**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]**

Dear Sir/Madam,

We are instructed by [name] in relation to [her/his] Personal Independence (“**PIP**”) award and the Secretary of State’s refusal to include [her/him] in the exercise known at the ‘MH LEAP exercise’.  We write in accordance with the judicial review pre-action protocol.

**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 challenges D’s failure to accept and decide C’s supersession request or, if a supersession decision was made, to appropriately notify C of that decision, and D’s failure to supersede C’s (“**PIP**”) award in accordance with the ‘MH LEAP exercise’.

Relevant facts and chronology

1. C is [details].
2. C suffers inter alia anxiety and depression. This is not disputed by D.
3. C made a claim for PIP on [xxxxx], a decision was made on xxxxx (“**Decision 1**”) that [s/he] was entitled to [the standard rate of the mobility component of PIP and the Daily Living component at the standard rate]. The award ran until [xxxxxxx]
4. In anticipation of that award ending, C submitted a new claim on [xxxxxx] and a new award of the [standard rate of the Daily Living Component] was made by a decision of [xxxxxx] (“**Decision 2**”).
5. C successfully appealed Decision 2. The appeal was heard by the First-tier Tribunal (“**FTT**”) on [xxxxxx] and by a decision dated [xxxxxx] C was additionally awarded the enhanced rate of the mobility component from [xxxxxx].
6. Following the FTT decision, C became aware of the Upper Tribunal decision in *MH v SSWP* (PIP) [2016] UKUT 531 (AAC); [2018] AACR 12) and the Legal Entitlements and Administrative Practices exercise (“**MH LEAP exercise**”) in which claims were being reviewed in line with the Upper Tribunal’s decision in *MH v SSWP*, effective from the date of that decision,28 November 2016 (the **“Effective Date**”).
7. On [xxxxxx] C contacted the PIP helpline to ask to be included in the LEAP exercise. This was a request for a supersession. D responded that:

*“[quote] the DWP would not complete a review because she had appealed against the decision recently, all her evidence from the previous claim was considered in the appeal. "*

1. By D’s response it would appear that D has refused to accept C’s supersession request or to make a supersession decision and C’s only recourse to challenge this refusal is by judicial review.

**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

*Unlawful refusal to include C’s award in the MH LEAP exercise*

1. In *MH v SSWP* the Upper Tribunal held that in assessing PIP mobility activity 1 (ability to follow the route of a journey without another person) it is relevant to consider the need to be accompanied by another to avoid overwhelming psychological distress.
2. Sarah Newton, then Minister of State for the Department for Work and Pensions in answer to a written question announced on 29 January 2018:

*‘As part of implementing the MH Upper Tribunal judgment, the Department for Work and Pensions will carry out an administrative exercise in order to ensure that claimants receive the correct award. We will be going through all cases in receipt of PIP and all decisions made since the judgment in MH to identify anyone who may be entitled to more as a result of the judgment. This review will include claimants who are currently receiving the standard rate of the PIP mobility component and experience psychological distress.*

*The Department will directly contact anyone who is affected and additional payments will be backdated to the effective date in each claim. The effective date will be either the date of the claim or the date of the MH judgment (November 2016), whichever is the later date. Claimants do not need to write to DWP in order to receive the correct award*.*[[3]](#footnote-3)*

1. D further explained in an email to Child Poverty Action group (“**CPAG**”) date 06/08/18:

 *‘There will be an initial scoping exercise to identify claimants who have been in receipt of the enhanced [rate of both components of] PIP since the judgment date, or* ***who have had a tribunal decision******that would have considered the judgment.******These cases will not be reviewed.*** *All other claimants (who are in receipt of PIP or have had a decision made on their claim since the judgment date), will be considered in scope for the exercise and contacted with the outcome of the review. They will then have a route to challenge the outcome.*’[[4]](#footnote-4)

(Emphasis added)

1. The initial decision on C’s claim, Decision 1, was [xxxxxx] ie, before the Effective Date.
2. Decision 2 on [xxxxxx] was both after the Effective Date and was considered by the FTT after the Effective Date. We do not dispute that Decision 2 cannot be considered as part of the MH LEAP exercise as the FTT was aware of the judgment at the time it made its decision in respect of Decision 2, and C was awarded the enhanced rate of the mobility component in line with the judgment.
3. However, D is not correct to exclude C’s award from the MH LEAP exercise between the Effective Date and [xxxxxx], ie, the date of Decision 2, as this period relates to an award decided before the Effective Date and *has not been, and could not have been, considered by the FTT*.
4. Decision 2 was a decision under s8 Social Security Act 1998 (“**SSA**”) about C’s entitlement from [xxxxxx] to [xxxxxx], and was appealed under s12. The power of the FTT considering an appeal under s12 is to consider afresh the correctness of the decision *which has been appealed* and remake it as appropriate. No appeal was ever made in respect of Decision 1 and it cannot therefore have been considered by the FTT.
5. C’s award between the Effective Date and [xxxxxx], ie, the date from which Decision 2 took effect has not therefore been considered by the FTT.
6. While the FTT will have considered *MH v SSWP* in respect of Decision 2 and C therefore has “*a tribunal decision that would have considered the judgment*” in respect of the period from the date from which Decision 2 took effect, there is no legal basis not to include C’s award in the LEAP exercise between the Effective Date and the date of Decision 2.

**Alternative remedies**

1. It does not appear to us that C has any suitable alternative means of obtaining redress. [S/he] cannot appeal to the First-tier Tribunal until the SSWP has considered and provided an effective s10 SSA decision in respect of the request for supersession.
2. **C has neither been provided with a decision notice nor advised of [his/her] appeal rights. As no decision has been notified or effectively notified then there is no effective decision to appeal against.**
3. **Further, the information that C was given, that this is not a decision which is open to supersession (and in turn not appealable), is not accurate and so it is apparent that DWP staff are not receiving adequate training on supersession/appeal rights. A remedy to address this wider issue would not be available through statutory appeal.**

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

**The Defendant is requested to:**

* **Supersede C’s PIP award between the Effective Date and the date of Decision 2.**
* **If she is unable to do so, to provide C with a notification that Decision 1 will not be superseded without further delay;**
* **Provide staff training and/or issue guidance to ensure other claimants in C’s position are not excluded from the MH LEAP exercise.**

**ADR proposals**

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

**Enclosures**

* C’s signed authority
* [anything else?]

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

ADVICE AGENCY NAME, ADDRESS AND EMAIL

**Proposed reply date**

We expect a reply promptly and in any event no later than **DATE** (14 days).

**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. Personal Independence Payment: Mental Health, Written question 124307, Hansard, 29 January 2018 [↑](#footnote-ref-3)
4. Email to CPAG, 6 August 2018 [↑](#footnote-ref-4)