

[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 adjustments to HER/HIS universal credit (“**UC**”) claimant commitment. 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** (14 days).**

**Proposed Defendant: Secretary of State for Work and Pensions (“D”)(“SSWP”)**

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** ` [xxxx]

**The details of C’s legal advisers:**

**[Insert if appropriate]**

**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 following actions and failures of D are challenged:**
2. **imposition by D of wrongful conditionality on C in C’s UC claimant commitment from DATE;**
3. **the ongoing failure of D to amend C’s claimant commitment in line with the legal framework set out below; and**
4. **[the sanctioning of C for failing to do something which there was no lawful basis for requiring C to do.]**

**Background facts**

1. **C has been in receipt of UC since DATE. SHE/HE was required to apply as REASON.**
2. **C receives UC as a LONE PARENT /COUPLE with HER/HIS partner X NAME, DOB AND NINO.**
3. **C and X has/have NUMBER CHILDREN – NAMES, DOBS and these are included in HIS/HER/THEIR UC award.**
4. **This includes NAME who is THREE/FOUR years old.**
5. **ANY DISABILITY/ADDITIONAL NEEDS?**
6. **ANY CHILDCARE PROBLEMS?**
7. **HOW NOTIFIED DWP?**
8. **HOW HAVE DWP RESPONDED?**
9. **C HAS DETAIL UC CONDITIONALITY WHICH REQUIRES HER/HIM TO…**
10. **C INCURRED A UC SANCTION DATE AS SHE/HE WAS UNABLE TO …. WHEN REQUIRED TO DO SO.**
11. **SANCTION CHALLENGED? DETAILS**
12. **LOSSES AS A RESULT OF THE SANCTION INCLUDING AMOUNT OF FINANCIAL LOSS.**
13. **ANY FURTHER CONTACTS WITH DWP – DETAILS OF REQUESTS TO CHANGE CONDITIONALITY AND THE RESPONSE.**
14. EDIT AS APPROPRIATE A message was posted to C’s online UC account on DATE asking the DWP to amend C’s conditionality. To date, D has not acted on this.

**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 for inspection, as part of the response to this letter.

**Legal background**

***Responsible carer***

1. C is responsible for a child or qualifying young person as NAME “who normally lives with” HER/HIM under Reg. 4(2) Universal Credit Regulations 2013 (“**UC Regs**”).
2. DELETE IF SINGLE CLAIMANT C receives UC as a couple with NAME. Of C and NAME, C “*has the main responsibility*” for CHILD by joint nomination with HIS/HER partner under Reg. 4(5) UC Regs.
3. C is therefore a “*responsible carer*” as defined by s. 19 (6) of the Welfare Reform Act 2012 ("**WRA 2012**”):

***19****.-(6) In this Part “responsible carer”, in relation to a child means–*

*(a) a single person who is responsible for the child, or*

*(b) a person who is a member of a couple where–*

*(i) the person or the other member of the couple is responsible for the child, and*

*(ii) the person has been nominated by the couple jointly as responsible for the child.*

*Relevant conditionality*

1. CHILD is THREE/FOUR years old and C is therefore subject to ‘all work-related requirements’ under s.22 WRA 2012 including under s.22(2)(a) ‘a work search requirement’, S22(2)(b) ‘a work availability requirement’, and under s.22(3): DELETE IF NOT INCLUDED IN CLAIMANT COMMITMENT s.22(3)(a) ‘a work-focused interview requirement’ and s.22(3)(b) ‘a work preparation requirement’.

*Expected hours*

1. The default number of ‘expected hours’ of work search and work availability for those subject to all work-related requirements is 35 hours a week under reg. 88(1) UC Regs.
2. However, this is reduced by regs. 97(2) and 88(2) UC Regs, under which as CHILD is THREE/FOUR years old and has not yet reached compulsory school age, the number of hours C is expected to look for work and be available for work must be limited and compatible with HER/HIS caring responsibilities:

***Work search requirement and work availability requirement – limitations***

***97****.- (2) In the case of a claimant who is a relevant carer or a responsible carer...a work search and work availability requirement* ***must be limited*** *to the number of hours that is determined to be the claimant’s expected number of hours per week in accordance with regulation 88.*

***Expected hours***

***88****.-(2) The lesser number of hours is–*

*(aa)* ***where the claimant is a responsible carer of a child who has not yet reached compulsory school age****,* ***the number of hours that the Secretary of State considers is compatible with those caring responsibilities****”.*

(Emphasis added)

1. D’s Advice for Decision Making (“**ADM**”) specifies up to ‘16 hours per week’ will be compatible with the caring responsibilities of a child under compulsory school age, and confirms that the claimant does not have to show a reasonable prospect of obtaining work:

***J3058***

*Where a claimant is a responsible carer for a child aged under the age of 13, the expected hours of work are the lower number that the Secretary of State considers is compatible with the child’s normal school hours (including the normal time it takes the child to travel to and from school)1. The expectation is that this safeguard will be 25 hours a week.* ***Where the child is aged three to four, the expectation is that this safeguard will be 16 hours a week. The claimant does not have to show that they have reasonable prospects of obtaining paid work.***

*1 UC Regs, reg 88(2)(b)*

(Emphasis added).

