**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

***This letter challenges*** *DWP’s closure of a 2nd Universal Credit claim because of an appeal pending/ongoing in respect to previous award even though there has been a change of circumstances since the 1st award.*

If you have any questions when using this letter, please contact jrproject@cpag.org.uk

DELETE BOX BEFORE POSTING

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

* Has had a 2nd universal credit claim closed due to an ongoing/pending appeal with a previous claim/award
* There has been a change of circumstances since their previous claim/award

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

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 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 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 the unlawful refusal of [his/her] claim for UC; and the SSWP’s failure adequately to provide a written decision and to advise [him/her] of [his/her] appeal rights regarding the same.

*Background facts*

1. C is [person details, relationship status, dependents, housing, disability, other income]
2. On [date] C made a claim online for UC [because…]
3. On [date] C received a decision that [he/she] was not entitled to UC [because…]
4. On [date] C requested a Mandatory Reconsideration.
5. On [date] C received a Mandatory Reconsideration Notice upholding the original decision.
6. On [date] C submitted an appeal of the decision dated [date]. This appeal is pending.
7. On [date] C [had what change of circumstances?] and on [date] made a new online claim for UC. [He/she] did this by clicking a button which said “start a claim”. [He/she] answered all the relevant questions and clicked the final button “submit claim”.
8. The reason that C applied for UC again was that [his/her] circumstances had changed and C thought the DWP may now accept [he/she] had an entitlement even if they had been unwilling to do so on the basis of the earlier circumstances.
9. C was advised [via notes] on [his/her] UC Journal on [date] that the new claim made on [date] was “closed” due to the fact that [he/she] already had a “live claim” open, and there was an outstanding appeal on this live claim.  No formal outcome decision was provided to C, advising [him/her] of [his/her] rights to challenge the decision.
10. On [date] C requested a Mandatory Reconsideration of the decision to “close” [his/her] second universal credit claim.
11. On [date] C was advised by [who and how?] in response to [his/her] Mandatory Reconsideration request that the claim made on [date] was closed as a duplicate of [his/her] open claim from [date]; and advised that [he/she] cannot make a new claim for UC; could not request a further reconsideration once one had been completed; and would need to wait for the appeal on [his/her] first claim to be determined. No formal decision notice was issued.

**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. ***Finality of Determinations***
2. Decisions as to whether to make an award in respect of a claim for benefit are made under s. 8(1)(a) of the Social Security Act 1998 (“SSA 1998”) under which the Secretary of State shall “*decide any claim for a relevant benefit*”.
3. Where a decision has been reached on a claim for benefit, that ”*claim*” ceases to exist under s. 8(2) SSA:

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

***8****.- (2) Where at any time a claim for a relevant benefit is decided by the Secretary of State—*

*(a) the claim shall not be regarded as subsisting after that time; and*

*(b) accordingly, the claimant shall not (without making a further claim) be entitled to the benefit on the basis of circumstances not obtaining at that time.*

1. Under s. 8(2) only circumstances up to the date of a claim may be taken into account when deciding an appeal (reversing the effect of decisions in *R(IS) 1/83* and *R(S) 2/98*).
2. The effect of s. 8(2)(b) is that where a person had made a claim and that has been refused, wishes to have circumstances that have arisen since that refusal taken into account in determining their entitlement then they are required to make a new claim.
3. This means that in C‘s case:
4. Once a decision was reached by the Secretary of State on C’s first claim that [he/she] was not entitled, that “claim” ceased to exist (notwithstanding [his/her] appeal of that decision),
5. C’s subsequent change of circumstances [which was what?] is irrelevant to C’s first claim (and appeal), and
6. to be entitled to UC on and the basis of [his/her] new circumstances, [he/she] must, as [he/she] has done, reclaim.
7. Further, while under s. 17 SSA decisions under s. 8 are “*final*”, the effect of s. 17 SSA is that once a decision has been made about entitlement to a benefit (in this case UC) there cannot be another decision about entitlement *on that day.*

##### *Finality of decisions*

***17****.- (1) Subject to the provisions of this Chapter and to any provision made by or under Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007****, any decision made in accordance with the foregoing provisions of this Chapter shall be final;*** *and subject to the provisions of any regulations under section 11 above, any decision made in accordance with those regulations shall be final.*

*(2) If* ***and to the extent that regulations so provide****,* ***any finding of fact*** *or other determination embodied in or necessary to such a decision, or on which such a decision is based,* ***shall be conclusive for the purposes of—***

***(a) further such decisions;***

…

(Emphasis added)

1. Under s. 17(2) a ‘finding of fact’ shall be conclusive for further decisions where regulations so provide. The only regulations of this sort that are relevant to universal credit is reg. 40 of the Universal Credit (etc) (Decisions and Appeals) Regulations 2013 (SI No. 381) and those are not relevant here as they apply simply to a finding of fact about limited capability for work. Section 17(2) therefore does not affect a claimant’s ability to make a new claim but rather in a limited class of cases, not applicable here, it provides that a subsequent claim must be decided on the basis of facts already determined. A finding of fact [as relates to capital] is not provided by regulations to be conclusive for subsequent claims.
2. The SSWP’s Guidance ‘Advice for Decision Making’ (ADM) confirms the above.
3. ADM Chapter A2[[3]](#footnote-3): ‘Claims’ states that if a change of circumstances occurs after a claim is disallowed, the decision cannot be superseded, but a further claim may be made.

***A2020*** *A claim ceases to exist once it has been decided by the DM [1]. If a claim is disallowed the decision disallowing it cannot be superseded because of a change in circumstances which occurred after the decision.* ***A further claim may be made as a result of the change in circumstance*** *[2].* …

*1 SS Act 98 s8(2)(a); 2 s 8(2)(b)*

Emphasis added.

