**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 claim for Universal Credit (“**UC**”). 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** 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**

Failure on the part of D to provide a decision within a reasonable time or at all regarding X’s request for a mandatory reconsideration of the decision not to award UC.

***Background facts***

1. X IS A SINGLE WOMAN SUFFERING FROM
2. X DISABILITY
3. X IMMIGRATION STATUS (IF RELEVANT)
4. X HOUSING
5. X HOUSEHOLD
6. WHAT HAS HAPPENED
7. CONTACTS WITH DWP
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 for inspection, as part of the response to this letter.

**Grounds for Judicial Review**

**Ground 1: Unreasonable delay in providing a mandatory reconsideration decision**

1. 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).
2. The duty to make a decision within a reasonable time applies equally to s.9 of the Social Security Act 1998 (“**SSA**”) under which Secretary of State may “revise” any decision made under s.8 or s.10 SSA, as to the analogous provision at s.8 SSA under which the Secretary of State shall “decide any claim for a relevant benefit”.
3. What counts as a reasonable time depends on all the circumstances, including the impact on the claimant[[3]](#footnote-3).

*Impact on the claimant*

1. X’S MENTAL HEALTH FORCED HER TO LEAVE FULL-TIME EDUCATION AND ALSO PREVENTS HER FROM WORKING. SHE/HE has no income without UC.
2. The failure to provide a decision in response to C’s request for a mandatory reconsideration has caused C hardship. The delay relates to a decision on UC entitlement. UC is a subsistence benefit which includes amounts for housing. Delays in UC decisions can therefore have severe consequences for the claimant, leaving them with no income to fall back on, without money for food or heating, unable to pay their rent and so at risk of homelessness and destitution. The failure to review the decision not to award C UC caused C stress and anxiety when SHE/HE was already experiencing WHAT?.

Non-complex case/all information available

1. C is eligible for UC. SHE/HE clearly meets, and met, the conditions of entitlement as set out in s. 4 of the Welfare Reform Act 2012:

##### ​  4. Basic conditions

                    (1) For the purposes of section 3, a person meets the basic conditions who—

                    (a) is at least 18 years old,

                    (b) has not reached the qualifying age for state pension credit,

                    (c) is in Great Britain,

                    (d) **is not receiving education**, […​]

(Emphasis added)

1. This is not a complex case and there is no reason for the delay. C has provided clear and compelling evidence to the effect that S/HE was and is eligible for UC. It should be easy for the Secretary of State to re-consider whether or not the initial decision was correct.

*Purpose of mandatory reconsideration process*

1. Finally, of relevance to the circumstances and therefore what constitutes a reasonable or unreasonable delay is, the statutory purpose for introducing the mandatory reconsideration process. According to the Government’s consultation paper, the stated purpose “*to deliver* ***timely****, proportionate and effective justice for claimants, make the process for disputing a decision* ***fairer and more efficient***.”[[4]](#footnote-4) (emphasis added). The delay in this case due to the failure to accept C’s request for a mandatory reconsideration and the consequent frustration of C’s appeal rights clearly fails to deliver on this stated purpose and is therefore unlawful.

**Ground 2: Procedural irregularity**

1. It is clear that a mandatory reconsideration of an UC can be requested by telephone.
2. This is confirmed on D ’s own publicly accessible “How Benefits Work” webpages[[5]](#footnote-5):

“*How to ask for mandatory reconsideration:*

*Contact the benefits office that gave you the decision. You can contact them:*

* ***by phone***
* *by letter*
* *by filling in and returning a form*

*The contact details are on your decision letter.*”

(Emphasis added)

1. This is further confirmed by D’s operational guidance ‘Mandatory Reconsiderations’ (V8)[[6]](#footnote-6):

“***The Mandatory Reconsideration process***

*A claimant is able to request a Mandatory Reconsideration:*

* ***over the phone***
* *face to face*
* *by putting a note in their journal*
* *in writing”*

(Emphasis added)

1. In requesting a mandatory reconsideration of the decision not to award her UC by telephone, C had a legitimate expectation that HER/HIS request would be considered and a decision provided. Failure to provide a decision and to later report that ‘THERE WAS NO RECORD OF HER/HIS REQUEST’ BREACHES THE RULES OF NATURAL JUSTICE AND FRUSTRATES HER APPEAL RIGHTS.

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

* The Secretary of State should revise and award C UC from HIS/HER original claim date (DATE),
* If the Secretary of State is unable to do so, she should provide a Mandatory Reconsideration decision immediately.
* Ensure that decision makers are adequately trained to ensure that requests made by telephone to change a decision are treated as mandatory reconsideration requests and written decisions are provided within a reasonable time.

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

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

* **Signed form of authority.**
* **Other documents available via C**’s UC online journal

**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 (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

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. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. https://www.gov.uk/mandatory-reconsideration/how-to-ask-for-mandatory-reconsideration [↑](#footnote-ref-5)
6. http://data.parliament.uk/DepositedPapers/Files/DEP2021-0835/093\_Mandatory\_Reconsiderations\_V8-0.pdf [↑](#footnote-ref-6)