**IMPORTANT:** the address for service changed in 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](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 appealed a universal credit (UC) decision and won at the First-tier Tribunal (FTT), but DWP have not yet decided and paid their UC based on the FTT decision.
* Due to the delay, your client has reclaimed UC and DWP have confirmed they are eligible, but have not paid them any UC as they say they can’t pay on a new award until the previous backdated sum further to the FTT decision is decided.

 **Delete box before posting**

***This letter challenges***: the DWP’s failure to pay a current UC entitlement while they calculate a backdated entitlement for a previous finite period.

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

**Please read the whole letter** carefully and make any changes needed, in particular any text in **red** or [square brackets]. Return all text to black.

**Check numbering is sequential** if you have added or removed paragraphs.

**Delete all comments**/ prompts/ instructions/ square brackets and then put your letter on headed paper.

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

**Delete box before posting**

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 [Xfull name] in relation to [her/his] Universal Credit (“**UC**”) 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 5pm 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. D’s refusal to pay C’ [her/his] ongoing UC payments since [date] (i.e. the date of the decision on C ’s current entitlement) whilst calculating C’s backdated entitlement for a previous finite period.

**Background Facts**

1. [C’s personal details, including DoB and NINo].
2. [C lives with **(…)** include family details/DoB and NINos].
3. [C has health/ disability/ care responsibilities/ or some other vulnerability].
4. [include housing details if relevant. e.g. C lives in social rented accommodation/ rent arrears, is at risk of / possession action/ homelessness / threat of homelessness?]

***UC claim – backdating calculation***

1. [Circumstances which led C to need to claim UC. Any other income / benefits coming in? Details. If none, say so].
2. C made an application online for UC on [date]. On [date] C’s UC application was refused on the basis that [insert reason given].
3. On [date] C requested that D carry out a mandatory reconsideration of the decision that C was ineligible for UC. A mandatory reconsideration decision was received dated on [date]. The mandatory reconsideration decision upheld the decision to refuse UC that had been made on [date].
4. C appealed that decision. The matter was heard in the First-tier Tribunal (“**FtT**”) by Judge [name] on [date] , and judgment was given on [date]. Judge [name] allowed C’s appeal, finding that C was entitled to UC at the time [she/he] applied on [date].
5. Pending the mandatory reconsideration decision and the hearing of [her/his] appeal C had [no income to support (her/his) family and meet essential living costs including food and heating / (state what minimal income C had) which provided insufficient funds to meet said costs].
6. The Judge ordered at paragraph [X] of the order dated [date] that D was to re-calculate C’s entitlement to UC for the period from [date] to [date] and to send a revised calculation to C within [X] weeks of service of the order.
7. To date no revised calculation for this period has been received from D, and no payment of UC has been received by C for the period considered by the FtT, or for any period subsequent to the hearing in respect of C’s original claim.
8. [details of any further contact on this matter and what has been said].

***Current situation - new claim to UC***

1. Subsequent to the FtT decision that [he/she] was entitled to UC, as UC was not brought into payment by D, C made a new claim to UC on [date].
2. C received a decision from D confirming [her/his] entitlement to UC on [date] and C’s current UC award starts from [date].
3. [Why has it not been paid now/ what has been said by D? E.g. on**(date)**D sent C a message through the online journal to advise that payments could not be made/resumed *until the DWP had considered* the evidence in *relation to the backdated* payments going back to **(date)**, which needed to be done as a result of the FtT’s order].
4. [D advised that it is not possible to pay any benefit at present untilthe backdating issues are sorted out. D stated via C's online journal on [date] that “*the DWP UC system requires that they pay the benefit that C is entitled to at the earliest date of entitlement first, before going on to pay benefit for later periods*”. As the backdating period in this case pre-dates the current entitlement D advised that D cannot pay the C’s UC payments based on [her/his] current entitlement until such time as the backdating is resolved].
5. C’s current situation is perilous**.** [E.g. C’s rent was due on [date] but [s/he] has not received the housing costs element of [her/his] UC payment. If C is not able to pay his rent [s/he] risks losing [her/his] home and facing homelessness. [S/he] also has no money with which to pay for the basic necessities of life].

