**This letter challenges** DWP’s unlawful failure to lift the suspension of C’s PIP award when C has left hospital.

Please read the whole letter carefully and make any changes needed, in particular any text in red and/or [square brackets]

Please send your letter for review to JRProject@CPAG.org.uk before sending to DWP.

Delete box before sending

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

* Was in receipt of PIP
* Went into hospital for more than 28 days and PIP was suspended
* Has been discharged from hospital into accommodation DWP are treating as if is a hospital or similar but is not
* PIP payments have not been resumed
* Your client has made several attempt to resolve the issue **and has provided evidence of the type of accommodation** showing **no** treatment is provided there

Delete box before sending

DWP Legal Advisors

Government Legal Department

2nd Floor

Caxton House

Tothill Street

London

SW1H 9NA

**By email**: legal.queries@dwp.gov.uk

**Our ref:**

**[Date]**

**Dear Sir or Madam**

**Re: Proposed claim for judicial review against the Secretary of State for Work and Pensions by X**

We are instructed by [name] **in relation to [her/his] personal independence payment (“PIP”) 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 by** 4pm on **[Date]**

##### (14 days).

**Proposed Defendant:** The Secretary of State for Work and Pensions (“**D**”)(“**SSWP**”)

**Claimant:** X(“**C**”)

**NINo:**

**Address:**

**Date of Birth:**

**The details of the matter being challenged**

**C is challenging the suspension of [her/his] PIP payments by SSWP while residing at [address] (“the Property”).**

***Background facts* [edit whole section carefully**

1. **C is [a disabled wo/man with what conditions.]**
2. **On [date] C was awarded PIP at [what rates].**
3. **On [date] C went into [hospital / a psychiatric ward] in order to undergo [what medical treatment] and after 28 days payment of C’s PIP award stopped.**
4. **On [date] C was discharged from hospital to the Property. On [date] C signed a license agreement for the Property with [accommodation provider].**
5. **While C has a license agreement, C does not pay rent as the property is funded by the NHS.**
6. **Though funded by the NHS, the license is not part of C’s treatment. C receives no care or medical treatment at the Property or otherwise as part of [her/his] license. There is a support worker on site for residents. The support worker offers basic support, but residents complete their own shopping, cook their own meals and manage their own time.**
7. **On [date] C reported to SSWP [how] that C had left hospital and had been residing at the Property since [date].**
8. **[What evidence did C provide to SSWP and how? This must be provided to SSWP before sending this letter and then referenced here but need not be provided again.]**
9. **On [date] C called, via [her/his] adviser, the PIP helpline to ask when [her/his] PIP would be paid.**
10. **SSWP stated they needed the date C moved into the Property. This information was provided verbally during the call.**
11. **On [date] C called, via his adviser, the PIP helpline again to ask when [her/his] PIP would be paid.**
12. **SSWP D stated there was a query over the nature of [her/his] accommodation, suggesting that, under regulations 29 and 30 of the Social Security (Personal Independence Payment) Regulations 2013, the Property may be accommodation that qualifies as a hospital setting.**
13. **[details of further contacts with SSWP including dates and quotes]**
14. **At present, C has not been paid the PIP to which [s/he] [is/was] entitled [while at the Property]. [S/he] [received / receives no support, care or medical treatment [while living there / at the Property.**

***Legal background and grounds for judicial review***

**Ground 1: Failure to failure to restore payments within a reasonable time**

1. **It is correct that PIP was not payable whilst C was in hospital after 28 days (see ground 2).** While C’s PIP was not in payment, C’s entitlement to PIP continued such that on discharge from hospital, payment of C’s PIP award should have resumed. However, C’s payments have not resumed.
2. **D’s power to suspend payment of C’s PIP award is provided by reg 44 or reg 45(6) Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (“D&A Regs”).**
3. The suspension of C’s payments is to allow SSWP to decide whether a decision on the award of benefit should be revised under s.9 of the Social Security Act 1998 (“**SSA**”) or superseded under s.10 of that Act.
4. If C’s award is neither revised nor superseded following the suspension under reg 44 or reg 45, under reg 46 D&A Regs SSWP must resume payments:

***46.****- The Secretary of State must pay a benefit which has been suspended where—*

*(a) in a case where regulation 44(2)(a) (suspension in prescribed cases) applies, the Secretary of State is satisfied that the benefit is properly payable and that* ***there are no outstanding issues to be resolved****;*

(Emphasis added)

