**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 HIS/HER Universal Credit (“**UC)**” 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 5pm on 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*.*

**The details of the matter being challenged**

1. The unreasonable delay on the part of D in making a supersession decision to reflect C’s change of circumstances as notified and evidenced to D on DATE.

***Background facts***

1. CLAIMANT’S CIRCUMSTANCES, DISABILITY ETC
2. FAMILY INC DOBS
3. THE CLAIMANT HAS BEEN IN RECEIPT OF UC SINCE DATE. C RECEIVES UC BECAUSE …
4. ON DATE C HAD WHAT CHANGE OF CIRCUMSTANCES.
5. ON DATE C NOTIFIED THIS TO D **HOW** AND PROVIDING WHAT EVIDENCE? (NB VERY IMPORTANT TO EXPLAIN HOW, DID THEY USE THE CHANGE OF CIRC’S BUTTON ON THEIR JOURNAL?)
6. IF LATE, WHY LATE? AND HOW COMMUNICATED TO DWP REASONS FOR LATENESS? WHAT HAS BEEN SAID?
7. C’S UC SHOULD HAVE BEEN SUPERSEDED FROM **DATE** (IE THE FIRST DAY OF THAT UC ASSESSMENT PERIOD) TO INCLUDE A CHILD ELEMENT.
8. HOW DID DWP RESPOND?
9. D HAS NOT REQUESTED ANY FURTHER EVIDENCE / OR D REQUESTED WHAT FURTHER EVIDENCE AND THIS WAS PROVIDED ON DATE.
10. WHAT IS THE EFFECT ON C OF THE ADDITIONAL AMOUNT NOT BEING INCLUDED IN THE AWARD?
11. TO DATE, NO SUPERSESSION DECISION HAS BEEN RECEIVED BY THE CLAIMANT.
12. DURING THIS TIME WHAT CONTACT HAS BEEN MADE WITH THE DWP? YET NO ADDITIONAL AMOUNT HAS BEEN RECEIVED AND C HAS BEEN DEPRIVED OF HIS/HER APPEAL RIGHTS BY THE FAILURE TO PROVIDE A DECISION NOTICE.

**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: unreasonable delay in providing a decision and failure to follow the law**

***Summary - Unlawful Delay***

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.10 of the Social Security Act 1998 (“**SSA 1998**”) under which Secretary of State may “supersede” any decision, as to any decision made under 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[[3]](#footnote-3).
4. C contacted D HOW on DATE to notify of HIS/HER change of circumstances and provide the relevant evidence.
5. To date C has received no decision, this is a delay of HOW LONG. This is not a reasonable delay. The matter is not a complex one and the delay is causing C financial hardship and anxiety.

***What should have happened: duty to conduct a supersession decision and the effective date of that decision***

1. The power to supersede under s.10 SSA applies to decisions made under Part III, Chapter 1 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013 (“**UC (DA) Regs**”) including under reg. 23 where there has been a change of circumstances:

***23****—(1) The Secretary of State may supersede a decision in respect of which—*

*(a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since it was made; or*

*(b) it is expected that a relevant change of circumstances will occur.*

1. **The effect of an advantageous change of circumstances on a claimant’s UC award is to increase that award from the beginning of the UC assessment period in which the change occurred, or if notified late, the beginning of the assessment period in which the change was notified to D under reg 35 and sch 1 of the** UC (DA) Regs**:**

#### Effective dates: Secretary of State decisions

#### 35.—(1) Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) makes provision for the date from which a superseding decision takes effect where there has been, or it is anticipated that there will be, a relevant change of circumstances since the earlier decision took effect.

***Schedule 1***

***Effective dates for superseding decisions made on the ground of a change of circumstances***  *(Reg. 35)*

***20*** *-**Subject to the following paragraphs and to Part 4,* ***in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.***

***21****- Except in a case to which paragraph 22 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.*

**(Emphasis added)**

1. **C’s UC assessment periods run from the DATE TO THE DATE of each month.**
2. **C’s change of circumstances occurred on DATE.**
3. **C notified D of HIS/HER** change of circumstances **on DATE ie. within the same UC assessment in which** HIS/HER change of circumstances **occurred, and as such HIS/HER UC should have been superseded from the beginning of that assessment period (reg. 35 and sch 1, para 20).**
4. **In failing to supersede C’s UC at all, or from the beginning of the assessment period in which the change occurred, D has unlawfully failed to apply this law.**

