**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 the failure of the DWP to accept HER/HIS universal credit (“**UC**”) claim when required to do so by law. 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.**

**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. C is challenging the unlawful refusal of the Defendant to accept HER/HIS UC claim when made in the month prior to HIS/HER release from prison contrary to reg. 32 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

***Background facts***

1. C CIRCUMSTANCES, HOUSEHOLD, DISABILITY, OTHER BENEFITS
2. C IS A VULNERABLE INDIVIDUAL. HE/SHE SUFFERS FROM …
3. C was previously in prison. LENGTH OF TIME IN PRISON. He/she was due to be released on DATE and was released on DATE.
4. Prior to HIS/HER release C had no income or savings and was concerned about how he/she would support HER/HIMSELF once released.
5. On DATE C WHAT DID HE/SHE DO, WHO DID HE/SHE SPEAK TO tried to claim UC and was advised WHAT by WHO (E.G. it was not possible to do so until HE/SHE had been released from prison BECAUSE.
6. C WAS NOT ADVISED HE/SHE COULD MAKE A CLAIM BE TELEPHONE/ WAS INFORMED HE/SHE COULD NOT MAKE A CLAIM BY TELEPHONE.
7. DETAIL ANY UNSUCCESSFUL ATTEMPTS TO CLAIM UC
8. On DATE C successfully submitted a claim for UC on DATE BY TELEPHONE / ONLINE with the support of WHO, and was awarded UC from DATE, HOW MANY DAYS/WEEKS AFTER HIS/HER RELEASE FROM PRISON.
9. Between DATE and DATE C had no income / was living on income of only AMOUNT – detail hardship and if used food banks etc.

**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***

***Regulations***

1. Regulation 32 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (“**UC etc (C & P) Regs**”) allows UC claims to be made up to one month in advance where the case falls within a class for which Secretary of State accepts advance claims and the claimant will meet all of the conditions for UC within the period of one month:

### *Advance claim for and award of universal credit32.- (1) This regulation applies where—*

*(a) although a person does not satisfy the conditions of entitlement to universal credit on the date on which a claim is made, the Secretary of State is of the opinion that unless there is a change of circumstances that person will satisfy those conditions for a period beginning on a day not more than one month after the date on which the claim is made; and*

*(b) the case falls within a class for which Secretary of State accepts advance claims or is a case where Secretary of State is otherwise willing to do so.*

*(2) The Secretary of State is to treat the claim as if made on the first day of that period.*

*(3) The Secretary of State may award universal credit accordingly, subject to the requirement that the person satisfies the conditions for entitlement on the first day of that period.*

### Regulation 8(2) of the UC etc (C & P) Regs provides that UC claims are ‘digital by default’ but where is not possible to make a digital claim, a new claim to UC can be made by telephone:

### *Making a claim for universal credit*

***8.****—(1) Except as provided in paragraph (2), a claim for universal credit must be made by means of an electronic communication in accordance with the provisions set out in Schedule 2 and completed in accordance with any instructions given by the Secretary of State for that purpose.*

*(2)****A claim for universal credit may be made by telephone call to the telephone number specified by the Secretary of State if the claim falls within a class of case for which the Secretary of State accepts telephone claims or where, in any other case, the Secretary of State is willing to do so.***

(Emphasis added)

***Guidance***

1. Guidance on the “class(es) of case for which the Secretary of State accepts telephone claims” is provided in the Defendant’s operational guidance “Non-digital relationships” (V2):

***Reasons for not using the digital service***

*There are a number of reasons why a claimant may not be able to make and maintain their claim online including:*

*• Physical or mental ill health or disability*

*• visual impairments*

*• lack of basic literacy*

*• lack of skills and training*

*• legal limitations such as MAPPA - Multi-agency Public Protection Arrangements or TPIM - Terrorism Prevention Investigation Measures*

***The claims by phone process is in place to enable non-digital claimants to make and maintain their claim****, and to ensure they receive the right support while claiming Universal Credit.[[3]](#footnote-3)*

(Emphasis added)

1. The Defendant’s Advice for Decision Making (“**ADM**”) guidance confirms that prisoners are a “class for which Secretary of State accepts advance claims” and can be understood in conjunction with Reg 32(1)(a) to apply to prisoners in the month prior to their release from prison:

