***Only use this letter if*:**

You have made a request for mandatory reconsideration and have not received a response with a reasonable time.

***This letter assumes:***

The mandatory reconsideration was requested of a habitual residence test (HRT) decision or in respect of UC housing costs, but it can be edited for any MR)

***Do not use this letter if:***

Your original decision letter says you cannot request mandatory reconsideration or have no right of appeal. Seek advice from jrproject@cpag.org.uk.

**Delete box before sending**

***This letter challenges*** the unreasonable delay of the DWP in deciding your request for a mandatory reconsideration of the decision not to award UC or an element of UC, particularly on the basis of a failed habitual residence test (HRT)**.**

Please **verify and include all relevant dates** in your letter.

**Read the whole letter carefully** and make any changes as needed, in particular any text in red or [square brackets]. **Delete all comments** / prompts/ instructions and then **put on headed paper.**

In all cases **send your letter for review** to JRProject@CPAG.org.uk before sending.

**Delete box before sending**

**IMPORTANT: the address for service changed January 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 for more information. <https://cpag.org.uk/welfare-rights/support-advisers/support-advisers-england-and-wales/support-judicial-review-process/pursuing-court-and>

**Delete Box before sending**

[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: [number]**

**Date: [date]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] Universal Credit (“UC”) [claim / 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 by 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 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) requires:[[1]](#footnote-1)

*“****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 above 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 further instructs:**[[2]](#footnote-2)

***[…]***

*“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******.”***

(Emphasis added)

**Details of the matter being challenged**

1. The unreasonable delay on the part of D in deciding C’s request for a mandatory reconsideration of the decision [state the particular decision on UC entitlement].

**Background facts EDIT WHOLE SECTION**

1. [claimant’s circumstances, family, disability etc.].
2. C applied for UC on [date].
3. C was informed that [she/he] was not entitled to the [type of benefit] by a decision dated: [date] on the grounds that [grounds for refusal].
4. C requested a mandatory reconsideration of this decision [by letter/phone etc.] on [date].
5. DELETE IF YOU DO NOT KNOW THE REQUEST WAS RECEIVED SSWP received the mandatory reconsideration request on [date] and stated in its letter dated [date] that it was reviewing the [claim/request] and that it could take [number] weeks for a decision. It has been over [number] weeks since C requested a mandatory reconsideration of SSWP’s decision [not to award UC]. This is a significant and unreasonable delay.
6. C meets the conditions of entitlement for UC [briefly state how C meets the conditions eg. ‘C has EU pre settled status and a EEA right to reside as a worker’].
7. To date, no decision has been received, and C has been left with no [income/ an income of only...] to support [her/him]self and [her/his] family [and further details of hardship caused].
8. During this time [state contact that has been made with the DWP, formatted as follows].
9. On [date] SSWP informed C [by telephone]:

*“what has been said?”*

1. Yet no award has been made, and C has been deprived of [her/his] appeal rights by the failure to provide a mandatory reconsideration 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 for inspection, as part of the response to this letter.

**Grounds for Judicial Review**

**Ground 1: Unreasonable delay in providing a mandatory reconsideration decision**

1. D 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 equally tos.9 of the Social Security Act 1998 (“**SSA 1998**”), under which the Secretary of State may *“revise”* any decision made under s.8 or s.10, as to the analogous provision at s.8 under which the Secretary of State shall *“decide any claim for a relevant benefit.”*
3. What counts as a reasonable time depends on the circumstances, including the impact on C and the complexity of the case.[[3]](#footnote-3)

