**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

As well as sending this letter, seek a mandatory reconsideration of the decision not to apply the grace period – which is an appealable decision (rather than the decision to apply the cap – which this letter challenges).

DELETE BOX BEFORE POSTING

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

Is a lone parent now and has been for the last 12 months,

Is no longer employed and was previously employed for a period of 12 months,

applied for Universal Credit as a result of no longer working,

consistently worked 16 or more hours per week when working and was paid the national minimum wage with monthly earnings.

DELETE BOX BEFORE POSTING

**This letter challenges** the DWP’s decision to immediately apply the benefit cap to the claimant’s Universal Credit award and not to apply the 9 month grace period from the cap

Read and edit whole letter carefully, in particular change any text in [square brackets]

If you have any questions when using this letter please contact jrproject@cpag.org.uk

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] universal credit (“**UC**”) award and SSWP’s refusal to apply a ‘grace period’ to [her/his] claim, resulting in [her/his] award being incorrectly subject to the benefit cap. We write in accordance with the Pre-action Protocol for Judicial Review. We are requesting your response no later than the date shown 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. **Our client, C, challenges SSWP’s failure to apply a 9-month ‘grace period’ to C’s UC award and, as a result of this, incorrectly applying the benefit cap and failing to pay C’s full UC entitlement for C, [her/his] [number] children and housing costs from the start of [her/his] award, which commenced on [date].**

***Background facts***

1. **C (D.O.B. : [date]) is a [lone parent to [her/his] [number] children.]**
2. **Prior to [date], C worked for the same employer for over 12 months. Throughout this period, C worked [number] (16 or more) hours per week and was consistently paid more than the national minimum/living wage. [C was paid monthly/weekly and earned [amount] per week/month, equivalent to £[amount] per calendar month.]**
3. **C left [her/his] job on [date] when [reason for leaving job].**
4. **C first claimed UC on [date], when [reason for claiming UC e.g., without [her/his] wages s/he did not have income to meet even basic expenditure for [herself/himself] and [her/his] children).**
5. **C contacted SSWP via [her/his] UC journal on [date] to ask for confirmation that the benefit cap would not be applied due to [her/his] entitlement to a ‘grace period’.**
6. **[Details, including dates of contacts with DWP and what has been said*.]***
7. **On [date], the statement/decision for C’s first assessment period [date to date] appeared on C’s online UC account. The statement showed C’s maximum UC entitlement for [her/him,] [her/his] children and [her/his] housing costs as £[amount] but the benefit cap was applied and an adjustment of £[amount] was made, leaving [her/him] with a first payment of £[amount].**
8. **C requested a mandatory reconsideration of the decision to apply the benefit cap [explain how. e.g., via [her/his] online UC journal on [date]]. A mandatory reconsideration decision notice was uploaded to C’s journal on [date] upholding SSWP’s decision to apply the cap.**
9. **[Consequence of benefit cap for C – what financial difficulties, stress, impact on housing etc? Discretionary housing payment applied for? Details]**

**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.

***The benefit cap and grace period***

1. **The benefit cap, when applied, operates to limit the total amount of benefit paid to a claimant in respect of the relevant reference period (s. 96 Welfare Reform Act 2012 (“WRA 2012”)).**
2. **Para 8A of Schedule 2, Social Security Act 1998 (as amended)provides that‘***A decision to apply the benefit cap in accordance with regulations under section 96 of the Welfare Reform Act 2012’*is a decision against which no appeal lies (s. 97, WRA 2012.).
3. **The benefit cap applies where a single person’s or couple’s benefit entitlement during the assessment period exceeds the relevant amount. For a lone parent claiming UC outside Greater London, such as C, the relevant amount is £1,666.67 (s. 96 (5A) WRA 2012 and regs. 79 and 80A, Universal Credit Regs 2013) (the “UC Regs”).**
4. **Regulation 82(1) of the UC Regs sets out the earnings exceptions to the benefit cap:**

*“****82****.—(1) The benefit cap does not apply to an award of universal credit in relation to an assessment period where—*

*a) the claimant's earned income or, if the claimant is a member of a couple, the couple's combined earned income, is equal to or exceeds the amount of earnings that a person would be paid at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations for 16 hours per week, converted to a monthly amount by multiplying by 52 and dividing by 12; or*