***Advance claims to UC – Prisoners and Care Leavers****A2048 8 [See Memo ADM 10/20][[4]](#footnote-4)* ***Advance claims to UC may be made if a claimant does not satisfy the conditions of entitlement on the date on which a claim is made but will satisfy them for a future period.*** *The DM must be of the opinion that unless there is a change of circumstances the claimant will satisfy the conditions of entitlement on this future date. The future period must begin on a day not more than a month after the date on which the claim is made.* ***The DM treats the claim as made for a period beginning with the date from which entitlement will begin1****. Advance claims can only be made if the person falls within a class of case for which the Secretary of State is willing to accept them.* ***This class of case is restricted to certain prisoners*** *and care leavers where the claim is made one month before the claimant’s 18th birthday.*

 *1 UC, PIP, JSA & ESA (C&P) Regs, reg 32*

*A2049* ***If A2048 applies then UC can be awarded*** *subject to the condition that the person satisfies the requirements for entitlement on the first day of the period1.*

*1 UC, PIP, JSA & ESA (C&P) Regs, reg 32(3)*

(Emphasis added)

1. The Defendant’s operational guidance ‘Prisoners’ (V11)[[5]](#footnote-5) however states contradictorily that prison leavers are prevented from exercising their right to make an advance claim under reg. 32 UC etc (C & P) Regs and ADM A2048 due to prison restrictions on internet and computer use, without making any reference to the ability to make telephone claims where a claimant cannot make a claim online:

***Prisoners: New claims for prison leavers***

*As Universal Credit Full Service is a digital benefit* ***prison leavers can’t currently make a claim in advance.*** *This is* ***due to restrictions on accessing and use of computers in prisons.***

*A short term solution has been designed to ensure that prison leavers have a claim from day one of their release.*

(Emphasis added)

1. This “short term solution” involves advising prison leavers on what they need to do once they have left prison and facilitating their Jobcentre appointments:

*Prison work coaches will support prison leavers to make a claim on release by:*

*• giving advice on what evidence is required to make a claim, for example; verifiable identity, bank account and email address*

*• ensuring that prison leavers are aware that they must complete an online claim as soon as possible on release and before the date of the initial appointment*

*• booking an initial appointment at the relevant Jobcentre within 7 days of release*

*In most cases, the prison work coach books the initial appointment but if not, the prison leaver must arrange this in the usual way* ***when they make an online claim on release.***

1. The Defendant’s guidance: ‘Supporting prison leavers: a guide to Universal Credit’[[6]](#footnote-6) also states claims should be made once a prisoner has left prison, but goes on to highlight the availability of a telephone claim, albeit after release:

***On release, the prison leaver should make their claim online as soon as possible*** *as the Universal Credit claim starts from the date that the claim is submitted. If the prison leaver does not have access to a computer they can use a smartphone.*

*[…]*

***If they’re unable to use the online service, a Universal Credit helpline agent can complete the online form over the phone for them****. The information entered and its accuracy is the prison leaver’s responsibility.*

(Emphasis added)

**Grounds for judicial review**

**Ground 1: Failure to apply the law and own guidance**

1. The law and guidance under reg 32 UC etc (C & P) Regs and ADM A2048 (set out above), are clear and unambiguous. A prison leaver within one month of their release from prison is in a class of person able to make an advance claim to UC.
2. The decision maker must “*treat[s] the claim as made for a period beginning with the date from which entitlement will begin*” i.e. the Claimant’s release from prison.
3. The reasons for this are entirely understandable: many of those leaving prison are unlikely to have any means of supporting themselves on release and so will need immediate access to financial support yet given the practical and emotional difficulties associated with release from prison, making a claim for universal credit may not immediately be possible upon release. Being able to make an advance claim while still in prison avoids prisoners on release finding themselves without financial resources at a critical juncture in their lives.
4. The refusal to allow the Claimant to make a claim in the month before HIS/HER release from prison, either online or by telephone, with the result that the Claimant has lost out of UC for NUMBER weeks, is in breach of reg 32 UC etc. (C & P) Regs and therefore unlawful.

**Ground 2: Unlawful guidance**

1. The Defendant’s guidance ‘Prisoners’ and ‘Supporting prison leavers: a guide to Universal Credit’ (set out above) completely fail to reflect the legislative power in Reg 32 UCetc (C & P) Regs, and to the extent that it is followed and a prisoner within one month of their release is prevented from making a UC claim either online or by telephone, results in an unlawful failure to act.
2. Further, the Defendant’s guidance ‘Prisoners’ and ‘Supporting prison leavers: a guide to Universal Credit’ wholly contradicts the guidance at ADM A2048. It is misleading, and where followed in preference to the other guidance, has the wholly unjustifiable effect of frustrating a vulnerable class of UC claimants from making and submitting UC claims when about to be released from prison to order to prepare for their release, and is therefore unlawful.

