**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 X **in relation to HIS/HER Personal Independence Payment (“**PIP**”) claim. 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 D’s failure to apply the correct test when processing the DS1500 form provided with C’s PIP claim which confirms that C is terminally ill and eligible for PIP under the DWP ‘Special Rules’ process.**

***Background facts***

1. **CLIENT DETAILS,**
2. **DISABILITY / MEDICAL DETAILS**
3. **ON DATE C PROVIDED A DS1500 SIGNED BY HIS/HER GP CONFIRMING HE/SHE HAS *……* AND CONFIRMING HIS/HER PROGNOSIS AS:**
4. **C is currently undergoing [what] treatment the impact of which is expected to be [what].**
5. CONTACT WITH DWP AND HOW HAVE RESPONDED
6. On [DATE] the medical assessment provider, Atos, recommended to D that the DS1500 was not valid, and D made a determination on DATE that this should be a ‘normal rules’ claim.
7. HOW WAS THE FEEDBACK OBTAINED? The feedback from Atos includes:

“*it is too soon in the patient’s treatment to decide whether the treatment will or will not work and therefore it should be a normal rules claim.”*

1. **EFFECT ON FINANCES**
2. **EFFECT ON HEALTH ETC.**

**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***

***Effect of terminal illness on PIP claim process and award***

1. **Claims for PIP are usually made by claimants completing first a basic claim form, then a detailed ‘How Your Disability Affects You’ form, and in most cases attending a medical assessment. The ‘How Your Disability Affects You’ form and the information gathered at the medical assessment are then used by a DWP decision maker to decide PIP entitlement with reference to a points based system contained under reg 5 and sch 1 Social Security (Personal Independence Payment) Regulations 2013 (“PIP Regs”).**
2. **PIP claims by terminally ill people are treated differently under legislation and DWP guidance.**

## Under the Welfare Reform Act 2012 (“WRA”) where a person is terminally ill they are in all cases entitled to the enhanced rate of the daily living component under s.78(2) (and the required period condition does not apply).

## Where also ‘the person's ability to carry out mobility activities is limited / severely limited by the person's physical or mental condition’ (s.79(1)(b) and (2)(b) WRA), the required period condition for mobility under s.79(1)(c) and (2)(c) does not apply:

#### *Terminal illness*

***82****.- (1) This section applies to a person who—*

*(a) is terminally ill; and*

*(b) has made a claim for personal independence payment expressly on the ground of terminal illness.*

*(2) A person to whom this section applies is entitled to the daily living component at the enhanced rate (and accordingly section 78(1) and (2) do not apply to such a person).*

*(3) Section 79(1)(c) and (2)(c) (required period condition for mobility component) do not apply to a person to whom this section applies.*

1. **Further, under reg 21 PIP Regs,** where a claimant “*is terminally ill and makes a claim for personal independence payment expressly on that ground*” the past presence requirement under reg 16(b), to have “*been present in Great Britain for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks*” does not apply. Terminally ill claimants who are currently present in Great Britain are therefore able to access PIP immediately.
2. Once terminal illness is established, reg 48(2) Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (“**CP Regs**”) then provides for payments weekly instead of the standard 4 weekly:

***48****.-(2) In the case of any person to whom section 82 of the 2012 Act F1(terminal illness) applies, the Secretary of State may arrange that personal independence payment is to be paid at intervals of* ***one week*** *in advance.*

(Emphasis added)

1. **D’s guidance, the ‘PIP Handbook**[[3]](#footnote-3)**’ explains that where a claimant is accepted as terminally ill, ie. where they “*might have 6 months or less to live”* they will not be sent the second form (‘How Your Disability Affects You’) to complete and will not be called for a face-to-face medical assessment. This means that their claim can be decided promptly:**

***If a claimant might have 6 months or less to live***

***There are special rules that allow people who are nearing the end of life to get help quickly when they claim PIP. This is when their doctor or a medical professional has said they might have 6 months or less to live.***

***Claims made under the special rules for end of life criteria follow a different process, so are dealt with more quickly than standard PIP claims.***

