further information or evidence (if this is needed) to enable a paper assessment to be made. Instead, they appear to have unlawfully operated a blanket policy of calling all claimants to a face-to-face assessment even in situations where “*a face-to-face consultation is likely to be stressful for the claimant*” and notwithstanding the reference in that same part of the guidance to determining each case individually (as per Part One guidance).
5. Alternatively, if the SSWP has considered whether or not to exercise the discretion available and decided not to, this would appear to amount to a clear failure to have regard to relevant information and material considerations (namely their own guidance, the medical evidence provided by C [and his three letters] in which [s/he] has requested a paper based assessment and made clear that a face to face assessment would be too distressing to [her/him]) given that such factors all point strongly towards a paper based assessment being appropriate.

**Ground 2: Failure to make reasonable adjustments/ disability discrimination**

1. The duty to make reasonable adjustments applies to the SSWP under s.29 EA 2010.
2. As above, the SSWP is aware of C’s mental health condition and has been specifically advised of his needs. Further, C has requested the reasonable adjustment of contact only in writing because of the severe anxiety and distress that other forms of contact cause and of proceeding with [her/his] claim by way of a paper-based assessment.
3. In failing to take account of C’s mental health problems and needs, and disregarding [her/his] request for contact to be made in writing to avoid significant and undue mental health distress and to have a paper-based assessment, the SSWP has failed to make reasonable adjustments or to follow their own guidance which makes clear that the “*claimant knows best what their needs* [are]*[[8]](#footnote-8)*”.
4. SSWP has further not taken account of or adhered to SSWP’s own guidance in failing to “*use a flexible approach to put additional support/special arrangements in place that are tailored to the specific needs of the individual”[[9]](#footnote-9)* by failing to proceed with a paper-based assessment after the face-to-face assessment could not be completed and after one has been repeatedly requested by C.
5. In failing to take account of C’s preferred method of contact and apparently not being prepared to proceed by way of paper-based assessment with the result that the assessment has not been completed and C has still not received a decision in respect of [her/his] PIP application (when a person without the C’s mental health condition would have been able to complete the assessment), SSWP has, in breach of s.20 EA 2010, put “*a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled”* and has unlawfully failed to take *“such steps as it is reasonable to have to take to avoid the disadvantage”.* Non-compliance with the duty to make reasonable adjustments under s.20 EA 2010 amounts to discrimination under s.21 EA 2010 and the SSWP has therefore discriminated against C on the grounds of [her/his] mental health disability in breach of EA 2010.

**The details of the action that the SSWP is expected to take:**

SSWP is requested to:

* Assess C’s entitlement to PIP on the paperwork that has already been provided, and award PIP from the date of C’s claim [date].
* Ensure vulnerable claimants are identified, their needs recorded and this record is available to and referred to when both further contact is made by SSWP or SSWP’s agents (including IAS).
* Accept that C has been unlawfully discriminated against on the grounds of [her his] mental health disability contrary to the Equality Act and agree to pay [her/him] damages for the financial and non-financial loss, including injury to feeling, suffered as a result.
* Ensure guidance to staff on seeking further evidence to support a paper-based assessment (if needed) where it is identified that a face-to-face assessment will cause severe distress to claimants if required.
* Ensure internal monitoring of decisions over when to have paper-based assessments is carried out.
* Ensure that written communication from claimants is responded to within a reasonable time.
* Provide C with a written apology as to how [her/his] case has been handled and the failure to meet basic customer service standards plus conduct an internal review of the handling of [her/his] request for a face-to-face assessment and [her/his] complaints.

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

Please find enclosed copies of the following documents:

* Signed form of authority for C
* [The three letters sent by C requesting an assessment on papers.]

**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**

[Advice agency name and address, and email]

**Proposed reply date**

We expect a reply promptly and in any event no later than [date] (14 days).

If we have not 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. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment

   \_data/file/778281/admp2.pdf [↑](#footnote-ref-3)
4. https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process [↑](#footnote-ref-4)
5. [www.whatdotheyknow.com/request/esa\_pip\_uc\_internal\_dwp\_guidance#incoming-1239458](http://www.whatdotheyknow.com/request/esa_pip_uc_internal_dwp_guidance#incoming-1239458) [↑](#footnote-ref-5)
6. https://www.whatdotheyknow.com/request/518399/response/1239458/attach/3/Acrobat%20Document%201.pdf?cookie\_passthrough=1 [↑](#footnote-ref-6)
7. [www.whatdotheyknow.com/request/518399/response/1239458/ attach/html/11/Vulnerability%20Instructions.pdf.html](http://www.whatdotheyknow.com/request/518399/response/1239458/%20attach/html/11/Vulnerability%20Instructions.pdf.html) [↑](#footnote-ref-7)
8. [www.whatdotheyknow.com/request/518399/response/1239458/ attach/html/3/Acrobat%20Document%201.pdf.html](http://www.whatdotheyknow.com/request/518399/response/1239458/%20attach/html/3/Acrobat%20Document%201.pdf.html) [↑](#footnote-ref-8)
9. [www.whatdotheyknow.com/request/518399/response/1239458/ attach/html/11/Vulnerability%20Instructions.pdf.html](http://www.whatdotheyknow.com/request/518399/response/1239458/%20attach/html/11/Vulnerability%20Instructions.pdf.html) [↑](#footnote-ref-9)