1. ADM Chapter A1[[4]](#footnote-4): ‘Principles of Decision Making’ further states that determinations embodied within an outcome decision do not bind future claims.

***A1180*** *Normally, determinations embodied within an outcome decision are not conclusive for the purposes of a further claim for the same benefit. [1]*

*1 SS Act 98s.17(2)*

Accordingly, the SSWP’s refusal of C’s claim because there is an appeal outstanding on a previous claim, has no basis in law or guidance and C is entitled to make a new claim and have that claim decided on [his/her] circumstances as they are at the time of [his/her] new claim.

1. ‘*Closing’ claims and appeal rights*
2. Under section 8(1)(a) SSA 1998 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. 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. The SSWP’s own guidance Advice for Decision Making ‘Chapter A1 - Principles of decision making and Evidence[[5]](#footnote-5) 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 FtT*1*. See A1100-A1102 for further guidance on outcome decisions.*

*1 R(IB) 2/04*

***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. …*

***A1102*** *The claimant has a right of appeal against outcome decisions only[1] 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, s 12 & Sch 3*

***ADM Annex D[[6]](#footnote-6)***

***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 benefit [1],* ***including whether there has been a valid claim [2]*** ***or if the claim is defective****.*

*1 SS Act 98, s 12(1)(a); 2 UC, PIP, JSA & ESA (C&P) Regs, regs 8, 11, 13, 15, 19, 21 & 23*

(Emphasis added)

1. The Defendant’s operational guidance ‘Claim closure’ (V19)[[7]](#footnote-7) further confirms ‘claim closure’ is a decision on a claim which carries a right of appeal:

***Closing the claim***

*If the claim should 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****. ....*

(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 (“**UC (CP) Regs**”) 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. The Defendant’s guidance ‘Claim closure’ (set out above) further confirms a claimant must be notified of a decision to close their claim and be advised of their appeal rights*; “The claimant* ***will*** *receive a decision notification that the claim has been closed”.*
2. The Defendant’s guidance ADM A1: ‘Principles of decision making and Evidence’[[8]](#footnote-8) 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 decision {1]* ***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 computer [1]. 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 revision [2]*–*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.*

*1 SS Act 9 8, s2(1)(a); 2 UC, PIP, JSA & ESA (D&A) Regs, reg 7(1)(b); 3 reg 7(3)(a); 4 reg 51(2)(a)*

***Failure to notify the decision***

*A1119 A decision is not effective unless and until it is notified... - see A1015 …*

**Grounds for Judicial Review**

**Ground 1: Failure to apply the law and guidance in failing to make a decision on a new UC claim; and failing to provide a decision notice and notify the claimant of his appeal rights**

1. The concept of an “open” or “live” claim does not exist in law. There is no legal basis for the contention that C's original UC claim remains “live”, and as such precludes making a new claim based on a change of circumstances. The decision dated [date], which ended C's UC entitlement with effect from [date], is a decision on (non) entitlement which ended [his/her] first UC claim.
2. In addition, there is no basis in law for the implication that C cannot make a new (second) claim for Universal Credit, or challenge a further refusal of that second claim, until the appeal on [his/her] first claim has been decided.
3. The concept of ‘closing’ a claim does not exist in law. When a claim for benefit is made, 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. The decision, including the decision not to make an award, is an ‘outcome decision’ and carries a right of appeal under s. 12(1)(a) SSA.  This is confirmed by the SSWP’s own guidance ‘Claim closure ’ set out above.
4. Under Reg. 51 UC (CP) Regs the Defendant must “give P written notice of the decision and of the right to appeal against that decision”. 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 unlawful.

Ground 2: Failure to apply the law and guidance in relation to the finality of determinations and failure to apply the law and guidance in consideration of a subsequent change of circumstance

1. C had experienced a change in circumstance prior to making [his/her] new claim for UC. The decision on that new claim, should be on the basis of the circumstances in relation to [his/her] position at the date of the new claim, rather than the position at the date of [his/her] previous claim, which is currently being appealed.

Alternative remedies

1. It does not appear to us that the C has any suitable alternative means of obtaining redress notwithstanding the right of appeal to the First-tier Tribunal (FTT) set out above and confirmed by the Upper Tribunal in *PP v SSWP (UC)* [2020] UKUT 0109 (AAC). C *has* in any event filed an appeal against the decision on the first claim, and may also file an appeal against the refusal of the second claim, 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 Ground 1) 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.

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

The SSWP is requested to:

* Accept C’s second claim made on [date],
* Issue staff training and/or guidance to ensure claims are not incorrectly closed or refused to be accepted,
* 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.

The details of documents that are considered relevant and necessary

* All documents available through C’s online UC journal
* The Claimant’s signed authority

ADR proposals

Please confirm in your reply whether the 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 4pm on [date]. Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.

Yours faithfully

1. assets.publishing.service.gov.uk/media/657c891d83ba380013e1b66c/List-of-Authorised-Government-Departments-under-s.17-Crown-Proceedings-Act-1947-15.12.2023.pdf [↑](#footnote-ref-1)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-2)
3. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1136125/adma2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1136125/adma2.pdf) [↑](#footnote-ref-3)
4. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1084744/adma1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084744/adma1.pdf) [↑](#footnote-ref-4)
5. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1084744/adma1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084744/adma1.pdf) [↑](#footnote-ref-5)
6. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/245962/Annex\_D\_-\_Decisions\_and\_determinationsthat\_are\_appealable.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/245962/Annex_D_-_Decisions_and_determinationsthat_are_appealable.pdf) [↑](#footnote-ref-6)
7. <https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/028._Claim_closure_V19.0.pdf> [↑](#footnote-ref-7)
8. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1084744/adma1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084744/adma1.pdf) [↑](#footnote-ref-8)