1. The requirements can be reduced further under D’s operational guidance ‘Work related requirements for claimants with children’(V8)[[3]](#footnote-3) where a lead carer has one or more of the following:.
* *difficult travel time to a childcare provider for example: poor public transport links to taking and picking up the child from the childcare provision*
* *a health condition and the claimant is awaiting the health assessment*
* *part-time or temporary caring responsibilities for someone, for example an elderly relative or a child where the claimant isn’t the lead carer*
* *lack of childcare availability in the claimants [sic] area that is suitable for the needs of the child*

*Travel time*

1. ‘Work related requirements for claimants with children’ limits the amount of travel time which can be expected of people with children aged 3 or 4 years:

***Tailoring travel to work time for parents with children aged 3 or 4 year***

*Travel to work travel time for lead carers of children aged 3 or 4 should be proportionate to their expected hours of 16 per week. The following caps should apply:*

*• 10 to 16 hours weekly work search requirements - capped at 60 minutes*

*• Up to 10 hours weekly work search requirements - capped at 30 minutes.*

*Both these caps can be varied further to take into account individual circumstances*

**Grounds for Judicial Review**

**Ground 1: Failure to apply the law resulting in imposition of unlawful work-related requirements and unlawful sanctions**

1. D **is aware of the age of C’s child, CHILD’S ADDITIONAL NEEDS AND THE PROBLEMS C HAS WITH TRAVEL, CHILDCARE ETC… yet has refused to amend C’s UC conditionality.**
2. The law and D’s own guidance (set out above) are clear.
3. DELETE AS APPROPRIATE By failing to adjust the number of hours C has to look for and be available for work D is in breach of ss.88 and 97 UC Regs, D’s own ADM at paragraph J3058, and D’s operational guidance ‘Work related requirements for claimants with children’ and is acting unlawfully.
4. DELETE AS APPROPRIATE By failing to limit the jobs C has been required to apply for to those within 60/30 minutes from HER/HIS home, D is in breach of operational guidance ‘Work related requirements for claimants with children’ and is acting unlawfully.
5. DELETE AS APPPROPRIATE C was required to attend an interview at X, NUMBER minutes journey from HER/HIS home and the resulting sanction for failure to attend was therefore unlawful.
6. **As a result of D’s failure to follow the law and D’s own guidance C remains at risk of further unlawful sanctions, financial hardship and stress as a direct result of the unlawful conditions imposed on HER/HIM.**

**Ground 2: Discrimination**

1. The default requirement under reg. 88(1) UC Regs is that all claimants are required to undertake 35 hours of work search each week and be available to take up work for the same. Applying this blanket provision / making inadequate amendments to the claimant commitments of those caring for young children (the majority of whom are women) 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 young children, lone parents and women) would be more likely not to be able to comply with the requirements and so be subject to UC sanctions, consequent financial loss and emotional distress.
2. The law recognises the otherwise discriminatory effect of a blanket 35 hour per week work search and work availability requirement by making adjustments to the requirement which vary depending on the age of the parent/carer’s youngest child: see ss. 19-21 WRA 2012 and reg. 88 in conjunction with reg. 97 UC Regs.
3. By failing to apply the regs. 88(2) and 97 limitations, D 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.

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

**D is requested to:**

* Amend C’s claimant commitment immediately to reduce the amount of work related activity SHE/HE is required to do to 16 hours per week (OR FEWER IF APPROPRIATE).
* Amend C’s claimant commitment immediately to limit the jobs C is required to apply for to those within a 30/60 minute radius of HER/HIS home.
* Compensate C for HER/HIS losses suffered as a result of the unlawful sanctions imposed.
* Accept that C has been unlawfully discriminated against and pay HER/HIM HRA damages for the same

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

* **C’s signed form of authority.**
* **All other documents available through C’s UC 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 (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,

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/DEP2023-0791/196.\_Work\_related\_requirements\_for\_claimants\_with\_children\_V8.0.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2019-0980/154._Work_related_requirements_for_claimants_with.pdf) as referred to in D’s guidance ‘Labour market regimes’ <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/83_Labour_Market_regimes_v14_0.pdf> [↑](#footnote-ref-3)