***This letter challenges****:*

* the Secretary of State’s failure to amend your client’s conditionality to reduce the work-related activity required due to their child/children’s mental or physical impairment and their caring responsibilities.
* The challenge includes the removal of any unlawful sanctions imposed upon your client.
* This letter also seeks to compensate your client for the losses suffered from unfair penalties, including consequential financial loss and emotional distress.

Please **verify and include all relevant dates** in your letter.

**Read the whole letter carefully** and make any changes needed, in particular any text in red or [square brackets]. Delete [square brackets], comments/ prompts/instructions, return all text to black, and put on headed paper.

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

**Delete box before posting**

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

* Is receiving Universal Credit (UC) as a lone parent or couple;
* has a child aged 13+ in their UC award who has a mental or physical impairment; and
* is being required by their claimant commitment to undertake work-related activity for 35 hours per week, without consideration of their caring responsibilities.

***This letter assumes*** *your client:*

* has, on several occasions, contacted DWP to request changes to the conditionality but has been unsuccessful
* Has been sanctioned (this can be removed).

***Do not use this letter if*** your client:

* Has not already asked their claimant commitment to be changed.

**Delete box before posting**

**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**

[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:** [xxxx]

**Date:** [xxxx]

**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 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]

**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 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. **if relevant: [the sanctioning of C for failing to do something which there was no lawful basis for requiring [her/him] to do.]**

***Background facts***

1. **C has been in receipt of Universal Credit (“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 partner’s name] [has/have] [number] children [names, DoBs] and these are included in [her/hist/heir] UC award.**
4. **This includes [name] who is a child aged 13 and over.**
5. **[child’s name] has a mental or physical impairment and requires what care?. Provide details.]**
6. **[Any childcare problems? How was D notified?]**
7. **[When and how has this been raised to DWP?]**
8. **[How have DWP responded?]**
9. **C has [detail UC conditionality] which requires [her/him] to […]**
10. **[C incurred a UC sanction on [date] as [she/he] was unable to …. when required to do so.]**
11. **[Losses as a result of the sanction including amount of financial loss.]**
12. **[List in date order all relevant contacts with D in which C has requested D change her/his conditionality and D’s responses including dates and quotes, formatted as follows:**
13. [Sanction challenged? On [date] C posted a message to [her/his] online UC journal stating:

“*what was said?*”]

1. [On [date] D responded stating:

“***what was said*?”]**

1. **[To date, C’s claimant commitment has not been amended and C remains at risk of [further] sanction.]**

**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***

***Responsible carer***

1. C is responsible for a child or qualifying young person as [name of child] “*normally lives with*” [her/him] under reg. 4(2) Universal Credit Regulations 2013 (“**UC Regs**”).
2. DELETE PARAGRAPH IF C IS A SINGLE CLAIMANT: C receives UC as a couple with [partner’s name]. Of C and [partner’s 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. [name of child] is [number] years old [and was so at the time that C initially claimed UC / was required to sign [his/her] claimant commitment] and C is therefore subject to ‘all work-related requirements’ under s. 22 WRA. Work-related requirements are summarised in D’s guidance ‘Advice for Decision-Makers’ (“**ADM**”):

***J3003*** *The work-related requirements are1 the*

*1. work-focused interview requirement (see J3030 et seq)*

*2. work preparation requirement (see J3040 et seq)*

*3. work search requirement (see J3050 et seq)*

*4. work availability requirement (see J3110 et seq).*

*1 WR Act 12, s 13(2)*

*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, the ‘expected hours’ are reduced by regs 97(2) and 88(2) UC Regs, under which the number of hours C should be expected to look for and be available for work must be 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 or who has a physical or mental impairment, 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—*

*(a) where—*

*(i) the claimant is a relevant carer, a responsible carer (subject to the following sub-paragraphs) or a responsible foster parent, and*

*(ii) the Secretary of State is satisfied that the claimant has reasonable prospects of obtaining paid work,*

***the number of hours that the Secretary of State considers is compatible with those caring responsibilities.”***

(Emphasis added)

1. “Responsible carer” means responsible for a child and under reg 85 UC Regs “relevant carer” includes “a person who has caring responsibilities for a person who has a physical or mental impairment”. C is both a relevant and responsible carer.
2. D’s ADM guidance[[3]](#footnote-3) explains ‘expected hours’ are to be reduced where the child has any physical or mental impairments:

***J3059*** *“Where a claimant is the responsible carer of a child aged 13 or over then J3058* [i.e. children under 13] *does not apply. The claimant’s work search and work availability requirements can however be* ***limited to fit in with those caring responsibilities****.* ***The DM should take into account any mental or physical impairments of the child*** *(see J3055). The claimant has to show reasonable prospects of obtaining work notwithstanding those limitations.*

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

(Emphasis added)

**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 C’s child’s age and of [his/her] additional needs, which means that C is unable to undertake work-related activity for [35 hours] per week due to [her/his] caring commitments. But D has refused to amend C’s UC conditionality.**
2. The law and D’s own guidance (set out above) are clear.
3. By failing to adjust the number of hours C has to undertake work-related activity, D is in breach of both regs 88(2) and 97(2) UC Regs and its own guidance at paragraph J3059 and is therefore acting unlawfully.
4. **As a result of D’s ongoing failure to apply the law and its own guidance, C [has already been unlawfully sanctioned and] 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) taken together with reg 97 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 to those caring for children and children with disabilities (the majority of whom are women) would be indirectly discriminatory, contrary to the Equality Act 2010, as such people (women) are less likely to be able to comply with the requirements and so be subject to UC sanctions, consequent financial loss and emotional distress. The law recognises this and avoids such indirect discrimination by virtue of the limitations in ss. 88(2) and 97(2) UC Regs and associated guidance.
2. By failing to apply the limitations contained in ss. 97(2) and 88(2), D’s action is 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**

**36. D is requested to:**

* Amend C’s claimant commitment immediately to reduce the expected hours of work-related activity required by [her/his] claimant commitment, such that they are compatible with C’s caring responsibilities for their child, [child name].
* Compensate C for [her/his] losses suffered as a result of the unlawful sanctions imposed and the stress and distress caused.
* Ensure adequate training of work coaches so that C and other claimants with children are not subject to unlawful conditionality.

**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, our client will seek representation to 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. assets.publishing.service.gov.uk/media/675026f9b9847955e1632a10/admj3.pdf [↑](#footnote-ref-3)