**What is this letter for?**

*This letter challenges a local authority’s refusal of a DHP for the reason that the claimant’s housing costs are already being met in full by a Managed Payment to Landlord (APA or MPL)*

* Read whole letter carefully.
* Edit all text in red and/or [square brackets] and/or CAPSLOCK
* Return all text to black before sending.

[DELETE THIS BOX BEFORE POSTING]

 **Only use this letter only if:**

* *your client has been refused a DHP,*
* *the amount of UC your client receives is reduced by a Managed Payment to Landlord for their rent,*
* *your client is also subject to the benefit cap, and*
* *you have used your local authority’s dispute service and a decision has not been made within a reasonable time or a response has been received which states the same reason for the decision.*

[DELETE THIS BOX BEFORE POSTING]

[COUNCIL LEGAL DEPARTMENT]

By post and email:

Date:

Dear Sir/Madam,

**Re: Proposed Claim for Judicial Review against the … Housing Benefit Department by X**

We are instructed by X 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:**  X Housing Benefit Department (“**D**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**HB / DHP reference:** [xxxx]

**The details of the matter being challenged**

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

**Background Facts**

1. C is a private / social tenant renting from [her/his] landlord [landlord name].
2. C lives in a NUMBER bedroom property with [her/his] children:
* *NAME DoB*
* *NAME DoB*
* *NAME DoB*
* *NAME DoB*
* *NAME DoB*
1. C is in receipt of Universal Credit (“**UC**”) and is subject to the ‘Benefit Cap’. This has the effect of reducing her/his UC by £…. EACH MONTH.
2. C has rent arrears of £[AMOUNT AND IS SUBJECT TO A POSSESSION ORDER/ HAS BEEN SERVED WITH A NOTICE SEEKING POSSESSION].
3. A Managed Payment to Landlord (“**MPL**”) has been set up to avoid the loss of this family’s home. [THE MPL WAS REQUESTED BY C’S LANDLORD AND AGREED BY THE DWP]. **DELETE IF UNTRUE**
4. The result of this is that X’s full rent and repayments towards [her/his] arrears are paid to her/his landlord before the remainder is paid to X for [her/his] and [her/his] children’s living costs.
5. This leaves X only £… UC each month to meet all [her/his] essential expenditure (including the family’s gas, electricity, water, TV license, telephone and internet, food, clothing etc) for [her/his] family of [number].
6. C applied for DHP to meet the shortfall in [her/his] living costs, which would otherwise be a shortfall in [her/his] housing costs but for the MPL.
7. This was refused by a decision dated …. in which D stated:

*“DHP is only available for housing costs and X’s housing costs are being paid in full” (edit as appropriate)*

1. Evidence was provided to D in support of C’s DHP application [from …, which confirmed x’s difficulties and needs. (edit as appropriate)]
2. [DHP has been sought on a short-term basis, until … what? Or…]
3. [DHP has been sought on a long-term basis because …]
4. [Consequence of hardship…]
5. [Detail the history of complaint pursued through local authority dispute service.]

**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**

*Alternative Payment Arrangements (“****APA****”): Managed Payments to Landlord (“****MPL****”)*

1. In most cases UC is a single, monthly payment which is paid in arrears directly into a claimant’s bank account. The claimant is then responsible for meeting their own rent payments.
2. However, an APA can be arranged at the discretion of the Secretary of State for Work and Pensions (“**DWP**”)[[1]](#footnote-1) where the DWP (or in some cases the claimant’s landlord) identifies that a claimant is unlikely to be unable to manage their own rent payments; to protect the interests of the claimant, their partner, a child, or a severely disabled person. An MPL is a type of APA.
3. Specific guidance is provided by the DWP as to when and how this discretion should be exercised. An APA is set up when a claimant is vulnerable by reference to criteria set out in the DWP’s guidance: *Alternative Payment Arrangements[[2]](#footnote-2)*. These factors include at Annex A: *5.1* *Tier 1* *factors* - *Highly likely/probable need for Alternative Payment Arrangements*:
* *Drug/alcohol and/or other addiction problems, such as gambling,*
* *Learning difficulties including problems with literacy and/or numeracy*
* *Severe/multiple debt problems*
* *In temporary accommodation*
* *Homeless*
* *Domestic violence and abuse*
* *Mental health condition*
* *Currently in rent arrears/threat of eviction/repossession*
* *Claimant is a 16 or 17 year old and/or a care leaver*
* *Families with multiple and complex needs*
1. An MPL is arranged at the discretion of the DWP and the claimant does not have a right of appeal if he or she does not want the MPL.

