**What this letter should be used for:**

To challenge the Local Authority’s failure to take your client’s disability, upcoming PIP appeal and DWP and Local Authority guidance into account when deciding to refuse your client a DHP.

* Use the Local Authority’s dispute resolution before sending this letter
* Read the whole letter carefully to check it is suitable for your client
* Edit all text in [red square brackets]

DELETE BOX BEFORE POSTING

**Client facts essential to use this template.**

Client:

* Is under 35 years old
* Is subject to the Shared Accommodation Rate of Local Housing Allowance
* Cannot afford their rent and their home is at risk
* Has applied for a DHP and been refused
* Has mental health disability (letter assumes also physical but this can be edited out) which would make shared accommodation unsuitable
* Is appealing a PIP decision that refused them PIP
* When PIP is awarded they will be able to afford their rent
* Any LA dispute resolution has already been tried

DELETE BOX BEFORE POSTING

LEGAL DEPARTMENT

ADDRESS

Date:

Dear Sir/Madam,

**Re: Proposed Claim for Judicial Review against the … Housing Benefit Department by [name]**

We are instructed by [name] in relation to [her/his] claim for a Discretionary Housing Payment (“**DHP**”). 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:** [London Borough of X Housing Benefit Department] (“**D**”)

**Claimant:** (“**C**”)

**National Insurance Number:**

**DHP reference:**

**Address**:

**Date of Birth:**

**The details of the matter being challenged**

Cchallenges the failure of D to follow the law and relevant guidance, or exercise its discretion reasonably when deciding not to award [her/him] a DHP.

**Background Facts [edit background facts in full]**

1. C is a private tenant renting from [her/his] landlord, [landlord name].
2. C lives in a one-bedroom property.
3. C is in receipt of Universal Credit (“**UC**”) which includes the Limited Capability for Work Related Activity Element.
4. C has [condition/s] and suffers from [symptoms/effect] [Specify details of mental health] and is unable to work.
5. C applied for Personal Independence Payment (“**PIP**”) on the basis of [her/his] severe daily living and mobility needs on [date] in respect of physical and mental health disability. This application was refused on [date] [Why? If obvious reason like ‘was not asked about her mental health needs at the medical assessment’]. C sought a mandatory reconsideration of this decision and an appeal is pending.
6. C’s contractual rent is [£850/month]. C receives housing costs through [her/his] UC of only [£368.03/month]. This is because C’s eligible rent is capped by the under 35 ‘shared accommodation rate’ of Local Housing Allowance.
7. There is a shortfall of [481.97/month] which C must meet from [her/his] UC standard allowance in order to maintain [her/his] rent.
8. C receives [£654.02] as [her/his] UC standard allowance. Meeting [her/his] rent leaves [her/him] only [£172.03] to live on each month, from which [s/he] must pay all [her/his] bills including gas, electricity, water, TV licence, telephone etc. and [her/his] living expenses, including food and bus fares.
9. C has understandably been unable to meet the shortfall and has been served with a Notice Seeking Possession, a copy of which was emailed to D on [date]. C is at serious and imminent risk of homelessness as possession will be sought by [her/his] landlord on mandatory grounds.
10. C’s alternative is to seek shared accommodation. C’s [reason] and mental health problems [more detail needed] make shared accommodation inappropriate for [her/his] needs.
11. [What is it about shared accommodation that would be inappropriate?] This would render sharing [her/his] living area and toilet/bathroom facilities highly inappropriate.
12. C applied for DHP to meet the shortfall in [her/his] rent. This was refused by a decision dated [date].
13. C challenged this decision and provided a copy of the notice seeking possession [s/he] has received, but her appeal was refused by a decision dated [date].
14. C’s DHP was refused on the grounds that C was not:

*“at imminent risk of becoming homeless, and that the property is unaffordable.”* [ quote - What did they say exactly?]

