**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](mailto: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 template if your client:**

**Only use this letter if** your client:

* Receives income-related (irESA)
* Has subsequently been awarded PIP daily living component
* Is eligible for the SDP (no CA etc)
* Has asked for their irESA to be
* superseded to include the SDP and this has been refused as “you need to claim UC”.

**Note: if** your client received old style contribution-based ESA and DWP refuse to superseded to include irESA – use JR85 instead.

**Delete box before sending**

**This letter challenges**:

* DWP error of law in refusing to supersede an award of irESA to include SDP.

Please read the whole letter carefully and make any changes needed, in particular any text in [square brackets]

Please send your letter for review to JRProject@CPAG.org.uk before sending to DWP.

**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](mailto: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 [full name] in **relation to [her/his] Employment and Support (“**ESA**”) 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 4pm on [date] (14 days).**

**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*](mailto:thetreasurysolicitor@governmentlegal.gov.uk)*.*

**The details of the matter being challenged**

1. The unreasonable delay on the part of SSWP in deciding C’s request for a supersession of [her/his] income-related ESA (“**ESA**”) award to include the severe disability premium (“**SDP**”).

***Background facts* edit whole section**

1. C is...
2. C has…
3. C has been ion receipt of income-related ESA since [date].
4. C lives alone and no one receives Carers allowance for looking after [her/him].
5. C was awarded Personal Independence Payment (“**PIP**”) daily living component from [date] to [date] on [date].
6. C, via her adviser at ][…], wrote to ESA […], Post Handling Site B on […], requesting a supersession of C’s ESA award to include the SDP from [date] from which [s/he] was awarded PIP including the daily living component.
7. [details of further attempts to resolve issue and contacts]

**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**

**Unreasonable delay in providing a supersession decision**

1. SSWP 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**”)[[3]](#footnote-3) under which Secretary of State may “supersede” any decision made under s.8 or s.9, 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 the claimant and the complexity of the case[[4]](#footnote-4).

*Impact on the claimant:*

1. C is suffering from [health] which is exacerbated by the financial hardship caused by SSWP’s failure to award and pay [her/him] all of the benefit [s/he] is entitled to and the repeated failure of SSWP to respond to [her/his] correspondence.

*Non Complex case/all information available*

1. Under reg 67 Employment and Support Allowance Regulations 2008 (“**ESA Regs**”) the calculation of the amount of income-related ESA is to include amounts determined in accordance with Schedule 4.
2. Under para 6(1) Sch 4 an SDP is to be included in an ESA award where the claimant is “*a severely disabled person*”.
3. A claimant is a “severely disabled person” under para 6(2) Sch 4 where they have no partner if:

* the claimant is in receipt of the daily living component of PIP
* the claimant has no non-dependants aged 18 or over normally residing with the claimant or with whom the claimant is normally residing; and
* no person is entitled to, and in receipt of, a carer’s allowance or has an award of universal credit which includes the carer element in respect of caring for the claimant;

1. It is not disputed by SSWP that C meets these criteria and has done so since [s/he] was awarded PIP.
2. From the date from which C was awarded PIP, [date], C was a “severely disabled person” for the purposes of sch 4 ESA Regs and was entitled to have the SDP included in [her/his] ESA award from that date.
3. The award of PIP to C constitutes a change of circumstances and [her/his] ESA award therefore fell to be superseded under s10 Social Security Act 1998 and reg 6(2)(e) Social Security and Child Support (Decisions and Appeals) Regulations 1999 (“**SSCS (DA) Regs**”)[[5]](#footnote-5):

#### Supersession of decisions

***6.****—(1) Subject to the following provisions of this regulation, for the purposes of section 10, the cases and circumstances in which a decision may be superseded under that section are set out in paragraphs (2) to (4).*

*(2) A decision under section 10 may be made on the Secretary of State’s or the Board's own initiative or on an application made for the purpose on the basis that the decision to be superseded—*

*[…]*

***(e) is a decision where—***

*(i)* ***the claimant has been awarded entitlement to a relevant benefit; and***

*(ii)* ***subsequent to the first day of the period to which that entitlement relates, the claimant or a member of his family becomes entitled to ... another relevant benefit****or Scottish disability benefit or an* increase in the rate of another relevant benefit or Scottish disability benefit;

1. C was awarded a relevant benefit (PIP) from [date]. Under reg 7(7) SSCS (DA) Regs C’s ESA should have been superseded from the date entitlement to the other relevant benefit arose, ie, [date]:

#### **Date from which a decision superseded under section 10 takes effect**

***7.-****(7) A decision which is superseded in accordance with regulation 6(2)(e) or (ee) shall be superseded—*

*(a) subject to sub-paragraph (b), from the date on which entitlement arises to the other relevant benefit or Scottish disability benefit referred to in regulation 6(2)(e)(ii) or (ee) or to an increase in the rate of that other relevant benefit or Scottish disability benefit; or*

*[…]*

1. C’s entitlement to an SDP is clear and C’s ESA should therefore be superseded from [date] to include an SDP without further delay.

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

* SSWP should supersede C’s ESA award and award the SDP from [date]. immediately,
* If SSWP is unable to do so, SSWP should provide a decision confirming that the award will not be superseded and giving reasons for this decision in light of the evidence provided.

**The 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.**

**ADR proposals**

Please confirm in your reply whether SSWP is willing to consider alternative dispute resolution.

**The address for reply and service of court documents**

**[Advice agency 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 our client has the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

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. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)