**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 claimant commitment. We write in accordance with the Pre-action Protocol for Judicial Review contained in the Civil Procedure Rules. Please note that we require you to respond as soon as possible and in any event no later than by **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]

**The details of C’s legal advisers**

**[Insert if appropriate]**

**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 matters being challenged:**

1. **The following actions and failures of D are challenged:**
2. **imposition by D of wrongful conditionality on C in C’s Universal Credit (“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 C to do.**

**The issue – factual background**

1. **C has been in receipt of UC since DATE. She/he was required to apply as REASON.**
2. **C receives UC as a 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 aged 2 years old.**
5. **ANY DISABILITY/ ADDITIONAL NEEDS OF CHILD/REN – DISABILITY BENEFITS RECEIVED IF ANY**
6. **WHEN / HOW THIS HAS BEEN NOTIFIED TO 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 journal 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.

**The issue – legal background**

***Responsible carer***

1. C is responsible for a child or qualifying young person as CHILD NAME “*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 ss. 40 and 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 two years old and was so at the time that C initially claimed UC and was required to sign her/his claimant commitment and as such C is required only to meet the ‘work preparation’ and ‘work-focused interview’ requirements requirement under s. 21 WRA 2012:

***Claimants subject to work preparation requirement***

***21****.-(1) A claimant falls within this section if the claimant does not fall within section 19 or 20 and-*

 *[…]*

 *(aa) the claimant is the responsible carer for a child who is aged 2,*

 *[…]*

*(2) The Secretary of State may, subject to this Part, impose a work preparation requirement on a claimant falling within this section.*

*(3) The Secretary of State may also, subject to this Part, impose a work-focused interview requirement on a claimant falling within this section.*

*(4)* ***The Secretary of State may not impose any other work-related requirement*** *on a claimant falling within this section (and, where a claimant falls within this section, any other work-related requirement previously applying to the claimant ceases to have effect).*

(Emphasis added)

1. D’s operational guidance ‘Work related requirements for claimants with children’ (V8) then limits the number of hours C is expected to undertake ‘work preparation’ to those compatible with C’s caring responsibilities and not more than 16 hours per week [[3]](#footnote-3):

|  |  |
| --- | --- |
| **Age of youngest child** | **Regime** |
| *Age 2* | *Work preparation**• minimum monthly interviews**• maximum Conditionality Earnings Threshold (CET) of 16**Hours**• caring responsibilities must be taken into account when setting expected hours of work preparation**• lead carers of children aged 2 are not required to be available for work (mandatory work search and work availability switched off)* |

**Grounds for Judicial Review**

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

1. The legislation and guidance (set out above) are clear and unambiguous.
2. **D is aware of C’s child given that she/he is included in C’s UC award.** By
3. imposing on C work-related requirements other than work preparation and work-focused interview requirements, and/or
4. by requiring C to undertake her/his work preparation requirement for more than 16 hours per week, and
5. failing to adjust C’s claimant commitment,

D is in breach of s. 21 WRA 2012 and D’s own guidance and is acting unlawfully.

1. **As a result of D’s failure to correctly apply the law, C has already been unlawfully sanctioned and 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) taken together with reg. 97 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 / making inadequate amendments to the parents and carers of 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.
2. The law recognises the otherwise discriminatory effect of a blanket 35 hour per week work search and work availability requirement by making adjustments to the requirement which vary depending on the age of the parent/carer’s youngest child: see ss. 19-21 WRA 2012 and reg. 88(1) in conjunction with reg. 97 UC Regs.
3. By failing to apply the restriction contained in s. 21 WRA 2012, the imposition of the conditionality on C beyond the work-focused interview and work preparation requirements 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**

**D is requested to:**

* Amend C’s claimant commitment immediately to include only work preparation and work-focused interview requirements.
* Limit the number of hours C is required to undertake ‘work preparation activity’ to those compatible with her/his caring responsibilities for a two year old child and in any event no more than 16 hours per week.
* 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.
* Ensure adequate training of work coaches so that C and other claimants with children who are 2 years old are not subject to unlawful conditionality.

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

* **C’s signed form of authority.**
* **All other documents available through C’s Universal Credit 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**

**NAME, ADDRESS AND EMAIL OF ADVICE AGENCY HERE**

**Proposed reply date**

Please provide your response promptly and in any event within 14 days (i.e. by **DATE)**. S**hould we not have received such a request for further time nor a substantive reply by the given deadline C reserves HIS/HER right to issue proceedings for judicial review without further notice to you and to seek HIS/HER costs of doing so from you. All of C’s rights remain reserved.**

Yours faithfully

Enc.

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. <https://data.parliament.uk/DepositedPapers/Files/DEP2023-0791/196._Work_related_requirements_for_claimants_with_children_V8.0.pdf> as referred to in D’s guidance ‘Labour market regimes’ <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/83_Labour_Market_regimes_v14_0.pdf> [↑](#footnote-ref-3)