***Claimants who meet the criteria for claiming under the special rules:***

* ***will not have to complete the ‘How your disability affects you’ form***
* ***will not need a face-to-face consultation, and***
* ***if entitled, will receive an award of the enhanced rate of the daily living component of PIP without having to wait until they satisfy the usual qualifying period***

***Both the daily living component and, providing the conditions are met, the mobility component will be paid straight away.***

**(Emphasis added)**

## D’s guidance ‘Personal Independence Payment (PIP) assessment guide for assessment providers’ (22/7/2022) (“PIP Assessment Guide”)[[4]](#footnote-4) Part 1 sets out the process where a claimant reports terminal illness, including:

## the DS1500 is the preferred medical evidence,

## the claimant will not be sent the “claimant questionnaire” ie, the ‘How Your Disability Affects You’ form,

## the claimant will not be called for a “consultation” ie, a medical assessment, and

## referrals to the Assessment Provider (“AP”) must be completed and returned by the AP to the DWP within 2 working days.

1. ThePIP Assessment Guideexplains:

*1.7.1 These provisions were previously called Special Rules for Terminal Illness (SRTI), but this has now changed to ‘Special Rules for End of Life’ (SREL) and the remainder of this section will refer to SREL rather than SRTI.*

*[…]*

*1.7.5 If the claimant states that they are nearing the end of life when applying for PIP, they will be advised by the DWP to obtain form DS1500 from their GP, consultant or specialist nurse. The DWP will wait 7 working days for the DS1500 to be returned before making a referral to the AP.*

*1.7.6 The DS1500 is the* ***preferred*** *medical evidence for a DWP SREL claim. Claimants who have recently completed a cross border move from Scotland to England/Wales may instead provide the Scottish equivalent form – BASRiS (Benefits Assessment under Special Rules in Scotland), where the BASRiS form is less than 6 months old.*

*[…]*

*1.7.8 The referral sent to the AP via the PIPCS will include the initial claim details together with the DS1500 or other medical evidence if it has been submitted by the claimant.*

*1.7.9 The DS1500 gives factual information about the claimant’s condition, any treatment received and any further treatment planned.*

***1.7.10 SREL referrals will not contain the claimant questionnaire due to the need to process claims quickly****. However, some relevant information about the claimant’s circumstances will be gathered during the initial claim stage and supplied to the AP. This will include details of the claimant’s key supporting health professional and basic information about their mobility.*

*1.7.11 All SREL claims will be clearly flagged.* ***SREL referrals must be completed and returned to the DWP within 2 working days.***

***1.7.12 Consultations are not required where a claim has been referred under the SREL provisions.***

(Emphasis added)

## **These provisions under legislation and guidance exist to enable claimants nearing the end of their life to “get help quickly;”**[[5]](#footnote-5) **by:**

## **Exempting claimants from the** required period conditions

## **Exempting claimants from the** past presence test

## Not requiring claimants to complete a ‘How Your Disability Affects You’ form

## Not requiring claimants to attend face-to-face medical assessments

* Requiring Assessment Providers to return referrals to DWP to decide entitlement within 2 working days
* Enabling PIP to be paid weekly

## **It is therefore vital for claimants who qualify under the Special Rules to be recognised as such to enable them to benefit from the PIP they are entitled to within their lifetime.**

## PIP applications made other than the Special Rules usually take around 20 weeks to be decided. Where terminally ill claimants who “**might have 6 months or less to live”**[[6]](#footnote-6) (ie, 26 weeks) are not recognised as terminally ill by D and are required to apply for PIP as if they were not terminally ill, there is a reasonable chance that they will die before their claim is decided or only benefit from an award for a very few weeks at the end of their life.

