**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

**This letters assumes:**

X = claimant who is fit for work (and may be in work) but is a carer for more than 35 hours per week for both:

Y = claimant who is disabled partner of X in receipt of PIP daily living component or AA with significant care needs, and

Z = child of X, also with disabilities

X has not accepted her/his claimant commitment and UC has been stopped.

**Changes are needed if there is no child or child is not disabled**

Read and edit while letter carefully, delete comments and return all text to sentence case and black before sending.

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 and full name]**

##### We are instructed by X and Y **in relation to their 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 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. X and Y challenge the following action of D:

(i) the imposition on DATE on X of a claimant commitment/conditionality requirement(s) which was/were unlawful;

(ii) the resultant decision of DATE that X and Y are not entitled to UC on the basis that X has not accepted the unlawful claimant commitment/conditionality requirements.

**Background facts**

1. **HOUSEHOLD DETAILS INC DOBS, DISABILITY, BENEFITS**
2. **DETAILS OF CARING RESPONSIBILITIES – PERSON RECEIVING DISABILITY BENEFIT AND CHILDREN**
3. **Contacts with DWP, how notified, how DWP responded**
4. **X’s claimant commitment requires HIM/HER to EXAMPLE NORMALLY LOOK FOR WORK FOR 35 HOURS PER WEEK WITHIN 90 MINUTES TRAVEL FROM HIS/HER HOME – SEE THE ATTACHED COPY OF THE CLAIMANT COMMITMENT.**
5. **DELETE IF NOT RELEVANT Neither** X nor Y’s **claimant commitment appears to be available through their online journal now that it has been decided that they have no entitlement to UC. X is able to provide a printed copy of HER/HIS claimant commitment having been provided with it by HIS/HER work coach to take home to read before agreeing it, but this does not appear to be available on the journal. This raises additional concerns about how claimants can be expected to make informed challenges to the requirements in their claimant commitments once a decision has been made refusing their claim.**

**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 issues and grounds for judicial review**

***Failure to apply the law: Expected number of hours and work search and work availability limitations***

1. Work related requirements are summarised in the D’s guidance ‘Advice for Decision-Makers’ (“**ADM**”):

***J3003*** *The work-related requirements are1 the*

*1. work-focused interview requirement (see J3030 et seq)*

*2. work preparation requirement (see J3040 et seq)*

*3. work search requirement (see J3050 et seq)*

*4. work availability requirement (see J3110 et seq).*

*1 WR Act 12, s 13(2)*

1. **X was asked to agree to a claimant commitment with HIS/HER expected hours set at 35 hours i.e. HIS/HER claimant commitment stipulates that the work HE/SHE can do is ‘full-time’ and that HE/SHE will normally spend 35 hours per week looking and preparing for work.**
2. **Regulation 88(1) of the Universal Credit Regulations 2013 (“UC Regs”) states that the expected number of hours per week in relation to a claim for the purposes of regulation 95 or 97 (work search and work availability requirement –limitations) is 35 unless a lesser number of hours applies under paragraph (2). Paragraph (2)(a) states:**

***88.- (2) The lesser number of hours is—***

 ***(a) where—***

***(i) the claimant is a relevant carer, a responsible carer or a responsible foster parent, and***

***(ii) the Secretary of State is satisfied that the claimant has reasonable prospects of obtaining paid work,***

***the number of hours that the Secretary of State considers is compatible with those caring responsibilities;***

**(Emphasis added)**

1. **X falls within the definition of a ‘relevant carer’ set out in reg.85 of the UC Regs, i.e. she is “*a person who has caring responsibilities for a person who has a physical or mental impairment*”. A “*person who has a physical or mental impairment*” is not defined so should be given its ordinary, everyday meaning.**
2. **Furthermore, X falls within the definition of ‘*responsible carer*’ as defined by s.19(6)(b) of the Welfare Reform Act 2012 (“WRA”):**

***(b) a person who is a member of a couple where—***

***(i) the person or the other member of the couple is responsible for the child, and***

***(ii) the person has been nominated by the couple jointly as responsible for the child.***

1. **X is both a ‘*relevant carer*’ and a ‘*responsible carer*’ for the purposes of Reg 88(2)(a)(i) UC Regs.**
2. **As previously set out, X has to spend a significant amount of time each day caring for Y. He requires her help with DETAILS getting up out of bed, preparing food, washing and drying himself, and dressing and undressing. Further, X has to …**
3. **The expected number of hours set by Reg 88 is, in turn, relevant to Reg 97 limitations on work related activity requirements.**
4. **Under Reg 97, a claimant who is a relevant carer or responsible carer, as X is, *must* have their work search and work availability requirements limited to their expected number of hours:**

