**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 unlawful exercise of DWP’s discretion to refuse a change of circumstances advance when the claimant is eligible under the legislation and DWP guidance recognises the particular needs of claimants fleeing domestic abuse.

Please read whole letter carefully and make any changes necessary, in particular edit all text in CAPSLOCK, [square brackets], and/or RED, then return all text to black lower case before posting.

If you need help using this letter of have any questions please contact jrproject@cpag.org.uk

**DELETE BOX BEFORE POSTING**

**Use this letter if** your client:

* Is a survivor of domestic abuse
* Had a joint UC award with their abusive ex-partner
* Notified UC of end of relationship and has a new award as a single claimant
* The final payment of UC following the end of the relationship was taken/spent by the ex-partner
* Your client is destitute until their first UC payment
* Applied for and been refused a change of circumstances advance

**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 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 the failure of SSWP to offer, ensure awareness of, or make a payment on account of benefit pending first payment on [her/his] UC award despite being made aware of C’s destitution.

***Background facts***

1. **C is a single claimant who has recently been the victim of domestic abuse.**
2. **[Nature of domestic abuse, including financial abuse aspect].**
3. **C previously had a joint UC award with the perpetrator of that abuse who was [her/his] ex-partner [name, NINo (if possible), DoB]. [The joint award was paid in full into [name’s] bank account / was paid into C and [name’s joint account account].**
4. **C was in a relationship with [name] until [insert date], on which date [C left the property/C’s ex-partner moved out of the property].**
5. **On [insert date] C completed a change of circumstances on [her/his] online UC account to advise [he/she] was no longer living with [her/his] ex-partner.**
6. **Following notification by C of [her/his] change of circumstances, SSWP brought C and [name’s] joint UC award to an end and C is now a single claimant. No payment has yet been received on C’s new award as a single claimant but SSWP has opened a separate online UC account for C and indicated to C that [her/his] single award will be paid on [insert date].**
7. **C was last paid UC on the joint award with [her/his] ex-partner on [insert date].**
8. **However, through means of financial abuse C’s ex-partner [insert details of how ex-partner has taken/spent the money leaving it unavailable to C].**
9. **C is due to be paid the first payment of UC on [her/his] single award on [insert date].**
10. Until this payment, C has extremely limited/no income on which to subsist and is unable to cover **[her/his]** basic needs and those of **[her/his]** children. [Provide details of limited income and which expenses C is unable to cover.]
11. On [insert date] C requested an advance payment to help **[her/him]** to cover **[her/his]** basic expenses until **[her/his]** first UC payment, but this was refused on the basis that [s/he] has sufficient money to last until the first UC payment, by virtue of the last payment made on the joint award on [insert date].
12. [Detail effect of refusal of advance on mental / physical health. Any other details of hardship.]

**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 9 Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment Support Allowance (Claims and Payments) Regulations 2013 (as amended) (“UC *etc.* C&P Regs”) further to C’s notification to SSWP that [s/he] is no longer in a relationship/part of a couple with [her/his] ex-partner, an award may be made to C as a single claimant to C without C making a new claim.**

### Claims for universal credit by members of a couple

***9.****-(6) Where an award of universal credit to joint claimants is terminated because they cease to be a couple an award may be made, without a claim, to either or each one of them—*

*(a) as a single person; or*

*[…]*

1. **Under regulation 21 Universal Credit Regulations 2013 (“UC Regs”) when an award of UC is made under reg. 9(6) UC etc C&P Regs, as set out above, the claimant maintains the same assessment period dates as they did on their former joint award:**

***21****.-(3) Where a new award is made to a single person without a claim by virtue of regulation 9(6)(a) or (10) of the Claims and Payments Regulations (old award has ended when the claimant ceased to be a member of a couple) each assessment period for the new award begins on the same day of each month as the assessment period for the old award.*

1. Section 5(1)(r) Social Security Administration Act 1992 provides that regulations may provide for the making of a payment on account of benefit:

***Regulations about claims for and******payments of benefit***

***5****-. (1)* Regulations may provide—

*[…]*

(r) for the making of a payment on account of such a benefit—

*(i) in cases where it is impracticable for a claim to be made or determined immediately, or for an award to be determined or paid in full immediately,*

*(ii) in cases of need, or*

*(iii) in cases where the Secretary of State considers in accordance with prescribed criteria that the payment can reasonably be expected to be recovered*

*[…]*

1. Regulations 5 & 6 of the Social Security (Payments on Account of Benefit) Regulations 2013 (“**SS (PAB) Regs**”) lay out the conditions under which a payment on account of benefit may be made. In this instance reg. 6 applies, given C has not made a new claim, but nonetheless has a new award of UC as a single person.