***Definition of terminal illness***

***Legislation***

1. Under s.82(4) WRA a claimant is terminally ill where they can “*reasonably be expected*” to die within 6 months:

**82**. - *(4) For the purposes of this section a person is “terminally ill” at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can* ***reasonably******be expected*** *within 6 months.*

(Emphasis added)

1. DWP guidance has in part already been changed to amend the condition from ‘6’ to ’12’ months (set out below under ‘DWP Guidance’) and Parliamentary intention is to amend the legislation. The Social Security (Special Rules for End of Life) Bill is at time of writing undergoing its second reading in the House of Commons[[7]](#footnote-7) and will if passed amend s.82 WRA as follows:

*Rules to apply where death expected within 12 months*

***1****.-(2) In section 82 of the Welfare Reform Act 2012 (rules for personal independence payment in cases where death can reasonably be expected within 6 months), in subsection (4) (meaning of “terminally ill”),* ***for “6” substitute “12”.***

*(3) In the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I. 2013/381), in regulation 2, in the definition of “terminally ill”, for the words from “expected” to the end substitute* ***“expected within 12 months”.***

(Emphasis added)

1. How the condition under s.82 WRA is met is the subject of caselaw and DWP guidance.

***Caselaw***

1. In *Department for Communities and The Department for Work and Pensions v Lorraine Cox* [2021] NICA 46 the Northern Ireland Court of Appeal considered how ‘reasonably be expected’ to die should be interpreted and held that the test is met by the answer to the question would *“death as a consequence of the progressive illness within a six month period […] be a surprise” and “not whether death is probable within six months; nor […] that death can be expected within six months”.* This interpretation the Court held, is in accordance with DWP policy and will ensure “*people who are closest to death are given immediate access to the benefits”*:

*[32] The position of the DWP at the time of the hearing was set out as follows:*

***“DWP is committed to delivering an improved benefit system for claimants that are nearing the end of their lives*** *and is working across Government to bring forward proposals following the evaluation. DWP has not been able to bring forward these changes as soon as it would have wished but unfortunately responding to COVID-19 and its impacts has delayed publishing the outcome of the evaluation.”*

*It was accepted by the respondents that the policy debate included extending the time limit to 12 months or dispensing with it altogether and replacing it with a clinical assessment. On 8 July the DWP Minister confirmed that the UK Government intends to extend the time period from 6 months to 12 months.*

*[…]*

*[42] At paragraph 11.1 of Bennion, Bailey and Norbury on Statutory Interpretation (8th edition) it is suggested that the primary indication of legislative intention is the legislative text, read in context and having regard to its purpose. The issue in this case is what is meant by the phrase “death in consequence of the disease can reasonably be expected within six months”.* ***Having regard to some of the comments made in the discussion about policy it is important to note that the test is not whether death is probable within six months; nor is it that death can be expected within six months. The use of the adverb “reasonably” introduces the concept of a range of values rather than a precise figure.***

*[…]*

*[47] We accept that in cases of MND and other progressive illnesses defining even a span of time within which death can reasonably be expected is likely to be difficult but we consider that* ***the statutory test is appropriately satisfied by asking the question whether death as a consequence of the progressive illness within a six month period would be a surprise*** *as recommended by the DfC. In order to address the concerns noted by the APPG on Terminal Illness about the understanding of the test by the clinicians dealing with it we suggest that this question should be incorporated into the DS1500 form as an aid to those providing an opinion.*

*[63] We accept that there has been a measure of uncertainty about the definition of terminal illness but* ***in light of our conclusions at paragraph 46 above we consider that the definition can be said to be clear and specific. We are also satisfied that the definition ensures that a group of people who are closest to death are given immediate access to the benefits****. That is the legitimate aim. We accept that the definition safeguards public funds. Although some medical practitioners have had difficulties assessing claimants against the test the evidence indicates that the rules have operated well in practice and have not until recently led to significant pressure for reform.*

1. The judgment also considers the position of a claimant with an uncertain prognosis *“where death may reasonably be expected over the next 3-12 months”* (with reference to the 6 month condition) concluding this too would satisfy the test on a grammatical construction of the qualifying condition, as the test is not that death is probable, only that it can be ‘reasonably be expected’ within 6 months. That this is the case the Court observes is apparent from DWP policy to award PIP and not to review it for 3 years (rather than 6 months):

*[46****] Where, however, the prognosis is more uncertain the conclusion may be that death may reasonably be expected over the next 3-12 months. Applying a grammatical construction of the qualifying condition it is clear that death can be reasonably expected within the statutory timeframe. Although death may not be probable within the 6 month period, entitlement to the benefit would, therefore, be established.*** *The context of the provision envisages a limited period of entitlement arising from a SRTI award.* ***That is relevant to the continuation of the payment of the benefit. In practice that review takes place after 3 years.*** *The arrangements for review of the payment of the benefit provide an obvious protection for the public purse but do not call into question the entitlement to avail of the special rules.*

