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

* Has complex needs
* Was called to a claimant commitment meeting and did not attend
* Was not invited to give reasons for non-attendance
* Their UC claim was “closed” within 7 days of their failure to attend
* A mandatory reconsideration has been requested – request an MR if you have not already done so

**This letter can be adapted** if your client does not have complex needs.

Delete box before posting

**This letter challenges:**

The refusal of C’s claim for UC due to failure to attend a claimant commitment meeting.

Pleaseverify then include **all relevant dates** in your letter.

**Read whole letter** carefully and edit all text in red and/or [square brackets]. **Delete all comments**, return text to black (and not bold), and put on headed paper.

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

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 **[full name]** in **relation to [her/his] Universal Credit (“UC”) claim. 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 [DATE] (7 days).**

**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 challenges D’s failure to provide C the opportunity to explain why [she/he] could not accept [her/his] UC claimant commitment resulting in [her/his] claim being refused (referred to by D as “*closed”*)on [DATE].**

***Background facts***

1. **C is… [relationship status, housing situation, family / dependants/ other income inc benefit income].**
2. **C has… [immigration status].**
3. **C made an online claim for UC on [DATE]. C was supported to do so by [organisation].**
4. **On [DATE] C’s Habitual Residence and entitlement to UC were confirmed.**
5. C struggles to manage [her/his] UC claim online due to [reasons]. [C has provided fit notes to D confirming [her/his] mental health and has informed D of [her/his] housing situation on multiple occasions. ]
6. On [**date]** C was notified via [her/his] online UC journal of a commitments meeting on [**date]** further to [her/his] UC claim made on [**date]**. C was unable to attend this meeting and it was re-booked by D for [**date]**. C was unable to attend because [reason] and the meeting was rescheduled for [**date]** at [2.30pm]. C was unable to attend at [2.30pm] because [reason], at [2.55pm] D ‘closed’ C’s UC claim and cancelled C’s ‘to-do’ item ‘[prepare for your commitments meeting’. Before ‘C’s claim was ‘closed’ C received no contact from D to find out why [she/he] had missed the appointment and was not given time to contact D to explain why [she/he] had not attended at the time arranged (since [her/his] claim was closed [25 minutes] after the appointment time).](https://www.universal-credit.service.gov.uk/journal/details/313cd9aa-732a-46aa-9ebc-1d6182cb9d37)
7. C, [a vulnerable homeless [woman/man] with complex needs], which have been notified to D, has received no UC further to [her/his] claim and [has been left destitute with no money to meet [her/his] living costs for more than [number months/weeks].

**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***

***Condition of entitlement***

1. Accepting a claimant commitment is a basic condition of entitlement to UC under the Welfare Reform Act 2012 (“**WRA**”):

***Entitlement***

***3****.-(1) A single claimant is entitled to universal credit if the claimant meets—*

 *(a) the basic conditions, …*

***Basic conditions***

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

*…*

*(e) has accepted a claimant commitment.*

***Accepting a commitment***

1. Section 4(7) WRA provides for regulations to specify when a claimant commitment is to be treated as accepted or not.

***4****.-(7) For the basic condition in subsection (1)(e) regulations may specify circumstances in which a person is to be treated as having accepted or not accepted a claimant commitment.*

1. Section 14 WRA explains what a claimant commitment is, ie, a record of a claimant’s responsibilities which should be “*prepared by”* the Secretary of State (in practice prepared by the work-coach) which can be reviewed and updated as the work-coach thinks fit.
2. Section 14(4) contains brief requirements as to the contents of the commitment – broadly such requirements as the work-coach thinks fit and anything else considered appropriate.[[3]](#footnote-3)
3. Section 14(5) provides that a claimant commitment is only ‘*accepted*’ if the claimant “*accepts the most up-to-date version”* and provides for regulations to prescribe the method of acceptance.