**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**

***Current UC entitlement***

1. C has clear entitlement to UC in respect of the current claim since [date of second application] (as well as for the period [date to date] as confirmed by the FtT). C met and meets the basic conditions of entitlement set out in s4 of the Welfare Reform Act 2012 (“**WRA 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. C meets the basic conditions of entitlement as [she/he] is over 18, under the qualifying age for state pension credit, in Great Britain [she/he has undisputed leave to remain as [explain] and is not in education.
2. C also meets the financial conditions set out in s.5 WRA 2012:

***Financial conditions***

***5****.- (1) For the purposes of section 3, the financial conditions for a single claimant are that—*

*(a) the claimant’s capital, or a prescribed part of it, is not greater than a prescribed amount, and*

*(b) the claimant’s income is such that, if the claimant were entitled to universal credit, the amount payable would not be less than any prescribed minimum.*

1. C meets the financial conditions as [she/he has **(what income and capital)**] which has been evidenced to D.
2. Under s.3 WRA 2012 C is therefore entitled to UC:

***Entitlement***

***3****.- (1) A single claimant is entitled to universal credit if the claimant meets—*

*(a) the basic conditions, and*

*(b) the financial conditions for a single claimant.*

***Payment of UC***

1. Under regulation 10(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (“**the Claims and Payments Regs**”) where the claim is made online, the date of claim is the date that the claim is received at an appropriate office. The date of C’s most recent UC claim was [date]; this is the date confirmed by [her/his] online journal where it states, *“New claim details were submitted”*. D made a decision confirming C’s entitlement, C’s current UC award runs from this date.
2. A UC award is payable in respect of each complete assessment period of one month from the date entitlement starts (s.7 WRA 2012 and reg 21 Universal Credit Regulations 2013).
3. Under reg 47(2) of the Claims and Payments Regs, payments of UC are to be paid into the claimant’s account within 7 days of the last day of an assessment period or, if not possible, as soon as reasonably practicable thereafter.
4. Under reg 47(3)(a) of the Claims and Payments Regs an additional payment, outside the usual schedule of UC payments, can also be made to pay any arrears of benefit. There is nothing to suggest payment of ‘arrears of benefit’ in relation to an earlier award should delay or prevent payment of current entitlement:

### *Time of payment: general provision*

***45.****Subject to the other provisions of this Part,* ***benefit is to be paid in accordance with an award as soon as is reasonably practicable after the award has been made.***

***Direct credit transfer***

***46.****—(1) The Secretary of State may arrange for benefit to be paid by way of direct credit transfer into a bank or other account nominated by the person entitled to benefit, a person acting on their behalf under regulation 57(1) or a person referred to in regulation 57(2).*

*[…]*

***Payment of universal credit***

***47.****—[…]*

*(2) Where universal credit is to be paid in accordance with regulation 46, it is to be paid within seven days of the last day of the assessment period but if it is not possible to pay universal credit within that period of seven days, it is to be paid as soon as reasonably practicable thereafter.*

*(3) In respect of an award of universal credit which is the subject of an arrangement for payment under regulation 46, the Secretary of State may make a particular payment by credit transfer* ***otherwise than is provided by paragraph (2)****, if it appears to the Secretary of State appropriate to do so* ***for the purpose of—***

***(a)******paying any arrears of benefit****; or*

*(b) making a payment in respect of a terminal period of an award or for any similar purpose.*

(Emphasis added)

1. There is no provision which enables D to withhold payment of UC in relation to an existing award simply because D is also calculating entitlement for an earlier distinct period.
2. Where an award of UC has been made, until that award is revised or superseded, and unless D is entitled to suspend payment, UC is ‘payable’ under s.1 of the Welfare Reform Act 2012, which puts D under a duty to pay UC. By failing to pay C UC, D is acting in breach of the statutory duty.

