**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

[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 adjustments to HER/HIS universal credit (“UC”) claimant commitment. 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 (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**.*

**The details of the matter being challenged**

1. **The following actions and failures of D are challenged:**
2. **imposition by D of wrongful conditionality on C in C’s UC claimant commitment from DATE;**
3. **the ongoing failure of D to amend C’s claimant commitment in line with the legal framework set out below; and**
4. **[The sanctioning of C for failing to do something which there was no lawful basis for requiring HER/HIM to do.]**

***Background facts***

1. **C has been in receipt of UC since DATE. SHE/HE was required to apply as REASON.**
2. **C receives UC as a LONE PARENT /COUPLE with HER/HIS partner X NAME, DOB AND NINO.**
3. **C AND X has NUMBER CHILDREN – NAMES, DOBS and these are included in HIS/HER/THEIR UC claim.**
4. **This includes NAME who is AGE (5,6,7,8,9,10,11,or 12) years old and ….**
5. **ANY DISABILITY/ADDITIONAL NEEDS?**
6. **ANY CHILDCARE PROBLEMS? HOW NOTIFIED DWP?**
7. **C HAS DETAIL UC CONDITIONALITY WHICH REQUIRES HER/HIM TO…**
8. **C INCURRED A UC SANCTION DATE AS SHE/HE WAS UNABLE TO …. WHEN REQUIRED TO DO SO.**
9. **SANCTION CHALLENGED? DETAILS**
10. **LOSSES AS A RESULT OF THE SANCTION INCLUDING AMOUNT OF FINANCIAL LOSS**
11. **CONTACTS WITH DWP – DETAILS OF REQUESTS TO CHANGE CONDITIONALITY AND THE RESPONSE.**
12. EDIT AS APPROPRIATE A message was posted to C’S online UC account on DATE asking D to amend C’s conditionality. To date, D has not acted on this.

**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***

***Responsible carer***

1. C is responsible for a child or qualifying young person as CHILD “*normally lives with*” HER/HIM under reg. 4(2) Universal Credit Regulations 2013 (“**UC Regs**”).
2. DELETE IF SINGLE CLAIMANT C receives UC as a couple with NAME. Of C and NAME, C “*has the main responsibility*” for CHILD by joint nomination with his/her partner under reg. 4(5) UC Regs.
3. C is therefore a “*responsible carer*” as defined by s. 19 (6) of the Welfare Reform Act 2012 (“**WRA 2012**”):

***19****.-(6) In this Part “responsible carer”, in relation to a child means–*

*(a) a single person who is responsible for the child, or*

*(b) a person who is a member of a couple where–*

*(i) the person or the other member of the couple is responsible for the child, and*

*(ii) the person has been nominated by the couple jointly as responsible for the child.*

***Relevant conditionality***

1. CHILD is AGE years old AND WAS SO AT THE TIME THAT C INITIALLY CLAIMED UC AND WAS REQUIRED TO SIGN HER/HIS CLAIMANT COMMITMENT and C is therefore subject to ‘all work-related requirements’ under s. 22 WRA. Work related requirements are summarised in the D’s guidance ‘Advice for Decision-Makers’ (“**ADM**”):

*J3003 The work-related requirements are1 the*

*1. work-focused interview requirement (see J3030 et seq)*

*2. work preparation requirement (see J3040 et seq)*

*3. work search requirement (see J3050 et seq)*

*4. work availability requirement (see J3110 et seq).*

*1 WR Act 12, s 13(2)*

*Expected hours*

1. The default number of ‘expected hours’ for those subject to all work-related requirements is 35 hours a week under reg. 88(1) UC Regs.
2. The ‘expected hours’ are however reduced by regs. 97(2) and 88(2) UC Regs, under which as CHILD is school age but under the age of 13, the number of hours C is expected to look for work and be available for work must be limited and compatible with HER/HIS caring responsibilities and HIS/HER child’s normal school hours (including the normal time it takes the child to travel to and from school):

