**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 HER/HIS Flexible Support Fund (“FSF”) application. 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 5pm on xx/xx/xxxx.**

**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. D’s refusal to make C a FSF payment for upfront childcare costs to allow C to take necessary training to take up a firm offer of employment.

***Background facts***

1. **C is [a lone parent, working part time for 16 hours per week. C has child/ren - details.]**
2. **C has been in receipt of Universal Credit (“UC”) since [date] [on the basis of his/her low income / while looking for work].**
3. **On DATE C secured an offer of employment as a [details] to start on [date] with a salary of [amount].**
4. **A condition of C’s job offer is that C undertakes training [details].**
5. **C has informed [her] work coach of this and it has been agreed [how? verbally, via her UC journal? details] that C can attend this training.**
6. **C requires childcare in order to undertake the training required to take up the job offer, the costs for which must be met up front. C has not yet started [her] new job, and has therefore not yet been paid. C does not have the money to meet the upfront childcare costs from her existing universal credit award (not yet increased to include a childcare costs element) and will be unable to take up the job offer if [she] cannot attend the training. C cannot attend the training without childcare in place.**
7. **On DATE, C applied for a FSF payment to pay the upfront childcare costs.**
8. **D responded:**

**[“quote – ‘eg. you are not eligible as you have not yet started work”]**

1. **[Impact on C]**

**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.

Flexible support fund: Relevant guidance and other background material

1. The FSF is, as described in D’s guidance ‘Flexible Support Fund’ (V17):

*“a locally managed budget to supplement existing services and tailor support to the needs of individuals in the local area… awards are discretionary, aimed at improving a claimant’s job prospects and are subject to eligibility.”*

1. Award types include “*training and education*”, “*barriers to work*” and “*travel expenses*” and D’s guidance provides circumstances in which an award “*must*” be made, including for *“childcare costs”*.
2. D’s guidance is also clear a FSF payment can be awarded for childcare to attend training and education or once the claimant has started work and is awaiting their first wage. It is not therefore necessary for C to have started work in order to be awarded a FSF payment:

*FSF for Childcare costs may be awarded for training and education* ***or*** *for the period between commencing work and the receipt of first wages (upfront childcare costs).*

(Emphasis added)

1. Absence of childcare prior to starting work is also in C’s case a barrier to C accepting a firm offer of employment, which is specifically provided for under “*Barriers to work*”:

*FSF should be considered to remove barriers that are:*

*• preventing claimants from moving closer to the job market*

*• hindering a claimant’s search for work*

*•* ***preventing a claimant from accepting a firm job offer*** *or moving into self employment*

(Emphasis added)

1. That this is the purpose of the FSF was confirmed by Minister for Welfare Delivery Mr Will Quince responding to a written question on Parliament on 24th September 2021[[3]](#footnote-3):

**"*Childcare costs should not be a barrier to getting into work – this Government is committed to helping parents into work****…* *The FSF received an additional £150m this financial year* ***to help support Universal Credit claimants to move*** *closer to,* ***or into work****.*”

(Emphasis added)

1. D’s guidance ‘Flexible Support Fund’ also states “*A full list of circumstances relevant to the award of FSF is available in the general DWP Flexible Support Fund guidance*” however this guidance does not appear to be publicly available. The document “O4 Payment of childcare costs” has however been made available in response to a Freedom of Information request by a Frank Zola[[4]](#footnote-4) and includes:

***When an award must be made***

*6. Financial assistance* ***must be awarded:***

*[…]*

***• where it has been agreed a parent can attend approved non-contracted provision, i.e. there is a formal agreement in place***

*• where it has been agreed a parent can participate in a Work Trial, work experience or sector-based work academy*

*[…]*

*7. … The formal agreement is between the work coach and the claimant and,* ***can be in writing or by another method for example, verbal.***

(Emphasis added)

1. C’s training has been agreed by [her] work coach [how] and the training C needs to attend is therefore “*approved non-contracted provision”.*
2. ‘O4 Payment of childcare costs’ also includes, which is of relevance to C whose training is on [date] [how many] days before [she] is contacted to start work for [how many] hours per week.

***When an award might be made***

*8. Financial assistance may be awarded when a parent is:*

*[…]*

*• in the seven days immediately before work (of at least eight hours per week) starts*

**Grounds for judicial review**

Failure to follow own guidance and/or failure to take into account material considerations

1. It is clear that C’s upfront childcare costs to enable [her] to undertake training fall within D’s guidance ‘O4 Payment of childcare costs’ as the training has been [how] agreed by [her] work coach. In these circumstances D’s guidance statesthat“[f]*inancial assistance* ***must*** *be awarded”.*
2. It is further clear from D’s guidance ‘Flexible Support Fund’ where it states “*FSF for Childcare costs may be awarded for training and education or* [before the first payment of wages]*”* that FSF payments can be awarded *before* a claimant starts work, and indeed the FSF is intended to so to do so where there is a barrier “*preventing a claimant from accepting a firm job offer”,* as in C’s case.
3. D’s refusal of a FSF payment because C has not yet started work, when C requires a FSF payment to enable her to accept a firm offer of employment, unlawfully fails to follow D’s guidance. It is unclear whether the guidance itself has not been taken into consideration or whether C’s full circumstances for needing a FSF payment have not been taken properly into consideration.
4. Further, FSF payments are discretionary. Restricting FSF payments to those who have already started work, fetters the discretion available to D to award FSF payments in line with the FSF’s purpose and in consideration of all relevant factors, including C ’s circumstances and that a payment would enable C to take up a firm offer of employment.

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

1. **The Secretary of State is requested:**
* **without further delay to award and pay C a FSF payment to pay for childcare to enable C to attend the agreed training.**
* **to ensure that those dealing with FSF payment requests are properly trained and fully aware of the Department’s guidance on the circumstances in which FSF payments will be made.**

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

**Please provide the version of “**DWP Flexible Support Fund guidance” **currently in use by DWP decision makers.**

**All other relevant documents/information are already in the possession of the Defendant and accessible from the Claimants 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 5pm on date. This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given:

(a) the clear unlawfulness of the decision making, and

(b) the subject matter of the dispute, namely the refusal to make a FSF payment to cover childcare costs which will enable C to attend training on [DATE] to take up a firm offer of employment within [how many] days. Allowing a full 14 days to respond would mean that C will not be able to attend the training and will therefore not be able to take up the employment.

**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.**

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

**If we not have received a reply by this time 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. <https://questions-statements.parliament.uk/written-questions/detail/2020-09-21/92739> [↑](#footnote-ref-3)
4. <https://www.whatdotheyknow.com/request/flexible_support_fund_guidance#incoming-1830778> [↑](#footnote-ref-4)