1. Evidence was provided to D in support of C’s DHP application from both [her/his] GP and from [the South London and Maudsley Trust …Team], which confirmed C’s difficulties and needs.
2. C is optimistic of success in [her/his] PIP appeal. [S/he] has already been found to have limited capability for work related activity for UC (a high bar to pass) and is confident [her/his] daily living and mobility needs will be recognised by the Tribunal in respect of [her/his] PIP eligibility.
3. Once C’s PIP is awarded [s/he] will become entitled to the one-bedroom rate of the Local Housing Allowance which is [£791.83]/month and the monthly shortfall would be reduced to just [£58.17]. The rent would then be affordable. This shortfall is less than many other privately renting tenants have to pay.
4. DHP has been sought on a short-term basis, until the outcome of C’s PIP appeal is known, to enable [her/his] to stay in accommodation appropriate for [her/his] needs and affordable once [her/his] PIP is awarded.
5. The stress of [her/his] current situation is putting C’s mental and physical health at risk.

***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**

*Legislation*

1. **Under s.** 69 of the Child Support, Pensions and Social Security Act 2000 (“**CSPSSA**”) the Secretary of State may by regulations confer a power on relevant authorities to make payments by way of financial assistance (“discretionary housing payments”) to persons who:

*(a) are entitled to housing benefit or council tax benefit, or to both, universal credit[[1]](#footnote-1) ; and*

*(b) appear to such an authority to require some further financial assistance (in addition to the benefit or benefits to which they are entitled) in order to meet housing costs.*

1. The Discretionary Financial Assistance Regulations 2001[[2]](#footnote-2) then provide the legal framework for DHPs. S.69 CSPSSA (above) is reiterated in Reg 2 and some limitations are placed on the on the circumstances in which a DHP can be awarded by Reg 3. In all other cases local authorities (“**LAs**") are given the discretion to award DHP whenever an application has been made, and how much to award in each case.

***Discretionary housing payments***

***2*** *- ….*

*(2) Subject to paragraph (3) and regulations 4 and 5, a relevant authority has a discretion—*

*(a) as to whether or not to make discretionary housing payments in a particular case; and*

*(b) as to the amount of the payments and the period for, or in respect of which, they are made.*

*Guidance*

1. The Department for Work and Pensions (“**DWP**”) provide guidance on circumstances in which DHP may be appropriate in the form of ‘The Discretionary Housing Payments Guidance Manual’ May 2022 (“**DWP Guidance**”)[[3]](#footnote-3). Of relevance to C’s situation, this includes:

***What DHPs can cover***

*[…]*

*9. DHPs can also cover shortfalls between housing support and actual rental costs, for example, where benefit cap or Removal of the Spare Room Subsidy*

*(RSRS) deductions are applied.*

1. LHA restrictions cause such a shortfall between housing support and actual rental costs.
2. The DWP Guidance suggests factors which should be taken into account in deciding DHP applications (set out further in ‘Grounds’ below) and earlier DWP guidance ‘The Discretionary Housing Payments Guidance Manual Including Local Authority Good Practice Guide’ August 2019 (“**Earlier DWP Guidance**”) made clear that LAs have a duty to act “fairly, reasonably and consistently”. While not included in the current version of the DWP Guidance, the duty to make decisions in accordance with administrative law clearly persists:

*1.10 Although the regulations give LAs very broad discretion, decisions must be made in accordance with ordinary principles of good decision making i.e. administrative law. In particular, LAs have a duty to act fairly, reasonably and consistently. Each case must be decided on its own merits…*

1. D has also issued its own guidance in the form of ‘X’s Discretionary Housing Payments Policy 2013-14’[[4]](#footnote-4) (“**D’s Guidance**”), which confirms limited term awards are favoured and the objectives of the D’s scheme (as relevant to C’s circumstances):

*In most cases, DHPs are not a permanent solution to a shortfall in rent and therefore funding will be paid to cover a period of time whilst alternative, sustainable circumstances are achieved.*

