**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** the DWP’s

failure to take into account the claimant’s

health condition when preparing their UC claimant commitment and failure to make reasonable adjustments.

**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 [square brackets].

**Delete all comments**/ prompts/ instructions / [brackets] and then put on headed paper.

**In all cases send your letter for review** to

JRProject@CPAG.org.uk before sending

to DWP.

**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 sending

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

* Is in receipt of UC
* Has a UC claimant commitment which does not taken account of their physical or mental health disability.
* A reasonable adjustments request has been made to DWP and no action taken by DWP

**This letter assumes** (so can be edited if

it does not apply):

* Has had a work capability assessment and scored some points, showing DWP are aware of the claimant’s health condition and needs
* Has a mental health condition which makes socialising with people they don’t know difficult and they have been required to attend a group session.

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

* Your client has not already asked for their claimant commitment to be changed.

Delete box before sending

**Date: [INSERT 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 adjustments to [her/his] universal credit (“**UC**”) claimant commitment. We write in accordance with the Pre-action Protocol for Judicial Review contained in the Civil Procedure Rules. Please note that we require you to respond as soon as possible and, in any event, no later than by **4pm on [date]** (14 days).**

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

**Claimant:** [full name] (“**C**”)

**NI No:** [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-2) 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-3) **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 failure of D to amend C’s UC Claimant Commitment in line with the legal framework set out below and consequent indirect discrimination contrary to the Equality Act 2010.**

**The issue- factual background**

1. **C has been in receipt of UC since [date]. [She/He] was required to apply as [reason]. C has [what medical conditions/disability] and has provided medical certificates for the duration of [her/his] UC award.**
2. **[If C has been unable to provide medical evidence, say so and explain why, then under grounds include ‘unlawful evidence requirement contrary to guidance’ and highlight the DWP guidance that says evidence is not always required – seek assistance if needed from jrproject@cpag.org.uk].**
3. **C has been assessed under the Work Capability Assessment and was found ‘fit for work’ but was awarded [number] points. D has therefore accepted that C's disability affects [[her/him]] in the following ways:**

**[EXAMPLES - edit to circumstances of your client]**

* 1. **TRAVEL – C is unable to travel to a specified place with which they are unfamiliar, without being accompanied by another appropriate person (6 POINTS). In relation to this area of activity, the assessor reported: “[insert report]”.**
	2. **COPING WITH SOCIAL ENGAGEMENT DUE TO MENTAL DISORDER – Engaging in social contact with someone unfamiliar is primarily impossible, due to C’s difficulty relating to others, and significant distress endured as a result (6 POINTS). In relation to this area of activity, the assessor reported: “[INSERT REPORT]”.**
1. **[IF RELEVANT - any further background e.g. ongoing appeal of WCA points info]**
2. C has expressed interest in [type of roles**]**. [She/He] has been told that [she/he] [must attend a group session for further discussion.].
3. A message was posted to C’s online UC Journal on [date] asking for clarification of what adjustments were made in view of [her/his mental health disability (anxiety and depression)]. No response was received from D [amend to “D responded X” if appropriate]
4. [Edit as appropriate] A message was posted to C’s online UC account on [date] asking D to amend C’s work search requirements and to make reasonable adjustments to the support offered to [her/him]. 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 in full for inspection, as part of the response to this letter.

**The issue - legal background**

**Universal Credit Regulations 2013**

1. Regulation 97 of the Universal Credit Regulations 2013 (“**UC Regs**”) sets out the limitations which must be applied to a claimant’s work search requirements where the claimant has a physical or mental impairment:

***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.*

*[…]*

*(6) Where a claimant has a physical or mental impairment that has a* ***substantial adverse effect on the claimant's ability to carry out work of a particular nature, or in particular locations, a work search or work availability requirement must not relate to work of such a nature or in such locations.***

(Emphasis added)

**Default expected hours, and the relevant exception**

1. Regulation 88 UC Regs sets out the reduction which can be made to the number of hours a claimant with physical or mental impairment must undertake work search each week:

***88.-****(1) - The “expected number of hours per week” in relation to a claimant in determining their individual threshold in Regulation 90 is 35 hours, unless some lesser number of hours applies under paragraph (2).*

*(2) The lesser number of hours is–*

 *[…]*

*(c) where the claimant has a physical or mental impairment,* ***the number of hours that the Secretary of State considers is reasonable in light of the impairment.***

(Emphasis added)

1. There is nothing to prevent the number of hours in this case being reduced to zero if this is ‘*reasonable in light of the impairment’*.

**D’s ‘Advice for Decision Making Staff Guidance’ (“ADM”)**

1. The limitations above are confirmed in D’s ADM guidance which also makes clear that a claimant with aphysical or mental impairment whose expected hours are limited ‘*does not have to show that they have reasonable prospects of finding work*’:

***Physical and mental impairments***

*J3167 A claimant who demonstrates that*

*1. they have a*

*1.1 physical* ***or***

*1. 2 mental impairment* ***and***

*2. their ability to carry out work*

*2. 1 of a particular nature* ***or***

*2. 2 in particular locations*

*is substantially adversely affected due to the impairment,* ***must not have a work search requirement or work availability requirement related to work of that nature or in those locations1.***

*1 UC Regs, reg 97(6)*

***J3060*** *The expected hours for a claimant who has a*

*1. physical* ***or***

*2. mental*

*impairment are the* ***lower number of hours that the Secretary of State considers is reasonable as a result of the impairment1.*** *The claimant does not have to show that they have reasonable prospects of finding work.*