*(b) the assessment period falls within a grace period or is an assessment period in which a grace period begins or ends.”*

1. **Regulation 82(2) (as amended by the Universal Credit (Miscellaneous Amendments) Regulations 2020) sets out the period which a grace period covers as follows:**

***“82.— (2) A grace period is a period of 9 consecutive months that begins on the most recent of the following days in respect of which the condition in paragraph (3) is met—***

*(a) a day falling within the current period of entitlement to universal credit which is the first day of an assessment period in which the claimant's earned income (or, if the claimant is a member of a couple, the couple's combined earned income) is [less than—]*

*(i)………………….*

*(ii) …the amount calculated in accordance with paragraph (1)(a);*

***(b) a day falling before the current period of entitlement to universal credit which is the day after a day on which the claimant has ceased paid work.***

***(3) The condition is that, in each of the 12 months immediately preceding that day, the claimant's earned income or, if the claimant was a member of a couple, the couple's combined earned income was equal to or exceeded—***

*(a)…………………………*

***(b)…the amount calculated in accordance with paragraph (1)(a).*** (Emphasis added)

1. Application of the 9-month grace period from the first day after the last day of employment (or, for claimants already in receipt of UC, the first day earnings fall below the in-work exemption threshold) is confirmed in SSWP’s operational guidance “Benefit Cap” (V22)[[3]](#footnote-3):

*“****Grace period***

*…*

***For those who were working and not claiming Universal Credit, the grace period starts the day after the last date of employment.***

*…”*

(Emphasis added)

**Grounds for judicial review**

**Failure to follow the law and taking irrelevant considerations into account**

1. **C qualifies for a grace period by virtue of the operation of regulations 82(2)(b) and 82(3) of the UC Regs. (Reg 82(2)(a) is not relevant for C’s purposes as it is accepted that [s/he] does not meet condition 82(3) in relation to any days within [her/his] current entitlement period).**
2. The relevant day the purposes of reg 82(2) is [date]for C, being the day after [s/he] ceased paid work, in accordance with reg 82(2)(b) and D’s own guidance “Benefit Cap”. [her/his] 9-month grace period, provided that [s/he] meets the conditions in reg 82(3), therefore commenced on that day.
3. C meets the condition set out in reg 82(3) for the 12 months prior to [date]. C’s earned income met the threshold in reg 82(3) as, [s/he] was employed for the duration of this 12-month period, [s/he] consistently worked 16 or more hours per week and [s/he] was consistently paid the national minimum wage with monthly earnings of £[amount] for [month] [year] to [month] [year], as previously confirmed via C’s UC journal on [dates].
4. **The decision to apply the benefit cap to C’s UC award was not, therefore, made in accordance with the applicable law. C is properly entitled to benefit from a grace period of 9-months running until [**date]**.**
5. **Regulation 82(1)(b) explains that the cap should not be applied in any assessment period where:**

***“82****(1)(b) the assessment period falls within a grace period or is an assessment period in which a grace period begins or ends.”*

1. **As C’s assessment period for UC runs from the [dayth]to the [dayth]of each calendar month, the cap should not be applied to [her/his] award until the assessment period starting [date] (being the first day of the assessment period following the assessment period in which [her/his] grace period ends).**

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

**SSWP is requested to:**

* **Recalculate C’s UC entitlement from the start of [her/his] award and revise the earlier decision to apply the benefit cap to C’s UC award /not grant C a grace period of 9 months.**
* **Pay the outstanding amount due to C for the UC assessment period [day]–[day] as a result of the revision within 28 days of this letter.**
* **Ensure that decision makers receive sufficient training as to when the grace period can apply and that guidance contains examples which cover both reg. 82(2)(a) and (b) scenarios.**
* **Provide a written apology and compensation to C for the unnecessary stress, anxiety and hardship that has been caused by not just one, but two decision makers completely failing to understand the operation of the grace period and the application of reg. 82(2)(b).**

**The address for reply and service of court documents**

[advice agency name

Address

Email]

**Advice service name and address, email**

**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 unlawfulness of the decision and that the issue has already been brought to D’s attention via a posting on the UC journal and (b) the C/family [DETAILS] are experiencing significant financial hardship and are unable to meet what costs.

**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

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. https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/017.\_Benefit\_Cap\_V22.0.pdf [↑](#footnote-ref-3)