**Only use this letter if your client:**

- Has been granted refugee status

- Is awaiting determination or first payment of UC

- Is in financial need, and

- has not been offered an advanced payment.

Please send your letter for review to jrproject@cpag.org.uk before sending to DWP.

**DELETE BOX BEFORE POSTING**

**This letter challenges:**

The SSWP’s failure to issue a payment on account of benefit pending a person with refugee status’s first UC payment despite their awareness of the claimant’s current destitution.

Please read the whole letter carefully and change / edit all text in red and/or [square brackets]. Delete any comments and return all text to black before posting.

**DELETE BOX BEFORE POSTING**

**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 [NAME] **in relation to [HER/HIS] 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 by 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-2) 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-3) **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 challenges the failure of SSWP to offer, ensure awareness of, or make a payment on account of benefit pending first payment of C’s award of UC despite awareness of the C’s destitution.

**Background facts [edit whole section]**

1. **C is a refugee and arrived in the UK from [….] on [date].**
2. **[children, partner, disability.etc].**
3. **[does the claimant have any language issues? Does the claimant have a mobile phone/ internet access/ IT skills?]**
4. **While waiting for [her/his] asylum claim to be decided, C had no independent source of income, no independent accommodation and was not permitted to work. The Home Office accepted C [and C’s family was/were] destitute and C was awarded subsistence support of [how much] each week** under section 95 of the Immigration and Asylum Act 1999 (s.95 Support) and provided with accommodation.
5. **C** received [her/his] s.95 Support by way of a debit card (an ‘Aspen card’) which [she/he] used to buy what essentials [he/she] could and was accommodated [where].
6. [did the claimant have a bank account? Why not? Problems opening one?] [the claimant] could not open and did not need a bank account while receiving s. 95 Support.
7. **C was granted refugee status on [date] and received a biometric residence card on [date].**
8. **C’s s. 95 Support continued for 28 days following notification of [her/his] grant of refugee status and [ended/will end] on [date]. C [is/was] required to leave [her/his] accommodation on [date].**
9. Between [date] and [date C is/was] expected to find and [secure accommodation, open a bank account, access the internet, find employment or make a claim/s for Child Benefit, Personal Independence Payments, other benefits? Anything else? And] UC.
10. C does not speak English / has limited spoken English and cannot read English [edit as appropriate] and is digitally excluded, with no access to a computer or the internet and [no/limited] experience of or skills in making a claim to the UK social security system, online, or at all and [any other disadvantage re making a claim? Edit as appropriate].
11. C was prevented from making a claim by [her/his] language, access, and digital skills barriers and [any other disadvantage re making a claim] until [date].
12. C claimed UC on [date].
13. C’s claim was accepted and [her/his] first payment of uc [was made / is due] on [date 5 (or more????)] weeks after [he/she] first claimed UC. C [was /has] not been told how much this [would / will] be.
14. Between [date] when C claimed UC and now, C has been surviving on an income of only £[amount] each week and is experiencing financial hardship. £[amount] is an amount below subsistence level, designed only to prevent destitution. [or delete as appropriate]. C’s s. 95 Support ended on [date]; between [date] and when C’s UC [was paid /is due] C [was / has been and is] destitute. C has had no income of any kind [and has been unable to secure accommodation. how has the claimant been surviving? where has the claimant been living?]
15. [Effect on mental / physical health. Any other details of hardship].

**Note on D’s duty of candour**

1. As SSWP 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 for inspection, as part of the response to this letter.

**Grounds for Judicial Review**

**Ground 1: Failure to follow SSWP’s operational guidance and the law**

***Operational Guidance***

1. SSWP’s operational guidance “Refugees and Asylum Seekers”(V13)[[3]](#footnote-4) specifically provides the following:

*“A refugee may have complex needs that require individual tailored support for making or maintaining a benefit claim, Assisted digital and Help to Claim must always be considered. …*

***A refugee must be offered an advance payment when making a new claim”.***

(Emphasis added)

***Relevant Legislation***

1. **The guidance above builds on the provisions in** Reg. 5 of the Social Security (Payments on Account of Benefit) Regulations 2013 (“**SS (PAB) Regs**”) under which a payment on account of benefit maybe made:

### *Payment on account of benefit where there is no award of benefit*

***5.****—(1) The Secretary of State may make a payment on account of benefit to A if—*

*(a) either of paragraphs (2) or (3) applies;*

*(b) it appears to the Secretary of State likely that the* ***conditions of entitlement for benefit are satisfied*** *(or will be satisfied during the period in respect of which the payment is to be made); and*

*(c) the Secretary of State is satisfied that A is* ***in financial need****.*

*(2) This paragraph applies where A* ***has made a claim for benefit but the claim has not yet been determined****.*

*[…]*

*(Emphasis added)*

1. **C meets the conditions contained in r**eg. 5 SS (PAB) Regs as follows.

