**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

Please respond as soon as possible and in no more than 7 (EDIT IF NEEDS TO BE LESS) days as the Claimant is terminally ill, as detailed below.

**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 NAME **in relation to HIS/HER Universal Credit (“**UC**”) 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 the date at the end of this letter.**

**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 is challenging the requirement for HIM/HER to accept a claimant commitment and the D’s ‘closure’ of HIS/HER claim for UC failure to do so when the DS1500 form provided to the D confirms that HE/SHE is terminally ill.**

***Background facts***

1. **CLIENT DETAILS,**
2. **HOUSEHOLD, FAMILY**
3. **OTHER INCOME AND PIP AWARD**
4. **DISABILITY / MEDICAL DETAILS**
5. **ON DATE C CLAIMED UC.**
6. **C HAS CONTINUED TO PROVIDE REGULAR ‘FIT NOTES’ FROM HIS/HER GP SINCE HIS/HER DATE OF CLAIM.**
7. **ON DATE C PROVIDED A DS1500 SIGNED BY HIS/HER GP CONFIRMING HE/SHE HAS *…* AND CONFIRMING HIS/HER PROGNOSIS AS:**

 **“**

1. CONTACT WITH DWP AND HOW HAVE RESPONDED
2. **C IS SUFFERING CONSIDERABLE FINANCIAL HARDSHIP AND HAS DEBTS OF …**
3. **EFFECT ON HEALTH ETC.**

**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***

1. It is a basic condition of entitlement to Universal Credit to accept a ‘claimant commitment’ under s.4 of the Welfare Reform Act 2012 (“**WRA**”):

##### *Basic conditions*

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

 *(e)has accepted a claimant commitment*

##### Under s.14(5) WRA the claimant commitment must be accepted in a prescribed manner:

***14.-****(5) For the purposes of this Part a claimant accepts a claimant commitment if, and only if, the claimant accepts the most up-to-date version of it in such manner as may be prescribed.*

1. Regulation 15(4) of the Universal Credit Regulations 2013 (SI No. 376) (“**UC Regs**”) then sets out the prescribed manner provided for in s.14(5):

#### *15.-(4) A person must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—*

*(a) electronically;*

*(b) by telephone; or*

*(c) in writing.*

1. Failure to accept a ‘claimant commitment’ in one of the ways above when required to do so will result in entitlement to UC ending (if there is an award in place) or a refusal of the UC claim, as made very clear in the D’s operational guidance “Claimant Commitment - Commitment not accepted:“[[3]](#footnote-3)

*If the claimant does not accept a reasonable Commitment then they are not entitled to receive Universal Credit.*

1. A power to provide for exceptions to the general rule requiring acceptance of the claimant commitment is contained in s.4(2) WRA:

***4****.-(2) Regulations may provide for exceptions to the requirement to meet any of the basic conditions (and, for joint claimants, may provide for an exception for one or both).*

1. That power has been exercised in reg 16 UC Regs:

***Claimant commitment – exceptions***

***16.****A person does not have to meet the basic condition to have accepted a claimant commitment if the Secretary of State considers that—*

*(a) the person cannot accept a claimant commitment because they lack the capacity to do so; or*

*(b)* ***there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.***

 (Emphasis added)

1. From 15th February 2022 reg 16 UC Regs is amended by the Universal Credit and Employment and Support Allowance (Claimant Commitment Exceptions) (Amendment) Regulations 2022 to specifically exclude claimants who are terminally ill.

## Amendment to the Universal Credit Regulations 2013

***2.****In regulation 16 of the Universal Credit Regulations 2013 (claimant commitment-exceptions)—*

*(a) regulation 16 shall stand as paragraph (1);*

*(b) after paragraph (1), insert—*

*“(2) A person does not have to meet the basic condition to have accepted a claimant commitment* ***if the person is terminally ill****.”.*

(Emphasis added)

1. As the explanatory memorandum to the above explains, this unequivocally removes D’s discretion not to exempt C from the requirement to accept a claimant commitment:

*7.1 To be entitled to receive Universal Credit (UC) and New Style Employment and Support Allowance (NS ESA) a claimant is legally required (as per UC 2013 and ESA 2013 regulations) to accept a claimant commitment. The exemption to have an accepted claimant commitment was designed to allow for exceptional circumstances where it would not be appropriate to apply.*

*7.2 Terminal illness may qualify as an exceptional circumstance, but within the current parameters of the legislation, the decision to apply the exemption is left to the discretion of the work coach on a case by case basis, leaving the risk of some terminally ill claimants still being required to accept a claimant commitment.*

*7.3 This change will streamline and standardise the administrative process for terminally ill claimants when making a claim, or maintaining an existing claim, to UC and/or NS ESA, by removing the requirement to accept a claimant commitment.*

1. In an email from the Customer Experience Improvement Team (Customer Experience Directorate, Service Excellence Group, Department for Work and Pensions) to DWP Operational Stakeholders, D confirmed the effect of the change:

*[…]**This information is also going out via Touchbase and the LA Bulletin.*

*We are committed to ensuring the benefit system supports people nearing the end of their lives. The Department provides people who are terminally ill a simplified and straightforward means to access the benefits system.* ***We have made a change which exempts people who are terminally ill, from the requirement to accept a claimant commitment, to be eligible for benefits.*** *It will apply to New Style Employment Support Allowance and/or Universal Credit, where a terminal illness health declaration is made on, or after, 15 February 2022. We have made this change in order to reduce unnecessary administrative burden for people nearing the end of their life.*

