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

* Has had their claim for UC claim “closed” and was told to make a new claim, which resulted in the client not being able to access their original UC journal and so cannot access the decision notice or letter posted to their original journal including any information provided by DWP about their appeal rights.

Read the whole letter carefully and edit as appropriate including all text in red and/or [square brackets].

Delete any comments and return all text to **black** (and not bold)before posting.

**DELETE BOX BEFORE POSTING**

***This letter challenges*** *the DWP’s:*

* unlawful closure of the Claimant’s claim for UC,
* failure to allow the claimant the proper time to provide the evidence requested to establish their identity/ habitual residence,
* failure to allow the claimant opportunity to explain why they failed to attend/provide the evidence requested, and
* failure to provide a written decision / advise the claimant of appeal rights.

Please send this letter to [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk) for review before sending to DWP.

**DELETE BOX BEFORE POSTING**

**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**

[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 a claim for Universal Credit (“**UC**”). 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 [xx/xx/xxxx].**

**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. **C challenges the unlawful closure of [his/her] claim for UC; the failure to allow [him/her] the proper time to provide the evidence requested to establish [her/his identity / habitual residence]; the f**ailure to allow C the opportunity to explain [his/her] failure to attend /provide the evidence requested;] and **SSWP’s failure adequately to provide a written decision and to advise C of [his/her] appeal rights regarding the same.**

***Background facts*  [EDIT WHOLE SECTION]**

1. **[Name’s personal details, disability, family, housing situation etc]**
2. On [date], C commenced the process of making an online claim for UC. [He/She] did this by clicking a button which said “make a claim”. [He/She] answered all the relevant questions and clicked the final button “submit claim”.
3. **C applied for UC as [reason].**
4. [What happened? E.g. C telephoned the DWP and an Evidence of Identity appointment / Right to Reside interview was arranged for DATE].
5. On [date] C failed to attend that [initial evidence] appointment. The reasons for that failure are not material to this challenge but for the sake of completeness, [name] was unable to attend due to [reason] and notified the defendant of this [when and how]. [SSWP responded when and how.]
6. On [date], a decision maker of the DWP made a decision which was expressed as being a decision that the claim “was closed”.
7. on [date] C was advised by D to ‘re-claim’ UC [how and by whom?.]
8. At no point did D advise C that in the event that [he/she] re-claimed UC following the initial claim closure, C would no longer have access to [his/her] original journal including access to decision notice in respect of [his/her] original claim.
9. On [date], C submitted a further online claim for UC. this claim resulted in an award for UC following [his/her] attendance at an evidence interview on [date / provision of what evidence]. The date of claim was said to be [date].
10. As a result of C’s re-claim, a new UC journal was created and C can no longer access or post to [his/her] original online journal in respect of [his/her] first claim, this means that [name] cannot access the decision notice or letter posted to [his/her] journal including any information provided by SSWP about [his/her] appeal rights (if indeed such a decision notice was posted to the journal).
11. **[Edit as appropriate** on [date], C requested a mandatory reconsideration of the decision dated date to “close” the first UC claim.]
12. [In a decision dated [date], a decision maker accepted the late request but found that there were no grounds to revise the decision dated [date].]
13. Chas appealed against the decision of [date.]

**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***

**A. *‘Closing’ claims and appeal rights***

1. Under section 8(1)(a) of the Social Security Act 1998 (“**SSA**”) a decision maker must decide whether to make an award of benefit in respect of a claim made for that benefit:

##### *Decisions by Secretary of State*

***8.*** *— (1) Subject to the provisions of this Chapter, it shall be for the Secretary of State—*

*(a) to decide any claim for a relevant benefit;*

1. In situations where the decision maker needs to decide whether something constitutes a claim, or whether something is a ‘defective’ claim, that decision is also made under s. 8(1)(a) SSA.
2. Decisions made under s. 8(1)(a) SSA carry a right of appeal under s. 12 SSA:

***Appeal to First Tier Tribunal***

***12****.—(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which–*

*(a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act; or*

*(b) is made otherwise than on such a claim or award, and falls within Schedule 3 to this Act.*

1. SSWP’s guidance Advice for Decision Making: Staff Guide (“**ADM**”) ‘Chapter A1 - Principles of decision making and Evidence[[3]](#footnote-3) confirms a decision on a claim carries a right of appeal:

***What decisions are made by DMs***

***A1030*** *The DM*

*1. decides any claim for a relevant benefit*

*[…]*

*These decisions are called outcome decisions. It is important that DMs distinguish between outcome decisions and other decisions and determinations. This is because only outcome decisions carry the right of appeal to the FtT1. See A1100-A1102 for further guidance on outcome decisions.*