***UC award not revised or superseded***

1. D has made no decision revising or superseding its decision of [date] that C is entitled to UC. There is no basis for any revision or supersession affecting ongoing entitlement; in any event under reg 51 of the UC, PIP, JSA & ESA (Decisions and Appeals) Regulations 2013 (“**the Decisions and Appeals Regs**”) D would have had to notify C of any such decision, and inform [her/him] of the right to appeal against such a decision, which D has not done.
2. As D has made no decision to revise or supersede C’s award, there is no lawful reason for non-payment of [her/his] ongoing entitlement.

***Award not suspended***

1. An award of UC may be suspended in specified circumstances, none of which apply to C.
2. Under reg 44 of the Decisions and Appeals Regs, the Secretary of State may suspend the payment of a benefit, *“in whole or part”* in prescribed circumstances set out in reg 44(2):

***Suspension in prescribed cases***

***44****.- (2) The circumstances are where—*

*(a)  it appears to the Secretary of State that—*

*(i)  an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;*

*(ii)  an issue arises whether a decision relating to an award of the benefit should be revised under*[section 9](https://uk.westlaw.com/Document/ID12F7AB0E44F11DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink))or superseded under[section 10](https://uk.westlaw.com/Document/IE4BDEAB0E44C11DA8D70A0E70A78ED65/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink))of the 1998 Act,

(iii)an issue arises whether any amount of benefit paid to P is recoverable under or by virtue of[section 71ZB](https://uk.westlaw.com/Document/I8E1059C0B5E511E1BC5AB18E4B2ED6E4/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink)),[71ZG or 71ZH](https://uk.westlaw.com/Document/I8E114421B5E511E1BC5AB18E4B2ED6E4/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.DocLink))of the Administration Act,

(iv)the last address notified to the Secretary of State of P is not the address at which P resides,

(b)an appeal is pending in P's case against a decision of the First-tier Tribunal, the Upper Tribunal or a court; or

(c)an appeal is pending against a decision given by the Upper Tribunal or a court in a different case and it appears to the Secretary of State that, if the appeal were to be decided in a particular way, an issue would arise as to whether the award of any benefit to P (whether the same benefit or not) ought to be revised or superseded.

1. Reg 44(2) does not apply to the facts in this case since:
* There is no dispute that C fulfils the conditions for entitlement to UC from [date] onwards.
* There is no issue arising as to whether the decision made on [date] should be revised or superseded.
* There is no issue of C having potentially been overpaid UC, as no UC has been paid.
* C has [not moved home/has notified D of [her/his] current address].
* No appeal is pending in another case which would have bearing on C’s case.
* [D has not requested a Statement of Reasons in respect of C’s original claim as appealed, indicating no intention to appeal the FtT’s decision and is now out of time to do so / D requested a Statement of Reasons but is now out of time to appeal]. In any event, any appeal of the FtT decision of[date]should not affect the C’s new claim made on[date]**.**
1. There are therefore no grounds for suspension under reg 44(2) of the Decisions and Appeals Regs.
2. Regulation 45 of the Decisions and Appeals Regs allows the Secretary of State to suspend the payment of a benefit, *“in whole or part”* where a claimant has failed to provide information or evidence requested in accordance with that regulation:

***Provision of information or evidence***

**45.**—(1) This regulation applies where the Secretary of State requires information or evidence from a person mentioned in paragraph (2) (“P”) in order to determine whether a decision awarding a benefit should be revised under section 9 of the 1998 Act or superseded under section 10 of that Act.

(2) The persons are—

(a) a person in respect of whom payment of any benefit has been suspended in the circumstances set out in regulation 44(2)(a) (suspension in prescribed cases);

(b) a person who has made an application for a decision of the Secretary of State to be revised or superseded;

(c) a person from whom the Secretary of State requires information or evidence under regulation 38(2) (evidence and information in connection with an award) of the Claims and Payments Regulations 2013;

(d) a person from whom the Secretary of State requires documents, certificates or other evidence under regulation 31(3) (evidence and information) of the Jobseeker’s Allowance Regulations 2013;

(e) a person whose entitlement to an employment and support allowance or universal credit is conditional on their having, or being treated as having, limited capability for work.