1. **D ’s operational guidance ‘Terminal Illness’ (V17)**[[4]](#footnote-4) **confirms the DWP’s definition of ‘terminal illness’:**

*For benefit purposes, DWP describes a terminally ill claimant as having a progressive disease health condition and due to that condition they are not expected to live more than 6 months.*

1. D’s guidance to medical professionals completing the DS1500: ‘[DWP medical (factual) reports: A guide to completion -](https://www.gov.uk/government/publications/dwp-factual-medical-reports-guidance-for-healthcare-professionals) August 2021’[[5]](#footnote-5) explains this means that death within 6 months would not be surprising:

*You should complete the form promptly if you believe that your patient meets the special rules criteria, namely:*

* *They have a progressive disease and, as a consequence of that disease*
* ***You would not be surprised if*** *your patient were to die within 6 months*

*(Emphasis added)*

1. ADM J1 also makes clear that even where the DWP definition of ‘terminal illness’ is not met in its entirety, “exceptional circumstances” may apply taking into account the circumstances of each individual case and using the “normal and every date meaning of “exceptional” which is “unusual, not typical”:

*J1026 ...****The list is not exhaustive.*** *When determining whether or not exceptional circumstances apply, the Decision Maker should remember* ***the normal and every date meaning of “exceptional” is “unusual, not typical”.***

*J1020 [… ]*

***Note****: … It would be for the DM to consider each case on it's[sic] own individual merits, facts and circumstances when considering whether exceptional conditions apply and whether it would be unreasonable.*

1. **Under D’s guidance ‘Terminal Illness’**[[6]](#footnote-6)**, evidence of terminal illness is confirmed when form DS1500 is provided** unless there is ‘good reason’ to doubt the information contained in the DS1500:

***Confirming the claimant has a terminal illness***

*Form DS1500 is confirmation that a person is terminally ill and not expected to live more than six months. It can be completed by a doctor, other healthcare professional or Macmillan nurse.*

***A correctly completed DS1500 can be accepted as evidence of a terminal illness where the claimant satisfies the terminal illness description.*** *There is no need to refer to Centre of Health and Disability Assessment for a Work Capability Assessment decision to determine if a person is terminally ill,* ***unless there is good reason*** *to doubt the information provided on the DS1500.*

1. There is no guidance on what constitutes a ‘good reason to doubt the information provided on the DS1500’, however, as above, even where ‘terminal illness’ is not accepted (for example if death is not expected within 6 months) “exceptional circumstances” may still apply.

***Grounds for judicial review – illegality; failure to follow guidance without good reason***

1. The law and guidance are clear. A terminally ill claimant for whom a DS1500 has been provided is exempt from the requirement to accept a claimant commitment under reg 16 UC Regs both:

a) where the DWP definition of “terminal illness” is met (reg 16(2), and

b)where the DWP definition of “terminal illness” is not met (for example where a claimant is terminally ill but death is expected in more than 6 months) using the normal and every date meaning of “exceptional” as “unusual, not typical” and taking into account the circumstances of each individual case (under reg 16(1)).

1. In requiring the claimant to accept the claimant commitment and refusing to make an AWARD/ENDING the award when HE/SHE failed to do so, in circumstances where HE/SHE had provided a valid DS1500 fails to follow the law and guidance set out above and as such is unlawful.
2. Further, the DWP’s own guidance is clear that terminal illness is evidenced by provision of a DS1500 and that where a correctly completed DS1500 has been provided and there is no good reason to doubt its contents, a terminally ill claimant should not be expected to accept a claimant commitment and an award of UC should be made.
3. In this case, C has unlawfully been required to accept a claimant commitment and HIS/HER claim has been ‘closed’ for failure to do soin clear breach of the law and the D’s own guidance.
4. We accept that our client would be able to seek a revision of this matter and ultimately, to appeal to the First-tier Tribunal. However, our position is that, given the time that remedy would take and given our client’s terminal illness, those are not suitable alternative remedies on the facts of this case.

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

**D is requested to:**

* Accept that C has exceptional circumstances in which it is unreasonable to expect HIM/HER to accept a claimant commitment and revise the decision of DD/MM/YYYY so as to award UC from DATE/REINSTATE THE AWARD OF UC FROM DATE.
* Accept that the failure to act on the DS1500 provided for C up until this point falls well below the level of service that C should be entitled to expect from the DWP AND HAS CAUSED C UNNECESSARY STRESS AND FINANCIAL HARDSHIP AT A TIME WHEN HE/SHE is already having to come to terms with HIS/HER imminent death and agree to pay C compensation in respect of the same.

**We expect these actions to be taken as soon as possible and in any event by DD/MM/YYYY – such prompt action is reasonably to be expected given our client’s circumstances.**

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

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

* **Medical evidence confirming illness and prognosis**
* **Signed form of authority for C**
* **All other documents available through C’s online UC journal**

**ADR proposals**

**Please confirm in your reply whether the 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 (7 DAYS OR LESS DEPENDING ON CLIENT’S CIRCUMSTANCES). This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the delay already experienced; (b) the lack of complexity of the issue, and (c) crucially, the limited remaining lifespan of the Claimant.

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. Should we not have received such a request for further time nor a substantive reply by the given deadline we will issue proceedings for judicial review without further notice to you.

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. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/30._Claimant_commitment_not_accepted_v2.0.pdf> [↑](#footnote-ref-3)
4. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/150._Terminal_illness_v17.0.pdf> [↑](#footnote-ref-4)
5. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1013905/medical-reports-completion-guidance.pdf> [↑](#footnote-ref-5)
6. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/150._Terminal_illness_v17.0.pdf> [↑](#footnote-ref-6)