***Claimant commitment***

***14.-*** *(1) A claimant commitment is a record of a claimant's responsibilities in relation to an award of universal credit.*

*(2) A claimant commitment is to be prepared by the Secretary of State and may be reviewed and updated as the Secretary of State thinks fit.*

*(3) A claimant commitment is to be in such form as the Secretary of State thinks fit.*

*(4) A claimant commitment is to include—*

*(a) a record of the requirements that the claimant must comply with under this Part (or such of them as the Secretary of State considers it appropriate to include),*

*(b) any prescribed information, and*

*(c) any other information the Secretary of State considers it appropriate to include.*

*(5) For the purposes of this Part a claimant accepts a claimant commitment if, and only if, the claimant accepts the most up-to-date version of it in such manner as may be prescribed.*

1. The Universal Credit Regulations 2013 (“**UC Regs**”) are made under the WRA and prescribe the manner in which the claimant commitment must be accepted:

#### *Claimant commitment – date and method of acceptance*

***15.****—(4) A person must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—*

*(a) electronically;*

*(b) by telephone; or*

*(c) in writing.*

1. Regulation 15(4) UC Regs requires the claimant to accept the commitment either electronically, over the phone or in writing – D can specify which one of these methods is to be used. D’s guidance ‘Advice for Decision Makers’ (“**ADM**”) confirms:

***J1007*** *The methods by which a claimant commitment can be accepted by a person is set out in regulations as*

*1. electronically* ***or***

*2. by telephone* ***or***

*3. in writing.1*

***The Secretary of State then specifies which of these methods are to be used*** *by a person to accept their claimant commitment*

*1 UC Regs, reg 15(4)*

(Emphasis added)

1. In practice, the method specified is via a “To Do” action placed on a claimant’s UC electronic journal where the claimant must click a button indicating acceptance of their commitment.

***Date of acceptance***

1. When a claim for UC is first made there will be no claimant commitment in existence and so the conditions of entitlement are not met. However, reg.15(1) and (2) UC Regs allow a claimant to be treated as having accepted a commitment from when they have first claimed, provided that they go on to accept the commitment within a specified period. This allows for a claimant to attend a commitment meeting with their work coach at which a “*tailored*” commitment can be drawn up.

***15.****—(1) For the basic condition in section 4(1)(e) of the Act, a person who has accepted a claimant commitment* ***within such period after making a claim as the Secretary of State specifies******is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.***

 *(2) In a case where an award may be made without a claim, a person who accepts a claimant commitment within such period as the Secretary of State specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first assessment period in relation to the award in accordance with regulation 21(3) or (3A).*

(Emphasis added)

1. D’S operational guidance ‘Claimant commitment not accepted’ (V5)[[4]](#footnote-4) specifies a standard period to be “*within 7 days*” either of the date of the commitments meeting or, if the commitment is “*auto generated*” within 7 days of that:

*For auto-generated Claimant Commitments, the claimant is reminded to accept these within 7 days of receiving the prompt. For tailored Claimant Commitments, the claimant is required to accept them within 7 days of their Commitments meeting.*

1. Note, in C’s case, C’s entitlement to UC was confirmed on [DATE] and C was not asked to attend a meeting or accept a claimant commitment until [DATE] when [she/he] was called to a meeting on [DATE], [three and a half] months after [her/his] entitlement was confirmed. This meeting was rescheduled to [DATE], the date on which C’s claim was then ‘closed’ by D.
2. Further, D’s operational guidance also makes clear repeatedly that where a claimant has “complex needs”[[5]](#footnote-5) the claim should not be “closed” (ie, refused):

*If the commitments are not accepted within this time* ***and the claimant does not have complex needs****, their claim must be closed the day after.* [...]