###  *Payment on account of benefit where there is an award of benefit*

***6.*** *(1) The Secretary of State may make a payment on account of benefit to A if—*

*(a) an award of benefit has been made to A;*

*(b) any of paragraphs (2) to (5) applies; and*

*(c) the Secretary of State is satisfied that A is in financial need.*

 *(2) This paragraph applies where—*

*(a) A currently satisfies the conditions of entitlement to that benefit; and*

*(b) the date on which the first payment of that benefit to A is due to be made in accordance with the award has not yet been reached.*

**Grounds for Judicial Review**

**Ground 1: Irrational exercise of discretion**

1. **C has had a change of circumstances and is in financial need until [her/his] new single award is determined and paid by SSWP; C is therefore eligible for payment of a UC Advance.**
2. **C meets the conditions contained in r**eg. 6 SS (PAB) Regs as follows.

***The conditions of entitlement for benefit are satisfied (reg 6(2)(a) SS (PAB) Regs)***

1. C [met/meets] the **basic conditions of entitlement for UC contained in s. 4 of the Welfare Reform Act 2012:**

##### *4. Basic conditions*

*(1) For the purposes of section 3, a person meets the basic conditions who—*

*(a) is at least 18 years old,*

*(b) has not reached the qualifying age for state pension credit,*

*(c) is in Great Britain,*

*(d) is not receiving education,…*

1. C is aged [number] years, therefore over 18 and under the qualifying age for state pension credit. C is in Great Britain and not receiving education. C [is/was] both eligible to claim UC and [met/meets] the basic conditions of entitlement.

***The claimant is in financial need (reg 6(1)(c) SS (PAB) Regs)***

1. **Financial need is defined as by reg. 7 SS (PAB) Regs to include “*a serious risk of damage to the health or safety of A or any member of their family*”.**
2. SSWP [is/was] aware that C was the victim of financial abuse and has received supporting evidence from an organisation supporting domestic abuse victims that states that the circumstances of C are consistent with someone who has experienced domestic abuse and supports **[her/his]** version of events.
3. C has also supplied evidence that shows that last UC payment on the joint award was [withdrawn/transferred] and has attested that this was done by **[her/his]** ex-partner, with C having no access to those funds OR The last payment of UC on the joint award was made to C’s ex-partner bank account and as a result of the financial abuse, C has no access to those funds.
4. C has no other access to money at this time and is reliant on a payment on account of benefit in order to cover **[her/his]** basic expenses.
5. It is therefore clear that C is in financial need, despite the payment on the joint award as it has been evidenced that this money has been unavailable to C to cover the basic needs of [herself/himself] [and **[her/his]** children].

***The claimant has an award for benefit for which the date of the first payment has not been reached (reg 6(2)(b) SS (PAB) Regs)***

1. Having been moved from a joint UC award to a single award, C has an award for benefit and did not have to make a new claim. As such [s/he] keeps the same assessment period dates as were applied in the joint award. C [is/was] still within **[her/his]** first assessment period and is not due to be paid **[her/his]** first payment until [insert date].

***The claimant meets the conditions which mean D has a power to make a “payment on account of benefit”.***

1. As set out above, C [met/meets] the conditions of entitlement to UC, [is/was] in clear and pressing financial need, and [is/was] waiting for **[her/his]** first payment. C’s situation is therefore unequivocally one where D has a power to make a ‘**payment on account of benefit’.**
2. **SSWP’s failure to offer or make a payment on account of benefit in C’s circumstances is irrational. To the extent that the decision to not offer or pay a UC Advance was made on the basis of a misapprehension by D that he did not have the power to do so in C’s case, that is not a rational basis for refusing to offer/pay a UC Advance and is unlawful as a result.**
3. **If, on the other hand, SSWP maintains that he understood that he had the power to make a payment on account of benefit in C’s circumstances, but nonetheless decided not to offer/make one on account of C previously having paid UC in a joint award prior to fleeing [her/his] home due to domestic abuse, then that also would be irrational given the information which SSWP has available to him on the resources available to C and the level of financial need faced by C. This is addressed further below.**

**Ground 2: Failure to have regard to relevant factors**

1. **SSWP’s power to make payments on account of benefit is a discretionary one. In exercising a discretionary power, SSWP must have regard to all relevant factors.**
2. **SSWP recognises that those fleeing domestic abuse often do not have access to financial resources and that therefore obtaining Universal Credit can be crucial. SSWP’s guidance ‘Domestic Abuse’ (V24.0)**[[3]](#footnote-3) **states:**

*Victims of domestic abuse often flee their homes with few or no possessions and with no access to their own economic resources, or a financial safety net. Financial assistance through Universal Credit can be essential to provide for themselves - or themselves and their children.*

1. **The Domestic Abuse guidance continues:**

*A claimant who has been financially abused may need support to manage their money. The discussion must explain what assistance can be given, for example:*

*[…]*

***Advances to provide immediate financial support for victims fleeing abuse,*** *or help with buying essential household items or rent in advance*

**(Emphasis added)**

1. C has supplied information that [s/he] has been the victim of domestic abuse and has supplied supporting evidence from [professional/organisation] which explains the financial abuse that [s/he] has experienced and that /s/he] does not have access to financial resources as a result.
2. By refusing an advance without taking all these factors into account, SSWP has failed to have regard to his own guidance on domestic abuse and to the individual circumstances of C. Not only should the advance request not be refused but SSWP should have proactively had a discussion with C to offer an advance and to discuss other financial support to which [s/he] may be entitled.

