**IMPORTANT:** the address for service changed in January 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:**

DWP’s unlawful imposition of the habitual residence test when processing a UC claim from a person who has been granted leave under the Migrant Victims of Domestic Abuse Concession (formerly the DDV)

**Please send your letter for review** to JRProject@CPAG.org.uk before sending to DWP.

DELETE THIS BOX BEFORE POSTING

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

* Has been granted leave under the Migrant Victims of Domestic Abuse Concession (formerly the Destitution Domestic Violence concession (DDV)).
* Has made a claim for UC.
* Has unlawfully had the habitual residence test imposed which has delayed their UC claim.

Please **read the whole letter carefully** and make any changes needed, in particular any text in [square brackets].

DELETE THIS 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] claim for universal credit (“**UC**”). 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 [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 challenges SSWP’s unlawful imposition of the Habitual Residence Test (“**HRT**”) to process [her/his] claim for UC.

**Background facts*:***

1. C is a survivor of domestic violence and has been granted leave to remain under the Migrant Victims of Domestic Abuse Concession (“**MVDAC**”) (formerly the Destitution Domestic Violence concession (“**DDV**”)).
2. [Insert family details here]
3. C was granted leave to remain under the MVDAC on [date and how long for], [how notified to C].
4. C made a claim online to UC on [date] and provided [what proof of MVDAC to DWP and how provided, on what date].
5. SSWP has confirmed that C has a right to reside and so is not excluded from UC, see letters posted to their journal on [date].

**Note on D’s duty of candour**

1. As SSWP 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.

**Grounds for Judicial Review**

**Ground 1: Unlawful application of the Habitual Residence Test (“HRT”) to a person granted leave under the Migrant Victims of Domestic Abuse Concession.[[3]](#footnote-3)**

1. **C has made a claim for UC and been informed by SSWP that [she/he] must meet the HRT before [her/his] claim for UC can be determined or paid.**
2. **C has leave to remain under the MVDAC [as shown on [her/his] biometric residence permit (“BRP”). This leave is granted outside the rules made under s.3(2) Immigration Act 1971.**
3. **A person with leave granted under the MVDAC is exempt from the HRT under reg.** 9(4)(e) of the Universal Credit Regulations 2013 (as amended) (“**UC Regs**”)**:**

***9****.—(1)**For the purposes of determining whether a person meets the basic condition to be in Great Britain,* ***except where a person falls within paragraph (4),*** *a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

 ***(4) A person falls within this paragraph if the person is—***

 *[…]*

*(e)**a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971****.***

(Emphasis added)

1. Regulation 4(e)(ii) UC Regs previously specified the DDV (now **MVDAC)**. This specification was omitted by the Social Security (Habitual Residence and Past presence) (Amendment) Regulations 2022, the Explanatory Memorandum to those Regulations explains the reason for this was to extend the provision:

*“2.2 […] to make clear that all those granted types of leave outside the Immigration Rules (LOTRs) are exempted from the HRT requirement for the listed benefits.”*

1. As a person with leave under the MVDAC, C is therefore exempt from the HRT under the UC Regs and SSWP is acting unlawfully in delaying the determination of C’s claim for UC until habitual residence has been established.

**Ground 3: Unlawful discrimination**

1. **Article 14 of the European Convention on Human Rights (ECHR) provides:**

**“*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.”**

1. **Welfare benefits are a recognised form of property for the purposes of Article 1, Protocol 1 ECHR.**
2. **Victims of domestic violence are at a recognised disadvantage in establishing ‘habitual residence’ as they may have fled an abusive partner with little documentation, then are prevented from working or having access to public funds prior to their UC claim. The impact of this disadvantage is discriminatory but is removed by the exemption from the HRT contained in s. 9(4) UC Regs 2013.**
3. **Failure to apply the exemption in s. 9 (4) UC Regs 2013 therefore amounts to unlawful discrimination contrary Article 14 ECHR in conjunction with A1/P1, and the Human Rights Act 1998 which incorporates ECHR into UK law.**

**Details of the action that the defendant is expected to take:**

**SSWP is requested:**

* **without further delay award and pay C UC from [date].**
* to accept that it has unlawfully discriminated against C and to pay [her/him] HRA damages.

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

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

* **Confirmation of leave to remain [dated]**
* **Biometric residence permit**
* **Form of authority**

All other relevant documents/information are already in the possession of SSWP and accessible from C’s UC journal.

**ADR proposals**

**Please confirm in your reply whether SSWP is willing to consider alternative dispute resolution.**

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

**[Advice agency name, address, and 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 discriminatory impact of SSWP’s unlawful insistence that C meets the habitual residence test and (b) that SSWP is already aware of C’s status and of the relevant law.

**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

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. The Migrant Victims of Domestic Abuse concession is published by the Home Office at: [www.gov.uk/government/publications/application-for-benefits-for-visa-holder-domestic-violence](file:///C%3A%5CUsers%5Cjstrode%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CUGDTBDTA%5Cwww.gov.uk%5Cgovernment%5Cpublications%5Capplication-for-benefits-for-visa-holder-domestic-violence). [↑](#footnote-ref-3)