**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 sending letter

 **Please get in touch if you have client in this situation** <https://cpag.org.uk/welfare-rights/test-cases/refer-test-case> or testcases@cpag.org.uk.

This letter is **only relevant if payment of the benefit was** **NOT suspended** before the claim was closed/overpayment generated

**This letter assumes:**

* Male claimant with partner and son
* Had ID documents but did not provide them to DWP when requested

**Edits needed throughout**, please read it carefully and ensure facts are accurate, in particular text in red (some in CAPSLOCK). Return to black lower case and delete comments before sending.

It may be helpful to first make a **Subject Access Request** if your client no longer has access to their journal to find out what has happened

[www.gov.uk/guidance/request-your-personal-information-from-the-department-for-work-and-pensions](http://www.gov.uk/guidance/request-your-personal-information-from-the-department-for-work-and-pensions)

Also **request a mandatory reconsideration** of the decision to ‘close’ the claim.

If your client did not respond due to disability for an additional ground jrproject@cpag.org.uk

Delete box before sending letter

[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 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 5**pm 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**.*

1. **Details of the matter being challenged**
2. C is challenging the SSWP’s decision of [DATE] that he [and his partner] have been overpaid [£AMOUNT] of UC for the period [DATE] to [DATE] and the decision of the same day to end his and his partner’s entitlement to UC and “close the claim” due to C failing to provide evidence. In doing so D has unlawfully revised the decision made on or around [DATE] that C and his partner were entitled to UC.

***Background facts EDIT WHOLE SECTION, DELETE ANYTHING NOT RELEVANT TO YOUR CLIENT***

*Initial claim and ID verification*

1. C lives with [NAMES AND DoBs].
2. [REASON CLAIMED UC AND DATE OF CLAIM]
3. On [DATE], C completed his claimant commitment and verified his capital, housing costs and added details of other benefits – namely, [child benefit]. DELETE IF NOT KNOWN
4. Also on [DATE], a record for C was found on DWP’s Customer Information System (“**CIS**”). DELETE IF NOT KNOWN
5. Also on [DATE], C’s bank account was verified automatically. DELETE IF NOT KNOWN
6. Also on [DATE], C verified his identity and a UC agent recorded a decision outcome of:

“[*INSERT DECISION WORDING RECORDED ON UC RECORD IF KNOWN]”*

1. Shortly afterwards on [DATE], a UC agent approved an Advance Payment of UC and made a payment request for payment of the advance.
2. Following the Advance Payment paid on or around [DATE], C received his first monthly UC payment on [DATE].
3. [EDIT AS APPROPRIATE TO REFLECT THE EVIDENCE THAT WAS REQUESTED] At the time of making his claim, and throughout the time his award was in payment, C was in possession of [a valid UK passport (copy enclosed)]

*C’s health and personal circumstances during his UC award*

1. C suffers from [MEDICAL CONDTIONS] and has been prescribed [WHAT] by his doctor for the past approximately [NUMBER] years.
2. [RELEVANT PERSONAL HISTORY DURING PERIOD – REASONS DID NOT RESPOND TO EVIDENCE REQUESTS]

*D’s requests for evidence from C* **EDIT WHOLE SCETION**

1. On [DATE], a phone appointment was booked for C and his partner to take place on [DATE]. Messages were sent to C and his partner on their journal stating:

[EDIT AS APPOPRIATE, DELETE IF NOT KNOWN]

1. On [DATE], C received his monthly UC payment in the usual way. This (as C now knows but did not know at the time) was his final UC payment.
2. On [DATE], C’s partner attended the phone appointment as requested by UC and provided all requested information and ID evidence. [EDIT AS APPROPRIATE – INCLUDE REASONS FOR PARTNER NOT ATTENDING IF APPOINTMENT WAS MISSED]
3. On [DATE], a UC agent created a document upload request for C. A note was posted on C’s journal requesting that C provide [EVIDENCE].
4. On [DATE], [DATE] and [DATE], reminder messages were posted on C’s journal stating:

“[*EDIT AS APPROPRIATE]”*

1. C is aware his ID was requested via his journal and accepts he did not respond to the requests as he felt unable to deal with them due to … REASON … at the time. C states that he did not receive any further telephone calls from UC during this time.

