DWP Legal Advisors
Government Legal Department
2nd Floor, Caxton House
Tothill Street
London
SW1H 9NA

By post and email: legal.queries@dwp.gov.uk

**Our Ref: 1**

**DATE**

**Dear Sir or Madam**

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

##### We are instructed by … 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 5pm on the date at the end of this letter.**

**Proposed Defendant:** The Secretary of State for Work and Pensions

**Claimant:**

**NINO:**

**Address:**

**Date of Birth:**

**The details of the matter being challenged**

Failure on the part of the DWP to provide a decision within a reasonable time or at all regarding X’s request for a mandatory reconsideration of the decision not to award Universal Credit (UC).

***Background facts***

1. X is a single woman suffering from
2. X disability
3. X immigration status (if relevant)
4. X housing
5. X household
6. what has happened
7. contacts with DWP
8. effect on X

**Grounds for Judicial Review**

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

1. The Defendant 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 toS.9 of the Social Security Act 1998 (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 all the circumstances, including the impact on the claimant[[1]](#footnote-1).

*Impact on the claimant*

1. X’s mental health forced her to leave full-time education and also prevents her from working. She has no income without UC.
2. The failure to provide a decision in response to X’s request for a mandatory reconsideration has caused X hardship. The delay relates to a decision on UC entitlement. UC is a subsistence benefit which includes amounts for housing. Delays in UC decisions can therefore have severe consequences for the claimant, leaving them with no income to fall back on, without money for food or heating, unable to pay their rent and so at risk of homelessness and destitution. The failure to review the decision to close X’s UC claim caused X stress and anxiety when she was already experiencing what?.

Non-complex case/all information available

1. X is eligible for UC. She  clearly meets, and met, the conditions of entitlement as set out in s. 4 of the Welfare Reform Act 2012:

#####                     ​  4. Basic conditions

                    (1) For the purposes of section 3, a person meets the basic conditions who—

                    (a) is at least 18 years old,

                    (b) has not reached the qualifying age for state pension credit,

                    (c) is in Great Britain,

                    (d) **is not receiving education**,…​

1. This is not a complex case and there is no reason for the delay. X has provided clear and compelling evidence to the effect that she was and is eligible for UC. It should be easy for the Secretary of State to re-consider whether or not her initial decision was correct.

*Purpose of mandatory reconsideration process*

1. Finally, 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 “*to deliver* ***timely****, proportionate and effective justice for claimants, make the process for disputing a decision* ***fairer and more efficient***.”[[2]](#footnote-2) (emphasis added). The delay in this case due to the failure to accept C’s request for a mandatory reconsideration and the consequent frustration of C’s appeal rights clearly fails to deliver on this stated purpose and is therefore unlawful.

**Ground 2: Procedural irregularity**

1. It is clear that a mandatory reconsideration of an UC can be requested by telephone.
2. This is confirmed on the Defendant’s own publicly accessible “How Benefits Work” webpages [[3]](#footnote-3):

 “How to ask for mandatory reconsideration:

Contact the benefits office that gave you the decision. You can contact them:

by phone

…

The contact details are on your decision letter.”

1. This is further confirmed by the Defendant’s own Operational Guidance[[4]](#footnote-4):

“The Mandatory Reconsideration process:

A claimant is able to request a Mandatory Reconsideration:

over the phone…”

1. In requesting a mandatory reconsideration of the decision not to award her UC by telephone, C had a legitimate expectation that her request would be considered and a decision provided. Failure to provide a decision and to later report that ‘there was no record of her request’ breaches the rules of natural justice and frustrates her appeal rights.

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

* The Secretary of State should revise and award X UC from her original claim date (DATE),
* If the Secretary of State is unable to do so, she should provide a Mandatory Reconsideration decision immediately.
* Ensure that decision makers are adequately trained to ensure that requests made by telephone to change a decision are treated as mandatory reconsideration requests and written decisions are provided within a reasonable time.

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

**Please find enclosed copies of the following documents:**

* **Signed form of authority.**
* **Other documents available via X**’s UC online journal

**ADR proposals**

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

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

**Proposed reply date**

We expect a reply promptly and in any event no later than **5pm on** . **Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

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1. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. https://www.gov.uk/mandatory-reconsideration/how-to-ask-for-mandatory-reconsideration [↑](#footnote-ref-3)
4. http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Mandatory\_Reconsideration\_v3.0.pdf [↑](#footnote-ref-4)