BEFORE YOU USE THIS LETTER:

Judicial review is a ‘remedy of last resort’. If there is a right of appeal, you must use it before sending a pre-action letter, unless that right of appeal can be said to not be effective.

We suggest sending a mandatory reconsideration request and asking for response within 28 days, or 14 days in exceptional circumstances (which you will need to explain e.g. no UC in place so risk of homelessness and/or destitution). Feel free to use the references in this pre-action template when drafting your MR request.

Explain that if a mandatory reconsideration decision is not received within the time requested, you will send a judicial review pre-action letter.

If a mandatory reconsideration decision is not received, your pre action letter should then address the substantive issue AND the delay in providing an MR decision within a reasonable time (see the letter template: UC delay in providing MR decision).

If you are unsure, please contact CPAG to discuss: jrproject@cpag.org.uk

Delete this box before sending

**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 NAME **in relation to HER/HIS universal credit 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 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**.*

**The details of the matter being challenged**

1. C is challenging the unlawful delay in failing to pay HIM/HER the backdated limited capability for work related activity (“**LCWRA**”) element to the start of HER/HIS universal credit (“**UC**”) award contrary to regulation 19 of the Universal Credit (Transitional Provisions) Regulations 2014 (“**UC (TP) Regs**”).

***Background facts***

1. C CIRCUMSTANCES, HOUSEHOLD, DISABILITY, OTHER BENEFITS
2. C is a vulnerable individual. S/he suffers from …
3. On DATE C made a new claim for UC BECAUSE …
4. Immediately prior to HER/HIS claim to UC, C was in receipt of Employment and Support Allowance (“**ESA**”) including the LCWRA component. C had been in receipt of ESA including the LCWRA component since DATE.
5. DELETE IF NOT RELEVANT ON DATE, On DATE an entry was placed by D on C’s UC journal stating that he/she had been / was in receipt ESA including the LCWRA component.
6. C received HER/HIS first UC payment on DATE. It was based on HER/HIS standard allowance, housing element, child elements (X NUMBER) but included no LCRWA element.
7. On DATE, C posted an entry in her UC journal regarding back-dating of HER/HIS LCWRA element, HAVING RAISED THE ISSUE SEVERAL TIMES IN TELEPHONE CALLS.
8. DWP RESPONSE
9. DELETE IF NOT RELEVANT On DATE, C posted a further entry regarding back-dating. SHE/HE received a response that the request (originally raised… ) could take 28 days to process.
10. DELETE IF NOT RELEVANT In the meantime, C had undertaken a work capability assessment (“**WCA**”) on DATE and it was found she/he had LCWRA. S/he received notification of this on DATE AND THAT SHE/HE WOULD RECEIVE AN ADDITIONAL ELEMENT.
11. DELETE IF NOT RELEVANT C’s UC award for DATE to DATE still did not include the LCWRA element but it was subsequently included in the DATE to DATE award and subsequent awards.

**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***

1. Regulation 19 UC (TP) Regs requires that where a claimant of UC was entitled to ESA immediately prior to claiming UC and had been, in respect of ESA, determined to have LCWRA, then they must be treated as having LCWRA from the outset of their UC claim and that the LCWRA element must be included from the outset:

***Transition from old style ESA***

***19.****- (1) This regulation applies where–*

*(a) an award of universal credit is made to a claimant who was entitled to old style ESA on the date on which the claim for universal credit was made or treated as made (“the relevant date”); and*

*(b) on or before the relevant date it had been determined that the claimant had limited capability for work or limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act).*

*(4) Where, on or before the relevant date, it had been determined that the claimant had limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act) or was treated as having limited capability for work-related activity–*

 *[…]*

*(b) the claimant is to be treated as having limited capability for work and work related activity for the purposes of regulation 27(1)(b) of those Regulations and section 19(2)(a) of the Act.*

*(5) Unless the assessment phase applied and had not ended at the relevant date, in relation to a claimant who is treated as having limited capability for work and work related activity under paragraph (4)(4)(b)–*

*[…]*

*(b) the LCWRA element is (subject to the provisions of Part 4 of the Universal Credit Regulations) to be included in the award of universal credit with effect from the beginning of the first assessment period.*

1. D’s own Advice for Decision Making confirms that the result of a WCA done for ESA applies equally to a subsequent claim for UC and that the UC LCWRA element must be included in the new UC award[[3]](#footnote-3):