(Emphasis added)

1. Ongoing DWP policy to award PIP for 3 years under the Special Rules is confirmed by D’s guidance the ‘PIP Handbook’[[8]](#footnote-8):

*Awards made under the special rules for end of life will be for 3 years. The daily living component will be paid at the enhanced rate in all cases. Payment of the mobility component will depend on whether the claimant needs help to get around and, if they do, how much help they need.*

***DWP Guidance***

1. Guidance under D’s PIP Handbook, as set out above, is in line with legislation and caselaw; the test is met where “***their doctor or a medical professional has said they might have 6 months or less to live”.* That test in line with caselaw “***introduces the concept of a range of values rather than a precise figure”* (*DfC & DWP v Cox* para 42)
2. D’s guidance to medical professionals “The ‘Special Rules’: how the benefit system supports people nearing the end of life”[[9]](#footnote-9)(“**Med Guide**”) provides the test, in line with the decision in *DfC & DWP v Cox* , “*you would not be surprised if your patient were to die within 6 months”* changing from April 2022 to *“12 months”* where, for the time being, a different form should be completed, the SR1*:*

***Patients with an estimated prognosis of less than 6 months to live – use the DS1500 form***

* *You should complete the DS1500 form promptly if you believe that your patient:*
* *has a progressive disease, and*

*as a consequence of that disease* ***you would not be surprised if your patient were to die within 6 months***

*[…]*

***Improvements occurring to the ‘Special Rules’ process in 2022***

*The rules are currently called the ‘Special Rules for Terminal Illness’ (SRTI) and apply to people who have 6 months or less to live.*

*These are changing to the ‘Special Rules for End of Life’ (SREL), which apply to people who have 12 months or less to live.*

*Due to parliamentary constraints, DWP can only change the rules for 2 out of 5 benefits from April 2022.*

*This means that from 4 April 2022 there will be:*

* *2 sets of ‘Special Rules’ criteria to consider*
* *a new medical evidence form, the SR1, which will operate alongside the DS1500 form*

*This is a transitional period until the new rules are extended to all 5 benefits. When this occurs, the DS1500 form will be withdrawn and the SR1 form will remain as the medical evidence form that can be provided to support a ‘Special Rules’ claim.*

(Emphasis added)

1. The reason for the change is explained as follows:

***Why DWP is making this change to the ‘Special Rules’***

*DWP recognises that an increasing number of people are living with chronic illness and co-morbidities and that people need more support at an earlier stage when approaching the end of life. Therefore, DWP is changing the current 6-month ‘Special Rules’ criteria to a model which considers whether an individual is likely to be in their final year of life, that is with a 12-month time-frame.*

*The intent of this change to the ‘Special Rules’ process is to align with the current NHS/GMC definition of ‘end of life’ which states that ‘patients are approaching the end of life when they are likely to die within the next 12 months’. One of the aims of this alignment is to bring conversations about financial support into mind when taking a holistic approach to supporting patients with advanced progressive illness, poor prognoses or terminal conditions.*

1. While ‘*likely to die’* corresponds with the NHS/GMC[[10]](#footnote-10) definition of end of life, it does not correspond with the legal test, which can be satisfied by *“asking the question whether death as a consequence of the progressive illness within a [12] month period would be a surprise”[[11]](#footnote-11)* and which is otherwise reflected by this guidance.
2. D’s Med Guide provides guidance on clinical indicators indicating eligibility, including that undergoing further treatment which has the potential to alter the prognosis does not detract from a terminal diagnosis for the purpose of the DS1500:

***Clinical indicators***

***Determining life expectancy in these circumstances is not an exact science.*** *The following indicators may suggest that a patient is eligible under the ‘Special Rules’:*

