**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:**

* Has made a mandatory reconsideration request and no response has been received; can be edited where DWP have refuse to accept a late MR
* Male claimant no dependants or housing costs
* Had ID documents but did not provide them to DWP when requested.
* Provided driving license when claimed
* C asked that his UC be stopped as had returned to work

**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

Please get in touch if your client did not respond due to disability for an additional ground jrproject@cpag.org.uk

Please feel free to send to jrproject@capg.org.uk for review before sending to DWP.

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 X 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 **5pm 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 ongoing unreasonable delay in deciding C’s request for a mandatory reconsideration made in September 2021 in relation to the decision of [DATE] that [he] has been overpaid UC; and
* D’s unlawful revision of the decision made on [DATE] that C was entitled to UC.

***Background facts***

*Initial claim and ID verification [****EDIT WHOLE SECTION]***

1. C claimed UC on [DATE]when his employment ended because no work was available during the Covid-19 national lock down.
2. On [DATE], C completed his claimant commitment, and verified his capital and that he does not have housing costs.
3. On the same date, [DATE], C’s bank account was verified online by D.
4. On the same date, [DATE], C verified his identity via the app he was directed to download by D by submitting a photograph of himself, a photograph of his driving licence and a voice recording stating he wished to claim UC.
5. On the same date, [DATE], D recorded via C’s UC online journal:

“*Identity verification comp*leted*”*

1. C requested a UC Advance payment; this was approved by SSWP and paid on or around [DATE].
2. C received his first monthly UC payment on [DATE].
3. At the time of making his claim, and throughout the time his award was in payment, C has been in possession of [his valid driving licence] (copy of which was provided to D on [DATE] and is attached for ease of reference).

*C’s health and personal circumstances during his UC award [****EDIT WHOLE SECTION]***

1. C did not suffer from any health condition during the UC award but since the overpayment decision and subsequent letters from debt management companies, C is reporting stress and anxiety causing C to seek support from his GP.
2. On [DATE] C returned to full time work and contacted D to terminate his UC award as he was aware that his earnings would be more than his UC entitlement and C did not wish to cause an overpayment.
3. C received his last UC payment on [date].
4. As C had asked on [DATE] that his UC award be terminated and C had stopped receiving any UC payments, there was no reason for C to continue to monitor his UC Journal (indeed he did not realise he could so), and he did not continue to monitor his UC Journal.

*D’s requests for evidence from C*

1. No appointment was booked to request C to provide identification verification.
2. There are no requests recorded by D on C’s UC journal for information or evidence to verify C’s identity, or of any attempts to contact C to obtain the same by any method.
3. C received no telephone calls or voicemail messages requesting information or evidence to verify C’s identity, and his phone records show no missed calls from DWP numbers indicating attempts were made by telephone.

*Overpayment Notice and MR/appeal request*

1. On [DATE] C received a letter *by post* from the DWP Debt Management team (“**Debt Management**”) regarding an overpayment. This letter did not include details of C’s appeal rights.
2. This was the first time C was made aware of the overpayment and any decision revising his previous entitlement decision. C contacted D on receipt of this letter by a telephone call to Debt Management.
3. During this call, Debt Management advised C to log onto his UC Journal. C did so and discovered that:

a) his account had been closed as he had understood it to be in June 2021, **but**

b) his account had been reopened on [DATE] **because**

c) a letter dated [DATE] had been posted to C’s UC journal (the “**Overpayment Notice**”).

1. The Overpayment Noticestates:

“*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*”

(Emphasis added)

1. This Overpayment Notice was not sent to C by post and C was not informed that the letter had been posted to his journal. (If a text message notification was sent, C does not recall this and C would have been unlikely to respond to any text notification as it was C’s understanding that C did not have an active UC award and it would have appeared no different to other purported official text message scams C was receiving at the time.)
2. C submitted a mandatory reconsideration request (“**MR**”) on [DATE] in writing to the address provided by Debt Management challenging the decision of [DATE] that he had been overpaid because he did not provide identification information.
3. D has subsequently confirmed by telephone that C’s MR was received but has not yet been actioned.

*Debt Management enforcement of overpayment and effect on C*

1. In the letter dated [DATE], D’s Debt Management team notified C that “*An overpayment had been generated and this must be repaid*.”
2. C made an MR request and has received no MR decision to date (as above, D has since confirmed [it was received but had not yet been actioned]).
3. C then received notification from a civil debt collection agency pursuing C for the overpayment by a letter dated [DATE].
4. The civil debt collection agency have agreed not to progress recovery while C is being supported to challenge the overpayment decision but could not confirm for how long they can suspend recovery for.
5. The incorrect overpayment and the debt collection action has significantly affected C. C is reporting severe distress and anxiety, which is affecting C’s ability to perform daily living activities and C’s ability to work.

