**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 universal credit (“**UC**”) 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]

**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. **The failure of D to amend C’s UC Claimant Commitment in line with the legal framework set out below.**

**The issue- factual background**

1. **C has been in receipt of UC since DATE. SHE/HE was required to apply as REASON. C has MEDICAL CONDTIONS and has provided medical certificates for the duration of HER/HIS UC award. SHE/HE has been assessed under the Work Capability Assessment and was awarded NUMBER points. D has therefore accepted that C's health problems affect HER/HIM in the following ways: EXAMPLES**
	1. **GETTING ABOUT - IS UNABLE TO GET TO A SPECIFIED PLACE WITH WHICH THE CLAIMANT IS UNFAMILIAR WITHOUT BEING ACCOMPANIED BY ANOTHER PERSON (6 POINTS).**

**IN RELATION TO THIS AREA OF ACTIVITY, THE ASSESSOR REPORTED: “...”**

* 1. **COPING WITH SOCIAL ENGAGEMENT DUE TO MENTAL DISORDER - ENGAGEMENT IN SOCIAL CONTACT WITH SOMEONE UNFAMILIAR TO THE CLAIMANT IS NOT POSSIBLE FOR THE MAJORITY OF THE TIME DUE TO DIFFICULTY RELATING TO OTHERS OR SIGNIFICANT DISTRESS EXPERIENCED BY THE CLAIMANT (6 POINTS).**

**IN RELATION TO THIS AREA OF ACTIVITY, THE ASSESSOR REPORTED: "...".**

1. **ANY FURTHER BACKGROUND E.G. ONGOING APPEAL OF WCA POINTS INFO**
2. C has expressed interest in TYPE OF ROLES. SHE/HE has been told that E.G. SHE/HE NEEDS TO ATTEND A GROUP SESSION AT WHERE IN ORDER TO TAKE THAT FURTHER.
3. A message was posted to C’s online UC Journal on DATE asking for clarification of what adjustments were made in view of HER/HIS mental health difficulties (ANXIETY AND DEPRESSION). NO RESPONSE WAS RECEIVED FROM THE DEPARTMENT/ THE DEPARTMENT RESPONDED...
4. EDIT AS APPROPRIATE A message was posted to C’s online UC account on DATE asking D to amend C’s work search requirements and to make reasonable adjustments to the support offered to HER/HIM. 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**

**Universal Credit Regulations 2013**

1. Regulation 97 of the Universal Credit Regulations 2013 (“**UC Regs**”) sets out the limitations which must be applied to a claimant’s work search requirements where the claimant has a physical or mental impairment:

***97****.—(2) In the case of a claimant who is a relevant carer or a responsible carer or who has a physical or mental impairment, a work search and work availability requirement must be limited to the number of hours that is determined to be the claimant’s expected number of hours per week in accordance with regulation 88.*

*(6) Where a claimant has a physical or mental impairment that has a substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search or work availability requirement must not relate to work of such a nature or in such locations.*

1. Regulation 88 UC Regs sets out the reduction which can be made to the number of hours a claimant with physical or mental impairment must undertake work search each week:

***Expected hours***

***88****.-(1) The “expected number of hours per week” in relation to a claimant for the purposes of determining their individual threshold in regulation 90 or for the purposes of regulation 95 or 97 is 35 unless some lesser number of hours applies under paragraph (2).*

*(2) The lesser number of hours is–*

*(c) where the claimant has a physical or mental impairment,* ***the number of hours that the Secretary of State considers is reasonable in light of the impairment.***

(Emphasis added)

1. There is nothing to prevent the number of hours in this case being reduced to zero if this is ‘*reasonable in light of the impairment’*.

**D’s ‘Advice for Decision Making Staff Guidance’ (“ADM”)**

1. The limitations above are confirmed in D’s ADM guidance which also makes clear that a claimant with aphysical or mental impairment whose expected hours are limited ‘*does not have to show that they have reasonable prospects of finding work*’:

***Physical and mental impairments***

*J3167 A claimant who demonstrates that*

*1. they have a*

*1.1 physical* ***or***

*1. 2 mental impairment* ***and***

*2. their ability to carry out work*

*2. 1 of a particular nature* ***or***

*2. 2 in particular locations*

*is substantially adversely affected due to the impairment,* ***must not have a work search requirement or work availability requirement related to work of that nature or in those locations1.***

*1 UC Regs, reg 97(6)*

***J3060*** *The expected hours for a claimant who has a*

*1. physical* ***or***

*2. mental*

*impairment are the* ***lower number of hours that the Secretary of State considers is reasonable as a result of the impairment1. The claimant does not have to show that they have reasonable prospects of finding work****.*