*(Highlight as relevant)*

*advanced, progressive illness*

*worsening symptoms despite optimal treatment or management*

*(severe) degenerative condition*

*deterioration of incurable condition*

*rapid decline*

*metastatic disease*

*inoperable cancer*

*severe frailty*

*death is imminent, death is inevitable*

*a high risk of sudden death with an underlying deteriorating condition*

***Some patients may be eligible for ‘Special Rules’ whilst receiving treatment, be it ongoing or palliative treatment****. In some circumstances, there may not be any treatment options available that would significantly alter prognosis. Inclusion of the relevant information on the DS1500 or SR1 form is likely to help your patient’s claim. Some examples can be found below:*

*no or poor response to treatment*

*best supportive care, supportive care only*

*palliative treatment or palliative care in any form including palliative chemotherapy, immunotherapy or radiotherapy*

*symptom control only*

*no further treatment planned/available*

*not amenable to curative treatment, leading to increased need for additional care and support plus decreased function and activity*

*treatment is declined*

*treatment ongoing but unlikely to alter prognosis*

(Remove if none are highlighted)(Emphasis added)

## D’s PIP Assessment Guidance includes the higher test whether it is reasonable to expect that death were to occur within 6 months:

*1.7 Special Rules for End of Life*

*1.7.2 Claimants who identify themselves as nearing the end of life on the initial claim form can seek to claim PIP under the ‘Special Rules for End of Life’ (SREL). Such cases will be flagged to the AP at the point of referral. HPs will be required to advise on whether the claimant satisfies the SREL provisions (see below), and provide advice with appropriate justification to the DWP.*

*1.7.3 The criteria for SREL claims set out in legislation are that the claimant: ‘is suffering from a progressive disease and death in consequence of that disease can* ***reasonably******be expected*** *within 6 months’.*

(Emphasis added)

1. However, going on to clarify that that the test for terminal illness is on the balance of probabilities and that prognosis does not need to be certain:

*1.7.13 In SREL claims, HPs are required to advise on:*

*whether they consider, on balance, the claimant is or is not terminally ill under the prescribed definition*

*if so, which of the descriptors in the mobility activities set out in the assessment criteria are likely to be relevant to the claimant.*

*[…]*

*1.7.16 Advice must be evidence based on the balance of probability. HPs should remember that prognosis can be* ***uncertain*** *and if in their opinion life expectancy* ***is, on******balance****, likely to be less than 6 months, they should advise accordingly.*

(Emphasis added)

**Grounds for Judicial Review**

**Ground 1: Failure to apply the correct test when deciding whether to decide C’s claim under the Special Rules**

1. The law and guidance are clear. A claimant is terminally ill and their PIP claim is to be processed according to Special Rules where*‘death as a consequence of a progressive illness within a six month period would not be a surprise’ (para 47 DfC & DWP v Cox)* andthetest is “*not whether death is probable within six months; nor is it that death can be expected within six months. The use of the adverb “reasonably” introduces the concept of a range of values rather than a precise figure”*.
2. D has decided not to treat C as terminally ill because C is undergoing [what] treatment. Atos recommended to D that the DS1500 was not valid because:

“*it is that it is too soon in the patient’s treatment to decide whether the treatment will or will not work and therefore it should be a normal rules claim*”

1. This appears to apply the test ‘is death probable?’.
2. On [date] D made a determination in line with this advice that this should be a ‘normal rules’ claim.
3. This unlawfully fails to apply the legal test under s.82(4) WRA as interpreted by *DfC & DWP v Cox* *“whether death as a consequence of the progressive illness within a six* [now 12] *month period would be a surprise”* [para 47]. Clearly in C’s case where the prognosis is [what] death would not be a surprise within 12 months, notwithstanding C’s ongoing treatment which [impact of treatment on C and on C’s prognosis].
4. D’s Med Guide guidance specifically considers this scenario and advises that undergoing further treatment which has the *potential* to alter the prognosis does not detract from a terminal diagnosis for the purpose of the DS1500, as set out above at para [32 – edit as more paras probably added so numbering will be different].
5. D’s failure to treat C as terminally ill and to decide C’s claim in line with the Special Rules’ is in breach of s.82(4) WRA, fails to apply the caselaw in *DfC & DWP v Cox*, and does not take D’s own guidance into account.

