**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

***Only use this letter if your client*** has had a mandatory reconsideration request not processed or refused because the challenge relates to a policy issue.

The used example in the text is where a claimant is paid twice by their employer in one AP, but these paragraphs can be substituted for any other situation where DWP have stated “there is no right to an MR because the challenge relates to a policy issue”.

Delete box before posting

***This letter challenges*** *DWP’s refusal to provide a decision on a revision request because they state “there is no right to an MR because the challenge relates to a policy issue”.*

Read and edit whole letter carefully, in particular change any text in red and/or in [square brackets]

If you have any questions when using this letter, please contact 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 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 refusal to carry out a mandatory reconsideration in respect of the decision of [dd/mm/yy], that C [is not entitled to UC / is longer entitled to UC/ is entitled to £X of UC for the period dd/mm/yy to dd/mm/yy] because [s/he is treated as having received two wage payments in the same assessment period/ her maternity allowance is treated as unearned income/ s/he is paid a lower standard allowance because s/he is under 25/any other challenge to the law as opposed to how the law was applied].**

***Background facts***

1. [Client circumstances – household/ work/ children etc.]
2. [Client claim/ award details, e.g. C has been in receipt of UC since dd/mm/yy. Her assessment period runs from the dd of each month to the dd of the following month. C is paid by her employer on the dd of each month.]
3. [(e.g. cont.) On dd/mm/yy C’s usual pay date fell on a bank holiday and she was instead paid on dd/mm/yy. The result of this was that the pay fell into the previous assessment period, meaning that she appeared to have received two payments in the same month when, in reality, the two payments were attributable to different months.]
4. [(e.g. cont.) C’s UC award for the period dd/mm/yy to dd/mm/yy was reduced to account for the apparent additional income. She received a payment of £XX, which is £XX lower than the amount that she usually receives.]
5. On [dd/mm/yy] C requested a mandatory reconsideration of the decision of [dd/mm/yy, that the payment received on dd/mm/yy should be included as income for the calculation of her UC award from dd/mm/yy to dd/mm/yy.] C was informed that the decision could not be revised, as it was a policy matter [include extract of reasons from UC journal as appropriate]. [S/he] received no further informat**ion.**

**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***

1. ***Appeal rights***
2. **Decisions on UC claims are made under s8 of the Social Security Act 1998 (“SSA 1998”)** under which the Secretary of State shall “*decide any claim for a relevant benefit*”**. Decisions under s8 can subsequently be revised under s9 of the SSA 1998:**

***9****.—(1) Subject to section 36(3) below, any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State–*

*(a) either within the prescribed period or in prescribed cases or circumstances; and*

*(b) either on an application made for the purpose or on his own initiative;*

*and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.*

1. **C’s right to appeal to the First-tier Tribunal in respect of a s8 decision, whether or not revised under s9, derives from s12 of the SSA 1998:**

***Appeal to Appeal 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;*

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

*(c) relates to statutory sick pay or statutory maternity pay.*

*(2) In the case of a decision to which this section applies –*

*(a) if it relates to statutory sick pay or statutory maternity pay, the employee and employer concerned shall each have a right to appeal to an appeal tribunal; and*

*(b) in any other case, the claimant and such other person as may be prescribed shall have a right to do so;*

*but nothing in this subsection shall confer a right of appeal in relation to a prescribed decision, or a prescribed determination embodied in or necessary to a decision.*

*(3) Regulations under subsection (2) above shall not prescribe any decision or determination that relates to the conditions of entitlement to a relevant benefit for which a claim has been validly made or for which no claim is required.*

1. The regulations that provide the circumstances and conditions referred to in s12(3) of the SSA 1998 are the Universal Credit, Personal Independence Payment, Jobseekers’ Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (“**UC (DA) Regs**”), which state as follows:

***Consideration of revision before appeal***

***7****.—(1) This regulation applies in a case where—*

*(a) the Secretary of State gives a person written notice of a decision under section 8 or 10 of the 1998 Act (whether as originally made or as revised under section 9 of that Act); and*

*(b) that notice includes a statement to the effect that there is a right of appeal in relation to the decision only if the Secretary of State has considered an application for a revision of the decision.*

*(2) In a case to which this regulation applies, a person has a right of appeal under section 12(2) of the 1998 Act in relation to the decision only if the Secretary of State has considered on an application whether to revise the decision under section 9 of that Act.*

