**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**

**This is letter assumes:**

* Your client has requested a supersession of their award, perhaps due to a change of circumstances
* DWP have not replied within a reasonable time or,
* DWP have stated they will not make a decision

Please read whole letter carefully and edit/complete all text in [square brackets]

**Delete box before posting**

**This letter challenges:**

* DWP delay in decision making, and/or
* DWP unlawful refusal to make a supersession decision and/or
* DWP failure to notify of a decision.

Please seek assistance if needed and send your letter for checking to jrproject@cpag.org.uk

**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 [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 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. D’s failure to decide C’s supersession request within a reasonable time or at all, or D’s refusal to decide C’s request, or if a decision has been made, D’s failure to appropriately notify C of that decision and D’s failure to supersede C’s award.

Relevant facts and chronology.

1. [Relevant background facts and correspondence with DWP.]
2. [Etc]
3. [Etc]
4. [Etc]
5. By D’s lack of response, D has either refused to accept C’s supersession request or failed to make a supersession decision and C’s only recourse to challenge this refusal is by judicial review.

**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**

**Ground 1: Unreasonable delay in providing a 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 to s.10 of the Social Security Act 1998 (“**SSA**”) under which Secretary of State may “supersede” any decision made under s.8 or s.10 SSA, as to the analogous provision at s.8 SSA under which the Secretary of State shall “decide any claim for a relevant benefit”.
3. What counts as a reasonable time depends on all the circumstances, including the impact on the claimant[[3]](#footnote-3).

*Impact on the claimant*

1. [X’s mental health forced her to leave full-time education and also prevents her/him from working. She/he has no income without UC.]
2. The failure to provide a decision in response to C’s request for a supersession has caused C hardship. [details]

Non-complex case/all information available

1. [Set out fully the supersession request including the law you are relying on.]

**Ground 2 (alternative): Unlawful refusal to decide C’s supersession request**

1. If D is refusing to decide C’s application, D’s refusal is unlawful. D may refuse to decide a supersession application only in limited circumstances that do not apply in C’s case**.**
2. In *Wood v SSWP* [2003] EWCA Civ 53 (R(DLA) 1/03) the Court of Appeal considered the question of whether the Secretary of State’s decision to refuse to decide a supersession application is a ‘decision superseding an earlier decision’ confirming that it is, except where an application is “*hopeless,*” “*not properly constituted”* [para 75] “*transparently not upon the ground of a relevant change of circumstances, or is otherwise misconceived” [para 62].*
3. The duty to decide a supersession application applies including where the decision is to not change the award (a "supersession at the same rate").  “*The old decision is still "superseded" by the new decision even if there is no change of rate: the word "supersede" does not mean that there must be a change in the rate.” [para 64].*
4. A supersession decision must be made and that decision then carries a right of appeal “s*ection 12(9) must be construed so as to give a right of appeal from the rejection by the Secretary of State of a properly constituted application for a decision under section 10”* [para 75}.
5. Thus, in all but ‘hopeless’ cases; applications not made on the ground of a relevant changes of circumstance, or those otherwise misconceived, a decision not to supersede is made under s.10 SSA and therefore carries a right of appeal under s.12 SSA.
6. C’s supersession request was made due to [what]. This is a change of circumstances for the purposes of reg 23 UC etc (Claims and Payments) Regs. C’s application was patently not hopeless or misconceived and it is for D to decide C’s application under s.10 SSA and provide a decision notice including notification of appeal rights.

**Ground 3 (Alternative): Failure to apply the law and guidance in failing to provide a decision notice and notify the claimant of his/her appeal rights**

1. In the alternative, if SSWP submits that consideration was given to the request for a supersession and that a decision was made not to supersede, then SSWP has failed to correctly notify C of that s.10 SSA decision and the decision is therefore not effective.
2. Under reg 51 Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (“**UC (DA) Regs**”) D must “*give P written notice of the decision and of the right to appeal against that decision*”.