**Ground 2: Failure to take account of relevant evidence**

1. A properly completed DS1500 has been provided to D BY … THIS MADE CLEAR TO THE DEFENDANT THAT …
2. WHAT OTHER MEDICAL EVIDENCE HAS BEEN PROVIDED?
3. This compelling evidence does not appear to have been taken into account, as had it been, C would have been accepted as terminally ill.
4. Further, no information was provided to C with the PIP2 explaining why C was not considered to have a terminal illness. Only by contacting the DWP was C informed “*it was too early to tell if the claimant was terminal*”. C **is entitled as a matter of public law and as a basic principle of natural justice to have an explanation as to why this is the case so that he/she is aware of whether any irrelevant matters have been taken into account/relevant matters not considered and challenge such a finding accordingly and/or provide further evidence as may be the case**. No written reasons have been provided and the anecdotal statement is contrary to the regulations and D’s own guidance.

**Ground 3: Unreasonable delay**

1. Regulations and D’s own guidance direct that a claimant with a terminal illness is assessed for this benefit within 2 days and then the benefit is awarded and in payment straight after. This is to ensure Parliament’s aim to provide expedited welfare support to terminal patients is met.
2. Failure to process C’s DS1500 according to the regulations and D’s own guidance and failing to pay C PIP immediately, fails to give effect to the policy intention and unlawfully leaves claimants such as C, who are terminally ill, without the means to meet disability needs that PIP is designed to assist with. Further to this, it is likely due to the time it takes to receive a PIP decision under normal rules, that C will die before receiving this help.
3. The stress of having no means to address the financial costs that arise due to disability needs caused by their terminal illness affect what can be considered a ‘reasonable time’ to action a DS1500 correctly. This is on top of the stress and anxiety that C is already facing in having to come to terms with HIS/HER impending death and risks being considered as inhuman and degrading treatment.
4. D 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).
5. A decision on terminal illness is incorporated into the decision on entitlement made under s.8 of the Social Security Act 1998 (SSA 1998) under which the Secretary of State shall “decide any claim for a relevant benefit”.
6. The duty to make a decision within a reasonable time applies to s.8 of the SSA. What counts as a reasonable time depends on all the circumstances, including the impact on the claimant[[12]](#footnote-12).
7. THE IMPACT ON C HAS BEEN DETAILED ABOVE AND INCLUDES …

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

**D is requested to:**

* Treat C as having a terminal illness immediately
* Award PIP from the start of C’s claim (Start date of claim or the date the DS1500 was provided, whichever is later)
* Accept that the failure to process the DS1500 provided correctly for C up until this point falls well below the level of service that C should be entitled to expect from the DWP and has caused C unnecessary stress and financial hardship at a time when he/she is already having to come to terms with his/her imminent death and agree to pay C compensation in respect of the same.

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

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

* **Medical evidence confirming illness and prognosis**
* **Signed form of authority for C**
* **DS1500**

**ADR proposals**

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

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

ADVICE AGENCY NAME, ADDRESS AND EMAIL HERE

**Proposed reply date**

We expect a reply promptly and, in any event, no later than DATE (7 DAYS). This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the delay already experienced; (b) the lack of complexity of the issue, and (c) crucially, the limited remaining lifespan of the Claimant.

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. Should 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,

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. [gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#conditions-of-entitlement](https://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#conditions-of-entitlement) [↑](#footnote-ref-3)
4. gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-1-the-assessment-process [↑](#footnote-ref-4)
5. **‘PIP Handbook** [↑](#footnote-ref-5)
6. [gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#conditions-of-entitlement](https://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#conditions-of-entitlement) [↑](#footnote-ref-6)
7. bills.parliament.uk/bills/3157 [↑](#footnote-ref-7)
8. [gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#how-to-make-a-claim](http://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook#how-to-make-a-claim) [↑](#footnote-ref-8)
9. (6/4/2022) (gov.uk/government/publications/dwp-factual-medical-reports-guidance-for-healthcare-professionals/the-special-rules-how-the-benefit-system-supports-people-nearing-the-end-of-life) [↑](#footnote-ref-9)
10. www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/treatment-and-care-towards-the-end-of-life/guidance [↑](#footnote-ref-10)
11. *DfC & DWP v Cox* para 47 [↑](#footnote-ref-11)
12. *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin) [↑](#footnote-ref-12)