*1.UC Regs, reg 88(2)(c)*

***Example***

*Carl has claimed UC. He suffers from rheumatoid arthritis which can cause him a degree of pain and discomfort* ***but he does not have LCW****. Carl’s adviser considers the evidence and decides* ***that Carl cannot be expected to work for 35 hours a week but that it is not unreasonable for him to work for ten hours a week. Carl’s expected number of hours a week for the purposes of UC are therefore ten per week.***

***J3061 A claimant may have their hours of work limited in any way*** *provided the limitations are reasonable in the light of their physical or mental condition.*

***Expected hours of work***

***J3176*** *If a claimant has limited their expected hours of work on the grounds of*

 *[…]*

***3****. having a physical or mental impairment*

*Then their work search and work availability requirement must be limited to the same number of hours per week. […]*

 *1 UC Regs, reg 97(2)*

(Emphasis added)

**D’s Operational Guidance**

1. D’s operational guidance ‘Availability for work and expected hours of work-related activity: Guidance’ (V12)[[3]](#footnote-4) emphasises that availability for work and expected hours maybe reduced where a claimant’s ability to undertake work related activity is affected by their heath condition, that evidence is not always required, and that a claimant with a health condition “*will not have to show that they have reasonable prospects of finding work”.*

***Limitations***

*Some claimants may not be able to meet the maximum number of expected hours due to their circumstances.*

***Where it is unreasonable to expect a claimant to carry out maximum expected hours, limitations can be placed on their availability and expected hours can be tailored to allow them to do fewer hours of work and work search.***

*Easements and overrides may also apply.*

*[…]*

***Where possible****, the claimant must provide evidence of the restrictions (such as hours, nature of work and location) to the work they are capable of doing before the work coach can determine if limitations to any element of availability is reasonable. Examples of evidence include fit notes, written evidence from third parties.*

***However, some claimants will not be required to provide evidence where it would be difficult for them to do so*** *(for example, awaiting a medical diagnosis, a religious belief or lacking access to childcare).*

*[…]*

***If it is demonstrated that a claimant’s expected hours of work availability are limited, the number of hours they are required to search for work should be adjusted accordingly.***

***Health conditions***

*If a claimant has a physical or mental health condition or disability (including those with cognitive or learning difficulties),* ***the availability requirement will be limited to what is reasonable in light of the health condition or disability.***

*As well as limiting the number of hours,* ***the claimant may also limit the type and location of work they are available for.***

***They will not have to show that they have reasonable prospects of finding work,*** *but the following factors must be considered when agreeing a limitation:*

*• the nature of the physical or mental health condition or disability and how this may affect what the claimant is reasonably expected to do*

*• the likely duration of the health condition and the potential for this being long-term*

*• if the claimant has an employer who is providing occupational therapy or other provision to help the claimant get back to work*

(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 mental or physical impairment and of [her/his] additional needs. These include (i) inability to carry out [no.] hours work preparation, and/or (ii) constraints in the type and location of available work. D has nevertheless refused to amend C’s UC conditionality.**
2. The law and the D’s own guidance (set out above) are clear.
3. By failing to limit the nature and location of the jobs C is required to apply for **and** the number of hours C must carry out work preparation, D is in breach of both regs. 88 and 97 UC Regs and her own guidance and appears to have fettered the discretion available under the UC Regs. This breach is unlawful.
4. **As a result of D’s failure to apply the law and her own guidance and/or D’s fettering of the discretion available, C has already been unlawfully sanctioned. 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: Indirect discrimination contrary to the Equality Act**

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, and making inadequate adjustments for people with physical and/or mental impairments, constitutes indirect discrimination contrary to the Equality Act 2010 (“**EA 2010**”).
2. Under section 19 EA 2010 it is indirectly discriminatory to claimants with protected characteristics, which include mental and physical health disabilities, to apply a criterion or practice to all claimants, which places claimants with that protected characteristic at a disadvantage where that criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim.

***Indirect discrimination***

***19.-*** *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

*(3) The relevant protected characteristics are-*

*[…]*

*disability;*

1. People with mental or physical impairment are less likely to be able to comply with full work search and work availability requirements for 35 hours per week (or more), and thus 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 it possible to limit a claimant’s work search and work availability requirements.
3. By failing to make adjustments, the imposition of the default conditionality on C 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 decision.

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

* To amend C’s claimant commitment:
* To reduce C’s hours of work search and work availability to [no.] hours.
* to reflect that C is unable to travel to unfamiliar places and to engage with people [she/he] does not know.
* to reflect that C is only required to look for work in areas [she/he] is familiar with and therefore can travel to. The nature of work should be limited to roles which do not involve contacting unfamiliar people, such as public facing roles.

Please amend C’s work preparation and availability requirements immediately to reflect these limitations.

**D is further requested to**

* Compensate C for her/his losses suffered as a result of the unlawful sanctions imposed and the stress and distress caused.
* Accept that C has been unlawfully discriminated against and pay [her/him] damages for the hardship endured.
* The DWP must ensure adequate training of work coaches so that C and other claimants with mental or physical impairments are not subject to unlawful conditionality.

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

**Please refer to the documents available through C’s UC online account (Journal, Claimant Commitment, WCA decision notice).**

**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] (7 days).

We recognise that this is fewer than the 14 days recommended under the Pre-action Protocol. However, we consider such a shortened period is appropriate given the difficult financial circumstances of my client and the fact that D has had the opportunity to respond to this matter through the earlier post of [date.]

Should you consider that you need the full 14 days to respond, please inform me of the same with reasons by return. If we have not received a reply by [date], **C reserves [her/his] right to issue proceedings for judicial review without further notice to you and to seek to recover [her/his] costs of doing so from you.** All of C’s rights remain reserved.

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-2)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-3)
3. data.parliament.uk/DepositedPapers/Files/DEP2024-0673/hrs\_of\_work\_related\_activity\_V12.0.pdf [↑](#footnote-ref-4)