***Notice of a decision against which an appeal lies***

***51.****—(1) This regulation applies in the case of a person (“P”) who has a right of appeal under the 1998 Act or these Regulations.*

*(2) The Secretary of State must—*

*(a) give P written notice of the decision and of the right to appeal against that decision; and*

*(b) inform P that, where that notice does not include a statement of the reasons for the decision, P may, within one month of the date of notification of that decision, request that the Secretary of State provide a written statement of the reasons for that decision.*

*(3) If the Secretary of State is requested under paragraph (2)(b) to provide a written statement of reasons, the Secretary of State must provide such a statement within 14 days of the request or as soon as practicable afterwards.*

1. In *R (Anufrijeva) Secretary of State for the Home Department & Another* [2003] UK HL 36, citing *R v Commission for Racial Equality, Ex p Hillingdon London Borough Council*[1982] AC, the House of Lords confirmed that a decision will not be effective unless and until it is notified to the relevant party:

*“30. Until the decision in Salem it had never been suggested that an uncommunicated administrative decision can bind an individual. It is an astonishingly unjust proposition. In our system of law surprise is regarded as the enemy of justice. Fairness is the guiding principle of our public law. In R v Commission for Racial Equality, Ex p Hillingdon London Borough Council [1982] AC 779, 787, Lord Diplock explained the position:*

*"Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decision."*

*Where decisions are published or notified to those concerned accountability of public authorities is achieved.* ***Elementary fairness therefore supports a principle that a decision takes effect only upon communication.****”*

1. The Defendant’s own guidance, “Principles of Decision Making and Evidence”[[4]](#footnote-4) also states, citing *Anufrijeva*, that a decision is not fully effective until the claimant has been correctly notified of it:

***A1015:*** *A decision is valid as soon as it is properly recorded by the DM. If a decision is not acted upon or not communicated to the relevant parties1, this does not invalidate the decision[[5]](#footnote-5).* ***However a decision is not fully effective unless, and until it is notified2.*** […]

1 R(P) 1/85.pdf ; 2 R(U) 7/81; R (Anufrijeva) v Secretary

of State for the Home Department & Another [2003] UK HL 36

*(Emphasis added).*

1. Detail of what is required in the notification is contained in the same guidance:

***A1116:*** *The written notification of an outcome decision is issued to the claimant either clerically or by computer1. The notification contains*

*1. information which gives the effect of the decision such as whether there is entitlement to benefit and where appropriate the amount payable and when it is payable from and*

*2. a statement to the effect that there is a right of appeal only if the Secretary of State has considered an application for revision2 – see ADM Chapter A3*

*3. information regarding the time limits for making an application for reconsideration3.*

*Where the claimant has the right of appeal following consideration of an application for revision then the claimant must be given written notice of the decision and the right of appeal4.*

1 SS Act 98, s 2(1)(a); 2 UC, PIP, JSA & ESA (D&A)

 Regs, reg 7(1)(b); 3 reg 7(3) (a); 4 reg 51(2)(a)*.*

1. If the decision is not notified, it is not effective, as set out in A1015 and reaffirmed in A1119:

***A1119:*** *A decision is not effective unless and until it is notified*

1. [Informing the claimant verbally that the decision cannot be changed, as was done in C’s case during a call to the PIP helpline, is insufficient and the decision will not take effect.]
2. Therefore, if the SSWP submits that a decision has been made in this case, ie, a decision that C’s award will not be superseded, he failed to correctly notify C of this decision, as there was no notification in writing and C was not informed of [her/his] right of appeal. The decision is therefore not effective and is unlawful.

**Alternative remedies**

1. It does not appear to us that C has any suitable alternative means of obtaining redress. [S/he] cannot make a meaningful appeal to the First-tier Tribunal until the SSWP has considered and provided an effective s10 SSA decision in respect of the request for supersession.
2. C has neither been provided with a decision notice nor advised of [his/her] appeal rights. As no decision has been notified or effectively notified then there is no effective decision to appeal against.
3. Further, the information that C was given, that this is not a decision which is open to supersession (and in turn not appealable), is not accurate and so it is apparent that DWP staff are not receiving adequate training on supersession/appeal rights. A remedy to address this wider issue would not be available through statutory appeal.

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

**The Defendant is requested to:**

* Supersede C’s (benefit) award from….
* If D is unable to do so, to accept C’s request for a supersession effective decision notice without further delay;
* Provide staff training and/or issue guidance to ensure other claimants in C’s position are provided with decision notices.

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

* The claimant’s signed authority

**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).

If 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) [↑](#footnote-ref-3)
4. ADM Chapter A1:<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890304/adma1.pdf> [↑](#footnote-ref-4)
5. R(P) 1/85 [↑](#footnote-ref-5)