**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 Secretary of State 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 D to accept her/his UC claim when made in the month prior to his/her 18th birthday contrary to reg. 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**”).

***Background facts***

1. C’s CIRCUMSTANCES, HOUSEHOLD, DISABILITY, OTHER BENEFITS
2. C is a vulnerable individual. S/he suffers from …
3. On DATE C made a new claim for UC BECAUSE …

*It’s important in this section that the gap between leaving care and claiming UC is explained and/or why it was attempted to make an advance claim, the claim was not accepted, but advance claim preparation was carried out (or that it was not) and yet there was then still a gap between leaving care and claiming UC and the reasons for this.*

**Defendant’s position**

1. D’s previous response to the matters set out below in relation to a different claimant, are contained in a letter to Northumbria Healthcare NHSFoundation Trust dated 13th May 2019 (reference 20181851).
2. That response confirms the relevant legal background is as set out in the Legal Background section below, and goes on to state:

*The SSWP is currently unable to accept advance claims within the automated Universal Credit system and so does not accept these. However, advance claim preparation, which permits the completion of various administrative steps in advance of the date of claim, is available for certain classes of case where the SSWP aims to facilitate prompt claims on the first day of potential entitlement.*

And

*Regulation 32 provides a power to accept advance claims. There is no obligation upon the SSWP to do so. Any allegation that the current arrangements for care leavers are ultra vires is not therefore accepted. The remaining ground of challenge therefore appears to be that the guidance is irrational.*

1. We do not accept D’s position. The legislative “*power*” is not disputed by D. Failure to provide a system able to “*accept advance claims*” in any case prevents that power being exercised at all, contrary to the clear legislative intent in enacting such a power, and necessarily fetters the discretion made available to D by reg 32 and is consequently unlawful.
2. Further providing for “*advance claim preparation which permits the completion of various administrative steps in advance of the date of claim”* is not the same as providing for the making of an “advance claim” and the arguments below still stand.

*Para’s 8 and 9 are only to be included where it is apparent that advance claim preparation hasn’t been put in place sufficiently early, otherwise it is not relevant to the particular claim and the DWP will not provide details of the safeguards unless they are directly relevant:*

1. D also states:

*Having investigated the circumstances of this case, it appears that the proposed claimant was not identified as a care leaver intending to claim Universal Credit at a sufficiently early stage to be offered the advance claim preparation that should have been available and could have avoided the delay in his reclaim.* ***We are currently investigating any additional safeguards that could be built into the Department’s processes to prevent this recurring****.*

1. Please confirm what safeguards are being investigated as it is apparent from my client’s situation that the problems are recurring.

**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, or SSWP’s position is no longer as described 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***

1. Reg 32 of the 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.*

(Emphasis added)

1. D’s guidance ‘Advice for Decision Making’ (“**ADM**”) confirms that care leavers are a “*class for which Secretary of State accepts advance claims”*.

***Advance claims to UC – Prisoners and Care Leavers***

*A2048* ***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 begin****1. 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 leaverswhere 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. D’s ‘operational guidance’ further confirms this in its guidance ‘New Claims’ (V15) [[3]](#footnote-3):

***Advance claims
It is possible to claim Universal Credit in advance where the claimant is leaving care and the claim is made one month before that claimant’s 18th birthday****. See Care leavers for more information.*

(Emphasis added)

1. However D’s operational guidance: ‘Care Leavers’ (V16) contradictorily provides only for ‘advanced claim preparation’:

***Advanced claim preparation for a care leaver****Care leavers can prepare their claim to Universal Credit up to 28 days before and including their 18th birthday. This helps ensure support is in place as soon as possible.*

***Although the claim details must not be submitted until the claimant’s 18th birthday*** *they can be viewed and checked in advance of submission - to help get the claim ready.*

*The service automatically deletes any information after 28 days. All relevant information must be submitted within 28 days of the claimant starting to enter information on the service providing it is on or after their 18th birthday.*

*Local Authority Leaving Care Teams can assist young people to make their claim using the service.*

*The care leaver can make a pre-claim appointment, to confirm:*

*• identity*

*• bank account details*

*• they are a care leaver …*

(Emphasis added)

**Grounds for judicial review**

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

1. The law and guidance under reg 32 UC etc. (C & P) Regs and ADM A2048 and DWP operational guidance ‘New claims’ (set out above), are completely clear and unambiguous.
2. A care leaver aged 17 and within one month of their 18th birthday is in a class of people able to make an advance claim to UC.
3. 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 18th birthday.
4. Failure to accept the Claimant’s claim in the month before his/her 18th birthday, with the result that the Claimant has lost out of UC for NUMBER weeks, is unlawful.

**Ground 2: Unlawful guidance**

1. D’s guidance ‘Care Leavers’ (set out above) completely fails to reflect the legislative power in reg 32 UC etc (C & P) Regs, to the extent that it is followed and a care leaver within one month of their 18th birthday is prevented from actually submitting a UC claim as a result of it, is unlawful.
2. Further, D’s guidance ‘Care Leavers’ wholly contradicts the guidance at ADM A2048 and operational guidance ‘New Claims’. It is misleading, and where followed in preference to the other guidance, has the wholly unjustifiable effect of frustrating this vulnerable class of UC claimants from submittingUC claims while under the age of 18 with ready access to support, and is therefore is unlawful.

**Ground 3: Discrimination**

1. Specific provision has been made to treat care leavers differently from other young 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 care and a UC claim being made. The absence of such provision to enable them to make advance claims immediately ahead of their 18th birthday and their leaving care would potentially constitute *Thlimmenos* discrimination (failure to treat differently those who are in different situations)[[4]](#footnote-4).
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 is clearly no justification for the failure to apply the provision correctly and to limit any UC activity by them ahead of their 18th birthday to ‘preparation’ of a UC claim.
3. Such failure amounts to discrimination under Article 14 ECHR in conjunction with Article 1, Protocol 1 and/or Article 8.

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

1. D is requested to:
* Award C a backdated payment of UC from the DATE (C’s 18th birthday) to the start of their current UC award.
* Amend its operational guidance ‘Care leavers’ to make clear that new claims should be accepted from care leavers within one month of their 18th birthday with their award to start (unless the claimant has any relevant change of circumstance) as soon as they become entitled on their 18th birthday.
* 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 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 (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

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/DEP2020-0646/100._New_claims_v15.0.pdf> [↑](#footnote-ref-3)
4. Thlimmenos v Greece: ECHR 6 Apr 2000 [↑](#footnote-ref-4)