**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](mailto: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:**

* is unable to work due to medical reasons, but has received a letter stating that they can work
* has not receive a reason for their decision.
* has to appeal the decision but does not know the reasons for the decision.

DELETE BOX BEFORE POSTING

**This letter challenges** the DWP’s failure to provide a reason for their decision in respect of the claimant’s ability to work.

Read and edit whole letter carefully, in particular change any text in red or in [square brackets]

If you have any questions when using this letter, please contact [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk)

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](mailto: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 [Name] **in relation to [her/his] 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 4 pm 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*](mailto:thetreasurysolicitor@governmentlegal.gov.uk)*.*

**The details of the matter being challenged**

1. **C is challenging SSWP’s failure to give full reasons for finding that [s/he] does not have** **limited capability for work (“LCW”) or limited capability for work-related activity (“LCWRA”).**

***Background facts***

1. **[CLIENT DETAILS]**
2. **[HOUSEHOLD, Family]**
3. **[Disability and prognosis]**
4. **[Details of medical assessment. New claim? Date requested? Date attended?]**
5. **C received a decision letter dated [Date] which states that C does not have LCW and may be able to do some work.**
6. **The decision letter states that, in reaching this decision, SSWP has looked at the capability for work questionnaire, the information provided by the Health Assessment Advisory Service, and any other information provided by C and/or [her/his] doctor. The letter states that, in reaching the decision, the following activities have been looked at:**

* **Moving around and up or down steps**
* **Standing and sitting**
* **Reaching**
* **Picking up and moving things with either arm**
* **Using your hands**
* **Speaking, writing and typing**
* **Hearing and reading**
* **Seeing well enough to get around safely**
* **Staying conscious without fainting, seizures or blackouts**
* **Learning to do new tasks**
* **Being aware of hazards**
* **Planning, starting and finishing common tasks**
* **Coping with changes to your routine**
* **Going out on your own**
* **Coping with being with people**
* **Controlling your behaviour around other people**

1. **The letter does not detail what conclusions were reached in respect of these activities.**
2. **C requested a mandatory reconsideration (“MR”) on [Date]. A mandatory reconsideration notice (“MRN”) was received on [Date], upholding the original decision. The MRN did not expand on the explanation given in the original decision letter and again listed the activities considered without any detail of how C’s conditions affected [her/his] abilities in respect of those activities.**

**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***

***Legislation***

1. **The Universal Credit Regulations 2013 (“UC Regs”) are made under** powers conferred by the **Welfare Reform Act 2012 (“WRA**”). Under the UC Regs, the Secretary of State may carry out an assessment to establish a claimant’s capability for work and work-related activity:

***“When an assessment may be carried out***

***41.****—(1) The Secretary of State may carry out an assessment under this Part where—*

*(a) it falls to be determined for the first time whether a claimant has limited capability for work or for work and work-related activity; or*

*(b) there has been a previous determination and the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant’s physical or mental condition or whether that determination was made in ignorance of, or was based on a mistake as to, some material fact,”*

1. Work Capability Assessments (“**WCAs**”) are used to determine how much UC a claimant will receive and their relevant conditionality, as D’s guidance explains[[3]](#footnote-3):

***“Work capability assessment determinations***

*The work capability assessment outcome report, together with any other relevant health related evidence is used to determine if the claimant:*

*• has limited capability for work*

*• has limited capability for work and work-related activity*

*• does not have limited capability for work, so is fit for work*

*These in turn determine:*

*• the claimant’s Labour Market regime*

*• whether an additional amount can be included in the Universal Credit award*

*• whether a Work Allowance applies*

*• if childcare costs are payable in couple claims"*

1. **Regulations 39 and 40 UC Regs provide that at the assessment, capability for work and work-related activity will be determined by reference to the descriptors and points system set out in Schedules 6 and 7 UC Regs:**

***“39.-****(3) A claimant has limited capability for work on the basis of an assessment under this Part if, by adding the points listed in column (3) of Schedule 6 against each descriptor listed in column (2) of that Schedule that applies in the claimant’s case, the claimant obtains a total score of at least—*

*(a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;*

*(b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or*

*(c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.*

*…*

***40.-*** *(2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, by reason of the claimant's physical or mental condition,—*

*(a) at least one of the descriptors set out in Schedule 7 applies to the claimant;*

*(b) the claimant's capability for work and work-related activity is limited; and*

*(c) the limitation is such that it is not reasonable to require that claimant to undertake such activity*.”

