**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 her/his claim for Personal Independence Payments (“**PIP**”). 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 **DATE**.**

**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. C challenges SSWP’S unlawful failure to send a paper claim form / accept C’s claim for PIP on the basis that C has not yet been allocated a NINo, when SSWP is aware that C has already applied for a NINo.

***Background facts INCLUDING:***

1. FAMILY DETAILS INC DoB AND IMMIGRATION STATUS
2. DATE CLAIMED PIP – HOW DONE SO
3. CONTACTS WITH DWP, HOW, WHAT WAS SAID
4. WHEN APPLIED FOR NINO AND WHEN/HOW TOLD DWP
5. ANY REQUESTS FOR ASSISTANCE BY X
6. DWP CONFIRMATION THAT ELIGIBLE FOR PIP?
7. Detail DWP ADVICE THAT ‘NEED NINO’ TO CLAIM / MAKE PAYMENT?
8. EFFECT ON X

**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: Defendant’s failure to apply the law and follow own guidance by failing to accept and decide C’s claim for PIP award when all lawful conditions for the same have been met**

**Legislation**

1. **The only issue for SSWP to consider in respect of a NINo is whether X meets the NINo requirement set out in section 1(1A) to (1B) of the Social Security Administration Act 1992 (“SSAA 1992”).**
2. **This provides that the NINo requirement is satisfied where the claimant provides a NINo or evidence or information necessary to ascertain a NINo or, under s1(1B)(b) SSAA 1992, where:**

**“*the person makes an application for a national insurance number to be allocated to him which is accompanied by information or evidence enabling such a number to be so allocated*.” (Emphasis added.)**

**Case law**

1. **S1(1B)(b) SSAA 1992 was considered by Commissioner Rowland of the Upper Tribunal in CH/4085/2007 [2008] UKUT 14 (AAC):**

***“It is to be observed that there is no requirement that a national insurance number have [sic] been allocated before benefit is awarded. It is sufficient that an application has been made. That is consistent with the idea that having the national insurance number is not really necessary for entitlement to a non-contributory benefit but is merely a tool in the fight against fraud. The payment of benefit is not generally to be delayed while the application for the national insurance number is processed.”***

1. That possession of a NINo is not required to process a claim to benefits, rather the claimant need only have applied for a NINo and provided the appropriate evidence, was recently confirmed by the **Upper Tribunal in** CF/1556/2016, *OM v H.M. Revenue & Customs* [2018] UKUT 50 (AAC) which related to the analogous NINo provisions relating to child benefit and overturning the First Tier Tribunal’s decision:

*“The Tribunal wrongly held that actual allocation (or ‘possession’) of a N.I. number is the only way to satisfy the N.I. number-related child benefit entitlement condition.”*

**The Defendant’s position on PIP claims without a NINO**

1. **The DWP learning guide “PIP17 Paper Claims” (May 2019)**[[3]](#footnote-3) **(made available in response to a Freedom of Information request (“FOI”)), makes clear procedurally what should happen where a claimant makes a claim without a NINo:**

***A paper version of the initial claim form (PIP1) will be issued where the claimant or their PAB:***

***…***

 ***does not have a National Insurance Number (NINO)***

1. **The date of claim is then the date that the claimant telephoned to make the claim providing the claim form is retuned within one calendar month:**

***Claimants have one calendar month from date of issue to complete and return the paper claim form to the issuing office. If returned in time, the date of claim will be the date that the claimant telephoned the Department to request the form or the date a letter requesting the form was received.***

1. **DWP staff guide “PIP03-PIP Claims Telephony” (Feb 2020)**[[4]](#footnote-4) **(also provided in response to the FOI) confirms that a NINo is not required to issue a paper form.**

***There is a requirement for minimum data to issue a paper claim form:***

***• Name, address and either date of birth or NINO of claimant***

1. **The ‘PIP17 Paper Claims’ and ‘PIP03-PIP Claims Telephony’ guides for DWP staff are clear that where a claimant does not have a NINo, procedurally a paper claim form should be sent out to the claimant on provision of the claimant’s name, address and date of birth. Provided this is returned within one month, the claim will start from the date of the telephone call.**
2. **The Defendant’s webpage (as amended) “Personal Independence Payment (PIP)”**[[5]](#footnote-5) **and guidance “PIP handbook”**[[6]](#footnote-6) **further confirm a NINo only need be provided when making a new claim where the claimant already has a NINo; a NINo is not therefore required to make a claim where a claimant does not already have one:**

## Calling to start your claim

*Call the ‘PIP new claims’ phone line.*

*[…]*

*You’ll need to give the following information:*

* *your National Insurance number, if you have one (you can find this on letters about tax, pensions and benefits)*
1. **SSWP is aware that X has applied for a NINo, yet refused to accept C’s claim for PIP stating:**

**“…QUOTE DWP RESPONSE HERE..”**

1. **In so doing the Defendant has failed to follow the legislation and caselaw under which the NINo requirement is satisfied once a NINo has been applied for and there is no legal basis for the Defendant to refuse to accept and decide C’s claim for PIP.**
2. **By refusing to accept C’s claim for PIP, SSWP has further failed to follow her own guidance which sets out what should happen procedurally when a claim is received from a claimant who does not yet have a NINo, ie, that a paper form should be sent out.**

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

**The Defendant is requested:**

* **without further delay to award and pay X and Y PIP from DATE;**
* **to ensure staff are trained to send a paper form when a claimant claims PIP without a NINo.**

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

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

* **Form of authority signed by the Claimant**
* **WHAT ELSE?**

**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** (14 days).

S**hould we have received neither request for further time nor a substantive reply by the given deadline 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. [www.whatdotheyknow.com/request/711877/response/1695681/attach/6/PIP17%20Paper%20Claims%20v8.2.pdf?cookie\_passthrough=1](http://www.whatdotheyknow.com/request/711877/response/1695681/attach/6/PIP17%20Paper%20Claims%20v8.2.pdf?cookie_passthrough=1) [↑](#footnote-ref-3)
4. <https://www.whatdotheyknow.com/request/711877/response/1695681/attach/3/PIP03%20PIP%20Claims%20Telephony%20v%207.6.pdf?cookie_passthrough=1> [↑](#footnote-ref-4)
5. <https://www.gov.uk/pip/how-to-claim> [↑](#footnote-ref-5)
6. <https://www.gov.uk/government/publications/personal-independence-payment-fact-sheets/pip-handbook> [↑](#footnote-ref-6)