*Impact on C*

1. The delay is causing [C/ C’s 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 claimants, 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. DELETE/ EDIT IF UNTRUE C’s is living on only [how much] and the delay is causing C stress and anxiety which is having a significant impact on [her/his] mental health.
2. DELETE IF NO HOUSING COSTS A suitable comparator for a reasonable time to process a review request of a decision involving housing costs is housing benefit. The Local Government Ombudsman found that one **Council’s delay in reviewing a Housing Benefit claim for three months caused *“significant injustice requiring a remedy,”*[[4]](#footnote-4)**  while a complainant in another case was advised to make an additional complaint if the delay had “caused any further injustice such as loss of his home,”[[5]](#footnote-5) recognising the direct link between housing benefit and C’s ability to pay their rent and so maintain [her/his] tenancy.
3. DELETE IF NO HOUSING COSTS/ EDIT IF NOT PRIVATE TENANT The delay in this case far exceeds three months and C, who is a private tenant, 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 award is brought into payment or that [she/he] is given the opportunity to challenge the incorrect refusal of [her/his] [type of benefit].

*Non-complex case/all information available*

1. **C is eligible for [UC/element].**
2. **C has provided [state the evidence provided]. D appears not to have taken this into account.**
3. This is not a particularly complex case and D has given no reason for the continued delay DELETE WHERE IRRELEVANT, apart from [quote the reason given]. The decision letter gives no specific reasons as to why SSWP considers C is [not/no longer] eligible for [UC / element]. C has provided clear and compelling evidence to the effect that C is eligible for [UC / element]. It should be easy for SSWP to re-consider whether her initial decision was correct.

*Purpose of mandatory reconsideration process*

1. Finally, of relevance to the circumstances and therefore what constitutes a reasonable or unreasonable delay is, the statutory purpose for introducing the mandatory reconsideration process. According to the Government’s consultation paper, the stated purpose is to “*to deliver* ***timely****, proportionate and effective justice for claimants, make the process for disputing a decision* ***fairer and more efficient***.”[[6]](#footnote-6) (emphasis added). The delay in this case of [number] weeks and the consequent frustration of C’s appeal rights clearly fails to deliver on this stated purpose and is therefore unlawful.

**Ground 2: Unlawful discrimination DELETE WHOLE GROUND IF NOT HRT DECISION**

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.**[[7]](#footnote-7)
2. **SSWP’s delay in carrying out mandatory reconsiderations of Habitual Residence Test decisions is likely to disproportionately affect non-UK nationals, their partners, children, and dependants as they are more likely to have negative decisions made on whether they meet the HRT in the first place. It is for D to justify such differential impact, but we are not aware of any justification for differential impact. Accordingly, the unreasonable delay in considering the mandatory reconsideration request amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1.**

**Details of the action D is expected to take**

* SSWP should revise and award C [type of benefit] immediately and from [date] in consideration of the delay already suffered.
* If the Secretary of State is unable to do so, she should provide a Mandatory Reconsideration decision immediately.
* DELETE IF NOT HRT DECISION 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 [her/his] right not to be discriminated against and to a fair hearing.

**Details of documents that are considered relevant and necessary**

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

* **Correspondence with the DWP.**
* **Signed form of authority.**
* **ANYTHING ELSE?**

**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

email]

**Proposed reply date**

We expect a reply promptly and, in any event, no later than[date]. **Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.**

Yours faithfully,

[adviser 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. R. (on the application of C) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-3)
4. Broadland District Council 24/06/15 para 3 [www.lgo.org.uk/decisions/benefits-and-tax/housing-benefit-and-council-tax-benefit/14-014-323](http://www.lgo.org.uk/decisions/benefits-and-tax/housing-benefit-and-council-tax-benefit/14-014-323)​  [↑](#footnote-ref-4)
5. London Borough of Richmond upon Thames 29/06/17 [www.lgo.org.uk/decisions/benefits-and-tax/housing-benefit-and-council-tax-benefit/16-016-856](http://www.lgo.org.uk/decisions/benefits-and-tax/housing-benefit-and-council-tax-benefit/16-016-856) [↑](#footnote-ref-5)
6. assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/220473/mandatory-consideration-consultation.pdf [↑](#footnote-ref-6)
7. S**ee for example *Stec & Ors v UK*** [2005] ECHR 924, (2005) 41 EHRR SE 295, (2005) 41 EHRR SE 18 [↑](#footnote-ref-7)