*Overpayment Notice and MR/appeal request*

1. In a letter dated [DATE], C was notified that he and his partner had been overpaid [£AMOUNT] for the period [DATE]to [DATE], constituting the entire period of his UC award (the “**Overpayment Notice**”). The Overpayment Notice stated:

“*On DATE you wrongly told us that you had ID evidence when you made a claim*.

*Because of this you have been overpaid £AMOUNT and now need to pay this money back.*

***You are now in a minority of people who have received money they’re not entitled to EDIT AS APPROPRIATE***”

1. [SET OUT WHAT DID C DID WHEN RECEIVED the Overpayment Notice]
2. [HAS C APPEALED/ REQUESTED AN MR? DETAILS]

*Debt Management enforcement of overpayment and effect on C*

1. In a letter dated [DATE] (received [DATE]), D’s Debt Management team notified C that:

“EDIT AS APPROPRIATE”.

1. DETAILS OF CONTACT WITH D’s Debt Management Team AND WHAT HAS BEEN ADVISED EG,

"[*it would not be possible for Debt Managment to suspend or delay the enforcement process as any direction for suspension of recovery needs to be received by D’s Debt Management Team from D’s UC Team.”* or *“C is required to set up a repayment plan before [DATE], in order for enforcement not to be progressed*.]”

1. EFFECT OF RECEIPT OF THE OVERPAYMENT NOTICE AND SUBSEQUENT ENFORCEMENT LETTERS ON C.

**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***

D’s power to revise a benefit decision

1. D’s power to revise decisions on UC entitlement is set out in s.9 Social Security Act 1998 (“**SSA 1998**”)

“*9. - (1) Any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State –*

1. *Either within the prescribed period or in prescribed cases or circumstances; and*
2. *Either on an application made for the purpose or on his own initiative;*

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

1. Regulation 5 of the UC, PIP, JSA and ESA (Decisions and Appeals) Regulations 2013/381 (the “**D&A Regs**”) provides that UC decisions under section 8 or 10 SSA 1998 may be revised on any grounds by D if:

“**5**.-(1) *(a) the Secretary of State* ***commences action leading to the revision within one month of the date of notification of the original decision****; or*

*(b) an application for a revision is received by the Secretary of State at an appropriate office within […the time prescribed in subsection (i) – (iv)]*

*(2) Paragraph (1) does not apply-*

*(a) in respect of a relevant change of circumstances which occurred since the decision had effect…*

*(b) where the Secretary of State has evidence or information which indicates that a relevant change of circumstances will occur*;

[…]”

(Emphasis added)

1. As detailed in regulation 5(2) above, a revision on ‘any grounds’ can only be carried out on the basis of circumstances at the time the decision took effect.
2. Regulations 8 – 19 D&A Regs set out specific grounds on which a decision can be revised at any time by D including:

“***Official error, mistake etc.***

*9. A decision may be revised where the decision-*

*(a) arose from official error; or*

*(b) was made in ignorance of, or was based on a mistake as to, some material fact and as a result is more advantageous to a claimant than it would otherwise have been.”*

D’s power to request information

1. Regulation 38(2) of the UC, PIP, JSA and ESA (Claims and Payments) Regulations 2013/380 (“**C&P Regs**”) set out D’s power to request information or evidence required for determining whether a decision on the award of benefit should be revised under s.9 SSA 1998 or superseded under s.10 of that Act. A person to whom this regulation applies must supply the information in such manner and at such times as D may determine.
2. Regulation 45(4)(a) of the D&A Regs sets out the time period within which information requested under regulation 38 C&P Regs must be supplied as 14 days from notification by the SSWP of the requirements of the regulation, or such longer period as is required in the notification of information required or such longer period as the claimant satisfies the SSWP is needed to provide the information.

