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**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 her claim for Pension Credit. 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 4pm 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 deciding C’s Pension Credit (“**PC**”) claim.

***Background facts***

1. C is [details: age, nationality, immigration status, housing, disability, family etc].
2. C made a [telephone /other method] application for PC on [date] [with the assistance of…]. [C requested backdating to…]
3. C provided proof of her [right to reside / immigration status] as [eg, a person with EU Settled Status] on [date] by [method of notification], this was confirmed as received on [date].
4. C meets the conditions of entitlement for PC; [she] is not of working age and is in Great Britain. C is on a low income of [details and amount] and has [no /only amount in] capital evidence of which was provided to D in the form of [bank statements] on [date].
5. However, to date, no decision has been received and C has been left with insufficient funds to meet her essential expenditure.
6. [details of financial hardship]
7. [details of attempts to resolve the delay including what DWP have said]

**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.

**Grounds for Judicial Review**

**Ground 1: Unlawful delay in deciding a claim**

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 to s.8 of the Social Security Act 1998 (SSA 1998) under which D shall “*decide any claim for a relevant benefit*”.
3. What counts as a reasonable time depends on the context and taking all the material considerations into account[[3]](#footnote-3) , including the impact on the claimant.

*Impact on the claimant*

1. The delay relates to a decision on PC entitlement. PC is a subsistence benefit. Delays in PC decisions can therefore have severe consequences for claimants, leaving them with insufficient income to fall back on. In this case, C is [unable to pay for both for food and heating].
2. [detail impact on C]

*Non-complex case/all information available*

1. C is eligible for PC. She clearly meets the conditions of entitlement for the guarantee part of PC as set out in ss1 and 2 of the State Pension Credit Act 2002 (“**SPCA”**):

***1.****-(1) A social security benefit to be known as state pension credit shall be payable in accordance with the following provisions of this Act.*

*(2) A claimant is entitled to state pension credit if—*

*(a) he is in Great Britain;*

*(b) he has attained the qualifying age; and*

*(c) he satisfies—*

*(i) the condition in section 2(1) (guarantee credit); or*

*(ii) the conditions in section 3(1) and (2) (savings credit).*

### *Guarantee credit*

***2.****- (1) The condition mentioned in section 1(2)(c)(i) is that the claimant—*

*(a) has no income; or*

*(b) has income which does not exceed the appropriate minimum guarantee.*

1. The State Pension Regulations 2002 (as amended) are made under SPCA (“**PC Regs**”).
2. C is “*in Great Britain*” for the purpose of s(1)(2)(a) SPCA as C is habitually resident in the United Kingdom (not disputed by D) and has a right to reside as a […], ie, a right to reside which is not excluded by reg 2(3) or (3A) PC Regs.
3. C is [number] years old and has therefore attained the qualifying age and meets the condition in s1(2)(b) SPCA.
4. C meets the income condition under s1(2)(c)(i) SPCA as C “*has no income*” as per s(2)(1)(a) SPCA.
5. [OR DELETE ABOVE PARA AND REPLACE WITH THIS PARAGRAPH THROUGH TO PARAGRAPH 25] C meets the income condition under s1(2)(c)(i) SPCA as C has income lower than [her] appropriate minimum guaranteeunder s(2)(1)(b) SPCA.
6. The appropriate minimum guarantee is determined by s2 SPCA:

*2.-(2) Where the claimant is entitled to a guarantee credit, then—*

*(a) if he has no income, the guarantee credit shall be the appropriate minimum guarantee; and*

*(b) if he has income, the guarantee credit shall be the difference between the appropriate minimum guarantee and his income. and under 2(3):*

 *(3) The appropriate minimum guarantee shall be the total of—*

*(a) the standard minimum guarantee; and*

*(b) such prescribed additional amounts as may be applicable.*

*(4) The standard minimum guarantee shall be a prescribed amount.*

1. Regulation 6 PC Regs prescribes the amounts:

***6.****—(1) Except as provided in the following provisions of these Regulations, the standard minimum guarantee is—*

*(a) £278.70 per week in the case of a claimant who has a partner;*

*(b) £182.60 per week in the case of a claimant who has no partner.*

1. The PC Regs go on to prescribe additional amounts under reg 6:

- for disability under reg 6(4) and sch I;

- for carers under reg 6(6)(a) and sch I;

- for claimants with housing costs under reg 6(6)(c) and sch II;

- for claimants responsible for a child or qualifying young person (where there is no award of tax credits) under reg 6(6)(D) and sch II.

1. C’s appropriate minimum guarantee is [amount] including [details of amount types].
2. C’s income is [amount].
3. C’s income is less than [her] appropriate minimum guarantee amount and C therefore meets the entitlement condition under s2 SPCA.
4. C has no capital to be taken into account [or detail capital].
5. This is not a complex case and there is no reason for the delay.
6. C has provided clear and compelling evidence to the effect that she was and is eligible for PC.  It should be straightforward for D to decide C’s claim, yet is has been [number] months since [her] application was submitted.

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

* D is asked to award PC immediately and from [date] in consideration of the delay already suffered.
* If D is unable to do so, D is asked to provide the reason for the ongoing delay.
* If D is unable to award PC because she considers that D is not entitled to the same, D is asked to provide a decision on entitlement which would enable C to exercise [her/his] appeal rights without further delay.

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

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

* **Correspondence with D**
* **C’s 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).

S**hould we have received no substantive response nor a request for further time by the given deadline, C will seek representation to issue proceedings for judicial review without further notice to you.**

Yours faithfully

1. assets.publishing.service.gov.uk/media/657c891d83ba380013e1b66c/List-of-Authorised-Government-Departments-under-s.17-Crown-Proceedings-Act-1947-15.12.2023.pdf [↑](#footnote-ref-1)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-2)
3. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) at [34]. [↑](#footnote-ref-3)