***The conditions of entitlement for benefit are satisfied***

1. **C has leave to remain as a refugee as shown on [her/his] Biometric Residence Permit card. As such C is not a person** subject to immigration control under s. 115 of the Immigration and Asylum Act 1999 and is eligible to claim UC.
2. C [met/meets] the **basic conditions of entitlement for UC contained in s.4 of the Welfare Reform Act 2012:**

##### *4. Basic conditions*

*(1) For the purposes of section 3, a person meets the basic conditions who—*

*(a) is at least 18 years old,*

*(b) has not reached the qualifying age for state pension credit,*

*(c) is in Great Britain,*

*(d) is not receiving education*

*,…*

1. **C** [**is/was] exempt from the habitual residence test as [she/he] is a refugee and is therefore ‘in Great Britain’ under reg.** 9(4) of the Universal Credit Regulations 2013**:**

***9.****—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

 *(4) A person falls within this paragraph if the person is—*

*…*

*(d) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;*

1. C is aged [number], therefore over 18 and under the qualifying age for state pension credit. C is in Great Britain and not receiving education. c [is/was] both eligible to claim UC and [meets/met] the basic conditions of entitlement.

***The Claimant is in financial need***

1. **Financial need is defined as by reg. 7 SS (PAB) Regs to include “*a serious risk of damage to the health or safety of A or any member of their family*”.**
2. While waiting for [her/his] asylum claim to be determined, C was accepted as a “*person for whom support may be provided*” under s. 95 of the Immigration and Asylum Act 1999 (s. 95 Support).
3. D [was/is] aware that the C [is/was] receiving s. 95 Support when [she/he] made [her/his] claim to UC, was not in employment and had no other source of income.
4. Asylum seekers are entitled to support if they meet the ‘destitution test’. ‘Destitution’ must be understood to present “*a serious risk of damage*” to the claimant’s “*health or safety*”. A person is destitute or likely to be destitute within 14 days[[4]](#footnote-5) under s. 95(3)of the Immigration and Asylum Act 1999 where:

***95****.-(3).- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*

*(b) he has adequate accommodation or the means of obtaining it, but* ***cannot meet his other essential living needs.***

(Emphasis added)

1. Section 95 Support stops after 28 days once refugee status is granted[[5]](#footnote-6).
2. Eligibility for UC started on the day refugee status was granted.
3. UC is ‘usually’ paid 5 weeks after a claim is made[[6]](#footnote-7) as it can only be paid after the end of the first monthly UC assessment period. If C had been able to make a claim to UC on the day [her/his] status was granted, there would necessarily have been a period of at least 7 days where C had no income at all.
4. In reality, due to C’s [lack of access to the internet and computer skills, language difficulties, unfamiliarity with the UK benefits system, pressures of looking for accommodation at short notice, homelessness, mental health problems…] C was unable to make an effective claim to UC until [date], [number] days after [she/he] was granted refugee status, with only [number] days of s. 95 Support remaining, s. 95 Support was the only thing standing between C and destitution.
5. C [and [her/his] family] [is/are/was/were] therefore by definition ‘destitute’, without money to meet their “essential living needs” (including food, [nappies, accommodation], or fuel), posing a “**serious risk of damage to the health or safety” of this vulnerable [individual/family] and** more than meeting the test for ‘financial need’ contained in Regs. 5(c) and 7 SS (PAB) Regs.
6. Further C informed D of [his/her] financial need [detail what was said and when, copy of journal entry? how did DWP respond?]