 **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***

**(Emphasis added)**

1. **Under regulation 88 a carer’s expected hours are** the number of hours that the Secretary of State considers are compatible with their caring responsibilities.
2. **Under D’s guidance, Advice for Decision Making (“ADM”) the Secretary of State considers the number of hours compatible with caring regular and substantial caring responsibilities is zero, since the ADM specifies that no** work-related requirements may be imposed*:*

***Claimants of a prescribed description***

***J2051******The Secretary of State may not impose a work-related requirement on claimants1 who***

*[…]*

*2.* ***have regular and substantial caring responsibilities for a severely disabled person****3*

*[…] 5. have caring responsibilities for one or more severely disabled persons for at least 35 hours a week but are not entitled to CA and it would be unreasonable for the claimant to comply with a*

*5.1 work search requirement even a limited requirement and*

* 1. *work availability requirement even a limited requirement6*
1. Reiterated at J2053:

***Severely disabled***

***J2053*** *Where the claimant has*

***1****. regular* ***and***

***2.*** *substantial caring responsibilities for a severely disabled person then* ***work-related requirements cannot be imposed on them1 .***

*1 WR Act 12, s 19(2)(b)*

***J2054 Regular and substantial caring responsibilities for a severely disabled person in J2053 means1 that the carer***

***1. satisfies the conditions of entitlement for CA or***

***2. would satisfy the conditions of entitlement for CA if their earnings did not exceed the prescribed limit for CA.***

***This definition applies regardless of whether or not that the carer has made a claim for CA2. This definition does not apply to a person who derives earned income from those caring responsibilities3.***

1. **UC Regs, reg 30(1); 2 reg 30(2); 3 reg 30(3)**
2. **X meets these condition because:**
* **[X receives Carers Allowance or]**
* **X cares for Y for 35 hours per week**
* **Y receives [PIP daily living component / Attendance Allowance]**
* **[X would be entitled for Carers Allowance but for weekly earnings which exceed the Carers Allowance threshold]**
1. **The ADM clearly directs staff not to impose** work-related requirements on claimants who are carers with regular and substantial caring responsibilities for a severely disabled person. **The fact that this guidance was not followed suggests that there is a training need among JCP staff.**
2. **ADM paragraph J3059 further states that:**

***Where a claimant is the responsible carer of a child aged 13 or over then J3058* [where a claimant is a responsible carer for a child aged under the age of 13] *does not apply. The claimant’s work search and work availability requirements can however be limited to fit in with those caring responsibilities. The DM should take into account any mental or physical impairments of the child (see J3055). The claimant has to show reasonable prospects of obtaining work notwithstanding those limitations.***

1. **The guidance directs staff to ensure that requirements are compatible with childcare responsibilities. The fact that this guidance was not followed (as X is required to look for full time work) suggests that there is a training need among JCP staff.**
2. **In setting X’s claimant commitments, D failed to follow D’s clear and unambiguous ADM guidance and as a result unlawfully required X to accept claimant commitments which D accepts via D’s guidance a claimant in X’s position would be unable to comply with.**
3. **Having imposed an unlawful claimant commitment on X, D has irrationally proceeded to unlawfully refuse X and Y entitlement to UC due to X’s refusal to agree to something that D knew X could not comply with, given X’s extensive caring commitments.**

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

**D is requested to:**

* **To remove all** work-related requirements from C’s claimant commitment in accordance with D’s own guidance.
* **Provide X and Y with the correctly revised claimant commitments as soon as possible so that UC can be put into payment directly after these are agreed.**
* **Ensure proper training of DWP work coaches on regulations 15, 88 and 97 UC Regs.**
* **Amend the build of the UC journal so that the claimant commitment remains available even after a decision that a claimant is not entitled to UC.**

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

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

* **EVIDENCE OF X’s SELF/EMPLOYMENT**
* **MEDICAL EVIDENCE FOR Y, PIP award**
* **Copy of claimant commitment for X**
* **Signed form of authority for X and Y**

**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. We recognise that this is 7 days rather than the usual 14 days. However, given that X and Y have no UC in payment and therefore are without sufficient income to support themselves and their children we believe that in this case it is appropriate to shorten the time period.

**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 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)