**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*

1. *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. D’s power under reg 38(2) C&P Regs to request information applies under reg 38(1) to “*any person entitled to benefit*”.
3. At the time of the decision on [DATE] C was not entitled to UC; his UC award had been “closed” (as shown on his UC journal ON [DATE]). No power therefore existed for D to request information under reg 38(2) C&P Regs in August 2021 as this was after his award had ended in June 2021.
4. Further, under reg 37 C&P Regs“*The Secretary of State may require the person to supply information or evidence in connection with the claim”*. There was no ‘claim’ for UC on [DATE], and no grounds for C to be ‘treated a making’ a claim (under reg 9(6)-(8) C&P Regs).
5. C’s claim for UC from [DATE] ceased to subsist once decided by D (s.8(2)(a) Social Security Act 1998) (and in C’s case an award was made). There is therefore no power for D to request information connected with C’s initial claim under reg 37 C&P Regs.
6. In any event, no further evidence has been requested of C by D.

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. **Grounds for judicial review**

**Ground 1: Unreasonable delay in providing a mandatory reconsideration decision**

1. D is under a duty to consider all claims for benefit within a “reasonable time” – *R(C and W) v Secretary of State for Work and Pensions*  [2015] EWHC 1607 (Admin).
2. The duty to make a decision within a reasonable time applies equally to s.9 SSA 1998 under which Secretary of State may “revise” any decision made under s.8 or s.10, 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[[6]](#footnote-6).

*Impact on the claimant*

1. The delay is causing C stress and anxiety. The delay relates to a decision on an overpayment which D has already taken active steps to recover, including by referring the purported debt to a third party debt collection agency. The longer that D delays in considering C’s request for mandatory reconsideration, the more likely it becomes that the third party agency will take steps to progress recovery from C in the meantime.
2. [ANY OTHER IMPACT ON C]

*Purpose of mandatory reconsideration process*

1. Of relevance to the circumstances and therefore what constitutes a reasonable or unreasonable delay is, the statutory purpose for introducing the mandatory reconsideration process. According to the Government’s consultation paper, the stated purpose is “*to deliver* ***timely****, proportionate and effective justice for claimants, make the process for disputing a decision* ***fairer and more efficient***” (emphasis added). The delay in this case of [**No. of weeks**] and the consequent frustration of C’s appeal rights clearly fails to deliver on this stated purpose and is therefore unlawful. This is made worse by the fact that D has referred the matter to a third party collection agency whilst the delay is ongoing.

*Non-complex case / all information available*

1. C verified his identity in April 2020 and holds ID documents should they be required by D. [ID evidence was already provided to D with the mandatory reconsideration request/is enclosed with this letter]
2. It is not clear on what ground his original entitlement decision was revised by D but the reason given in the overpayment notice that “*you wrongly told us that you had ID evidence when you made a claim*” should be clear to a decision-maker that this was not a proper ground for revision and that the overpayment decision should be revised in line with the mandatory reconsideration request.

**Ground 2: No power to revise decision on C’s entitlement to UC**

1. On [DATE] by the Overpayment Notice, D would appear to have in effect revised the original decision made on C’s UC entitlement from [DATE] under s.8 SSA 1998, although it does not refer to C’s entitlement as such and no decision notice informing C of this decision (and the associated appeal rights) was sent in a format accessible to C.
2. 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*).
3. 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.
4. 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], over [NUMBER] months after the initial entitlement decision which was subject to revision (when no request for further evidence was made only a decision based on insufficient evidence having been provided when the claim was first made).
5. It is unclear based on the Overpayment Notice and the UC journal whether in making the decision challenged the decision-maker considered they were applying regulation 9 D&A Regs “*Official error, mistake etc.*”.
6. 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”.
7. The Overpayment Notice states:

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

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 , 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 [s/he] claimed. This is because possession of “ID evidence” 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 demonstrates was reached by D. Further, had this been D’s conclusion, it would have been a wholly unreasonable one to make.

**Ground 3: Failure to follow guidance**

1. As above, under D’s guidance 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.[[7]](#footnote-7)
2. In C’s case, C used ‘GOV.UK Verify’, his bank account was verified, [he provided a photograph of himself, a voice recordings, and his driving licence] to confirm [his] identity. D’s guidance ‘Primary evidence’[[8]](#footnote-8) confirms that a “*full or provisional UK photo driving licence*” is “*primary evidence*”.
3. C’s primary evidence and D’s verification via checks GOV.UK Verify were accepted at the time of C’s claim in accordance with D’s guidance. No explanation has been provide by D as to why C’s evidence is no longer accepted and no further evidence has been requested by D (no attempts to contact C have been recorded on C’s UC Journal, C has received no telephone calls including missed calls from DWP numbers, no text messages, emails or letters).
4. In refusing to accept C’s identity verification evidence, which was provided in accordance with D’s instructions and accepted by D at the time of C’s claim, D has unlawfully failed to follow D’s own identity verification 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 by submitting a mandatory reconsideration request. 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 has frustrated C’s ability to appeal by failing to provide a mandatory reconsideration notice within a reasonable time or at all;
	2. D is progressing enforcement action against C notwithstanding the (overdue) pending mandatory reconsideration request and appeal;
	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 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 Debt Management to suspend enforcement of the recovery of the overpayment and instruct the third party debt collection agency to do the same.
	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. 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.
	4. Pay C a consolatory payment for maladministration in the sum of £200 in consideration of the Department’s maladministration.[[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
8. **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:**

 **By email:**

 **[ADVICE AGENCY NME AND ADDRESS]**

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. *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin) [↑](#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. Ibid footnote 5 [↑](#footnote-ref-8)
9. Para 143. D’s Special Payments Guidance. [↑](#footnote-ref-9)