*1 R(IB) 2/04*

***Outcome decisions A1100 - A114***

***A1100*** *The most important issue for a claimant who makes*

1. *a claim*

*[...]*

*is the outcome of that claim or application. For a claim, the claimant wants to know whether the claim has been successful, and if so, how much benefit will be paid and from when. The same principle applies to an application.*

***A1102*** *The claimant has a right of appeal against outcome decisions only1 as listed in ADM Annex D. An outcome decision on a claim, for example, is whether or not the claimant is entitled to benefit. [...]*

*1 SS Act 98, s12 & Sch 3; 2 s12 & Sch 2*

***ADM Annex D[[4]](#footnote-4)***

***Decisions and determinations that are appealable***

***Benefit decisions***

1. *All decisions, other than those in Annex E, made on a claim for or award of a relevant benefit1,* ***including whether there has been a valid claim2 or if the claim is defective****.*

*1 SS (NI) Order 98, art 9(1)(a); 2 UC, PIP, JSA & ESA (C&P)*

*Regs (NI), regs 8, 11, 13, 15, 19, 21 & 23*

(Emphasis added)

1. SSWP’s operational guidance ‘Claim closure’ (V22) further confirms ‘closing’ a claim is a decision on a claim which carries a right of appeal[[5]](#footnote-5):

***Closing the claim***

*If the claim is to be closed, all outstanding appointments must be cancelled. The claimant will receive a decision notification that the claim has been closed* ***including consideration of their appeal rights****. A journal note entry is added to this effect.*

(Emphasis added)

**B. *Duty to provide a decision notice and advise of appeal rights***

1. Regulation 51 of the Universal Credit (Decisions and Appeals) Regulations 2013 confirms written notice of a decision must be provided when decisions are made under the SSA (set out above):

***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 the Secretary of State provide a written statement of reasons for that decision.*

1. SSWP’s operational guidance ‘Claim closure’ further confirms a claimant must be notified of a decision to close their claim and be advised of their appeal rights:

***Closing the claim***

*If the claim is to be closed, all outstanding appointments must be cancelled.* ***The claimant will receive a decision notification*** *that the claim has been closed* ***including consideration of their appeal rights****. A journal note entry is added to this effect.*

(Emphasis added)

1. SSWP’s guidance ‘Principles of decision making and Evidence’ states a decision is not effective until a claimant has been 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 parties, this does not invalidate the decision1.* ***However a decision is not fully effective unless, and until it is notified****.*2

**1** R(P) 1/85, **2** R(U) 7/81; R (Anufrijeva) v Secretary of State for the

Home Department & Another [2003] UK HL 36

(Emphasis added)

**How is the decision notified**

***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 where appropriate when it is payable from* ***and***
2. *a statement to the effect that there is only a right of appeal if the Secretary of State has considered an application for a revision2–see ADM Chapter A3*
3. *information regarding time limits for making an application for reconsideration.3*

*Where the claimant has the right of appeal following reconsideration of an application for revision then the claimant must be given written notice of the decision and the right of appeal.4*

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. SSWP’s guidance ‘ADM A5: Appeals - PIP, UC and new style ESA and JSA[[6]](#footnote-6)’ further confirms the time limit to appeal does not start to run until a claimant has been notified of it:

***A5080******The time limits in A5065 begin when the decision is notified****. It is therefore important to ensure, especially in cases where it is alleged that the decision notice has not been received, that the decision has been notified correctly. For guidance on how a decision is notified see ADM Chapter A1: Principles of decision making and evidence.*

(Emphasis added)

**C. *Time allowed to supply information or evidence in connection with a claim***

1. Regulation 37 of the Universal Credit etc. (Claims & Payments) Regulations 2013 (“**UC (CP) Regs**”) provides a claimant with at least one month to provide any evidence requested in connection with a claim:

***Evidence and information in connection with a claim***

***37****.—(1) Subject to regulation 8 of the Personal Independence Payment Regulations, paragraphs (2) and (3) apply to a person who makes a claim for benefit, other than a jobseeker's allowance, or on whose behalf a claim is made.*

*(2) The Secretary of State may require the person to supply information or evidence in connection with the claim, or any question arising out of it, as the Secretary of State considers appropriate.*

*(3) The person must supply the Secretary of State with the information or evidence in such manner as the Secretary of State determines* ***within one month of first being required to do so or such longer period*** *as the Secretary of State considers reasonable.*