**Ground 3: Breach of the Human Rights Act 1998**

1. The Human Rights Act 1998 incorporates the European Convention on Human Rights (“**ECHR**”) into UK law.
2. **Welfare benefits, including UC, are a recognised form of property for the purposes of Article 1, Protocol 1 (“A1P1”) ECHR (see for example** *R (RJM) v Secretary of State for Work and Pensions* [2009] 1 AC 311)**.**
3. Article 14 ECHR provides for the right not to be discriminated against in relation to the enjoyment of another Convention righ**ts (including A1P1) and states:**

*“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex,*[*race*](https://en.wikipedia.org/wiki/Racial_discrimination)*, colour,*[*language*](https://en.wikipedia.org/wiki/Linguistic_discrimination)*,*[*religion*](https://en.wikipedia.org/wiki/Religious_discrimination)*, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*

1. Those who have experienced domestic abuse have a specific set of circumstances and experience both direct and indirect discrimination as a result of being victims of domestic abuse. The European Court of Human Rights (“**ECtHR**”) recognises this in cases such as *Eremia v Republic of Moldova* ([3564/11](https://hudoc.echr.coe.int/eng#{%22appno%22:[%223564/11%22]})*),* finding member states to be in breach of Article 14 when they fail to adequately protect domestic abuse victims. Victims of domestic abuse are therefore a category of people included under “other status” who are afforded protection under Article 14.
2. **It is recognised that Article 14 can be breached by failing to treat people differently “***whose situations are significantly different”***. In *Thlimminos v Greece* (34369/97) the ECtHR found:**

*“The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” (§ 44)*

1. **The SSWP recognises that victims of domestic abuse should be treated differently as a result of their domestic abuse experiences and that they require additional support. This is apparent as the SSWP provides guidance (‘Domestic Abuse’) to DWP staff about how to support such individuals and describes the additional provisions that are available to them.**
2. **Failure to treat claimants such as C differently amounts to discrimination contrary to Article 14 ECHR applying the well-established four stage approach to discrimination under Article 14 ECHR, see for example *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 2 AC 557, §§133- 134), when read with *Thlimminos v Greece:***

**(i) C’s situation is within the ambit of a substantive ECHR right (A1P1)**

**(ii) C’s status is protected by Art 14 (“other status” as a victim of domestic abuse)**

**(iii) there is failure to treat differently C and appropriate comparators (claimants treated as making new claims following relationship breakdown where there is a history domestic including financial abuse, compared to claimants where there is no such history); and**

**(iv) the difference is unjustified (as SSWP’s guidance recognises and makes provision for the different needs of this group)**

1. SSWP should not treat claimants such as C the same as other claimants who may have spent a recent UC payment, as the circumstances by which [s/he] has no access to money are demonstrably different as a result of **[her/him]** being a victim of domestic abuse. SSWP should treat C differently as a result of **[her/his]** specific circumstances and by failing to do so is in breach of Article 14 ECHR.

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

**The Defendant is requested:**

* **without further delay to provide the claimant with a payment on account of benefit;**
* **to amend DWP guidance such as DWP operational guidance ‘Advances – change of Circumstances’ (V14)**[[4]](#footnote-4) **to i**nclude guidance to DWP staff that includes the provision of advances to people who have had a relationship breakdown and are in financial need, with particular reference to the circumstances of victims of domestic abuse;
* **to deliver staff training or otherwise ensure all jobcentre staff are aware of the power to offer a change of circumstances advance immediately once financial hardship is identified, and to identify where financial abuse may mean this hardship is less obvious;**
* **to pay C HRA damages in respect of the discrimination experienced by C under Article 14 with A1P1.**

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

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

* **Supporting statement from domestic abuse organisation**
* **Bank statement showing [withdrawal/transfer] of money from account by the perpetrator**
* **Notification of claim for UC dated DATE**
* **Form of authority**

All other relevant documents/information are already in the possession of the Defendant 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 HERE**

**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 the Defendant’s failure to offer ‘a payment on account’; that (b) the Defendant has already been made aware of the Claimant’s destitution via HIS/HER online UC journal and had opportunity to remedy this, and (c) the Defendant’s clear failure to follow its own guidance.

**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

Advisor Signature

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. rightsnet.org.uk/universal-credit-guidance [↑](#footnote-ref-3)
4. https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/005.\_Advances\_-\_Change\_of\_circumstances\_V14.0.pdf [↑](#footnote-ref-4)