**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 a NINo
* DWP have confirmed right to reside but delayed decision /payment pending habitual residence test (HRT)

This letter assumes your client is in the UK under the Afghan Relocations and Assistance Policybut can be edited if under a different analogous scheme.

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

Delete box before posting

**This letter challenges** the unlawful application by the DWP of the HRT to a person in GB under the Afghan Relocations and Assistance Policy, and the unreasonable delay in deciding C’s claim as a result.

Please read the whole letter carefully and edit all text in red an/or [square brackets]. Delete any comments before posting.

Verify and include all relevant dates and figures.

Send on headed paper on your client’s behalf, with signed authority from your client to do so.

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 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**

1. C challenges D’s unlawful imposition of the Habitual Residence Test (“**HRT**”) to process HER/HIS claim for UC.

***Background facts:***

1. C entered the UK on DATE from Afghanistan under the Afghan Relocations and Assistance Policy / under the scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme) / having left in connection with the collapse of the Afghan government that took place on 15th August 2021 / under the Afghan Citizens Resettlement Scheme.
2. FAMILY DETAILS ETC
3. C received notification of HIS/HER status on DATE, dated DATE.
4. C made a claim online to UC on DATE.
5. D 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 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.

**Grounds for Judicial Review**

**Ground 1: Unlawful application of the Habitual Residence Test**

1. **C made a claim for UC and been informed by D that HE/SHE must meet the HRT before HIS/HER claim for UC can be determined or paid.**
2. **C has leave to remain as […] as shown on HIS/HER Biometric Residence Card.**
3. **As a person with Leave to Remain as /under […] C is exempt from the HRT under Reg.** 9(4) of the Universal Credit Regulations 2013 (“**UC Regs**”) **as amended by the** Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 (“**the regulations**”).
4. The regulations ensure the benefit entitlement from day one to certain persons arriving in Great Britain from Afghanistan in connection with the collapse of the Afghan government that took place on 15.8.21 by exempting those persons from the HRT. The regulations came into force on 15.9.21 and are applicable to all decisions made thereafter.
5. The UC Regs, as amended, provide:

***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****—*

*(za) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971, where such leave is granted by virtue of—*

*(i) the Afghan Relocations and Assistance Policy; or*

*(ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);*

*(zb) a person in Great Britain not coming within sub-paragraph (za) or (e)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021;*

*[…]*

*(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 where that leave is—*

*[…]*

*(iv) granted under the Afghan Citizens Resettlement Scheme;*

1. D 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. **D’s Advice for Decision Making, ADM Memo 14-21 ’**Afghanistan HRT & PPT exception’ **confirms unequivocally that claimants with C’s status are exempt from the HRT:**

 ***INCOME-RELATED BENEFITS***

*6. Persons who were granted leave to remain under one of the relocation and resettlement schemes, as well as those who were not covered by the schemes, but who arrived in Great Britain in connection with the collapse of the Afghan government that took place on 15.8.21, who apply for an income-related benefit, will be exempted from satisfying the HRT.*

*7. The relevant income-related benefits are:*

*• Universal Credit,*

*[…]*

1. **By requiring C to take and satisfy the HRT, D is in breach of its own guidance and/or has failed to take into account such guidance despite it being a material consideration.**

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

**The Defendant is requested:**

* **without further delay, to award and pay C UC from DATE**
* **award C** compensation for failure to meet basic service standards of following processes (and the law) correctly as set out in the DWP customer charter, leaving a family which have already been through traumatic events in their home country destitute.

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

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

* **Confirmation of grant of status dated**
* **Biometric residence permit**
* **Form of authority**

All other relevant documents/information are already in the possession of the Defendant and accessible from C’s UC 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**

 **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 the Defendant’s unlawful insistence that C meet the HRT and (b) that Ds 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 we will 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)