**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 HIS/HER 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 5pm on the date at the end of this letter.**

**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 the Defendant to make a Habitual Residence Test (HRT) decision and decide C’s claim for Universal Credit (UC) within a reasonable time.

***Background facts***

1. Family / household
2. Disability
3. Immigration – how does C meet the HRT? Full details
4. Housing
5. Contacts with DWP inc dates and what has been said
6. Anything else? What has happened so far
7. Effect on claimant. What is C living on?
8. C made an application online for UC on 25th of February 2019. **Why? What led to this application?**
9. C attended an interview to establish whether he is ‘in Great Britain’ for the purposes of UC (HRT).
10. To date, C has not received a decision on whether he is ‘in Great Britain’ for the purposes of UC. It has been NUMBER weeks since submitting his UC claim).
11. As a result of non payment of UC…
12. Pending this decision C is ….
13. C meets the conditions of entitlement for UC, he is working age, not in education and is in Great Britain.

**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.

**Grounds for Judicial Review**

**Ground 1: Unlawful delay in deciding a claim**

1. The Defendant is under a duty to consider all claims for benefit within a “reasonable time” – *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).
2. The duty to make a decision within a reasonable time applies to s.8 of the Social Security Act 1998 (SSA 1998) under which the Secretary of State shall “decide any claim for a relevant benefit”.
3. What counts as a reasonable time depends on all the circumstances, including the impact on the claimant and the complexity of the case[[3]](#footnote-3).

*Impact on the claimant*

1. The delay in making a habitual residence decision is causing C serious and immediate hardship. The delay relates to a decision on UC entitlement. UC is a subsistence benefit which includes amounts for housing.
2. Delays in UC decisions can therefore have severe consequences for the claimant, and has in this case left C with no income to fall back on, without money for food or heating, unable to pay his rent, evicted, unable to secure alternative accommodation while he has no income, and consequently homeless and destitute. C’s is living on handouts from friend and family and ‘sofa surfing’. WHAT ARE THE CONSEQUENCES FOR C? EDIT AS APPROPRIATE
3. C claimed UC on DATE and has not received a decision, he/she has had not income for a period of NUMBER weeks.
4. Non payment of UC and the frustration of his/her appeal rights by failing to provide a decision which C can challenge is causing C considerable stress and anxiety which is having an impact on his mental health. DELETE AS APPROPRIATE

*Non-complex case/all information available*

1. C’s claim to UC is straightforward. WHAT IS C’S R2R? All supporting evidence/information has been supplied to confirm that he/she meets the habitual residence test. (If C was on legacy benefits then this can be referred to as well).
2. DELETE IF NOT RELEVANT The fact that C has EU settled status makes it clear that he satisfies the HRT and so there is no justification for the continuing delay.
3. **C has provided what evidence? The DWP appear not to have taken this into account.**
4. This is not a particularly complex case and the DWP has given no reason for the continued delay. C has provided clear and compelling evidence to the effect that C is eligible for UC. It should be easy for the Secretary of State to decide his/her claim for benefit.

*Reasonable time*

1. Given the impact on C together with the straightforward nature of his/her HRT, the delay of X weeks in making a decision on habitual residence and consequently on UC entitlement is unreasonable.

**Ground 2: Unlawful discrimination**

1. The Human Rights Act 1998 incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law.
2. Article 14 ECHR provides:

“*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.”

1. Welfare benefits, including universal credit, are a recognised form of property for the purposes of Article 1, **Protocol 1**[[4]](#footnote-4)**.**
2. The Defendant’s delay in deciding C’s UC claim is a result of the Defendant’s delay in confirming that C meets the HRT. Delays in reaching HRT decisions are likely to disproportionately affect non-UK nationals, their partners, children and dependants as they are the ones subject to the HRT, while UK nationals are very unlikely to experience any (significant) delay for this reason. While the operation of a HRT itself is justified, unreasonable delay in completing the same is not. It is for the Defendant to justify such differential impact but we are not aware of any justification for the same. Accordingly, the unreasonable delay in deciding C’s claim amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1.

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

* The Secretary of State should award C UC immediately and from DATE in consideration of the delay already suffered.
* Award C, a vulnerable person, HRA damages for the significant financial loss as well as suffering and distress caused by the DWP’s breach of her right not to be discriminated against.

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

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

* **Correspondence with the DWP**
* **ANYTHING ELSE?**
* **Signed form of authority.**

**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 AND ADDRESS AND EMAIL**

**Proposed reply date**

We expect a reply promptly and in any event no later than **DATE**. **Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

ADVISER 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. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-3)
4. S**ee for example *Stec & Ors v UK*** [2005] ECHR 924, (2005) 41 EHRR SE 295, (2005) 41 EHRR SE 18 [↑](#footnote-ref-4)