**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

*This letter challenges*:DWP’s unreasonable delay in deciding a claim for UC when eligibility has been established.

Read the whole letter carefully and edit as appropriate including all text in red and/or [square brackets].

Delete any comments and return all text to black before posting.

Please send this letter to jrproject@cpag.org.uk for review before sending to DWP.

DELETE BOX BEFORE POSTING

*Only use this letter if your client is:*

* At least 18 years old,
* Has not reached the qualifying age for state pension credit,
* Has had a Habitual residence test decision confirming eligible for UC
* Is not in education

This letters assumes (changes needed if your client’s circumstances are different):

* Your client is a private tenant, and
* Has no, or very low, income without UC

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 [full name] in **relation to [her/his] claim for Universal Credit (“**UC**”). 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 SWP in deciding C’s claim for UC.

***Background facts***

1. CLAIMANT’S CIRCUMSTANCES, FAMILY, DISABILITY ETC
2. C made an application online for UC on [date].
3. C attended an interview to establish whether [he/she] is ‘in Great Britain’ for the purposes of UC, known as the Habitual Residence Test (“**HRT**”) on [date].
4. C received an HRT decision dated [date] that [he/she] is ‘in Great Britain’.
5. C meets the conditions of entitlement for UC, [he/she] is working age, not in education and is in Great Britain.
6. However, to date, no decision has been received and C has been left with no income / an income of only to support [her/his] self and [her/his] family and further details of hardship caused.
7. During this time [what contact has been made with the DWP?] Yet no award has been made and C has been deprived of [her/his] appeal rights by the failure to provide a decision.

**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. The Defendant 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 tos.8 of the Social Security Act 1998 (“**SSA 1998**”) under which 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 and the complexity of the case[[3]](#footnote-3):

*Impact on the claimant*

1. C is [how vulnerable].
2. The delay is causing [C / the family] hardship. The delay relates to a decision on UC entitlement. UC is a subsistence benefit which includes amounts for housing and children. Delays in UC decisions can therefore have severe consequences for the claimant, leaving them with no income to fall back on, without money for food or heating, unable to pay their rent and so at risk of homelessness and destitution. C’s is living on ...and the delay is causing C stress and anxiety which is having a significant impact on [her/his] mental health. [delete if untrue]
3. [delete if no housing costs] The delay in this case means that C has been unable to pay [her/his] rent. As a private tenant, C has limited security of tenure and, should [her/his] landlord decide they are no longer willing to wait for [her/his] rent, a possession order can be obtained with relative ease on mandatory grounds. It is therefore vital that C’s UC is brought into payment or that [she/he] is given the opportunity to challenge the incorrect refusal of [her/his] UC.

*Non-complex case/all information available*

1. C is eligible for UC. [She/he] clearly meets the conditions of entitlement as set out in s. 4 of the Welfare Reform Act 2012:

#####                     ​ Basic conditions

 **4.**-(1) For the purposes of section 3, a person meets the basic conditions who—

                    (a) is at least 18 years old,

                    (b) has not reached the qualifying age for state pension credit,

                    (c) is in Great Britain,

                    (d) is not receiving education, […]

1. This is not a complex case and there is no reason for the delay.
2. C has provided clear and compelling evidence to the effect that [she/he] was and is eligible for UC. It should be straightforward for the Secretary of State to decide C’s claim yet is has been [number] weeks since [her/his] application was submitted.

**Ground 3: Unlawful discrimination**

1. The Human Rights Act 1998 incorporates the rights set out in the European Convention on Human Rights (“**ECHR**”) into domestic British law.
2. **Article 14 ECHR provides:**

**“*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.”**

1. **Welfare benefits, including universal credit, are a recognised form of property for the purposes of Article 1, Protocol 1**[[4]](#footnote-4)**.**
2. **SSWP’s delay in implementing HRT decisions and deciding UC claims by people with HRT decisions disproportionately affects non-UK nationals, their partners, children and dependants as they are the ones to have decisions made on whether or not they meet the HRT in the first place. It is for the Defendant to justify such differential impact but we are not aware of any justification for the same.**
3. **Accordingly, the unreasonable delay in deciding C’s claim amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1.**

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

* The Secretary of State should award C UC immediately and from [date] in consideration of the delay already suffered.
* If the Secretary of State is unable to do so, he should provide a decision refusing entitlement immediately.
* **Award C, a vulnerable person, HRA damages for the significant financial loss as well as suffering and distress caused by the DWP’s breach of C’s right not to be discriminated against.**

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

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

* **Signed form of authority.**

**All other relevant documents available via C’s online UC journal.**

**ADR proposals**

Please confirm in your reply whether the Defendant 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 [date]. This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given that SSWP has already been made aware of the Claimant’s [destitution] and had opportunity to remedy this, and the matter is not complex.

**If you consider** that you require 14 days from the date of this letter to reply, please immediately inform us in writing, giving full reasons. S**hould we not have received such a request for further time nor a substantive reply by the given deadline our client will seek representation to issue proceedings for judicial review without further notice to you.**

Yours faithfully

[adviser signature]

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) [↑](#footnote-ref-3)
4. S**ee for example *Stec & Ors v UK*** [2005] ECHR 924, (2005) 41 EHRR SE 295, (2005) 41 EHRR SE 18 [↑](#footnote-ref-4)