D's powers to suspend payment of benefit

1. D may **suspend** the payment of a benefit (in whole or in part) to any person who does not comply with the requirements of regulation 45(4) D&A Regs in response to a request for information by D (regulation 45(6) D&A Regs).
2. D may **suspend** payment of a benefit (again, in whole or in part) in other prescribed situations set out in regulation 44(2)(a) D&A Regs, including when

“*(i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;*

1. *an issue arises whether a decision relating to an award of the benefit should be revised under section 9 or superseded under section 10 of the 1998 Act,*
2. *an issue arises whether any amount of benefit paid is recoverable under or by virtue of section 71ZB, 71ZG or 71ZH of the Administration Act,*
3. *the last address notified to the Secretary of State of P is not the address at which P resides*”

D’s power to terminate for failure to furnish information or evidence

1. In cases where payment of benefit to a person (“P”) has been suspended in full under:
	1. Regulation 44 (suspension in prescribed cases) and P subsequently fails to comply with a requirement for information or evidence under regulation 45 and more than one month has elapsed since the requirement was made; or
	2. Regulation 45(6) and more than one month has elapsed since the first payment was suspended.

D must decide that P ceases to be entitled to that benefit with effect from the date on which the payment of the benefit was suspended (regulation 47 D&A Regs).

D’s identity verification guidance

1. Under DWP’s UC identity verification guidance, claimants can verify their identity by one or more of the following: GOV.UK Verify, documentary (primary or secondary) evidence, biographical test, biographical check, gather and confirm, know and recognise.[[3]](#footnote-3)
2. We understand that since around mid-April 2020, DWP has introduced an additional method of digital verification of identity for UC Claimants which utilises the enhanced Government Gateway system operated by HMRC.[[4]](#footnote-4) DWP has stated that this ‘Confirm Your Identity’ service had been used by 600,000 claimants by October 2020.[[5]](#footnote-5)
3. We understand that further methods of verification have also been introduced including “*better biographical questions so [DWP] can interrogate people over the phone*” that “*only the right individual could answer*”.[[6]](#footnote-6) D’s UC guidance ‘Identity verification,’ ‘Primary evidence,’ and ‘Secondary evidence’ provided in response to a Freedom of Information request state:

*“Biographical test*

***When the claimant is unable to provide documentary evidence, they must pass a biographical test (BIO).*** *BIO questions are generated onto a BIO template using information held on the Customer Information System (Searchlight). The claimant has to successfully answer two out of three questions correctly and they have two opportunities to satisfy this test. However, if the claimant answers one correct from each set of three questions - they will pass. The BIO template informs the user if a claimant has passed or failed.”*

*“Gathering and confirming*

 ***A combination of documentary evidence, questioning and comparison to DWP records can be used to verify ID if there is enough evidence to confirm it with confidence****.”[[7]](#footnote-7)*

(emphasis added)

**Grounds for judicial review**

**Ground 1: No power to revise decision on C’s entitlement to UC**

1. On [DATE], in ending C’s joint UC award, closing his UC account and issuing the Overpayment Notice, D would appear to have revised the original decision on C’s UC entitlement made on or around [DATE] under s.8 SSA 1998, although no decision notice informing C of this decision (and the associated appeal rights) was sent (a decision which takes effect from the same date as an earlier decision is generally to be regarded as a revision- see *R(IB)2/04*).
2. The decision challenged has been made without proper grounds for revision and is *ultra vires* D’s powers to revise under s.9 SSA 1998.
3. No proper grounds for revisions exist in C’s case because:
	1. None of the specific grounds for revision set out atregulations 8 – 19 D&A Regs apply to C’s case (see below);
	2. No application for revision has been made by C (regulation 5(1)(b) D&A Regs); and
	3. It was not open to D to make an ‘any grounds’ revision under regulation 5(1)(a) D&A Regs as D commenced action leading to the revision long outside the time period of 1 month set out in that provision. At the earliest, action was commenced on [DATE] (when [INITIAL ACTION TAKEN – eg. booking telephone appointment]), and arguably was only commenced when the request for evidence was actually made on [DATE], both over [15] months after the initial entitlement decision which was subject to revision.