**Ground 3: Irrationality**

1. Prison leavers are accepted as a “class for which Secretary of State accepts advance claims” (ADM A2048) and provision is made for claimants who are digitally excluded to make claims for UC by telephone (under reg 8(2) UC etc(C & P) Regs and as detailed in the Defendant’s guidance ‘Non digital relationships’).
2. However, prisoners are specifically frustrated from making advance claims due to prison internet and computer restrictions where the Defendant’s guidance ‘Prisoners’ and ‘Supporting prison leavers: a guide to Universal Credit’ is followed.
3. It is wholly irrational and/or frustrates the very legislative purpose of reg 32 to designate prisoners as a class from whom advance claims are accepted and not to but not to also accept them as a class for “which the Secretary of State accepts telephone claims” as provided for under reg. 8(2) UC etc (C & P) Regs).
4. The Defendant’s guidance ‘Non-digital relationships’ specifically anticipates the situation where “legal limitations” prevent claimants from making a digital claim to UC as one in which a ‘non digital’ claim will be appropriate. It would be irrational if this is not understood to include the situation described multiple times elsewhere in the Defendant’s guidance where prisoners are prevented from making a claim due to “restrictions on accessing and use of computers in prisons”.
5. Further, if prison leavers within one month of release are not accepted as a class from whom telephone claims are accepted, it is irrational and/or an unlawful use of the Defendant’s discretion not to permit telephone claims under the general provision “any other case...where the SSWP is willing to do so”.
6. It is further irrational apparently to highlight provision for prison leavers to make telephone claims once they have been released (‘Supporting prison leavers: a guide to Universal Credit’) but not to facilitate this prior to release to ensure a prison leaver has an income from day one of their release during contact with their ‘prison work coach’, when such facility clearly exists.

**Ground 4: Discrimination**

1. The “short term solution” offered by operational guidance ‘Prisoners’ provides that on the point of release, a prison leaver, who may have been in prison for some time, with no guarantee of:

 - ready access to the means to verify their identity

 - computer skills or internet access,

- the possession of ability to set up a bank account

and who may be returning to chaotic lifestyle and have no other source of income or savings, is left necessarily with no income until they have negotiated what is a complex system at a time they are also trying to reintegrate into society.

1. Specific provision has been made to treat prison leavers differently from other claimants in recognition of the particular difficulties that they may encounter both practically in making a claim and more substantively as a result of any gap that would arise between them leaving prison and a UC claim being made. The absence of such provision to enable them to make advance claims immediately ahead of their release would potentially constitute *Thlimmenos* discrimination (failure to treat differently those who are in different situations)[[7]](#footnote-7).
2. Having made specific provision to avoid discriminating against this group, the failure to correctly apply that provision necessarily results in this group being discriminated against. Given the explicit recognition of the need to treat this group differently, there would appear to be no justification for the failure to apply the legislative provision correctly thus preventing all (even supervised) UC activity by prisoners ahead of their release.
3. Such failure amounts to discrimination under Article 14 ECHR in conjunction with Article 1, Protocol 1.

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

The Defendant is requested to:

* Award C a backdated payment of UC from the DATE (the Claimant’s release from prison) to the start of their current UC award.
* Amend its guidance to make clear that prisoners who are due to be released within one month must be assisted by their prison work coach to make an advance claim to UC either online or by telephone, and that new claims should be accepted from prison leavers in these circumstances with their award to start (unless the Claimant has any relevant change of circumstance) as soon as they become entitled on their release.
* Accept that C has been unlawfully discriminated against and agree to pay HER/HIM HRA damages in respect of the same.

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

* **Claimant’s signed authority**
* **All other documents available through C’s Universal Credit online account (Journal and Claimant Commitment).**

**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 HERE

**Proposed reply date**

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

**Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

ADVISOR SIGNATURE

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. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/109._Non_digital_relationships_v2.0.pdf> [↑](#footnote-ref-3)
4. The relevance of Memo ADM 10/20 is not clear, this Memo relates to “the Universal Credit (Coronavirus) (Self-employed Claimants and Reclaims) (Amendment) Regulations 2020” [↑](#footnote-ref-4)
5. <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/114_Prisoners_v11_0.pdf> [↑](#footnote-ref-5)
6. [https://www.gov.uk/government/publications/universal-credit-and-prison-leavers/supporting-prison-leavers-a-guide-to-universal-credit#making-the-universal-credit-claim](https://www.gov.uk/government/publications/universal-credit-and-prison-leavers/universal-credit-guide-for-prison-leavers-who-have-a-work-coach)  [↑](#footnote-ref-6)
7. Thlimmenos v Greece: ECHR 6 Apr 2000 [↑](#footnote-ref-7)