NOTE:

This template can be used by advisers assisting people with PSS to whom *SSWP v AT (UC)* [2022] UKUT 330 (AAC) applies who have cases in the First-tier Tribunal (see the note for advisers available on [this page](https://cpag.org.uk/welfare-rights/resources/test-case/destitute-eu-nationals-pss-can-rely-eu-charter-fundamental-rights) for when the judgment might apply).

The template is designed to be used alongside the witness statement template which is also linked to from that page. The template refers to paragraphs in the witness statement so the witness statement should be completed first.

Advisers will need to go through the template filling in and adapting the text in yellow highlighting and reading the other text to make sure it is relevant to the appeal. Advisers can seek further advice with this from CPAG.

The template both makes an application for the case to be considered expeditiously and sets out the basis of the challenge to the refusal of universal credit and is designed to be used after an appeal has been filed with HMCTS.

Advisers should ensure the email sending the application is highlighted as “URGENT” and notes that it contains an application for directions which must be placed before a judge.

Advisers will need to chase up the request after emailing it to HMCTS to ensure that it is placed before a judge on an urgent basis- please contact CPAG if HMCTS are refusing to do this.

[DELETE THIS TEXT when preparing the application]

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| **In the First-tier Tribunal  (Social Entitlement Chamber)** | **[FTT REF]** |
| **BETWEEN**  **[NAME]**  **Appellant**  **-and-**  **SECRETARY OF STATE FOR WORK AND PENSIONS**  **Respondent** | |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  ***Risk of breach of EU Charter Rights – PSS case***   1. **URGENT Application for Directions – Rule 6** 2. **Submissions for the Appellant**   **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | |

***Introduction***

1. This case concerns the Appellant’s challenge to the refusal of his/her claim for universal credit made on [date].
2. The issue in this case is whether the Appellant must be awarded universal credit because the refusal to do so risked breaching the Appellant’s rights under the EU Charter of Fundamental Rights (“CFR”) and in particular his/her right to reside in the United Kingdom in dignified conditions (see the three judge panel in *SSWP v AT (AIRE Centre and IMA Intervening)* [2022] UKUT 330 (AAC), referred to as “*SSWP v AT*”).
3. In Section 1 below, the Appellant applies below for directions to allow his/her case to be dealt with expeditiously and for a direction making clear that the case is no longer stayed pending resolution of the *SSWP v AT* litigation as that is now concluded insofar as that is necessary [DELETE IF CASE NOT PREVIOUSLY STAYED]. In Section 2 below, the appellant makes brief submissions on the substance of her appeal.
4. Enclosed with this application are the following documents:
   1. the Appellant’s notice of appeal; [DELETE IF CASE ALREADY APPEALED]
   2. a witness statement from the Appellant which shows both that *SSWP v AT* applies to the Appellant’s case and equally, the urgency of deciding the matter expeditiously given the impact on the Appellant should the appeal not be heard.
   3. *SSWP v AT* [2022] UKUT 330 (AAC); SSWP v AT [2023] EWCA Civ 1307; Copy of the UKSC Order refusing permission to appeal the case.

***(1) Directions Application***

1. This is an urgent application, under rules 2, 5, 8 and 24 of the First-tier Tribunal (Social Entitlement Chamber) Rules of Procedure 2008 (“the Rules”), for the Tribunal to make the following directions:
   1. The Tribunal shortens the time limit for the Respondent to provide a response to this appeal. The Respondent shall within 7 days of the date of this direction comply with Rule 24 by sending to the Tribunal and to the appellant a response to the appeal. If the Respondent does not comply with this direction, the case may nonetheless be decided at the hearing below.
   2. The Respondent shall address in that reply whether the Respondent disputes the witness evidence for the Appellant.
   3. The Respondent shall email that response to the representative for the Appellant at [email address] so as to avoid delay.
   4. The case shall be listed for 60 minutes on the first available date after 7 days from when this direction is given.
2. Because of the urgency of the Appellant’s situation, which is particularised below and in the accompanying witness evidence, the Tribunal is respectfully asked to determine this application within 2 days.

## Case history

1. On [date] the Respondent decided that the Appellant was not entitled to universal credit.
2. On [date] the Appellant requested a revision (mandatory reconsideration) of that decision.
3. On [date] the Respondent refused to revise the decision.
4. On [date] the Appellant sent an appeal against that decision to First-tier Tribunal.
5. On [date] the Appellant provided a witness statement detailing the impact of the refusal of universal credit on him/her and his/her family.
6. On [date] an FTT gave directions staying the case pending the outcome of the SSWP v AT litigation [DELETE IF NOT STAYED]

## Fair and just to make direction sought

1. The overriding objective of the Rules is to enable the Tribunal to deal with cases fairly and justly: rule 2(1). This, in particular, includes:
   1. dealing with the case in ways which are proportionate to the importance of the case: rule 2(2)(a); and
   2. avoiding delay, so far as compatible with proper consideration of the issues: rule 2(2)(e).
2. It is submitted that the following factors demonstrate that it would be fair and just in the circumstances to make the direction sought:
   1. the prompt resolution of this appeal is of exceptional importance to the Appellant, and the delay is causing the Appellant hardship as explained in his/her witness evidence. That evidence effectively explains that the lack of universal credit means the Appellant and family are left without sufficient income to meet their most basic needs and as a result are unable to live in the UK in dignified conditions.
   2. Universal credit, the benefit in question in this appeal, would constitute [all/most] of the Appellant’s income. As the Court of Appeal said in *Wiles v Social Security Commissioner* [2010] EWCA Civ 258, §46-47, such decisions

directly affect… access to the most fundamental necessities of life… [and] may be of fundamental importance [to a claimant]… making the difference between a reasonable life and a life of destitution;