1. **In C’s case, D has decided that C does not have a LCW or LCWRA work-related because insufficient points have been scored under Schedule 6 UC Regs and none of the descriptors under Schedule 7 UC Regs apply. As a result:**
2. **C is subject to UC conditionality, including …, C is therefore at risk of having [her/his] UC sanctioned as [her/his] health condition makes it likely [s/he] will not be able to comply with [her/his] conditionality for the number of hours required each week. [How many hours? Edit if has been sanctioned]**
3. **C receives only the standard allowance of UC with no additional elements. [Edit if other elements received].**
4. **C receives only the lower work allowance, so more of her/his wages are taken into account in calculating [her/his] her/his UC award. [Edit if not in work].**

***Guidance:***

1. **D’s Advice for Decision Making Chapter G2, “Limited Capability for Work”**[[4]](#footnote-4)**, provides the following guidance to decision makers (“DMs”) for determining whether a claimant has satisfied the LCW assessment:**

*“G2114 The DM should decide which descriptor applies to each activity. Provided the determination is sufficiently supported by evidence, for each activity the DM can select the descriptor from the medical report, the evidence provided by the claimant (including the questionnaire), or a different descriptor.*

*G2115 The DM must record the final scores for each descriptor and the reasons for the determination. Guidance on burden of proof is in ADM Chapter A1 (Principles of decision making and evidence). “*

**Grounds for judicial review**

**Procedural unfairness:**

1. **D has decided that C does not meet the conditions set out in Regs. 39 or 40 UC Regs, as [s/he] has not obtained a total score of 15 points by adding the points listed against the relevant descriptors in Schedule 6 and has none of the descriptors listed in Schedule 7.**
2. **C was given standard information about the evidence that was used to reach this decision. The letter states that the capability for work questionnaire, the information provided by the Health Assessment Advisory Service, and any other information provided by C and/or [her/his] doctor were considered, but does not provide any detail of specific evidence considered in C’s case. The letter also lists the activities that were considered, which appears to be a list of all the activities that are included in the WCA,but does not provide the conclusions that were reached in respect of those activities.**
3. **While there is no stand-alone duty to give reasons for administrative decisions, reasons should have been provided in this instance to comply with the duty of fairness and to enable C to know whether all relevant information had been taken into account/that no irrelevant information was taken into account. See for example, pages 14 and 16 of *The Judge over your Shoulder* (6th edition 2022) which is specifically aimed at ‘improv[ing] the quality of administrative decision making’.**
4. **The need for a person to be provided with reasons for a decision in order to establish whether that decision should be appealed or judicially reviewed was considered in *R v SSHD ex parte Doody* [1993] UKHL 8, where Lord Mustill stated the following:**

***“I think it is important that there should be an effective means of detecting the kind of error which would entitle the court to intervene”*[19].**

1. **C’s challenge is not, at this point, to the decision that [s/he] does not have LCW which carries a right of appeal, but is to the necessarily preceding stage of failing to give reasons for that decision, which, of itself, is not appealable.**
2. **In this case, C is unable to determine whether there has been an error of law or fact that would allow [him/her] to appeal against the decision. Further, if C were to submit an appeal without knowing the reasons for the decision, [s/he] would not be able to make any meaningful submissions as [s/he] cannot demonstrate the basis on which the DM was wrong in reaching the conclusion that he did, when [s/he] has not been told how that conclusion was reached.**
3. **D’s failure to give reasons for the decision reached in C’s case has therefore frustrated C’s appeal rights under s. 12 SSA 1998, contrary to Article 6 ECHR, as C cannot meaningfully challenge the decision reached without knowing the evidence relied on and the conclusions that the DM reached from that evidence.**

**Alternative remedies**

1. **The decision that C does not meet the conditions of reg. 39 or 40 UC Regs and consequently does not have LCW or LCWRA is an appealable decision under s. 12 of the Social Security Act 1998 (“SSA 1998”). However, without knowing the reasons behind the DM’s decision, C cannot know whether the information on which the decision was based was correct and, therefore, whether the decision should be appealed.**
2. **In line with the guidance, as set out above, in UC cases, the DM should decide which descriptor applies to which activity, and the determination should be supported by evidence. Reaching a conclusion that is not adequately supported by the available evidence is an error of law. However, without knowing how the DM reached his decision, C cannot know whether this decision was adequately supported by the evidence available and, therefore, whether it is appealable or not.**

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

**SSWP is requested to:**

* **Provide reasons for the decision that C does not meet the requirements under reg. 39 or 40 of the UC Regs, and that [s/he] does not have LCW or LCWRA.**
* **Ensure that those making decisions concerning capability for work are properly trained on the importance of and legal requirement to make properly reasoned decisions supported by the evidence.**
* **Ensure that the practice of using standardised letters with generic reasons which say nothing about the individual’s own circumstances is immediately stopped.**
* **Provide compensation for the poor decision making which falls below the standard to be expected and leaves C with no knowing the basis on which [s/he] has been found not to have LCW or LCWRA.**

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

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

* **Signed form of authority for C.**
* **Decision letter from DWP.**
* **MR notice.**

**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**

**Email**

**Proposed reply date**

We expect a reply promptly and in any event no later than [**Date]** (14 days).

**If we have not 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)
3. [https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/166.\_WCA\_outcomes\_V15.0.pdf](file:///C:/Users/jstrode/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/UGDTBDTA/data.parliament.uk/DepositedPapers/Files/DEP2019-0465/WCA_outcomes_v10.0.pdf)  [↑](#footnote-ref-3)
4. assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/874561/admg2.pdf [↑](#footnote-ref-4)