***Work search requirement and work availability requirement - limitations******97****.-(2) In the case of a claimant who is a relevant carer or a responsible carer...a work search and work availability requirement must be limited to the number of hours that is determined to be the claimant’s expected number of hours per week in accordance with regulation 88.*

***Expected hours***

***88****.-(2) The lesser number of hours is–*

*(a) where–*

*(i) the claimant is a relevant carer, a responsible carer (subject to the following sub-paragraphs) or a responsible foster parent, and*

*(ii) the Secretary of State is satisfied that the claimant has reasonable prospects of obtaining paid work,*

*the number of hours that the Secretary of State considers is compatible with those caring responsibilities;*

*...*

*(b) where the claimant is a responsible carer for a child who has reached compulsory school age but who is* ***under the age of 13, the number of hours*** *that the Secretary of State considers is* ***compatible with the child’s normal school hours (including the normal time it takes the child to travel to and from school)****”.*

 (Emphasis added)

1. D’s ADM guidance considers up to ‘25 hours per week’ compatible with the school hours of a child aged between 5 and 13:

***J3058*** *Where a claimant is a responsible carer for a child aged under the age of 13, the expected hours of work are the lower number that the Secretary of State considers is compatible with the child’s normal school hours (including the normal time it takes the child to travel to and from school)1.* ***The expectation is that this safeguard will be 25 hours a week****.* [… ]

 *1 UC Regs, reg 88(2)(b)*

(Emphasis added)

**Grounds for Judicial Review**

**Ground 1: Failure to apply the law resulting in imposition of unlawful work-related requirements and unlawful sanctions**

1. D **is aware of the age of C’s child AND HIS/HER ADDITIONAL NEEDS and has refused to amend C’s UC conditionality.**
2. The law and D ’s own guidance (set out above) are clear.
3. By failing to reduce the number of hours C has to undertake work related activity, D is in breach of both ss. 97(2) and 88(2)(aa) UC Regs and its own guidance at paragraph J3058 and is therefore acting unlawfully.
4. DELETE AS APPROPRIATE AS A CONSEQUENCE OF THIS UNLAWFUL FAILURE, C has incurred a sanction. This sanction was therefore unlawful.
5. **As a result of the ongoing failure C remains at risk of further unlawful sanctions, financial hardship and stress as a direct result of the unlawful conditions imposed on HER/HIM.**

**Ground 2: Discrimination**

1. The default requirement under reg. 88(1) UC Regs is that all claimants are required to undertake 35 hours of work search each week and be available to take up work for the same. Applying this blanket provision to those caring for young children (the majority of whom are women) would be indirectly discriminatory, contrary to the Equality Act 2010, Human Rights Act 1998 and European Convention on Human Rights (Article 14 in association with Article 1, Protocol 1 and Article 8), as such people (people with young children, lone parents and women) would be more likely not to be able to comply with the requirements and so be subject to UC sanctions, consequent financial loss and emotional distress. The law recognises this and avoids such indirect discrimination by virtue of the limitations in regs. 88(2) and 97 UC Regs and associated guidance.
2. By failing to apply the regs. 88(2) and 97 limitations, D’s action is necessarily discriminatory, it cannot be shown to be a proportionate means of achieving a legitimate aim, and there can be no justification for the same.

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

1. **D is requested to:**
* Amend C’s claimant commitment immediately to reduce the amount of work related activity SHE/HE is required to do to 25 hours per week (OR FEWER IF APPROPRIATE).
* Compensate C for HER/HIS losses suffered as a result of the unlawful sanctions imposed.
* Accept that C has been unlawfully discriminated against and pay HER/HIM HRA damages for the same

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

* **C’s signed form of authority.**
* **All other documents available through C’s UC online account (Journal and Claimant Commitment).**

**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, ADDRESS AND EMAIL HERE

**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 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)