***The Claimant has made a claim for benefit but the claim has not yet been determined***

1. C made a claim for UC on [date]. [Her/His] claim was accepted, and [she/he] is within [her/his] first ‘assessment period’ awaiting determination of [her/his] claim [**or]** C challenges D’s failure to offer a payment on account during [her/his] first ‘assessment period’ while [she/he] was awaiting determination of [her/his] claim and [has/had] therefore made a claim for benefit but the claim [has/had] not yet been determined.

***The claimant [is/was] entitleme[NT/D] to a “payment on account of benefit”.***

1. C is a refugee, [he/she] [meets/met] the conditions of entitlement to UC, [was/is] in clear and pressing financial need, and [was/is] merely waiting for [her/his] claim to be determined and paid. C [was/is] therefore unequivocally entitled to a ‘**payment on account of benefit’ and D’s failure to offer one was unequivocally in breach of D’s own operational guidance.**

**Ground 2: Unlawful discrimination**

1. **Article 14 of the European Convention on Human Rights 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 are a recognised form of property for the purposes of Article 1, Protocol 1 ECHR.**
2. **D’s failure to follow D’s own guidance and offer a payment on account of benefit disproportionately affects refugees and asylum seekers, their partners, children and dependants compared to UK nationals who make a claim to UC, as they are unlikely to be familiar with the UK benefits system, are therefore significantly less likely to be aware that a ‘payment on account of benefit’ is available in order to ask for one, and the consequences of this disadvantage are likely to be significantly more severe than for other UC claimants as the State has already accepted that claimants in C’s position are ‘destitute’ and what meagre support the State was paying to alleviate this, will necessarily have ended by the time of their first UC payment.**
3. **It is for D to justify such failure and resulting differential impact but we are not aware of any justification for the same. Accordingly, SSWP’s failure to offer a ‘payment on account of benefit’ amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with A1/P1, as incorporated into UK law by the Human Rights Act 1998.**

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

**The Defendant is requested:**

* **Without further delay to provide the claimant with a payment on account of benefit;**
* **to amend D’s ‘Advice for Decision Making’** to include guidance to DWP staff that is compliant with its operational guidance that a ‘**new claim advance’ must be offered to new claimants immediately financial hardship is identified;**
* **to deliver staff training or otherwise ensure all jobcentre staff are aware of the obligation to offer a new claim advance immediately financial hardship is identified, and**
* to accept that it has unlawfully discriminated against C and to pay [her/him] HRA damages.

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

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

* **Confirmation of grant of refugee status [DATED]**
* **NASS35 [dated]**
* **Notification of claim for UC dated [dated]**
* **Biometric residence permit**
* **Form of authority**

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 here].**

**Proposed reply date**

We expect a reply promptly and in any event no later than [date]. this is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the discriminatory impact of the Defendant’s failure to offer ‘a payment on account’; that (b) the Defendant has already been made aware of the Claimant’s destitution via [her/his] online UC journal and had opportunity to remedy this, and (c) the Defendant’s clear failure to follow its own guidance.

**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.**

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-2)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-3)
3. V13 provided in response to an FOI request whatdotheyknow.com/request/updated\_uc\_guidance\_on\_refugees/response/2480153/attach/5/Refugees%20and%20Asylum%20Seekers%20V13.0.pdf[https://cpagorguk.sharepoint.com/sites/LondonWelfareRightsandLegal/Shared Documents/General/Projects/UT and JR projects/JR project/FINAL LETTER TEMPLATES/data.parliament.uk/DepositedPapers/Files/DEP2021-0349/121\_Refugees\_and\_Asylum\_Seekers\_v11.pdf](https://cpagorguk.sharepoint.com/sites/LondonWelfareRightsandLegal/Shared%20Documents/General/Projects/UT%20and%20JR%20projects/JR%20project/FINAL%20LETTER%20TEMPLATES/data.parliament.uk/DepositedPapers/Files/DEP2021-0349/121_Refugees_and_Asylum_Seekers_v11.pdf) [↑](#footnote-ref-4)
4. Reg. 7a Asylum Support Regulations 2000 No. 704 [↑](#footnote-ref-5)
5. s. 94(3) Immigration and Asylum Act 1999, Reg 2 and 2A Asylum Support Regulations 2000 (as inserted by s.3 Asylum Support (Amendment) Regulations 2002) [↑](#footnote-ref-6)
6. www.gov.uk/universal-credit/how-youre-paid [↑](#footnote-ref-7)