**Ground 2: No ground for revision arising from ignorance of, or mistake as to, some material fact**

1. It is unclear based on the Overpayment Notice [and UC records provided in response to C’s Right of Access request] whether in making the decision challenged the decision-maker considered they were applying regulation 9 D&A Regs “*Official error, mistake etc.*”.
2. Further, if the decision-maker did consider they were applying this regulation, it is unclear what “material fact” the decision-maker concluded the original entitlement decision was “made in ignorance of, or was based on a mistake as to”.
3. The Overpayment Notice states:

“*On* [DATE] *you wrongly told us that you had ID evidence when you made a claim*. [EDIT AS APPROPRIATE]”

1. Even if it was reasonable for the decision-maker to infer that C did not possess “ID evidence” at the time of his claim [EDIT TO REFLECT REASON GIVEN IN OVERPAYMENT NOTICE], which is not accepted, this determination of this “fact” would not have enabled the decision-maker to conclude that C was not *entitled* to UC at the time he claimed. This is because possession of “ID evidence” [EDIT TO REFLECT REASON GIVEN IN OVERPAYMENT NOTICE] is not a condition of entitlement to UC.
2. In order for D to conclude that C was not *entitled* to UC, D would have had to have concluded that C did not satisfy the requirements of section 1(1A) and 1(1B) Social Security Administration Act 1992. This is not the conclusion which the Overpayment Notice was reached by D. Further, had this been D’s conclusion, it would have been a wholly unreasonable one to make.

**Ground 3: No power to terminate C’s award**

1. Although D has powers to request information under regulation 38(2) C&P Regs, the consequence of a failure to comply with such a request by a claimant is that payment of the claimant’s benefit can be suspended (regulation 45(6) D&A Regs).
2. Similarly, D has powers to suspend payment of UC, in whole or in part, where an issue arises whether the conditions for entitlement to the benefit are or were fulfilled (regulation 44(2)(a)(i) D&A Regs).
3. For D to then go on and terminate an award, payment must have been suspended in full and either:
	1. a regulation 45(6) D&A Regs suspension was made AND more than one month has elapsed since the first payment was suspended (regulation 47(1)(b) D&A Regs); or
	2. a regulation 44 D&A Regs suspension was made AND the person subsequently fails to comply with a requirement for information or evidence under regulation 45 D&A regs AND more than one month has elapsed since the requirement was made.
4. In both situations, any such termination would take effect from the date on which the payment of the benefit was suspended (regulation 47 D&A Regs), not from the beginning of the award / date of original claim, as is the effect decision challenged.
5. Further, there are specific procedural and notice requirements which D must follow in order to lawfully exercise her discretionary power to suspend a UC award for failing to provide information within 14 days under regulation 45 D&A Regs. A suspension under this provision is only lawful if D has clearly notified the claimant of exactly what evidence is required, the deadline for providing it, and the possibility of extending the time limit should the claimant require more time to produce the evidence. These requirements were not complied with.
6. In any event, as explained in *SS v NE Lincolnshire Council (HB)* [2011] UKUT 300 (AAC) in relation to the equivalent powers to request information in housing benefit awards, a failure by a claimant to comply with the request “*does not operate to end an award of benefit by some process of statutory magic. There has to be a suspension…followed by a termination decision…or some other effective revision or supersession decision.*” [29].[[8]](#footnote-8)
7. In any event, payment of C’s UC was not at any point suspended, so D cannot have been exercising her powers under regulation 47 D&A Regs in terminating the award.

**Ground 4: Failure to follow guidance**

1. Under D’s guidance, set out above, in the absence of documentary evidence claimants can *“pass a ‘biographical test’”* consisting ofquestions using *“information held on the Customer Information System (Searchlight)”* and that a *‘combination of documentary evidence, questioning and comparison to DWP records can be used to verify ID”,* yet it appears from C’s UC records that following his missed telephone appointment, no attempts were made to use any alternative means of verifying C’s identity other than requesting ID documents, contrary to D’s guidance.

