**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

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

* refugee status / humanitarian protection / leave outside the immigration rules.
* claimed universal credit
* been required to satisfy the habitual residence test

As well as sending this letter, if your client has been refused UC, seek a mandatory reconsideration of the decision to refuse benefit.

**Delete box before posting.**

**This letter challenges:**

The Secretary of State’s unlawful imposition of the Habitual Residency Test when processing a person with refugee status’s UC claim.

Read the whole letter carefully and edit all text in red and/or [square brackets]. Delete all comments and return text to black before sending.

Please send your letter for review to jrproject@cpag.org.uk before sending to DWP.

**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 [full name] in relation to [her/his] 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 by 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:**

C challenges SSWP’s unlawful imposition of the Habitual Residence Test (“**HRT**”) to process [her/his] claim for UC.

**Background facts**

1. C is a refugee [Change throughout if status is humanitarian protection/leave outside the rules]. C entered the UK on [date] from [country].
2. [Insert family details etc here].
3. C received notification of [her/his] refugee status on [date], dated [date].
4. C made a claim online to UC on [date] and on [date] provided [her/his] Biometric Residence Card (“**BRP**”).
5. SSWP has confirmed that C has a Right to Reside and so is not excluded from UC, see letters posted to their journal on [date].

**Note on D’s duty of candour**

1. As SSWP 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 for inspection, as part of the response to this letter.

**Grounds for Judicial Review**

**Ground 1: Unlawful application of the ‘Habitual Residence Test’ to a refugee**

1. **C made a claim for UC and been informed by SSWP that [she/he] must meet the HRT before [her/his] claim for UC can be determined or paid.**
2. **C has leave to remain as a refugee as shown on [her/his] BRP.**
3. **As a refugee, C is exempt from the HRT under Reg.** 9(4) of the Universal Credit Regulations 2013**:**

***9.****—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

 *(4) A person falls within this paragraph if the person is—*

 [*…*]

*(d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;*

*(e) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971;*

*(f) a person who has humanitarian protection granted under those rules; or*

*(g) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 and who is in the United Kingdom as a result of their deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.*

1. SSWP is therefore acting unlawfully in delaying the determination of C’s claim for UC until habitual residence has been established.

**Ground 2: Failure to follow guidance**

1. **SSWP’s Advice for Decision Making (”ADM”) guidance Chapter ‘C1: Universal Credit - International Issues’, demonstrates DWP policy and includes:**

***C1280 Persons who are determined to have certain specific rights to reside are not subject to the requirement that they be habitually resident in the CTA. These persons are***

***[…]***

***4. a refugee7 (see C1376 to C1377)***

***5. a person 8 who***

 ***5.1 has been granted discretionary leave to enter or remain in the UK outside the Immigration Rules (see C1378) or***

***5.2 has been granted leave to remain outside the Immigration Rules under the Domestic Violence concession (see C1380 to C1383) or***

***5.3 is deemed to have been granted leave outside the Immigration Rules by virtue of specific legislation which, in accordance with an EU directive provides temporary protection to persons affected when the Council of the EU decides that there is (or will be) a mass influx of displaced persons who cannot return to their country of origin.***

***[…]***

***6. a person who has humanitarian protection granted under the immigration rules9 (see C1384)***

***7. a person who is not a PSIC (see paragraph C1040 et seq) who is in the UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK10***

***7 UC Regs reg 9(4)(d); 8 reg 9(4)(e); 9 reg 9(4)(f); 10 reg 9(4)(g)***

***C1376 Refugees1 are people who are outside their country of origin and are unwilling to return there for fear of persecution because of their***

***• race***

***• religion***

***• nationality***

***• political opinion***

***• membership of a social group.***

 ***1 Convention relating to the Status of***

***Refugees, Art. 1 (as extended)***

***C1378 The HO may alternatively grant discretionary leave outside the immigration rules.***

***C1379 Humanitarian protection and discretionary leave replaced exceptional leave to enter or remain from 1 April 2003 but there will still be residual cases of exceptional leave to 2007. Whereas indefinite leave to remain gave a right to permanent residence, limited leave, humanitarian protection, discretionary leave and exceptional leave do not guarantee that right.***