(3) The Secretary of State must notify P of the requirements of this regulation.

...

(6) The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4).

1. C has **not** been asked to provide any further information or evidence to enable D to calculate [her/his] entitlement / has provided [what] (and D has confirmed receipt of this) and has not been asked to provide any further information or evidence to enable D to calculate [her/his] entitlement.
2. There are therefore no grounds for suspension under reg 45 of the Decisions and Appeals Regs.
3. D has not made a decision to suspend payment of UC and there has at no time been any rational basis for doing so, because any residual uncertainty about C’s UC entitlement relates only to a closed *past* period of entitlement and there is no possibility of overpayment. Again, C has not been notified of D purporting to take any such step.
4. As C’s current UC award is not suspended, there is no lawful reason for non-payment of [her/his] ongoing entitlement.
5. As above, where an award of UC has been made, until that award is revised, or superseded, and unless D is entitled to suspend payment, UC is *“payable”* under s.1 of the Welfare Reform Act 2012. By failing to pay C UC, D is acting in breach of its statutory duty.

***Reason for non-payment provided by D***

1. The administrative explanation D has given to C for the non-payment of benefit is that D’s computers have been programmed in a way which will not presently allow payment. This does not release D from its statutory duty to make payment, and D has the ability to make manual payments where necessary.
2. The arrangements of D’s internal administration or computer systems do not justify a failure on the part of D to comply with its express legal duties regarding payments of awards. The only lawful approach is for D to pay C forthwith, manually if necessary – and then make adjustments to its administrative systems and computers so whatever has happened here does not happen to other claimants in future.

***Unreasonable Delay***

1. Even if, contrary to C’s primary submissions, D would need to take some decision on entitlement or suspension before UC became payable, D is acting irrationally by having failed to take that decision.
2. D has a duty to determine and pay claims for benefit within a reasonable time, and what is reasonable in a particular case *“has to be informed by the impact on the claimant[s]”*: *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).
3. [C has no resources, and is vulnerable to mental health problems/ homelessness/ hunger. UC is [her/his] only potential source of income entitlement].
4. D’s handling of C’s whole UC award has been manifestly unreasonable, but in particular D’s refusal to pay since [date] is indefensible and D has been unreasonably slow in taking whatever step is necessary to rectify that.

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

* As a matter of urgency we request that the Secretary of State pay the C’s ongoing current UC entitlement, with the issue of the backdated payments being calculated and resolved separately.
* We further expect compensation to be paid to C for the hardship and distress caused by not being paid what [she/he] is legally entitled to.
* Finally, D is requested to put a system in place which will enable others in a similar situation to C to receive the UC payments they are entitled to, when they are entitled to them, notwithstanding separate entitlement to backdated payments needing to be resolved. This can be done manually in the first instance and by an adjustment to the computer system in the longer term.

**The details of any interested parties**

N/A

**The details of the information and documents sought**

We request clarification as to:

1. how the DWP’s systems work for the payment of backdated UC entitlement;
2. whether it is the case that UC payments cannot be made in relation to a current period of time where there is an outstanding assessment required as to a claimant’s entitlement to UC in a previous period of time, and if so why; and
3. whether D has any policy or guidance on when manual interventions to payments should or should not be made.

Should any relevant document(s) exist in relation to the above points, please provide a copy to assist C to understand the reasons for D’s decision.

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

* **C’s signed authority**
* **All other documents available through C’s UC online account (Journal and Claimant Commitment).**
* **[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]. This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given [the urgency of C’s circumstances **(s/he currently has no source of income and no savings)** and the time limit to issue judicial review proceedings is approaching.

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. Should we not have received such a request for further time nor a substantive reply by the given deadline we will issue proceedings for judicial review without further notice to you.

[if allowing 14 days:

We expect a reply promptly and in any event no later than [date **(14 days)**]. Should 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)