*Discretionary Housing Payments (“****DHP****")*

1. Under s.69 of the Child Support, Pensions and Social Security Act 2000 the Secretary of State may by regulations confer a power on relevant authorities to make payments by way of financial assistance. These payments are known as DHPs.
2. The Discretionary Financial Assistance Regulations 2001 (“**DFA Regs**”) then provide the legal framework for DHPs.
3. In most cases local authorities (“**LAs**”) are given the discretion to award a DHP whenever an application has been made by a claimant in receipt of Housing Benefit (“**HB**”) or UC and how much to award in each case. The DFA Regs provide:

***“Discretionary housing payments***

***2****.—(1) Subject to paragraphs (2) and (3) and the following regulations, a relevant authority may make payments by way of financial assistance (“discretionary housing payments") to persons who—*

*(a) are entitled to housing benefit or a relevant award of universal credit*[[3]](#footnote-3)*; and*

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

*(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.”*

(Underlining added)

1. The need for further financial assistance under reg 2(1)(b) DFA Regs to be ‘*in order to meet housing costs*’ has been broadly defined by the courts and includes where current housing costs are being paid in full by HB or UC.
2. In *R (Gargett) v LB Lambeth* [2008] EWCA Civ 1450 the Court of Appeal unanimously held that an award of a DHP was not precluded for rent arrears, even though Housing Benefit was then in payment at a level which covered C’s ongoing rent in full. The Court held that LB Lambeth had:

*“32. ... misconstrued the 2001 Regulations by giving the fact that she was already in receipt of full housing benefit as the reason why it had no discretion to grant Ms Gargett's application for DHPs.”*

 *MPL and Benefit Cap*

1. The DWP provide guidance on circumstances in which DHP may be appropriate in the form of *The Discretionary Housing Payments Guidance Manual* (updated May 2022)(“**DWP Guidance**”)[[4]](#footnote-4). Of relevance to C’s situation, this includes:

*“****What DHPs can cover****8. DHPs can cover a rental deposit, rent in advance, costs associated with*

*taking up a new tenancy for example, removal costs.*

*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. See Annex A – Benefit cap and RSRS*

*policy for more information.”*

1. The DWP Guidance goes on to explain that the level of DHP must not exceed a claimant’s weekly HB or UC housing element (ie, that total eligible rent should not be exceeded when the amount of DHP is taken with the amount of HB or housing element already paid) with reference to the decision in *R (Gargett v LB Lambeth):*

***The level of a DHP award***

*12. The Discretionary Financial Assistance Regulations 2001 (regulation 4) require that the level of DHP does not exceed the weekly HB or UC housing element.*

*13. Regard should be given to the Court of Appeal’s decision in R v. LB Lambeth, ex parte Gargett which sets out that any HB already paid towards ‘housing costs’ must be deducted when calculating the amount of a DHP to avoid duplicate provision. See Legal considerations at Annex C for more information.*

(Underlining added)

1. From this it is clear that it is not the amount paid to a claimant’s landlord which is relevant (in this and other MPL claimants’ cases this is the full rent), rather the amount of a claimant’s HB or housing element which has already been paid which must be taken into account (which in C’s case is less than [her/his] eligible housing costs due to the Benefit Cap.
2. Annex A to the DWP Guidance: ‘*Benefit cap and Removal of the Spare Room Subsidy policy*’ further confirms funding is specifically provided to LAs to help families affected by the Benefit Cap:

*“13. The Government has provided additional funding for DHPs to support claimants affected by the benefit cap who, as a result of a number of complex challenges, cannot immediately move into work or more affordable accommodation.*

*14. The funding for DHPs is specifically aimed at a number of groups who are likely to be particularly affected by the benefit cap. These include (but are not limited to):*

*• those in temporary accommodation*

*• individuals or families fleeing domestic abuse*

*• those with kinship care responsibilities*

*• individuals or families who cannot move immediately for reasons of health, education or child protection*

*• households moving to, or having difficulty finding more appropriate accommodation*

*• those with dual liability for housing costs*

*• women within 11 weeks of the expected week of childbirth*

*• households containing a young child, specifically a child aged 9 months and under, or a child aged under 2 years of age where childcare is a barrier to getting work.*

*• resettlement refugees”*

**DELETE ANY THAT ARE NOT RELEVANT TO YOUR CLIENT and replace with […]**

1. The issue was further specifically addressed in a bulletin to all Housing Benefit staff in February 2017 (“**HB Bulletin**”)[[5]](#footnote-5), following the original iteration of the above guidance:

*“14. The Department has received a number of enquiries recently over the use of DHPs to support claimants with housing costs on Universal Credit. The following information updates our position on the subject following the original publication of this guidance bulletin on 22 December 2016 and the information contained supersedes that version.*

*15. DWP works closely with LAs to ensure tenants are able to meet their housing costs. Where it is in a claimant’s best interests to have their housing costs paid direct to the landlord, for example because they have difficulty budgeting or have problems with arrears, an Alternative Payment Arrangement (APA) can be put in place, such as a Managed Payment to Landlord (MPTL). This does not change the overall amount of the Universal Credit award but simply how it is paid.*

*16. DHPs can be made to people who are entitled to either HB or a Universal Credit award that includes an amount for housing costs and who have difficulty meeting their rent commitments. These payments are very flexible and are made at the discretion of the LA where they consider that further financial assistance towards housing costs is required. Universal Credit claimants who meet the eligibility criteria are considered for a DHP award in the same way as anyone else.*

*17. DWP does not see any legal reason why DHPs cannot be paid to Universal Credit claimants who have an MPTL in place.”*

(Underlining added)

1. As Lord Henley (then Parliamentary Under Secretary of State at the Department for Work and Pensions) made clear in his answer in the House of Lords[[6]](#footnote-6), a local authority can pay a DHP where an MPL is in place, and in the event they do not and this is the reason given by the local authority for the refusal, the DWP will remove the MPL:

*“DWP does not see any reason why Discretionary Housing Payments cannot be paid to Universal Credit claimants who have Managed Payments to their Landlord in place.*

*However, if a Local Authority decides not to accept an application for DHP on the grounds that a managed payment to the landlord is in place, guidance is clear that DWP can, in agreement with the claimant, remove that arrangement to allow the application to be made.”*

1. D HAS ALSO ISSUED ITS OWN GUIDANCE IN THE FORM OF ‘…. DHPS POLICY” (THE DEFENDANT’S GUIDANCE), WHICH CONFIRMS …

 INSERT LA GUIDANCE (IF ANY)

1. If the consequence of the refusal of a DHP is that the MPL is removed for a UC claimant, when that claimant has been identified as vulnerable and in need of an MPL to ensure their rent is paid and their home is protected, the consequence of this is to put their home in jeopardy and risk homelessness for the claimant and their family; in this case including [number] of children.

**Grounds for Judicial Review**

**Ground 1: Failure to follow the guidance / misdirection of law in stating C does not have a need for help with housing costs and fettering discretion**

1. **C meets the criteria for an award of DHP set out in** the DFA Regs **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 circumstances are specifically covered the DWP Guidance which recommends DHPs be used to help claimants whose UC is reduced due to application of the benefit cap (at para 9 and Annex A) and confirms that a DHP may be awarded when an MPL is in place (at para 17 HB Bulletin). That D must have regard to the DWP Guidance was confirmed in *R (Halvai) v LB Hammersmith and Fulham* [2017] EWHC 802 (Admin) (in the context of length of awards).
3. That the overall amount of the UC award is not changed by an MPL, simply how it is paid, was confirmed by the HB Bulletin in February 2017. C’s need for help with housing costs is not therefore changed by the MPL. [Her/his] need for further financial assistance with housing costs remains.
4. Caselaw confirms that a local authority has the discretion to award C a DHP when [his/her] current housing costs are being paid in full (*R(Gargett) v LB Lambeth*).
5. By stating “[DHP IS NOT AVAILABLE AS HOUSING COSTS ARE BEING PAID IN FULL” EDIT AS APPROPRIATE] D has failed to follow the DWP Guidance to which it must have regard and failed to apply the relevant caselaw.
6. **D’s statement further suggests** operation of a blanket policy. **It is unlawful to operate a ‘blanket policy’ when a discretion is available. In *R (S) v Secretary of State for the Home Department* [2007] EWCA Civ 546 the Court of Appeal summarised this principle when it stated:**

***“[a] public authority may not adopt a policy which precludes it from considering individual cases on their merits”.***

1. By failing to exercise the discretion available to it, or take account of the C’s personal circumstances and the relevant guidance, D has acted unlawfully.

