1. DWP confirmed in a letter dated 05/05/22 responding to pre action correspondence by CPAG that claimants awaiting a WCA “*should have their claimant commitment tailored to their individual needs including the frequency, length and method of interventions.”* Paragraph 5:

*…I can confirm that* ***claimants awaiting a work capability assessment should have their claimant commitment tailored to their individual needs*** *including the frequency, length and method of interventions. Where claimants consider that work-related requirements imposed on them are unreasonable, they should eit[her/his] request a second opinion on their claimant commitment or follow the complaints procedure.*

1. Going on at para 14 to state:

*The Jobcentre Core Offer Guidance advises that interventions should be face-to-face but it* ***allows for exceptions to be made*** *for claimants with health conditions, where easements under regulation 99 of the UC Regulations are allowed or in order to comply with obligations under the Equality Act 2010.*

(Emphasis added)

1. Our client has been informed that [s/he] must attend a ‘work review’ interview on [date].

**Purpose of ‘work review’ interview**

1. Our client’s claimant commitment currently includes no work-related requirements. [s/he] has seen unable to work due to sickness since [date] and has provided fit notes confirming [her/his] mental health conditions as [‘stress/anxiety’]. Our client’s previous diagnoses also include [Obsessive Compulsive Disorder and phobias].
2. We therefore understand this to be a ‘connected requirements’ interview under s.23 of the Welfare Reform Act 2012.

***Connected requirements***

 ***23****(1).- The Secretary of State may require a claimant to participate in an interview for any purpose relating to-*

*(a) the imposition of a work-related requirement on the claimant;*

*(b) verifying the claimant's compliance with a work-related requirement;*

*(c) assisting the claimant to comply with a work-related requirement.*

 *(2)The Secretary of State may specify how, when and where such an interview is to take place.*

1. Since our client’s claimant commitment does not currently include any work-related requirements, this interview cannot be to verify or assist with compliance under s.23(b) or (c), and must be related to the imposition of requirements under s.23(a).
2. Our client has been unfit for work for longer than 14 days. Under regulation 99(5)(c) of the Universal Credit Regulations 2013 work search requirements **must not** be imposed where the claimant has been unfit for work for longer than 14 days and the Secretary of State is satisfied it would be unreasonable:

***Circumstances in which requirements must not be imposed***

***99*** *(5) This paragraph applies where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement, including if such a requirement were limited in accordance with section 17(4)  of the Act, because —*

*(c) the claimant is unfit for work for longer than the period of 14 days specified in paragraph (4)(a) or for more than 2 such periods in any period of 12 months and, where requested by the Secretary of State, provides the evidence mentioned in paragraph (4)(b)(ii)*

**Request**

1. Please confirm that the purpose of the ’work review’ meeting on [date] is for the Secretary of State to decide whether he is satisfied that it would be unreasonable to require the claimant to impose requirements? In particular, given that our client has now been sent a UC50 to complete, and we understand a referral has been made for a Work Capability Assessment.

**Duty to make reasonable adjustments**

1. DWP have been notified of our client’s mental health condition via [her/his] fit notes, and have recorded from the start of [her/his] award that “X has a health condition that restricts their ability to work or look for work”.
2. In these circumstances, DWP guidance suggests that interviews for the purpose set out above, should be carried out by telephone. In particular, the [ADM example under J3228](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054126/admj3.pdf):

***Example 1***

*Chester has claimed UC. When he made his claim for UC, he indicated that he considers himself too ill for work on the grounds of depression. He has now medical evidence in the form of a self certificate and a note from his doctor to support this. Chester’s doctor has provided a note to say that Chester should refrain from work for eight weeks. The DM has decided that Chester should undergo the WCA. For the first 14 days of certified sickness, no requirement to be able and willing immediately to take up paid work and no work search requirement can be imposed.* ***Whilst Chester is waiting for his WCA, from the 15th day of sickness, the DM decides that it is unreasonable to require Chester to comply with a work availability and work search requirement. However, the DM decides that Chester must take part in a work focused interview by telephone to assess the level of support and frequency of interventions he will need.***

1. This is appropriate since under s.19 of the Equality Act 2010 (EA 2010) it is indirectly discriminatory to claimants with protected characteristics, which include mental health disability, to apply a criterion or practice to all claimants, which places claimants with that protected characteristic at a disadvantage where that criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim.

***Indirect discrimination***

***19.-*** *(1)A person (A) discriminates against anot[her/his] (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-*

*A applies, or would apply, it to persons with whom B does not share the characteristic,*

*it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*it puts, or would put, B at that disadvantage, and*

*A cannot show it to be a proportionate means of achieving a legitimate aim.*

*(3)The relevant protected characteristics are-*

*…*

*disability;*

1. Under s.20 EA 2010 the DWP has a duty to make reasonable adjustments in the way contact is made to avoid disadvantage to claimants with disabilities, such as C:

***Duty to make adjustments***

***20****.- (2)The duty comprises the following three requirements.*

*(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

1. Under s. 21 EA 2010, failure to comply with the s.20 duty to make adjustments constitutes discrimination:

***Failure to comply with duty***

***21.-****(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

*(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

1. Under s. 29 EA 2010 the duty to make reasonable adjustments applies to service providers and persons exercising public functions:

***29.-****(7) A duty to make reasonable adjustments applies to-*

*a service-provider (and see also section 55(7));*

*a person who exercises a public function that is not the provision of a service to the public or a section of the public.*

1. Requiring our client to attend a face-to-face interview when:
* DWP have been notified of [her/his] mental health condition and of the impact on [her/his] mental health of such a requirement,
* it is readily open to DWP to arrange such an interview by telephone,
* DWP’s own ADM guidance confirms a telephone interview is appropriate, and
* our client has been sent a UC50 and referred for a Work Capability in recognition of [her/his] conditions,

fails to make reasonable adjustments to avoid substantial disadvantage under s.20 EA and as such constitutes disability discrimation under s.21 EA.

**Request**

1. Please confirm the reasonable adjustment will be made to carry out our client’s ‘work review’ by telephone, in accordance with DWP guidance.

**Response**

1. Our client’s interview is on [date]. The prospect of being required to attend in person is causing out client acute distress and anxiety due to [her/his] mental health conditions, and [s/he] has contacted [her/his] GP for support.
2. We would therefore ask for a response by 5pm on [date].