1. **SSWP 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). The duty to make a decision within a reasonable time applies equally to s.9 and 10 SSA whereby the Secretary of State may “revise” or “supersede” any decision made under s. 8, 9 or 10 as well as to s.8 under which the Secretary of State may “decide” any claim for benefit. What counts as a reasonable time depends on the circumstances, including the complexity of the case and impact on C (set out in ground 2). SSWP** has requested no further information or evidence from C, strongly suggesting in consideration of the amount of time which has elapsed “*that there are no outstanding issues to be resolved”* and SSWP is therefore under a duty under reg 46 to resume payment of C’s award without further delay*.*

**Ground 2: Unlawful failure to pay PIP entitlement when C was not residing in a hospital or similar institution**

1. The Social Security (Personal Independence Payment) Regulations 2013 (“**PIP Regs**”) are made under the Welfare Reform Act 2012 (“**WRA**”).
2. The legislation is clear that PIP will not be paid to a claimant while they reside in specific types of accommodation. In particular, a claimant will not receive PIP after they have resided in hospital as a patient for over 28 days, in accordance with s86 WRA and regs 29 and 30 PIP Regs. A person is defined as “*a patient*” where they are receiving medical treatment as an in-patient in a hospital or similar institution and the costs of the treatment are paid ‘out of public funds.’
3. Section 86 (2) and (3) WRA provides:

***86.****- (2) The condition is that the person is undergoing medical or other treatment as an in-patient at a hospital or similar institution in circumstances in which any of the costs of the treatment, accommodation and any related services provided for the person are borne out of public funds.*

*(3) For the purposes of subsection (2) the question of whether any of the costs of medical or other treatment, accommodation and related services provided for a person are borne out of public funds is to be determined in accordance with the regulations.*

1. Reg 29 PIP Regs then provides with reference to the WRA:

***29****.- (1) Subject to paragraph (3) and regulation 30, no amount of personal independence payment which is attributable to either component is payable in respect of C for any period during which C meets the condition in section 86(2) of the Act (in-patient treatment: costs of treatment, accommodation and related services borne out of public funds).*

*(2) For the purposes of section 86(3) of the Act, the costs of treatment, accommodation or any related services are borne out of public funds if C is undergoing medical or other treatment as an in-patient in —*

*(a) a hospital or similar institution under –*

*(i) the National Health Service Act 2006 F3;*

*(ii) the National Health Service (Wales) Act 2006 F4; or*

*(iii) the National Health Service (Scotland) Act 1978 F5; or*

*(b) a hospital or similar institution maintained or administered by the Defence Council.*

1. D provides guidance on these rules in the ‘Advice for Decision Making’ at chapter P3 ‘Hospitals, Similar Institutions and Care Homes’, at paragraphs P3002-3012. Referencing the above legislation, paragraph P3002 and P3003 make clear that to be treated as an in-patient in a hospital or similar institution, a person **must** be receiving medical treatment or support appropriate to their needs and that tis does not include *‘straightforward personal care and attention by medically unqualified staff*.’

***Hospital in-patient***

***P3002*** *To be treated as a hospital in-patient a person* ***must be receiving***

*1. medical treatment (for example surgical treatment or administration of drugs and/or injections) or*

*2. other treatment which includes nursing services by professionally trained staff in the form of observation, therapy, support appropriate to the person’s needs, advice and training in domestic and social skills.*

***It does not include straightforward personal care and attention by medically unqualified staff.***

***A similar institution***

***P3003*** *A similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account*

*1. the purpose of the institution* ***and***

*2. the type of treatment provided* ***and***

*3. the level of care offered*

(Underlining added)

1. Based on the information provided by the management at the Property and in light of the above legislation and guidance, it is clear that, despite being funded by the NHS, The accommodation should not be considered a hospital or similar institution as no medical care or treatment is provided. C [is/was] not an in-patient. C [is/was] the licensee in a contracted agreement between [her/himself] and [the accommodation provider]; [her/his] entitlement to PIP [is/was] therefore clear.

*Impact on the claimant*

1. C is particularly vulnerable. [S/he] has been awarded PIP due to the difficulties [s/he] faces in everyday life, such as [preparing food]. [S/he] requires the extra money to ensure [s/he] does not fall into financial hardship as a result of [her/his] disability.
2. While living in accommodation with limited support, no care and no treatment, C has had to live on [her/his] [ESA money] only. This is despite the fact that if this accommodation was paid for by housing benefit, [her/his] PIP would not have been stopped, allowing [her/him] extra money to support [her/himself].

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

**D is requested to:**

* Review the decision to suspend C’s PIP payments in consideration of the evidence provided.
* Resume payment of C’s PIP award without further delay and from [date] when C was discharged from hospital.

**ADR proposals**

**Please confirm in your reply whether D is willing to consider alternative dispute resolution.**

**The address for reply and service of court documents**

[advice agency name and address]

**Proposed reply date**

We expect a reply promptly and, in any event, no later than X (14 days).

**If we have not received a reply by this time our client will seek representation to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

Enc.