***G3002*** *A claimant has LCWRA where*

*1. it is determined that they have LCWRA on the basis of the WCA, whether for the purposes of UC or ESA1 (see G3040 et seq) […]*

*1 UC Regs, reg 40(1)(a); ESA Regs 13, Part 5*

***G3003*** *The question of whether a claimant has LCWRA is relevant in order to determine*

*1. if the LCWRA element can be included in the UC award1 […]*

*See ADM Chapter F5 for guidance on work capability elements*

*1 UC Regs, reg 27(1)(b) & (2)*

***F5001*** *An award of UC includes the LCWRA element where the claimant has LCWRA1 .[ …]*

*1 WR Act 12, s 12(1) & (2)(b); UC Regs, reg 23(2)(a) & 27(1);*

**Grounds for judicial review**

**Ground 1: failure to include the LCWRA element from the outset of the UC claim**

1. Immediately prior to claiming UC, C was in receipt of ESA including the LCWRA component, having been determined to have LCWRA on DATE.
2. This was something that the decision maker was specifically aware of from the fact that it was recorded in C’s UC journal on DATE.
3. Despite this, and the fact that C had consistently requested backdating of her LCWRA element, the LCWRA element was not included in her UC award until DATE and DELETE IF NOT TRUE backdating was refused in a letter of DATE.
4. On DATE and DATE, C’s EXAMPLE Citizens Advice advisor / mental health welfare rights caseworker raised this issue with the UC processing team. A copy of the letter of DATE is enclosed. That letter clearly amounts to a request for official error revision. However, to date it has still not been acted upon despite the passage of some NUMBER months.
5. The failure to award C the LCWRA element from the outset of her UC claim was unlawful under reg 19 UC (TP) Regs and D’s own guidance (set out above).

**Ground 2: unlawful delay**

1. A request for official error revision of C’s award / the decision not to backdate the / LCWRA element on DATE has been made on several occasions by WHO, the latest occasion being on DATE, but has still not been actioned. This amounts to unreasonable delay.
2. While there is no specified timeframe in which D is required to respond to a request for official error revision, she is under a duty to do so within a “reasonable time” – *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin). What counts as a reasonable time depends on the circumstances, including the impact on the claimant.
3. In the present case, an over NUMBER month delay is unreasonable and therefore unlawful given:
	1. C’s very limited financial circumstances, DETAILS including her having to access foodbanks to ensure enough food for HIM/HER and HIS/HER NUMBER children;
	2. HIS/HER vulnerability DETAILS as somebody with ongoing mental / physical health problems;
	3. the fact that D was aware from the outset of HIS/HER claim that C had been in receipt of ESA immediately before claiming UC and was in receipt of the / LCWRA component;
	4. the fact that the issue has been raised repeatedly by both C and subsequently a WELFARE RIGHTS WORKER.

**Alternative remedies**

1. EDIT / DELETE AS APPROPRIATE C requested a Mandatory Reconsideration of the decision on 22 May 2019. D replied via C’s UC online Journal on the same day:

*“I will not set up a mandatory reconsideration regarding the overpayment until I have received LCWRA response”.*

1. C is prevented from appealing the decision in question by the refusal of D to accept her Mandatory Reconsideration request. Judicial review is therefore the only way for C to challenge the unlawful failure to include the LCWRA element in her UC award.

**The details of the action that he Defendant is expected to take**

**D is requested to:**

1. Award C the backdated payment of her LCWRA element to the start of HIS/HER UC claim.
2. Compensate C for the poor handling by DWP of HIS/HER UC claim which has added to HIS/HER overall stress and anxiety at a time when S/HE has been having to deal with … Contrary to DWP’s stated priority of delivering ‘outstanding services to our clients and customers’, C finds her/herself LENGTH OF TIME AFTER initially making her UC claim, still waiting for a backdated award of her LCWRA element. Such poor handling is also contrary to DWP’s customer charter, with its commitments inter alia to understand C’s circumstances and to provide HIM/HER with the correct decision and information.
3. Confirm what systems and training are in place to prevent this unlawful failure from being repeated.

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

* **Claimant’s signed authority**
* **All other documents available through C’s Universal Credit online account (Journal and Claimant Commitment).**

**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 4pm on 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. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987114/admg3.pdf> and <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864911/admf5.pdf> [↑](#footnote-ref-3)