**Ground 2: Irrationality in exercise of discretion**

1. C’s housing costs do not cover [her/his] rental liability, due to the application of the benefit cap. As above, para 9 and Annex A DWP Guidance **specifically state that this is a type of shortfall it is envisaged a DHP scheme will be used to meet, as the impact of the benefit cap will usually be a reduction in the amount that the claimant receives to cover housing costs. Where an MPL is in place for a benefit capped claimant then the effect is that housing costs are met by reducing the claimant’s income intended for subsistence to far below a sustainable level. In that situation (where a claimant does not have sufficient income for subsistence as the housing costs are being met) then it is obvious that claimant needs some additional support in order to meet her/his housing costs. Someone who can in effect only meet their housing costs through starving as a matter of rationality needs help to meet their housing costs.**
2. The MPL does not change the amount of C’s total UC award, only the way that it is paid, meaning the impact of the benefit cap is the same as it would be if C was responsible for making the rent payment [her/his]self.
3. D has refused C’s application for a DHP on the basis that [her/his] full housing costs are being paid to the landlord via the MPL, so there is no deficit for the DHP to meet.
4. In doing so D has essentially decided that it does not appear to it that C “*require[s] some further financial assistance (in addition to the benefit to which they are entitled) in order to meet housing costs*” and therefore that reg 2(1)(b) of the DFA Regs is not met. That decision is irrational for the reason given above and as further explained below.
5. The irrationality can be seen as soon as one considers another benefit claimant (“B”), in exactly the same position as C (with regard to housing situation, level of rent arrears, receipt of UC, family situation etc) save for the fact that B does not have an MPL in place. It would, we presume, appear to D that B needed some further financial assistance in order to meet housing costs.
6. It is irrational in those circumstances, for D not to have the same view with regard to C.
7. The only difference between the two situations is that:
	1. C does not get to make the choice about whether or not [s/he] pays the rent and then [her/his] and [her/his] family go without on the UC that is paid to [her/him].
	2. B has to decide whether to pay the rent and then subject [her/his] and [her/his] family to the privations imposed by the benefit cap.
8. It is obvious that in such a situation C would be likely to shortly request the MPL cease and the DWP guidance referred to above is that they would indeed cease making the MPL if that was the barrier to a DHP being granted. That would have the effect of leaving C in a situation where [s/he] would have all of the UC paid to [her/him] and would then have to choose to pay the balance of [her/his] rent (after the DHP had been paid by the LA to [her/his] landlord) to the landlord (a choice which the DWP has expressly recognised it would be in [her/his] interest for [her/him] not to have to make by awarding the MPL in the first place). That reveals further the irrationality in D’s approach which basically undermines the individual decision which the DWP have already made about C’s ability to manage [her/his] own finances.

In summary, it is irrational to refuse a DHP to someone in C’s position, who is due to vulnerability having [her/his] rent paid directly to [her/his] landlord by way of an MPL, arranged at the discretion of the DWP (ie. not C), to the detriment of the UC available to meet [her/his] living costs, while another claimant (B) with exactly with same income, family and housing situation who is not vulnerable enough to require an MPL or where the DWP has not exercised its discretion to arrange an MPL, would be considered for a DHP with the result that after housing costs he/she would have more UC available meet the same living costs.

**Alternative remedies**

**C has no right of appeal against the decision not to award a DHP. [Name of council] has a [dispute resolution/complaints] procedure which C has followed, however [no response has been received within a reasonable time or at all / D’s response does not address the arguments above, which were detailed in C’s complaint] and C is facing [what hardship] while DHP is not in payment. Judicial review is therefore the only remedy which can provide a timely resolution and challenge D’s unlawful decision making in respect of DHP applications from claimants where an MPL is in place and their housing costs are being met in full from their UC but they are left with insufficient income to meet their other essential basic expenditure.**

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

**D is requested:**

* **without further delay to award and pay C DHP**
* **to amend its guidance to make clear it is open to decision makers to award DHP where an MPL is in place**

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

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

* **DHP application (**as provided to D)
* Correspondence with D
* 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**

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

Yours faithfully

Enc.

1. Reg 58 of the Universal Credit etc.(Claims and Payments) Regulations 2013 SI 2013/380 [↑](#footnote-ref-1)
2. [www.gov.uk/government/publications/universal-credit-alternative-payment-arrangements/alternative-payment-arrangements#annex-a-factors-to-consider-for-alternative-payment-arrangements](http://www.gov.uk/government/publications/universal-credit-alternative-payment-arrangements/alternative-payment-arrangements#annex-a-factors-to-consider-for-alternative-payment-arrangements) [↑](#footnote-ref-2)
3. Amended by reg 2(3) of the Welfare Reform Act 2012 (Consequential Amendments) Regulations 2013 to allow UC claimants to have access to the DHP Scheme. [↑](#footnote-ref-3)
4. assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/827510/discretionary-housing-payments-guide.pdf [↑](#footnote-ref-4)
5. assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/637015/g12-2016.pdf [↑](#footnote-ref-5)
6. [www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-01-17/HL4741/](http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-01-17/HL4741/) [↑](#footnote-ref-6)