**ALTERNATIVE IF NOTIFED LATE BUT WITHIN 12 MONTHS (REPLACE PARA 19 TO 23)**

1. **The effect of an advantageous change of circumstances on a claimant’s UC award is to increase that award from the beginning of the UC assessment period in which the change occurred, providing the change is notified to the Secretary of State within the assessment period in which the change occurred or within 13 months if the Secretary of State is satisfied it is reasonable to grant an extension under regs 35 and 36 and sch 1 of the** UC (DA) Regs**.**

#### Effective dates: Secretary of State decisions

#### 35.—(1) Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances) makes provision for the date from which a superseding decision takes effect where there has been, or it is anticipated that there will be, a relevant change of circumstances since the earlier decision took effect.

#### […]

#### Effective dates for superseding decisions where changes notified late

#### 36.—(1) For the purposes of regulation 35(1) (effective dates: Secretary of State decisions) and paragraphs 6, 14 and 21 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), the Secretary of State may extend the time allowed for a person (“the applicant”) to give notice of a change of circumstances in so far as it affects the effective date of the change if all of the following conditions are met.

*(2) The first condition is that* ***an application is made to the Secretary of State at an appropriate office for an extension of time.***

*(3) The second condition is that* ***the application—***

*(a)* ***contains particulars of the change of circumstances and the reasons for the failure to give notice of the change of circumstances on an earlier date****; and*

*(b)* ***is made****—*

*(i)* ***within 13 months******of the date on which the change occurred****; or*

*(ii) in the case of personal independence payment where a notification is given under paragraph 15 of Part 2 of Schedule 1 (effective dates for superseding decisions made on the ground of a change of circumstances), within 13 months of the date on which the claimant first satisfied the conditions of entitlement to the particular rate of personal independence payment.*

*(4)****The third condition is that the Secretary of State is satisfied that it is reasonable to grant the extension****.*

*(5) The fourth condition is that* ***the change of circumstances notified by the applicant is relevant to the decision which is to be superseded.***

*(6) The fifth condition is that the Secretary of State is satisfied that, due to special circumstances,* ***it was not practicable for the applicant to give notice of the change of circumstances within the relevant notification period.***

**[…]**

***Schedule 1***

***Effective dates for superseding decisions made on the ground of a change of circumstances***  *(Reg. 35)*

***20*** *-**Subject to the following paragraphs and to Part 4,* ***in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.***

***21****- Except in a case to which paragraph 22 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or* ***after the expiry of such longer period as may be allowed under regulation 36*** *(effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.*

**(Emphasis added)**

1. **C’s UC assessment periods run from the DATE TO THE DATE of each month.**
2. **C’s change of circumstances occurred on DATE and C notified D on [date], ie, [how long] after the assessment period in which the change occurred. C meets the conditions for C’s notification to be treated ‘in time’ as:**

**Condition 1: C made an** application to the Secretary of State at an appropriate office for an extension of time **[how].**

**Condition 2(a): C’s application stated [details] and therefore** contained particulars of the change of circumstances and the reasons for the failure to give notice on an earlier date **[details].**

**Condition 2(b): C’s change of circumstances occurred on [date] and C notified D on [date] ie,** within 13 months of the date on which the change occurred.

**Condition 3:** C has explained that s/he was unable to notify D earlier because **[reason]** and the Secretary of State should be satisfied that it is reasonable to grant the extension.

**Condition 4**: the change of circumstances notified by C is relevant to the decision to be superseded as it increases the amount of UC C is entitled to.