*(3) The notice referred to in paragraph (1) must inform the person—*

*(a) of the time limit under regulation 5(1) (revision on any grounds) for making an application for a revision; and*

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

1. Before the claimant can appeal to the First-tier Tribunal in respect of a decision on a claim for, or on an award of, benefit, the Secretary of State must therefore have considered an application for a revision of the decision, commonly referred to as ‘mandatory reconsideration’.
2. ***Notification of decision and appeal rights:***
3. Regulation 51 of the UC (DA) Regs confirms written notice of a decision must be provided when decisions are made under the SSA 1998 (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. Decisions under s9 of the SSA 1998 carry a right of appeal and so the claimant should be notified in writing of the decision and the right to appeal against that decision.
2. The defendant’s own guidance, “Principles of Decision Making and Evidence”[[3]](#footnote-3), states 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 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.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*

**Grounds for Judicial Review**

**Unlawful refusal to consider a request for a revision/Breach of Article 6 ECHR**

1. The decision to calculate C’s UC award [by treating her as having received two wage payments in one month/ by treating her MA as unearned income/ by treating her as having a lower standard allowance than a lone parent aged 25 or over] is a decision under s8 of the SSA 1998. [It attracts a right of appeal where a mandatory reconsideration has been carried out, as confirmed on the decision notice itself under the heading ‘Can I appeal?’]
2. C made a request for the decision made under s8 of the SSA 1998 to be revised under s9 of the SSA 1998. [S/he] was informed that this decision was not one that was capable of being revised because it concerned a policy matter.
3. All decisions under s8 of the SSA can be revised under s9 of the SSA: s9 contains no exclusions for decisions under s8 which involve the application of a particular policy. Indeed, such an exclusion would be nonsensical as all s8 decisions necessarily involve the application of policy which is contained in the legislative provisions governing the conditions for entitlement to an award, methods of calculating the award, rate and frequency of payment etc.
4. While the SSWP cannot be obliged to revise a s8 decision, e.g. if SSWP considers it to be have correctly made, SSWP is obliged to consider whether or not the decision should be revised when so requested by a claimant under s9 SSA. A refusal to give consideration to whether to revise the decision of [dd/mm/yy] is therefore unlawful.
5. Further, the refusal to consider whether or not to revise the decision under s9 SSA means that C is prevented by reg 7(2) of the UC (DA) Regs from exercising [her/his] right of appeal under s12(2) SSA. The refusal to consider C’s mandatory reconsideration request is therefore in flagrant breach of C’s rights under Article 6 ECHR which guarantee a person the right to a fair and public hearing by an independent and impartial tribunal in a reasonable time in the determination of their civil rights.

**Ground 2 (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. If, in the alternative, SSWP submits that consideration was given to the request for a review and that a decision was made not to change the original decision, then SSWP has failed to correctly notify C of that s9 SSA decision and the decision is therefore not effective.
2. Under reg 51 of the UC (DA) Regs SSWP must “give P written notice of the decision and of the right to appeal against that decision”.
3. SSWP’s own guidance clearly sets out what is required in order for a decision to be effective. The claimant *must* be notified of the decision in writing and the claimant *must* be informed of their right to appeal. Informing the claimant that the decision cannot be reviewed, as was done in C’s case by a few lines posted on C’s UC journal, is insufficient and the decision will not take effect.
4. Therefore, if SSWP submits that a decision has been made in this case, i.e. a decision that the decision of [dd/mm/yy] will not be changed, SSWP 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 appeal to the First-tier Tribunal until SSWP has considered and provided an effective s9 SSA decision in respect of the request for review.
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 revision (and in turn not appealable), is not accurate and so it is apparent that DWP staff are not receiving adequate training on revisions/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:**

* **Accept C’s request for a mandatory reconsideration and provide an effective s9 decision without further delay;**
* **Provide staff training and/or issue guidance to ensure MR requests are not refused to be considered on the basis that they are “policy decisions”, when they relate to appealable decisions;**

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

* **The claimant’s signed authority**
* **The claimant’s MR request**

**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**

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 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)
3. ADM Chapter A1: [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/890304/adma1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890304/adma1.pdf) [↑](#footnote-ref-3)