*(Emphasis added)*

1. Regulation 8 UC (CP) Regs provides a claimant with one month or more to correct a ‘defective’ claim:

### *Making a claim for universal credit*

***8.****—(1) Except as provided in paragraph (2), a claim for universal credit must be made by means of an electronic communication in accordance with the provisions set out in Schedule 2 and completed in accordance with any instructions given by the Secretary of State for that purpose.*

*[…]*

*(3) A claim for universal credit made by means of an electronic communication in accordance with the provisions set out in Schedule 2 is defective if it is not completed in accordance with any instructions of the Secretary of State.*

*[…]*

*(5) If a claim for universal credit is defective the Secretary of State must inform the claimant of the defect and of the relevant provisions of regulation 10 relating to the date of claim.*

*(6) The Secretary of State must treat the claim as properly made in the first instance if—*

*[…]*

*(b) in the case of a claim made by means of an electronic communication, a claim completed in accordance with any instructions of the Secretary of State is received at an appropriate office,*

***within one month, or such longer period*** *as the Secretary of State considers reasonable, from the date on which the claimant is first informed of the defect.*

(Emphasis added)

1. SSWP’s operational guidance ‘Claim closure’ provides several relevant examples of situations where claim closure may be considered and it is clear from each that at least one month must be allowed for the claimant to provide further information or evidence as requested, or make contact, before a claim can be ‘closed’ and that if the evidence no longer exists, the claimant can be treated as having provided it. The examples are also confirmed in D’s operational guidance ‘Fail to attend’ (V21)[[7]](#footnote-7):

***Claimant fails to book their Initial Evidence Interview***

*…*

*If the claimant fails to book their IEI, their claim remains open for one calendar month from the date of their declaration. … If no further contact is made, the claim is closed 1 month from the date of their declaration.*

*To ensure the claim is not closed too early if no further contact is made, the claim is closed* ***1 calendar month plus 1 day*** *from the date of their declaration.*

*If the claimant re-books the appointment within that time but fails to attend again, the 1 calendar month will still count from the date of declaration. […]*

***Claimant fails to attend their Initial Evidence Interview, Initial Gateway intervention (or Habitual Residence Test)****If a claimant fails to attend their:*

* + *Initial Evidence Interview*
  + *Initial Gateway intervention (where the claimant has declared self-employment at the start of a new claim)*
  + *Habitual Residence Test appointment*

*The claimant is notified to make contact to book another appointment. If there is no contact, their claim is closed* ***1 calendar month plus 1 day*** *from their date of declaration.*

*[…]*

***Claimant fails the Habitual Residency Test***

*[…]*

*Claimants have a minimum of 1 calendar month from the date of request to provide evidence before the claim is closed. […]*

***Claimant fails to provide evidence***

*A claimant must be given 1 calendar month (or a longer period if considered reasonable) to provide information or evidence in connection with their new claim.*

*The month starts from the date the claimant is notified of the evidence that is required – this means the date the claimant completed the declaration. If they fail to provide the evidence, their claim is closed* ***1 calendar month plus 1 day*** *from the date the evidence was requested.*

*If further evidence is needed for a new claim and the claimant is notified, consideration is given to whether the remaining time of the original month allowed to provide evidence is reasonable - or whether that period should be extended.*

*If the claimant fails to provide evidence of their identity following an IEI and fails biographical questions, then the claim cannot be closed until* ***1 calendar month plus 1 day*** *after the request for evidence was made.*

*[…]*

*Where evidence cannot be provided because it no longer exists or cannot be obtained, the claimant is deemed to have satisfied the request.*

**D. *Deciding a claim on the evidence available***

1. Where a claimant does not attend an evidence or information gathering interview or does not provide evidence or information requested by SSWP, it is clear from case law that a decision must be reached on the information available to SSWP:

*Relevant caselaw*

***R(IS)4/93***

Regulation 37 Universal Credit etc. (Claims and Payments) Regulations 2013 (“**UC (CP) Regs**”) is very similar to reg. 7 of the Social Security (Claims and Payments) Regulations 1987 (SI No. 1968). Reg. 7 was considered in R(IS)4/93- see §14[[8]](#footnote-8).