*If this is not booked* ***and the claimant does not have complex needs****, the claim is closed following the same process for failing to book their Initial Evidence Meeting.*

1. Where a claimant has complex needs, operational guidance to DWP staff can be understood to mean either that the specified period time must be extended or that D regards someone as coming within reg. 16(b) UC Regs (see further below).
2. C previously ‘failed to attend’ a Commitments meeting in [month]. [Her/his] claim at that time was not ‘closed’, suggesting D recognised C’s complex needs in [month] and in compliance with D’s own guidance, did not ‘close’ C’s claim following [her/his] non-attendance. C’s needs have not changed since [month], they continue to be complex. D has offered no explanation as to why C’s complex needs are no longer to be taken into account.

***Exceptions***

1. Regulation 16 of the UC Regs provides for two situations in which the requirement to have accepted a claimant commitment is dis-applied. Reg.16 is a use of the s.4(7) power to treat someone as having accepted a commitment when they have not done so:

***Claimant commitment – exceptions***

***16*** *.-(1) A person does not have to meet the basic condition to have accepted a claimant commitment if the Secretary of State considers that—*

*(a) the person cannot accept a claimant commitment because they lack the capacity to do so; or*

*(b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.*

*(2) A person does not have to meet the basic condition to have accepted a claimant commitment if the person is terminally ill.*

***Grounds for judicial review***

*Unlawful ‘closure’ of C’s UC claim*

1. For a claimant to have failed to accept a commitment, then there must be a commitment which has been prepared by the work-coach (s.14(2) WRA).
2. C’s UC claim has been refused (“closed”) because C did not attend [her/his] commitments meeting on [DATE]. D (C’s work-coach) has not therefore prepared C’s commitment and C has not been asked to accept it. Section 4(1)(e) WRA does not apply; C has not failed to meet a basic condition of entitlement as C has not been asked to accept a claimant commitment and the decision to ‘close’ C’s claim is unlawful. C is not aware of D having presented [her/him] with a claimant commitment and being asked to accept it. Accordingly, it simply cannot be said that C has failed to accept a claimant commitment. If D disagrees with that analysis on a factual basis, D should provide C with a copy of the alleged claimant commitment and also explain when and where it was presented to [her/him] for [her/him] to agree. There is no power to end an award of UC simply on the basis of failure to attend an interview.
3. In the alternative, if it was established that a claimant commitment did exist, C did not fail to accept it. Under D’s guidance ‘Claimant commitment not accepted’ a standard period for a claimant to accept a claimant commitment is “*within 7 days*” either of the date of the commitments meeting or, if the commitment is “*auto generated*” within 7 days of that. D ‘closed’ C’s UC claim on [DATE]; ie, on the same day C “failed to attend” [her/his] commitments meeting, thereby depriving c of the 7 days specified in order to accept [her/his] claimant commitment and the decision to ‘close’ is unlawful.
4. In the alternative, under reg.16(b) UC Regs a person does not have to meet the basic condition to have accepted a claimant commitment if the Secretary of State considers that there are “*exceptional circumstances*” in which it would be unreasonable to expect them to do so. C’s personal circumstances are relevant factors for D to determine whether reg 16(b) applies and D is aware of C’s complex needs [having seemingly, appropriately, previously taken them into account in [month].] c is a [set out c’s exceptional circumstances]... who has provided fit notes confirming his ongoing issues with […] which limit [her/his] ability to manage [her/his] affairs. In C’s current circumstances it is not reasonable to expect [her/him] to accept [her/his] claimant commitment and D has provided no evidence that C’s personal circumstances have been taken into account in reaching the decision to ‘close’ [her/his] claim and the decision to do so is therefore unlawful.