*1.UC Regs, reg 88(2)(c)*

***Example***

*Carl has claimed UC. He suffers from rheumatoid arthritis which can cause him a degree of pain and discomfort but he does not have LCW. Carl’s adviser considers the evidence and decides that Carl cannot be expected to work for 35 hours a week but that it is not unreasonable for him to work for ten hours a week. Carl’s expected number of hours a week for the purposes of UC are therefore ten per week.*

***J3061 A claimant may have their hours of work limited in any way*** *provided the limitations are reasonable in the light of their physical or mental condition.*

***Expected hours of work***

***J3176*** *If a claimant has limited their expected hours of work on the grounds of*

*[..]*

*3. having a physical or mental impairment*

*Then their work search and work availability requirement must be limited to the same number of hours per week1 [...]*

 *1 UC Regs, reg 97(2)*

(Emphasis added)

**D’s Operational Guidance**

1. D’s operational guidance ‘Availability for work’ (V10)[[3]](#footnote-3) confirms a claimant’s availability for work “*will be limited to what is reasonable in light of the impairment*”.

***Availability for claimants with a health condition***

*If a claimant has a physical or mental impairment (including those with cognitive or learning difficulties) the requirement**will be limited to what is reasonable in light of the impairment.*

*As well as limiting the number of hours, the claimant may also limit the type and location of work they are available for. They will not have to show they have reasonable prospects of finding work, but the following factors must be considered when agreeing a limitation:*

* *the nature of the health condition or disability and how this may affect what it is reasonable to expect the claimant to do*
* *the likely duration of the health condition and the potential for this being long term*
* *if the claimant has an employer and that employer is providing occupational therapy or other provision to help the claimant get back to work*
1. D’s operational guidance ‘Expected hours’(V6)[[4]](#footnote-4) further emphasises that the expected hours maybe reduced where a claimant’s ability to undertake work related activity is affected by their heath condition.

***Tailoring expected hours***

*A claimant may not be able to meet the maximum expected hours of work-related activity, for example if they:*

*• have a health condition*

*• have caring responsibilities*

*• are working, and have earnings below the Administrative Earnings*

*Threshold*

*This list is not exhaustive.*

*The expected hours can be tailored to allow a claimant to do fewer hours of*

*work-related activity per week where appropriate.*

(Emphasis added)

**Grounds for Judicial Review**

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

1. **D is aware of C’s mental or physical impairment and of HIS/HER ADDITIONAL NEEDS which mean that C is not able to carry out 35 hours work search AND/OR IS LIMITED IN THE TYPE AND LOCATION OF WORK THEY CAN UNDERTAKE but has refused to amend C’s UC conditionality.**
2. The law and the D’s own guidance (set out above) are clear.
3. By failing to limit the nature and location of the jobs C is required to apply for **and** the number of hours C has to carry out work preparation, work search and be available for work, D is in breach of both regs. 88 and 97 UC Regs and its own guidance and is therefore acting unlawfully.
4. **As a result of D’s failure to apply the law and its own guidance 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 people with mental or physical impairments would be indirectly discriminatory, contrary to the Equality Act 2010, the Human Rights Act 1998 and the European Convention on Human Rights (Article 14 in association with Article 1, Protocol 1), as such people (people with mental or physical impairments) 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 it possible to limit a claimant’s work search and work availability requirements.
3. By failing to make adjustments, the imposition of the default conditionality on C 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 the DWP is expected to take**

* To accept that C is unable to travel to unfamiliar places and to engage with people SHE/HE does not know.  HER/HIS claimant commitment should be adjusted to reflect that SHE/HE is only required to look for work in areas SHE/HE is familiar with and therefore can travel to. The nature of work should be limited to ROLES WHICH DO NOT INVOLVE DEALING WITH UNFAMILIAR PEOPLE, SUCH AS PUBLIC FACING ROLES. Please amend HER/HIS work search requirements immediately to reflect these limitations. DETAIL DESIRED RESTRICTIONS

**D is further requested to**

* Compensate C for HER/HIS losses suffered as a result of the unlawful sanctions imposed and the stress and distress caused.
* 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 mental or physical impairments are not subject to unlawful conditionality.

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

**Please refer to the documents available through C’s UC online account (Journal, Claimant Commitment, WCA decision 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 AND EMAIL HERE

**Proposed reply date**

We expect a reply promptly and in any event no later than DATE (7 days).

We recognise that this is fewer than the 14 days recommended under the Pre-action Protocol. However, we consider such a shortened period is appropriate given the difficult financial circumstances of my client and the fact that D has had the opportunity to respond to this matter through the earlier post of DATE.

Should you consider that you need the full 14 days to respond, please inform me of the same with reasons by return, otherwise if we have not received a reply by DATE **the Claimant 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

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/DEP2023-0791/017._Availability_for_work_V10.0.pdf> [↑](#footnote-ref-3)
4. <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/58_Expected_hours_v5_0.pdf> [↑](#footnote-ref-4)