***R(H)3/05***

The Tribunal of Commissioners in R(H) 3/05 explain the position with reference to the judgment of the House of Lords in *Kerr v. Department for Social Development (Northern Ireland)* [2004] UKHL 23 -

*‘78. The position on a claim for benefit was recently considered by the House of Lords in Kerr ... Whilst there are striking similarities between a claim for benefit and (say) a civil claim, there are also differences arising primarily from the fact that the process in benefits claims is inquisitorial rather than adversarial. In Kerr (at [63]), Baroness Hale (with whom the rest of their Lordships agreed) approved the approach of Mr Commissioner Henty in CIS/5321/1998, when he said in relation to the provision of information by a claimant:*

*“[A] claimant must to the best of his or her ability give such information to the [adjudication officer] as he reasonably can, in default of which a contrary inference can always be drawn.”*

*79. An administering authority is therefore required to inform a claimant of the information and evidence he should provide and it is for the claimant to supply such information or evidence as best he can. Where a claimant fails to provide information or evidence he can reasonably be expected to provide, there is no express sanction – but an inference may be taken against him and the case or the relevant issue may as a result be determined against him. Where the claimant is unable to supply information or evidence, the duty to obtain it may pass to the administering authority (under the principles expounded in Kerr). The authority must, of course, always act not only in accordance with the regulations governing the benefit but also reasonably. However, where the administering authority has done all that can reasonably be expected of it in seeking information and evidence, it will always be open to it to make a decision on the claim, making such adverse inferences against a claimant for any failure to disclose that are reasonable and proper. If the information and evidence are insufficient to show that the relevant conditions of entitlement have been satisfied, then the claim will be refused. All of this is well established in Commissioners’ jurisprudence, but helpfully and succinctly confirmed in Kerr (see especially Lord Hope at [13]–[17] and Baroness Hale at [56]–[63]).’*

**Grounds for Judicial Review**

**Ground 1: Failure to apply the law and guidance in failing to provide a decision notice and notify the claimant of [his/her] appeal rights**

1. The concept of ‘closing’ a claim does not exist in law. When a claim for benefit is made (including a defective claim), the decision maker has a duty under s. 8(1)(a) SSA to decide whether to make an award of benefit in respect of that claim. This decision, including the decision not to make an award, is an ‘outcome decision’ and carries a right of appealable under s. 12(1)(a) SSA. This is confirmed by the Defendant’s own guidance ‘claim closure’ set out in paragraphs 18 and 20 above.
2. Under Reg 51 of the UC (CP) Regs the Defendant must “*give P written notice of the decision and of the right to appeal against that decision*”.
3. Failure to provide a written notice of a decision against which a claimant can request a review of a decision and later appeal, if the decision remains unchanged, is consequently unlawful.

**Ground 2: Failure to provide a decision notice and notification to the claimant of [his/her] appeal rights that is accessible to the Claimant**

1. In the alternative to Ground 1, there has been a failure to provide a decision notice in a manner where the decision is and remains accessible to C.
2. In the event that a decision notification has been placed on the Claimant’s original UC journal, as SSWP’s own guidance suggests it should be where it states “*The claimant should receive* ***a decision notification*** *that the claim has been closed, including consideration of appeal rights.* ***A journal note entry is added to this effect*,”** this is necessarily not accessible to C as [he/she] no longer has access to [his/her] journal as a result of [following SSWP’s advice to re-claim UC].
3. In addition, when SSWP advised C to re-claim UC, at no time did they advise C that this would render [his/her] existing journal inaccessible, including access to information about [his/her] appeal rights in respect of [his/her] first claim. It is not reasonable to expect any UC claimant to know this would be a consequence of re-claiming UC.
4. As a result, D has failed adequately to advise C of [his/her] appeal rights and, as such, has unlawfully failed to advise C of [his/her] appeal rights.
5. failure either to provide a decision notice which advises [name] of [his/her] appeal rights at all (Ground 1), or in the event that such notification was posted to C’s original UC journal, failure to provide notification in a manner properly accessible to C (Ground 2), fails to comply with the legislative requirements, fails to follow SSWP’s own guidance and deprives [name] of [his/her] appeal rights under Article 6 ECHR and is therefore unlawful.

**Ground 3: Failure to allow the requisite amount of time to provide information**

1. Regulation 37 UC (CP) Regs provides that a claimant has one month, or such longer period as the Defendant considers reasonable, to supply information or evidence in connection with a claim starting from the date the information is requested by the Defendant.
2. Regulation 8 UC (CP) Regs further provides that in the event an initial claim is deemed ‘defective’ the Defendant *must* inform the claimant of the defect and the claimant again has one month, or such longer period as the Defendant considers reasonable, to remedy the defect starting from the date the clamant is notified of the defect.
3. There is therefore no provision In the Regulations to refuse or ‘close’ a claim before the expiration of at least one month from either the date the claimant is informed of the defect (Reg 8) or the date any information or evidence is requested (Reg 37). As a result, closure of [NAME’S] claim [NUMBER] days after [HIS/HER] claim was [SUBMITTED / THE EVIDENCE WAS REQUESTED] is unlawful.