*Failure to act reasonably*

1. **It is averred as above that C’s claim for UC made on [date] should not have ended, and further that D has failed to act reasonably for the following reasons:**
	* + 1. **D failed to provide C the opportunity to explain why [she/he] had missed the appointment on [date] and provide good reasons.**
			2. **D did not contact C to ascertain why [she/he] had missed the meeting, which could have been for any number of reasons. The claim was closed at [2.55pm] on [DATE], leaving C without any opportunity to provide reasons for [her/his] non-attendance; and**
			3. **There is no requirement in the DWP guidance to attend claimant commitment meetings although UC claimants must accept the claimant commitment; and**
			4. **No actual decision notice was provided to C, frustrating C’s right to appeal the decision to ‘close’ [her/his] claim.**

***Discrimination***

1. The default requirement under the WRA is that a claimant has “*accepted a claimant commitment*” and under D’s guidance ‘Claimant commitment not accepted’ that this be done “*within 7 days*” of being asked to do so. If it was established that a claimant commitment existed (which is disputed as above), applying this blanket provision / making inadequate amendments to the manner and time scale in which claimant must accept their commitments would be indirectly discriminatory, contrary to the Equality Act 2010, Human Rights Act 1998 and European Convention on Human Rights (Article 14 in association with Article 1, Protocol 1 and Article 8), as such people [people with mental health problems, homeless claimants] and other claimants with complex needs) would be more likely not to be able to comply with the requirements and so have their UC claims refused, or ‘closed’.
2. The law recognises the otherwise discriminatory effect of a blanket requirement by allowing the time to be extended, or the requirement dispensed with under reg 16(b) UC Regs where “*there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment lack the capacity to do so”* and under D’s own guidance which makes it clear a claim will not be closed where a claimant has not accepted a claimant commitment where the claimant has “*complex needs”.*
3. By failing to apply reg 16(b) UC Regs or D’s own guidance, D’s action is necessarily discriminatory, it cannot be shown to be a proportionate means of achieving a legitimate aim, and there can be no justification for the same.

**Alternative remedies**

1. **C, having sought advice from [Advice Organisation], has sought a mandatory reconsideration of the decision to ‘close’ [her/his] claim. However, judicial review is appropriate because:**
* **C seeks compensation and HRA damages which are not available through the Tribunal.**
* **C is destitute and facing eviction and requires a quick resolution to avoid imminent and serious risk to [her/his] health and well-being, a time scale unlikely through the Tribunal.**
* **C is challenging D’s failure to follow the law and D’s own guidance which suggests a need for staff training, this is therefore a matter of wider public concern and judicial review is appropriate.**

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

**The Defendant is requested:**

* **without further delay to reinstate C’s UC claim,**
* **pay C UC from the start of [her/his] claim on [DATE],**
* Provide C with a written apology and compensation for the catalogue of failures by D as detailed above which have resulted in a level of service which is far below that which should be expected and has resulted C being without income for [number] months leaving [her/him] destitute and exacerbating [her/his] existing mental health issues.
* Deliver staff training and ensure vulnerable claimants are identified, their needs recorded and this record is available to and referred to decision are made by D.
* **Accept that C has been unlawfully discriminated against on the grounds of** [her/his] **mental health disability contrary to the Equality Act 2010 and Article 14 with Article 1 Protocol 1 of the European Convention on Human Rights and agree to pay** [her/him] **damages for the financial and non-financial loss, including injury to feeling, suffered as a result.**

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

* **C’s form of authority**
* **All other documents available via C’s 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**

**Due to the urgency of this matter we expect a reply promptly and in any event no later than 5pm on [DATE (7 days)]. Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you. We recognise this timescale is less than 14 days and if the DWP considers more time needed it is requested to supply such reasons by return.**

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. NB the power in 14(4)(b) to make regulations on other information to be included has not been exercised [↑](#footnote-ref-3)
4. data.parliament.uk/DepositedPapers/Files/DEP2023-0791/032.\_Claimant\_Commitment\_not\_accepted\_V5.0.pdf [↑](#footnote-ref-4)
5. data.parliament.uk/DepositedPapers/Files/DEP2023-0791/032.\_Claimant\_Commitment\_not\_accepted\_V5.0.pdf

 See also data.parliament.uk/DepositedPapers/Files/DEP2023-0791/031.\_Claim\_closure\_V22.0.pdf [↑](#footnote-ref-5)