* 1. non-payment of the benefit means the Appellant risks homelessness [insert details/cross-references to witness evidence/ quote relevant parts];
  2. non-payment of the benefit means the Appellant cannot buy necessary food [insert details/cross-references to witness evidence/ quote relevant parts];
  3. non-payment of the benefit means the Appellant cannot afford necessary heating of their home [insert details/cross-references to witness evidence/ quote relevant parts]
  4. non-payment of the benefit means the Appellant cannot buy necessary clothing or hygiene projects [insert details/cross-references to witness evidence/ quote relevant parts]
  5. the Appellant [and/or her/his family] can be described as particularly vulnerable because [insert details – eg disability, especially any health problem exacerbated by the uncertainty of delayed appeal proceedings, and any domestic violence history and cross refer to witness evidence as needed];
  6. the appellant has children aged [xx] whose interests are endangered by the delay [insert details/cross-references to witness evidence/ quote relevant parts];
  7. the Appellant cannot rely on alternative resources because [insert details - eg he has no family able to support him, refer to other parts of witness evidence];
  8. the Appellant has a strong case- see section 2 below;
  9. the Appellant has attempted to persuade the Respondent to reconsider his decision so as to avoid the need for a Tribunal hearing but the Respondent has not made any reasoned response [insert details / cross-reference to relevant parts of witness evidence];

1. Separately, the EU Charter of Fundamental Rights (‘**CFR**’) (which *SSWP v AT* establishes can be relied upon by the Appellant) provides at art. 47 that claimants have a right to an “effective remedy” before a tribunal within a “reasonable time”. Given the nature of the rights at issue (immediate risk of breach of art. 1 of the CFR or indeed an ongoing breach) then any delay in dealing with the casewould deprive the Appellant of an effective remedy.

No longer appropriate to stay this appeal [DELETE THIS SECTION IF NOT STAYED]

1. The Secretary of State’s attempts to challenge the decision of the Upper Tribunal in *SSWP v AT* are now at an end: the Court of Appeal dismissed his appeal against the decision on 08/11/2023 and the Supreme Court refused permission to appeal on 07/02/2024.
2. The directions staying the appeal should now, insofar as they do not cease to apply automatically following the refusal of permission by the Supreme Court, be lifted.

***(2) Submissions for the Appellant***

1. The three judge panel in *SSWP v AT* held that the Secretary of State and on appeal the First-tier Tribunal must set-aside reg. 9(3)(c)(i) of the Universal Credit Regulations 2013 where a refusal to award universal credit would result in a risk that a claimant with pre-settled status would be unable to reside in the UK in accordance with human dignity.
2. The Upper Tribunal held that applied to periods after 31/12/2020 (the end of the Brexit transition period), as it did to periods before.
3. The Upper Tribunal held that such a risk would arise where there was a risk the person would be unable to satisfy their most basic needs even for a temporary period. Specifically, at [125] the Tribunal held:

Those two paragraphs, taken together, lead us to the conclusion that the range of matters with which Article 1 is concerned, albeit strictly limited, extends to the provision of support for a person's "most basic needs". These will no doubt vary from person to person, though typically they will include housing (which we take as including a basic level of heating adequate for a person's health), food, clothing and hygiene. *Haqbin* also shows that the state may breach its obligations under Article 1 if a person lacks these things even for a very limited time

1. The witness evidence of the Appellant shows that without universal credit they do run such a risk and the Tribunal is invited to find that to be the case.
2. The Upper Tribunal also addressed when other sources of support would obviate a need to award universal credit. However, in the present case none of those apply in particular:
   1. Although the judgment holds that many people will be able to avoid such a risk because they are able to obtain an income through work (see [117]) the evidence in the present case is that the Appellant cannot work (see witness statement at §§XX).
   2. The Upper Tribunal did not decide definitively whether charitable support could in principle obviate a need for UC, as AT did not have such support available to her at sufficient and reliable levels. The Upper Tribunal comments that this may need to be decided in another case (see [153] of judgment). However, in this case the witness evidence shows that the Appellant, like AT, cannot get “*regular and reliable payments from a charitable source which were adequate to meet their most basic needs*” charitable support will not (at least by itself) be a sufficient answer. See witness statement at §§XX.
   3. The same is equally true for the Appellant’s ability to obtain support at a sufficient level from friends or family (see witness statement at §§XX).
   4. The Decision Maker cannot refuse to provide UC using the argument that social services support (usually under s.17 of the Children Act 1989 for families with children) *might or ought to* be available at a level that enables the claimant and her children to meet their most basic needs. As the Upper Tribunal held at [134]:

“*What matters is whether such support will actually be provided by a local authority which may be subject to severe resource constraints*”.

Also at [151] the UT holds that Decision Makers should “*focus on the concrete factual position, not the theoretical legal one*”. The Upper Tribunal does not rule out cases existing where s.17 support might be adequate (see [152]) but in this case, the evidence shows the Appellant has sought and not been able to obtain such support (see witness evidence at §§XX).

1. Accordingly the FTT is invited to allow the appeal and replace the decision under appeal with a decision awarding universal credit to the Appellant from the date of claim. It will then be for the Respondent to consider whether he wishes to appeal onward and if so whether it is appropriate to suspend payment under the award pending any such appeal.

Adviser Name

Adviser Organisation

*[assisted by template prepared by Child Poverty Action Group]*

DD/MM/YYYY