**Ground 4: Failure to make a decision on entitlement on the information and evidence available**

1. SSWP does not have a power to refuse to make an award of benefit under s.8 SSA solely on the basis that the claimant has failed to comply with an information requirement under reg. 37 UC (CP) Regs.
2. A breach of reg. 37 UC (CP) Regs does not give a freestanding right to make a decision that a claimant is not entitled to UC. Rather, following a failure to provide information or attend an interview, a decision on entitlement must be made on the information available. In many cases that decision will be a decision that the claimant is not entitled as the information or evidence that is needed to establish they met the conditions of entitlement is not available. However, this is not a foregone conclusion and each claim must be considered on its facts.
3. Applying the principles set out in *Kerr* and *R(H) 3/05* above to C’s case, a failure to satisfy reg. 37 of the uc (cp) regs did not in itself provide the basis for a determination that [she/he] was not entitled to UC. The decision maker should have made a decision on entitlement on the basis of the information available, and failure to do so was unlawful.

**Ground 5: Failure to provide opportunity to explain good reason for failing to attend / provide the information requested**

1. **In “closing” C’s original UC claim SSWP has failed to act reasonably for the following reasons:** 
   * + 1. **SSWP failed to provide C the opportunity to explain why [she/he] had missed the appointment on [date] and provide good reasons. SSWP** **did not contact C to ascertain why [she/he] had missed the meeting, which could have been for any number of reasons. the claim was closed at around [time and date], leaving C without any opportunity to provide reasons for [her/his] non-attendance; and**
       2. **C has since provided all the evidence needed to demonstrate [his/her] [identity/right to reside as evidenced by his/her current UC award and did so within one month of [his/her] initial claim / the date the information was requested by the DWP.]**

**Ground 6: Unlawful discrimination (ONLY INCLUDE GROUND 6 IF** FAILURE TO ATTEND A R2R INTERVIEW OR EVIDENCE OF HRT - NOT FAILURE TO ATTEND IDENTITY INTERVIEW)

1. Article 14 of the European Convention on Human Rights provides:

“*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.”

1. Welfare benefits are a recognised form of property for the purposes of Article 1, Protocol 1.
2. SSWP’s unlawful closure of claims where a claimant has failed to attend an identity or right to reside interview or provide information or evidence to demonstrate habitual residence, is likely to disproportionately affect non-UK nationals, their partners, children and dependants. It is for the Defendant to justify such differential treatment but we are not aware of any justification for the same. Accordingly, the closure of a claim where a claimant has failed to attend an identity or right to reside interview or provide information or evidence to demonstrate habitual residence amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1.

**Alternative remedies**

1. It does not appear to us that C has any suitable alternative means of obtaining redress notwithstanding the right of appeal to the first-tier tribunal (“**ftt**”) set out above. [[name] *has* in any event sought a mandatory reconsideration of the decision and/or filed an appeal, but this will not provide the redress sought.]
2. In particular, 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 (as per Grounds 1 and 2) then there is no effective decision to appeal against.**
3. **Furthermore, this is a problem which is frequently reported to Child Poverty Action Group from advisers across England and Wales. C’s challenge therefore represents a wider issue than [his/her] individual claim about the lawfulness of closing claims in C’s circumstances, the way decisions are made and the and the timing of decisions to ‘close’ claim, and the way claimants are notified of their appeal rights. The staff training and improvements to guidance sought are not available through the FTT.**
4. **[Finally, [name] is seeking HRA damages. These are not available through the FTT.] [delete if ground 6 not included]**

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

**SSWP is requested to:**

* **accept C’s first claim made on [date] and process [his / her] claim from this date / [and make the first payment of uc on date in place of her/his second claim where payment is only due on [date].]**
* **Issue staff training and/or guidance to ensure claims are not “closed” before at least one month from either the date of claim or the date the information is requested from the claimant.**
* Issue staff training and/or guidance that decision notices including appeal rights are issued to claimants in a format which continues to be accessible to them in the event that they make a new claim to UC. Where a claim has been ‘closed’, this must be a clerical written decision notice.
* Issue staff training and/or guidance to ensure that decisions are reached by decision makers deciding UC claims on the information and evidence available to them, not as a sanction for failing to attend an interview or failure to provide evidence requested.
* Accept that it has unlawfully discriminated against C and to pay [her/him] HRA damages.

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

* **All documents available through C’s online UC journal**
* **C’s signed 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 name

Address

Email]

**Proposed reply date**

**Due to the urgency of this matter we expect a reply promptly and in any event no later than 5pm on [DATE]. Should we not have received a reply by this time, our client will seek representation to 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)
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8. That position was doubted by the Northern Ireland Court of Appeal in the case that went on to become *Kerr* (see below). [↑](#footnote-ref-8)