*Objectives of the scheme are to:*

*• alleviate poverty*

*• help people to help themselves*

*• sustain tenancies and prevent homelessness*

*• support vulnerable people in the local community*

*• support households with physical and mental disabilities*

1. The principles of D’s Guidance are also relevant to C’s situation. C is doing everything [s/he] can to resolve her situation by pursuing [her/his] PIP appeal and it would only be fair to allow [her/him] time to do so. C’s mental and physical health problems would render it discriminatory to require [her/him] to move to shared accommodation, and, in consideration of other options available to C, [her/his] current accommodation is in cheaper than other accommodation in the area and will once [her/his] PIP is awarded, be affordable to [her/him].

*• All claimants will be treated fairly*

*• All claimants will be expected to do everything they can to help themselves*

*• All claims will be assessed on their individual merits, including, where relevant, considerations of equality*

*• All of the options available to the claimant will be taken into account when deciding upon a claim*

1. D’s Guidance notably includes this warning:

*The DWP warn that any policy which has a set of too rigid predefined criteria would be vulnerable to challenge by judicial review.*

1. Under “Support for claimants affected by the LHA reforms Since April 2011” D’s Guidance recommends short terms award where there is an expected change of circumstance, as in C’s situation:

*… in some cases it will be appropriate to pay DHP on a temporary basis. These include,* ***but are not limited to****,*

*• claimants who are subject to the age restriction who will soon turn 35*

*• single claimants who are pregnant and who, on the birth of their child, will no longer be subject to the age restriction*

*• claimants who are in employment and are in the process of increasing their hours in order to meet the shortfall in rent*

*• a child will soon require a room of their own*

**Grounds for Judicial Review**

**Ground 1: Failure to take into account relevant facts or follow relevant guidance and/or irrationality in exercise of discretion**

1. **C meets the criteria for an award of DHP set out in** the law and guidance **as [s/he]** is entitled to UC that includes housing costs towards rental liability and requires further financial assistance with housing costs.
2. C’s eligible rent is reduced as her Local Housing Allowance rate is capped until [s/he] turns 35 years old. Para 9 of the DWP Guidance **suggests this is a type of shortfall it is envisaged a DHP scheme will be used to meet.**
3. C lives in a property suitable to meet the needs caused by [her/his] mental and physical health problems.
4. Expecting C to move house would be unduly emotionally distressing when waiting for [her/his] PIP appeal to be decided.
5. Where there is a change of circumstances expected was mentioned in the Earlier DWP Guidance as a factor which should as a matter of good practice to be taken into account when deciding whether and how long to award a DHP for:

*7.2 There is no limit to the length of time over which a DHP may be made****. A time-limited award may be appropriate when an impending change of circumstances will result in an increase in benefit****…*

*7.3 Alternatively,* ***you may wish to make a long term or indefinite award until the claimant’s circumstances change****. You should remember that it may be more appropriate to make a long term award in cases where a claimant's circumstances are unlikely to change, and making a short term award will cause them undue distress.*

1. The current DWP Guidance gives no reason to suggest this is no longer the case, in particular as it confirms that “*each case must be considered on its own individual merits*”.
2. A claimant’s medical circumstances, health and support needs are also a factor to be taken into account under the DWP Guidance:

***Section 10: Priority groups***

*59. LAs will need to consider how best to target the funding within priority groups, whilst remembering that each case must be considered on its own individual merits.*

*60. You may wish to assist certain groups to stay in their home, for example:*

***[…]***

• *people with health or medical problems, either physical or mental, who need access to local medical services or support that might not be available elsewhere*

*• disabled people who need, or have had, significant adaptations made to their property,* ***or where they are living in a property particularly suited to their needs.*** *This includes properties which have been adapted for other members of the household, such as disabled children or non-dependants*

*• where the claimant or someone in their household has an impairment, which requires them to have a larger property than would usually be the case for the size of their household due to, for example, where a bedroom is used for storage of medical equipment or used to support their disability for example, sensory room*

