**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**

**This letter challenges** the DWP’s failure to apply the work allowance to earnings when a claimant is ‘treated as having LCWRA’ due to cancer treatment.

Please read whole letter carefully and make any changes needed. In particular edit all text in red or [square brackets] , return all text to black and delete any comments before sending.

**DELETE BOX BEFORE POSTING**

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

- Has been awarded UC

- Is undergoing treatment for cancer and falls within Sch.9 UC Regs ‘treated as having LCWRA’

- Conditionality has been turned off

- Has ongoing earnings/ SSP and the work allowance has not been applied

Please contact jrproject@cpag.org.uk for assistance using this letter and to send for review before sending to DWP.

**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 [his/her] Universal Credit (“**UC**”) award. 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 the date 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. **C is challenging SSWP’s failure to apply the work allowance to C’s earnings in the calculation of C’s UC award when C is treated as having Limited Capability for Work-Related Activity (“LCWRA”) while [s/he] is undergoing treatment for cancer.**

***Background facts***

1. **CLIENT DETAILS,**
2. **HOUSEHOLD, Family**
3. **Other income and PIP award**
4. **Disability / Medical details / diagnosis**
5. **When did C stop work? How much sick pay is received?**
6. **On DATE C claimed and was awarded UC. This is being paid at £AMOUNT each month.**
7. **On DATE C provided WHAT evidence that he/she has what cancer and is undergoing what treatment.**
8. **On DATE SSWP ‘turned off’ C’s UC conditionality in recognition that C has limited capability for work and work related activity because of C’s cancer treatment.**
9. To date C’s UC has not been increased.
10. **C is suffering considerable financial hardship and has debts of …**
11. **Effect on health etc.**
12. **C is currently on receipt of [what pay] from [his/her] employer while C is unable to work due to C’s cancer treatments. [What pay] is being deducted as earnings from C’s UC without application of the work allowance.**

**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***

1. **Under regulation 22 of the Universal Credit Regulations 2013 (“UC Regs”) the amount of a claimant’s earnings (including sick pay) which are taken into account to calculate a UC award is reduced by way of a ‘work allowance’ where a claimant has limited capability for work. This has the effect of increasing the amount of UC paid significantly each month as follows:**

**UC includes a housing costs element: £379**

**UC does not include a housing costs element £631**

### A claimant with limited capability for *work related activity* also, by definition, has *limited capability for work*, for example:

### *“Award to include LCWRA element*

### *27.—(1) An award of universal credit is to include an amount in respect of the fact that a claimant has limited capability for work and work-related activity (“the LCWRA element”).”*

(Emphasis added)

1. **Under regulation 40 UC Regs a claimant who is** *treated* as havinglimited capability for work and work-related activity by virtue of the circumstances set out in Schedule 9, *has* limited capability for work and work-related activity.

*“****Limited capability for work and work-related activity***

***40****.—(1) A claimant* ***has*** *limited capability for work and work-related activity* ***if—***

 *…*

*(b) the claimant* ***is to be treated as having*** *limited capability for work and work-related activity (see paragraph (5)).*

*(5) Subject to paragraph (6), a claimant* ***is to be treated as having*** *limited capability for work and work-related activity* ***if any of the circumstances set out in Schedule 9 applies[[3]](#footnote-3).”***

(Emphasis added)

1. Having, including being *treated as* having, LCWRA therefore affects the amount of earnings that are taken into account under **Reg 22 UC Regs*.***In C’s case, SSWP has acknowledged that C has LCWRA and so has switched off all conditionality, but has not applied the work allowance to C’s earned income.
2. In failing to apply the work allowance as soon as C was treated as having LCWRA, SSWP has unlawfully failed to follow the law as set out above with the effect that while C is undergoing [what treatment] and [effect of treatment on C], C is also experiencing significant financial hardship and is unable to meet [what costs].

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

**The Defendant is requested to:**

* Apply the work allowance from the start of C’s UC award (or the date the confirmation of [his/her] cancer treatment was provided, whichever is later)
* Accept that the failure to apply the work allowance falls well below the level of service that C should be entitled to expect from the DWP and has caused C unnecessary stress and financial hardship at a time when [s/he] is already having cope with [his/her] cancer diagnosis and treatment and agree to pay C compensation in respect of the same.

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

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

* **Medical evidence confirming treatment and effect on ability to work**
* **Signed form of authority for C**
* **All other documents available through C’s online 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**

**Email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than [DATE (7 days)]. This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the delay already experienced; (b) the lack of complexity of the issue, and (c) the effect on C who is already coping with [his/her] cancer diagnosis and treatment.

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. Should 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,

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. Schedule 9 **UC Regs** sets out the circumstances in which a claimant is to be treated as having limited capability for work and work-related activity and includes when the claimant who “(r)eceiving treatment for cancer,” as in C’s case. [↑](#footnote-ref-3)