**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**

***Only use this letter if your client:***

* + - * Has been found to be entitled on revision/appeal/backdating decision to a Universal Credit payment for an assessment period that ended in the period 26 January 2023 to 25 February 2023.
			* Has not received the Spring 2023 Cost of Living Payment

Seek advice if needed jrproject@cpag.org.uk

**DELETE BOX BEFORE POSTING**

***This letter challenges*** *DWP’s failure to pay* the Spring 2023 Cost of Living Payment and the failure to provide a way to challenge this.

Please read the whole letter carefully and change any text in red and/or [square brackets]. Then return all text to black.

Delete any/all comments before sending.

**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/his] universal credit (“**UC**”) award and the Defendant’s continued failure / refusal to pay the Spring 2023 Cost of Living Payment (“**COL Payment**”). We write in accordance with the Pre-action Protocol for Judicial Review. We are requesting your response no later than 5 pm 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. **Our client, C, challenges the failure / refusal of the SSWP to pay C the COL Payment when C meets the conditions for entitlement and SSWP’s failure to provide C with an effective mechanism to challenge that decision.**

***Background facts***

1. **C is in receipt of UC. C’s UC Assessment Periods (“APs”) run [day of month] to [day of month].**
2. **[history of UC award including backdating or revision/appeal and decision dates].**
3. **C was therefore entitled to UC during C’s AP which ran [date to date], ie, including the 25th February 2023.**
4. **On [date] C [, via [her/his] adviser at …,] contacted the SSWP via [her/his] UC journal on [date] to notify them that that [s/he] had not received the COL Payment, stating:**

**“*what*”**

1. **On [date] a Cost of Living Disallowance letter was uploaded to C’s online UC journal stating:**



1. **This decision letter includes no contact details or advice on how to challenge the disallowance decision.**
2. **On [date] C [, via [her/his] adviser at …,] contacted the SSWP via [her/his] UC journal on [date] stating:**

***“what”***

1. **On [date] SSWP replied:**

***“If you wish to have this reviewed please using [sic] the link below to report a missing payment. COL payments are not issued by Universal Credit.***

***(***[*https://secure.dwp.gov.uk/report-a-missing-cost-of-living-payment/welcome)*](https://secure.dwp.gov.uk/report-a-missing-cost-of-living-payment/welcome%29)***.”***

1. **On [date] C followed the link and started to complete the online form until reaching the page “Contact details for low income benefits”**[[3]](#footnote-3) **which states:**

***“Report your missing £301 Cost of Living Payment by calling the phone number for your benefit (or using your Universal Credit journal if you have one). You can find the phone number on the pages below:***

***income-related Employment and Support Allowance (ESA)***

***income-based Jobseeker's Allowance (JSA)***

***Income Support***

***Tax credits***

***Universal Credit***

***Pension Credit - if you're waiting for the outcome of your Pension Credit application, you will get the £301 payment automatically if you're eligible.***

1. **It was not possible for C to progress with the online form any further.**
2. **On [date], C telephoned the UC helpline and was advised to:**

**“*leave a message on your Journal*”.**

1. **As C has already done.**
2. **C has reported to SSWP that C has not received the COL Payment yet SSWP has not acknowledged this and C has still not received the COL Payment.**

**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**

**Ground 1: SSWP’s failure to apply the law and follow own guidance to make payment of a Cost of Living Payment when all lawful conditions to the same have been met**

***Legislation***

1. **Section 1 of the Social Security (Additional Payments) Act 2023 (“the Act”) provides that:**

### ***Means-tested additional payments: main payments***

***1****.-(1) The Secretary of State must secure that—*

*(a) a single payment of £301 is made to* ***any person who has a qualifying entitlement to a social security benefit in respect of the first qualifying day,***

*[…]*

1. **Section 2 of the Act provides**

### ***Qualifying entitlements: social security benefits***

***2****.-(1) A person has a qualifying entitlement to a social security benefit in respect of a qualifying day if—*

*(a) in respect of universal credit, the person is* ***entitled to a payment of at least 1p in respect of an assessment period ending******during the period of one month ending with the qualifying day;***

*[…]*

1. **The Social Security Additional Payments (First Qualifying Day) Regulations 2023 (“the Regulations”) specify that the first qualifying day is 25 February 2023, the last qualifying day is therefore one month from this date under 2(1)(a) of the Act:**