**Condition 5:** It was not practicable for C to give notice of the change of circumstances within the relevant notification period **[reason]**

1. **As such C’s UC should have been superseded from the beginning of the assessment period in which the change occurred (regs. 35 and 36 and sch 1 para 20, para 21 not applying).**
2. **In failing to supersede C’s UC at all, or from the beginning of the assessment period in which the change occurred, D has unlawfully failed to apply the law.**

***What should have happened – addition of child element via supersession***

1. C’s change of circumstances is not complex to give effect to in a supersession decision.
2. C notified D of the birth of HIS/HER child / that HIS/HER child (aged AGE) has started full time non-advanced education ON DATE.
3. C provided WHAT EVIDENCE SHOWING … AND PROVIDED WHAT EVIDENCE OF REASON FOR LATENESS
4. C is eligible for a UC child element in respect of NAME FROM DATE.
5. Under the Universal Credit Regulations 2013 (“**UC Regs**”) a child element is to be included for a child OR YOUNG PERSON AGED BETWEEN 16 AND 20 YEARS WHO IS IN FULL TIME NON-ADVANCED EDUCATION AND normally lives with the claimant:

***The child element***

***24.*** *(1) The amount to be included in an award of universal credit for each child or qualifying young person for whom a claimant is responsible and in respect of whom an amount may be included under section 10 (“the child element”) is given in the table in regulation 36.*

#### When a person is responsible for a child or qualifying young person

***4.*** *(1) Whether a person is responsible for a child or qualifying young person for the purposes of Part 1 of the Act and these Regulations is determined as follows.*

*(2) A person is responsible for a child or qualifying young person who normally lives with them.*

#### Meaning of “qualifying young person”

***5.*** *(1) a person who has reached the age of 16 but not the age of 20 is a qualifying young person for the purposes of part 1 of the act and these regulations—*

*(b) up to, but not including, the 1st september following their 19th birthday, if they are enrolled on, or accepted for, approved training or a course of education—*

*(i) which is not a course of advanced education,*

*(ii) which is provided at a school or college or provided elsewhere but approved by the secretary of state, and*

*(iii) where the average time spent during term time in receiving tuition, engaging in practical work or supervised study or taking examinations exceeds 12 hours per week.*

*(2) where the young person is aged 19, they must have started the education or training or been enrolled on or accepted for it before reaching that age.*

*(3) the education or training referred to in paragraph (1) does not include education or training provided by means of a contract of employment.*

*(4) “approved training” means training in pursuance of arrangements made under section 2(1) of the employment and training act 1973(*[***1***](https://www.legislation.gov.uk/uksi/2013/376/regulation/5/made#f00032)*) or section 2(3) of the enterprise and new towns (scotland) act 1990(*[***2***](https://www.legislation.gov.uk/uksi/2013/376/regulation/5/made#f00033)*) which is approved by the secretary of state for the purposes of this regulation.*

*(5) a person who is receiving universal credit, an employment and support allowance or a jobseeker’s allowance is not a qualifying young person.*

***DELETE SECTION IN RED IF NOT RELEVANT***

1. C’s child:
* WAS BORN ON / Is HOW MANY years old
* Lives with C and this is HER/HIS only home
* IS ENROLLED ON OR ACCEPTED FOR A NON-ADVANCED COURSE OF EDUCATION (WHAT ARE THEY STUDYING AND WHERE?). THIS IS A FULL TIME COURSE IE. MORE THAN 12 HOURS PER WEEK
1. The above was evidenced to D HOW? On DATE, yet C’s UC award has not been increased.
2. Failure to award a child element for NAME fails to apply the law at reg. 24 of the UC Regs.

***Impact on the claimant***

1. The delay in making a decision is causing C serious and immediate hardship. The delay relates to a decision on the amount of UC C is entitled to. UC is a subsistence benefit and C has WHAT ADDITIONAL COSTS FOR which provision is made by UC to meet by the availability of child elements for dependent children and qualifying young people. However in this case, C’s UC has not been increased to meet this cost as the child element has not been awarded.
2. WHAT ARE THE CONSEQUENCES FOR C? EDIT AS APPROPRIATE
3. Non-payment of the child element and failing to provide a decision which C can challenge is causing C considerable stress and anxiety which is having an impact on HIS/HER mental health. DELETE AS APPROPRIATE

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

* The Secretary of State should award C a UC child element immediately and from DATE in consideration of the delay already suffered.
* If the Secretary of State is unable to do so, she should provide a decision notice immediately.

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

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

* **Correspondence with the DWP**
* **ANYTHING ELSE?**
* **Signed form of authority.**

**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 you consider that you need more than 14 days to respond, please inform me of the same with reasons by return, otherwise if 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) at para 41 [↑](#footnote-ref-3)