***Alternative remedy not effective***

1. C accepts that he has a statutory right of appeal against the decision challenged and has taken steps to initiate the appeal process. However, judicial review is nonetheless an appropriate where the alternative remedy is not suitable or effective.
2. C’s appeal rights cannot provide an effective remedy in circumstances where:
	1. D is progressing enforcement action against C notwithstanding the (overdue) pending mandatory reconsideration review and appeal;
	2. D has set a deadline for the progression of enforcement action against C which falls before the date which D has requested to conduct a mandatory reconsideration of the decision;
	3. C is facing significant stress, increased mental health issues and strain on his family life on an ongoing basis, as a result of D’s incorrect decision. Were he to be required to set up repayments in order to avoid action by a debt enforcement agency while he challenges the decision he would also face an ongoing financial burden alongside this stress, at a time when he is trying to recover financially from the pandemic;
	4. C’s case is one of multiple cases that we are aware of, where revisions of UC awards made under the ‘Trust and Protect’ policy have been undertaken resulting in large overpayments, seemingly for failure to respond to information requests and without other proper grounds for revision. We therefore believe this is a wider issue than this one case and that there are serious flaws in D’s ‘retro action’ exercise which has lead to serious harm to claimants subjected to it.
	5. The remedies sought are not available through the tribunal, including staff training and a review of processes and decision-maker guidance.
3. **Details of the action the Defendant is expected to take**
4. D should:
	1. Immediately on receipt of this letter direct the Debt Management team to suspend enforcement of the recovery of the overpayment.
	2. Issue a Mandatory Reconsideration Notice revising the decision dated [DATE] that C has been overpaid [£AMOUNT] in UC and revising the decision that C was not entitled to UC from [DATE].
	3. Reinstate C’s UC claim and pay any arrears of UC owed to C since [DATE] (final day award was in payment).
	4. Urgently review the processes and decision-maker guidance used by the ‘Repair Team’ to revisit UC claims made during the ‘easements’ implemented by D in March – April 2020 to ensure that any termination of awards has been carried out in accordance with D’s powers to suspend and terminate for failure to furnish information or evidence and confirm the results of this review to C.
	5. Ensure staff training and awareness of alternative methods of verification available including a ‘*combination of documentary evidence, questioning and comparison to DWP records’.*
	6. Pay C a consolatory payment for maladministration in the sum of £500 in circumstances where the Department’s maladministration has had a serious and significant impact on the customer, including exacerbating existing mental health issues.[[9]](#footnote-9)
5. **Please find the following documents enclosed:**
6. C’s signed form of authority
7. Copy of Claimant’s driving licence and UK passport [PROVIDE THE REQUESTED EVIDENCE]
8. Copy CRM1 submitted on or around [DATE]
9. **ADR proposals**

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

1. **The address for reply and service of court documents:**

ADVICE AGENCY NAME, ADDRESS AND EMAIL HERE

1. **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 we reserve the right to issue proceedings for judicial review without further notice.

Yours faithfully

*Encs.*

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. DWP ‘Identity verification’ UC guidance, DWP ‘Primary evidence’ UC guidance, DWP ‘Secondary evidence’ UC guidance, provided in response to FOI 2021 38969, available at <<https://www.whatdotheyknow.com/request/identity_verification_processes_2>> [↑](#footnote-ref-3)
4. “*DWP turns to Government Gateway to support Universal Credit claim*s” Bryan Glick, Computer Weekly, published 16 April 2020; [↑](#footnote-ref-4)
5. “*Confirm Your Identity: a new way to verify online DWP*”, Alison Phelan, DWP Digital Blog, published 15 October 2020. [↑](#footnote-ref-5)
6. Peter Schofield response to Q5 by Antony Higginbotham and Neil Couling response to Q21 by Peter Grant in “*Public Accounts Committee Oral evidence: DWP Accounts – Fraud and error in the benefits system*” HC 633 9 September 2021 available at: <<https://committees.parliament.uk/oralevidence/2690/default/>> [↑](#footnote-ref-6)
7. DWP ‘Identity verification’ UC guidance, DWP ‘Primary evidence’ UC guidance, DWP ‘Secondary evidence’ UC guidance, provided in response to FOI 2021 38969, available at <<https://www.whatdotheyknow.com/request/identity_verification_processes_2>> [↑](#footnote-ref-7)
8. See also CH/2995/2006. [↑](#footnote-ref-8)
9. Para 143. D’s Special Payments Guidance. [↑](#footnote-ref-9)