## ***Means-tested additional payments: the first qualifying day***

***2.****25th February 2023 is the first qualifying day for the purpose of the means-tested additional payments under section 1 of the Social Security (Additional Payments) Act 2023.*

*Guidance*

1. **To be entitled to the Payment C must therefore have been “***entitled to a payment* [of UC] *of at least 1p***” during the qualifying period of one month up to and including** 25/02/23**, ie, 26/01/23 up to and including 25/02/23, as SSWP’s guidance ‘Cost of Living Payments 2023 to 2024’**[[4]](#footnote-4) **confirms, as well as confirming unequivocally that this applies to where a claimant has been** *“later found to be entitled to a payment”***, ie, on revision or appeal:**

#### **Universal Credit**

*You are eligible for the first Cost of Living Payment of £301* ***if you were entitled to a payment (or******later found to be entitled to a payment****) of Universal Credit for an assessment period that ended in the period 26 January 2023 to 25 February 2023.*

**(Emphasis added)**

1. **C has been awarded UC for period beginning [date] ie, including [what dates] in the period 26/01/23 to 25/02/23.**
2. **C’s entitlement is clear and SSWP’s refusal of the COL Payment to C is unlawful.**

**Ground 2: Unlawful withholding of benefit in breach of Article 1, Protocol 1 ECHR**

1. C is entitled to a COL Payment as set out above. [S/he] meets the conditions prescribed by the Act and the Regulations and as further explained by SSWP’s guidance.
2. SSWP’s guidance ADM Memo 17/22 explains that the COL Payment is a type of welfare benefit: “*cost of living payments are an entirely new benefit”*.
3. The European Court of Human Rights (“**ECtHR**”) has held that Article 1, Protocol 1 ECHR does not establish a right to acquire property and equally it does not put any obligation on member states to provide any particular form of social security. However, “*where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable.”* C has an assertable right to a COL Payment having met all of the conditions for entitlement and that right is protected by A1,P1.
4. A1,P1 does not establish an absolute right but any interference with a person’s peaceful enjoyment of their property/possessions must be (a) in the public interest and (b) subject to the conditions provided for by law. Those restrictions on any interference were considered in *Moskal v. Poland*, no. 10373/05, 15 September 2009 where the ECtHR stated:

***“49****. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that the States have the right to control the use of property by enforcing “laws” (see The former King of Greece and Others v. Greece [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII).”*

1. Article 1 of Protocol No. 1 also requires that a deprivation of property for the purposes of its second sentence be in the public interest and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, among others authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005).
2. Moreover, the principle of “good governance” requires that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 105, ECHR 2000-I § 120, and *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008).
3. The requisite “fair balance” will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *Brumărescu v Romania* [GC]*,* no. 28342/95, 28th October 1999 § 78).
4. Accordingly, the failure to pay C the COL Payment on the incorrect basis that C was not entitled to UC during the qualifying period, thereby withholding from C a possession to which C is lawfully entitled amounts to a breach of C’s rights under A1, P1.

***Ground 3: Unlawful failure to provide effective mechanism to challenge SSWP’s decision***

1. Under section 6(1) of the Act:

‘*For all purposes relating to the administration of an additional payment,* ***any provision applying in relation to a social security benefit****, child tax credit, working tax credit or disability benefit by reference to which that payment is made* ***is to apply in relation to that payment as if that payment were a payment or award of the social security benefit****, child tax credit, working tax credit or disability benefit* ***in question.’***

(Emphasis added)

1. However, SSWP’s position is that there is no right of appeal against the refusal of a COL Payment.
2. SSWP’s guidance ‘Cost of Living Additional Payments 2022’ (“**ADM Memo 17/22**“) advises there is no ‘claims process’, no entitlement decision and no decision-making and appeal challenges:

***Note 1:*** *[…] there is no claims process for persons to follow to claim the additional payments. The payments will be paid into the bank account where claimants normally receive benefits or by the claimant’s preferred alternative arrangements where applicable.*

*[…]*

***12.*** *Additional cost of living payments1 are an entirely new benefit which are automatically passported from existing benefit entitlement. Therefore, there*

