**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

[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 HIS/HER 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. The unreasonable delay on the part of D in making a supersession decision to reflect C’s change of circumstances as notified and evidenced to D on DATE.

***Background facts***

1. CLAIMANT’S CIRCUMSTANCES, FAMILY, DISABILITY ETC
2. THE CLAIMANT HAS BEEN IN RECEIPT OF UC SINCE DATE. C CLAIMS UC BECAUSE …
3. ON DATE C HAD WHAT CHANGE OF CIRCUMSTANCES.
4. ON DATE C NOTIFIED THIS TO D HOW AND PROVIDING WHAT EVIDENCE?
5. ON DATE C NOTIFIED THIS TO D **HOW** AND PROVIDING WHAT EVIDENCE? (NB VERY IMPORTANT TO EXPLAIN HOW, DID THEY USE THE CHANGE OF CIRC’S BUTTON ON THEIR JOURNAL?)
6. C’S UC SHOULD HAVE BEEN SUPERSEDED FROM **DATE** (IE THE FIRST DAY OF THAT UC ASSESSMENT PERIOD) TO INCLUDE A CARER ELEMENT.
7. D HAS NOT REQUESTED ANY FURTHER EVIDENCE / OR D REQUESTED WHAT FURTHER EVIDENCE AND THIS WAS PROVIDED ON DATE.
8. WHAT IS THE EFFECT ON C OF THE ADDITIONAL AMOUNT NOT BEING INCLUDED IN THE AWARD?
9. To date, no supersession decision has been made.
10. During this time WHAT CONTACT HAS BEEN MADE WITH THE DWP? Yet no additional amount has been received and C has been deprived of HIS/HER appeal rights by the failure to provide a decision notice.

**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: unreasonable delay in providing a decision and failure to follow the law**

***Summary - Unlawful Delay***

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.10 of the Social Security Act 1998 (“**SSA 1998**”) under which Secretary of State may “supersede” any decision, as to any decision made under 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 the claimant[[3]](#footnote-3).
4. C contacted D how on DATE to notify of HIS/HER change of circumstances and provide relevant evidence.
5. To date C has received no decision, this is a delay of HOW LONG. This is not a reasonable delay. The matter is not a complex one and the delay is causing C financial hardship and anxiety.

***What should have happened: duty to conduct a supersession decision and the effective date of that decision***

1. The power to supersede under s.10 SSA applies to decisions made under Part III, Chapter 1 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013 (“**UC (DA) Regs**”) including under reg. 23 where there has been a change of circumstances:

***23****—(1) The Secretary of State may supersede a decision in respect of which—*

*(a) there has been a relevant change of circumstances since the decision to be superseded had effect or, in the case of an advance award under regulation 32, 33 or 34 of the Claims and Payments Regulations 2013, since it was made; or*

*(b) it is expected that a relevant change of circumstances will occur.*

1. **The effect of an advantageous change of circumstances on a claimant’s UC award is to increase that award from the beginning of the UC assessment period in which the change occurred, or if notified late, the beginning of the assessment period in which the change was notified to D under sch 1 of the** UC (DA) Regs**:**

***Schedule 1***

***Effective dates for superseding decisions made on the ground of a change of circumstances***  *(Reg. 35)*

***20*** *-**Subject to the following paragraphs and to Part 4,* ***in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.***

***21****- Except in a case to which paragraph 22 or 31 applies, where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.*

**(Emphasis added)**

1. **C’s UC assessment periods run from the DATE TO THE DATE of each month.**
2. **C’s change of circumstances occurred on DATE.**
3. **C notified D of HIS/HER** change of circumstances **on DATE ie. within the same UC assessment in which** HIS/HER change of circumstances **occurred, and as such HIS/HER UC should have been superseded from the beginning of that assessment period (reg. 35 and sch 1, para 20).**

**ALTERNATIVE IF NOTIFED LATE and C has been awarded Carers Allowance (REPLACE previous section)**

1. **The effect of an advantageous change of circumstances on a claimant’s UC award where that change is that “***the claimant or, in the case of universal credit, a member of their family, becomes entitled to another relevant benefit”* **is to increase that award from “*the first day of the assessment period in which— (i) the entitlement to the other benefit […] arises*” under sch 1 UC (DA) Regs.**

***Schedule 1***

***Effective dates for superseding decisions made on the ground of a change of circumstances***  *(Reg. 35)*

***20*** *-* ***Subject to the following paragraphs*** *and to Part 4, in the case of universal credit, a superseding decision made on the ground of a change of circumstances takes effect from the first day of the assessment period in which that change occurred or is expected to occur.*

***21****-* ***Except in a case to which paragraph 22 or 31 applies,*** *where the superseding decision is advantageous to the claimant and the change of circumstances was notified to an appropriate office after the end of the assessment period in which the change occurred or after the expiry of such longer period as may be allowed under regulation 36 (effective dates for superseding decisions where changes notified late), the superseding decision takes effect from the first day of the assessment period in which the notification was given.*

***[…]***

***31.****—(1)* ***This paragraph applies in relation to an award of*** *personal independence payment or* ***universal credit where the change of circumstances is that the claimant or, in the case of universal credit, a member of their family, becomes entitled to another relevant benefit*** *or Scottish disability payment, ceases so to be entitled or the rate of another such benefit Scottish disability payment alters.*

*(2)* ***Where this paragraph applies, the superseding decision takes effect from—***