***The HO may refer to***

***1. limited leave given to refugees or***

***2. exceptional leave to remain or***

***3. leave to remain on an exceptional basis or***

***4. humanitarian protection or***

***5. discretionary leave.***

***A claimant given one of the above is not subject to the habitual residence test1 for as long as the leave lasts, including periods when he/she has applied in time for an extension of leave.***

***1 UC Regs, reg 9(4)(e) & (f)***

***C1384 The HO may grant humanitarian protection within the immigration rules to persons who have not been recognised as refugees but who are considered likely to face serious harm in their country of origin. As with refugees the family members of a person granted humanitarian protection are allowed to join that person and are granted the same leave. Under EU law common criteria for the identification of persons genuinely in need of international protection are applied across EU Member States1. A new category of protection is introduced, known as subsidiary protection, which is aligned with the present category of humanitarian protection. Persons granted humanitarian protection within the immigration rules do not have to satisfy the habitual residence test2.***

***1 Directive 2004/83/EC; 2 UC Regs, reg 9(4)(f)***

***C1671 People recognized as refugees by the Immigration and Nationality Directorate are granted asylum. From 30 August 2005 they will have been granted limited leave to enter or remain for five years, rather than indefinite leave. Spouses, recognized civil partners, and dependent children under the age of 18 are normally allowed to join a refugee in the UK immediately, and are also granted asylum. Refugees, their spouses or recognized civil partners and dependants who are granted asylum are not subject to the habitual residence test1.***

***1 UC Regs, reg 9(4)(d)***

**(Emphasis added)**

1. **Where published policy exists, there is a public law for duty for decision-makers to follow it, as held by Lord Dyson in *R (Lumba) v SSHD* [2011] UKSC 12 at [26]:**

***“a decision-maker must follow his published policy … unless there are good reasons for not doing so.”***

1. **By requiring C to take the HRT, SSWP is unlawfully in breach of his own guidance and the caselaw which says that guidance should be followed.**

**Ground 3: Unlawful discrimination**

1. **The Human Rights Act 1998 incorporates the rights set out in the European Convention on Human Rights (“ECHR”) into domestic British law.**
2. **Article 14 ECHR provides:**

**“*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.”**

1. **Welfare benefits are a recognised form of property for the purposes of Article 1, Protocol 1 ECHR**[[3]](#footnote-3)**.**
2. **Refugees are at a recognised disadvantage in establishing ‘habitual residence’ as they are likely to have only come to the UK recently, with little documentation, then are prevented from working or having access to public funds prior to their UC claim. The impact of this disadvantage is discriminatory, but is removed by the exemption from the HRT contained in Reg 9(4) UC Regs 2013.**
3. **Failure to apply the exemption in Reg 9 (4) UC Regs 2013 therefore amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1, and the Human Rights Act 1998.**

**Details of the action that the defendant is expected to take:**

**SSWP is requested:**

* **without further delay award and pay C UC from [date]**
* to accept that it has unlawfully discriminated against C and to pay [her/him] HRA damages.

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

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

* **Confirmation of grant of refugee status [dated]**
* **Biometric residence permit**
* **Form of authority**

All other relevant documents/information are already in the possession of SSWP and are accessible from C’s UC journal.

**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].**

**Proposed reply date**

We expect a reply promptly and in any event no later than [date]. This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the discriminatory impact of SSWP’s unlawful insistence that C meets the HRT and (b) that D is already aware of C’s status and of the relevant law.

**If you consider** that you require 14 days from the date of this letter to reply, please immediately inform us in writing, giving full reasons. S**hould we not have received such a request for further time nor a substantive reply by the given deadline our client will seek representation to issue proceedings for judicial review without further notice to you.**

Yours faithfully

[Adviser signature]

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. S**ee for example *Stec & Ors v UK*** [2005] ECHR 924, (2005) 41 EHRR SE 295, (2005) 41 EHRR SE 18 [↑](#footnote-ref-3)