***1.*** *is no entitlement decision* ***and***

***2.*** *are no rights of appeal in respect of these payments.*

*1 SS(AP) Act 22, s6*

1. SSWP has confirmed to Child Poverty Action Group[[5]](#footnote-5) the approach set out in the guidance, the duty to make a payment once the claimant has been found to be entitled to UC during the qualifying period and that the Department plans ‘mop-up’ exercises to deal with awards made retrospectively on revision or appeal:

*“If a claimant is not eligible for a payment this will be because there has been a decision the claimant was not eligible for the qualifying benefit during the qualifying period and it is that decision which carries appeal rights in the usual way.*

*So using the UC example, if a claimant was not eligible to a payment of UC in an assessment period ending between 26th April and 25th May, they would not be eligible for the additional payment. Where the claimant does not agree, they can appeal their UC eligibility. If their appeal is successful and they are found to be entitled to a payment of UC with an AP [assessment period] ending between 26th April and 25th May then the [Secretary of State]* ***comes under a duty to make the additional payment to the individual.***

***There is no need for the claimant to independently appeal their entitlement to an additional payment as one will always follow the other.***

***There are a series of mop-up exercises planned to pick up claimants whose entitlement is established at a later date and issue the additional payment to them.*** *This is particularly relevant in relation to the disability additional payments where we are aware claimants’ entitlement to the underlying disability benefit for the qualifying period may still be determined or be the subject of an ongoing appeal. So we are again planning for a series of ‘mop-up’ runs to accommodate this situation.*

(Emphasis added)

1. In practice is it is apparent that one does not always “*follow the other*” as in C’s case the COL Payment has been refused by the Disallowance Letter dated [date]. It is therefore **not** correct that there is*“no need for the claimant to independently appeal their entitlement”.*
2. SSWP’s position, as above, is that there is no right of appeal. Justice, fairness and good practice however require a mechanism for claimants affected by decisions by SSWP to ask for them to be changed when a clear error is made. SSWP, in the guidance quoted below, purports to provide such a mechanism by either “*enquiries for the relevant benefit”* or using the “Report a missing Cost of Living Payment” webpage, neither of which provide an effective mechanism for challenge.
3. SSWP’s operational guidance ‘Cost of Living Payment’ (V3)[[6]](#footnote-6) states:

*The Cost of Living Payment is based on the claimant’s eligibility to a qualifying benefit during the qualifying period. There is no right of appeal against the eligibility criteria for Cost of Living Payments.* ***If a claimant believes they were entitled to a qualifying benefit for one or more of the qualifying periods, they must make enquiries for the relevant benefit.***

1. C has made enquires via C’s UC journal and been informed:

***“If you wish to have this reviewed please using [sic] the link below to report a missing payment. COL payments are not issued by Universal Credit.”***

1. As set out above, “*the link*”, while suggesting that it is the way to report a missing payment since the webpage is titled “Report a missing Cost of Living Payment” in fact leads back to an instruction to **“*[call] the phone number for your benefit (or[use] your Universal Credit journal)”.* Both of which C has already attempted, only to be told to *“[use] the link*”.**
2. There is no effective way for C to challenge the incorrect refusal of the COL Payment, such a frustration is contrary to the principles of natural justice and as such is unlawful.

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

**SSWP is requested to:**

* **Pay C the Payment without further delay.**
* **If it is not possible to do so, to advise C whether C’s case will be looked at as part of a “*mop-up exercise*” and advise of the expected time frame.**
* **To ensure DWP staff are trained to provide advice regarding “*mop-up exercises*” rather than to signpost to the ‘Report a missing payment’ webpage.**
* **To establish an effective route for claimants to notify SSWP of missing Payments.**

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

* **C’s signed authority**
* **All other documents available via C’s online UC journal**

**ADR proposals**

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

**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 5pm on date. Should we not have received a reply by this time our client reserves the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

Adviser name and signature

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://secure.dwp.gov.uk/report-a-missing-cost-of-living-payment/contact-details-for-low-income-benefits [↑](#footnote-ref-3)
4. www.gov.uk/guidance/cost-of-living-payment [↑](#footnote-ref-4)
5. DWP legal adviser email to Simon Osborne, CPAG, 22 August 2022 [↑](#footnote-ref-5)
6. data.parliament.uk/DepositedPapers/Files/DEP2023-0365/046\_Cost\_of\_Living\_Payment\_V3-0.pdf [↑](#footnote-ref-6)