***(a) where the superseding decision concerns universal credit, the first day of the assessment period in which—***

***(i) the entitlement to the other benefit*** *or Scottish disability payment* ***arises;***

*[…]*

**(Emphasis added)**

1. **‘Relevant benefit’ for the purposes of reg 31 is defined by reg 2 UC (DA)Regs:**

*“relevant benefit” has the same meaning as in Chapter 2 (social security decisions and appeals) of Part 1 (decisions and appeals) of the 1998 Act;*

1. **The Social Security Act 1998 provides under s. 8(3) that “*relevant benefit*” includes a “***benefit under Parts II to V of the Contributions and Benefits Act*”**:**

***8****.-(3) In this Chapter “relevant benefit” means any of the following, namely—*

*(a) benefit under Parts II to V of the Contributions and Benefits Act;*

 *[…]*

1. **Carers Allowance is awarded under s.70** Social Security Contributions and Benefits Act 1992, **which falls within in Part III** of the Act **(set out below), and is therefore a “*relevant benefit*” for the purpose of sch 1 para 31 UC (DA) Regs.**
2. **C’s UC assessment periods run from the DATE TO THE DATE of each month.**
3. **C’s change of circumstances occurred from DATE when [NAME], C’s [relationship] PIP/DLA was awarded from and from which date C** meets the conditions of entitlement for a Carers Allowance.
4. **C notified D of HIS/HER** change of circumstances **on DATE and C’s UC should have been superseded from the beginning of C’s assessment period [date] to [date] (reg. 23 and sch 1, para 31 UC (DA) Regs).**
5. **In failing to supersede C’s UC at all, or from the beginning of the assessment period in which the change occurred, D has unlawfully failed to apply this law.**

***What should have happened – addition of carer element via supersession***

1. C’s change of circumstances is not complex to give effect to in a supersession decision.
2. C was awarded Carers Allowance on DATE from DATE.
3. C is eligible for the UC carer element in line with HIS/HER award of Carers Allowance. Under the Universal Credit Regulations 2013 (“**UC Regs**”) a UC award is to include the carer element when a claimant meets the conditions for a Carers Allowance:

***Award to include the carer element***

***29****.— (1) An award of universal credit is to include an amount (“the carer element”) specified in the table in regulation 36 where a claimant has regular and substantial caring responsibilities for a severely disabled person, but subject to paragraphs (2) to (4) and section 70(7) of the Contributions and Benefits Act (entitlement by different persons to the carer element and to carer's allowance in respect of the same severely disabled person*

*30.— Meaning of “regular and substantial caring responsibilities for a severely disabled person”*

1. *For the purposes of Part 1 of the Act and these Regulations, a person has regular and substantial caring responsibilities for a severely disabled person if they satisfy the conditions for entitlement to a carer's allowance or would do so but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.*

(Emphasis added)

1. Section 70 of the Social Security Contributions and Benefits Act 1992 (“**SSCBA**”), sets out the conditions of entitlement for Carers Allowance:

*70. - (1) A person shall be entitled to a carer's allowance for any day on which he is engaged in caring for a severely disabled person if—*

1. *he is regularly and substantially engaged in caring for that person;*
2. *he is not gainfully employed; and*
3. *the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.*

25. C satisfies the conditions for entitlement to Carers Allowance as set out in s.70(1) SSCBA and as such has been awarded a Carers Allowance. Accordingly, SHE/HE satisfies the definition of having regular and substantial caring responsibilities in reg. 30 of the UC Regs (2013) set out above and so is entitled the carer element under reg. 29 of the UC Regs (2013).

**26. D has also published guidance, available to all DWP decision makers, specifying that a clamant will be entitled to the carer element where they meet the conditions as set out in s. 70 SSCBA (1992) in their Ad**vice for Decision Making: Staff Guide (“**ADM**”):[[4]](#footnote-4)

***Conditions for award of a carer element***

***Carer test***

*F6010 The conditions for the award of a carer element are that the claimant has regular and substantial caring responsibilities for a severely disabled person1.*

***Note 1:*** *see F6020 for the meaning of regular and substantial caring.*

 *1 WR Act, s 12(2)(c); UC Regs, reg. 29(1)*

*F6020 A UC claimant will have regular and substantial caring responsibilities1 where they*

1. *satisfy the conditions of entitlement for CA2****or***
2. *would satisfy the conditions of entitlement for CA if their earnings did not exceed the prescribed limit for CA3.*

*1 UC Regs, reg. 30; 2 SS CB Act 92, s 70; 3 s 70(1)(b)*

1. Failure to award the UC element in line with C’s award of Carers Allowance unlawfully fails to apply the law at reg. 29 of the UC Regs and its own guidance at ADM F6020.

***Impact on the claimant***

1. The delay in making a decision is causing C serious and immediate hardship. The delay relates to a decision on the amount of UC C is entitled to. UC is a subsistence benefit and C has WHAT additional costs for which provision is made by UC to meet by the availability of the carer element. However in this case, C’s UC has not been increased to meet this cost as the carer element has not been awarded.
2. WHAT ARE THE CONSEQUENCES FOR C? EDIT AS APPROPRIATE
3. NON PAYMENT OF THE CARER ELEMENT AND failing to provide a decision which C can challenge is causing C considerable stress and anxiety which is having an impact on HIS/HER mental health. DELETE AS APPROPRIATE.

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

* The Secretary of State should award C the carer element of UC 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 decision notice immediately.

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

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

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

**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 AND EMAIL HERE

**Proposed reply date**

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)
3. *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin) at para 41 [↑](#footnote-ref-3)
4. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file /661570/admf6.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file%20/661570/admf6.pdf) [↑](#footnote-ref-4)