*• disabled people who receive informal care and support in their current neighbourhood from family and friends, which would not be available in a new area. In this respect, you may also consider families who have a child with an impairment who rely heavily on local support networks*

*[…]*

1. In reaching the decision not to award DHP it appears insufficient, if any, regard has been had to Cs’ circumstances. D has provided as the reasons for their decision not to award DHP:

The Claimant is not at imminent risk of homelessness

The property is unaffordable

While D is entitled to take all of C’s circumstances into account, the reasons they have provided are inaccurate as C has been served a Notice Seeking Possession and possession will be sought on mandatory grounds, and [s/he] is expecting [her/his] income to increase such that the property will become affordable, and the reasons given clearly demonstrate that insufficient regard has been had to C’s’ medical circumstances and the extent of hardship faced by this vulnerable claimant.

1. Failure to award DHP when a claim is made by an individual with disability, who is expecting an increase in [her/his] income, suggests that the decision has been unlawfully reached without reference to C’s’ individual, personal circumstances.
2. In the alternative, it suggests that the decision has been unlawfully reached without reference to material factors i.e. to the DWP or D’s own Guidance.

**Ground 2: failure to follow case law and unlawful discrimination**

1. C is a vulnerable individual with mental and physical health problems and [her/his] mental health would be significantly impacted by the loss of [her/his] home and/or being required to live in shared accommodation with people [s/he] does not know.
2. In *Thlimmenos v. Greece - 34369/97* [2000] ECHR 162, (2000), the ECtHR held that Article 14 “*is [also] violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different*” (para 44 of the judgment). The test is therefore whether they “*have been treated the same as others in a relevantly different situation*”.
3. **Failure to treat this disabled applicant differently to applicants aged under 35 without disability whose mental health would not be affected by living with people they do not know, amounts to discrimination contrary to Article 14 ECHR taken with Art 1 Prot 1 ECHR.**

**Details of the action that D is expected to take**

**D is requested:**

* **without further delay award and pay C DHP from** the date of [her/his] claim, 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:**

* **Medical evidence (as provided to D)**
* **DHP application (**as provided to D)
* Correspondence with D
* Rent statement showing rent arrears which have accrued as a result of non payment of DHP
* Signed form of **authority**

**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**

**Address of advice agency**

**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 we will issue proceedings for judicial review without further notice to you.

Yours faithfully

Enc.

1. ‘universal credit’ inserted by [Welfare Reform Act 2012 (c. 5)](https://www.legislation.gov.uk/id/ukpga/2012/5), [s. 150(3)](https://www.legislation.gov.uk/id/ukpga/2012/5/section/150/3), [Sch. 2 para. 55](https://www.legislation.gov.uk/id/ukpga/2012/5/schedule/2/paragraph/55); [S.I. 2013/358](https://www.legislation.gov.uk/id/uksi/2013/358" \o "The Welfare Reform Act 2012 (Commencement No.8 and Savings and Transitional Provisions) Order 2013), [art. 2(1)](https://www.legislation.gov.uk/id/uksi/2013/358/article/2/1), [Sch. 1 para. 21](https://www.legislation.gov.uk/id/uksi/2013/358/schedule/1/paragraph/21); [S.I. 2013/983](https://www.legislation.gov.uk/id/uksi/2013/983" \o "The Welfare Reform Act 2012 (Commencement No. 9 and Transitional and Transitory Provisions and Commencement No. 8 and Savings and Transitional Provisions (Amendment)) Order 2013), [art. 3(1)(b)(i)](https://www.legislation.gov.uk/id/uksi/2013/983/article/3/1/b/i) [↑](#footnote-ref-1)
2. Amended by the Welfare Reform Act 2012 (Consequential Amendments) Regulations 2013 to allow Universal Credit claimants to have access to the DHP Scheme. [↑](#footnote-ref-2)
3. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1080049/discretionary-housing-payments-guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080049/discretionary-housing-payments-guide.pdf) [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)