**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

Your client should also apply for a discretionary housing payment in this situation, and note the template available if DHP is refused because there is a managed payment to landlord in place: [cpag.org.uk/welfare-rights/support-advisers/support-advisers-england-and-wales/support-judicial-review-process/template-letters/other-benefits-and-payments](https://cpag.org.uk/welfare-rights/support-advisers/support-advisers-england-and-wales/support-judicial-review-process/template-letters/other-benefits-and-payments)

DELETE BOX BEFORE SENDING

**This letter challenges:**

* DWP’s application of the wrong test to impose an MPL – ie, whether landlord wants it, rather than whether it is necessary to protect interests of the claimant or their family

If you need help with this letter please contact jrproject@cpag.org.uk

DELETE BOX BEFORE SENDING

**Use this letter if:**

* Your client receives UC and is benefit capped
* Most of / all of UC award is paid to landlord via a managed payment to landlord (MPL)
* Your client has asked that the MPL be stopped and this has been refused by DWP
* Your client is left without enough UC to meet basic expenditure eg, food/heating

Read whole letter carefully and edit all text in red, **bold,** and or [square brackets]. Return all text to not bold, and black before sending.

DELETE BOX BEFORE SENDING

[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 [her/his] 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 date (7 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. C is challenging the ongoing payment of [what percentage of [her/his] / her/his] entire] UC award to [her/his] landlord under a managed payment to landlord/alternative payment arrangement.

***Background facts* [edit whole section]**

1. **C is …. Personal details, family inc DoBs**
2. **Housing details inc landlord**
3. **Disability / vulnerability**
4. **On date made a claim online for UC, and was awarded UC from date.**
5. **C was awarded £x each month, comprised of what elements. C is affected by the benefit cap, this reduces [her/his] eligible UC from £x to £x.**
6. **C’s rent equates to % of [her/his] total UC award.**
7. **An alternative payment arrangement was put in place on date with £x to be paid direct to landlord. With her/his consent?**
8. **On date, C’s UC payment went down from the previous month’s payment of £x to £x due to the £x being paid direct to the landlord.**
9. **On date, C posted a request in [her/his] UC journal for [her/his] UC award, including the housing element, to be paid to [her/him] direct so that [s/he] could manage the money and pay the landlord [her/himself].**
10. **This request was refused on date on the basis that the landlord had requested payment direct to them and the arrangement could not be terminated without the landlord’s agreement.**
11. **Any further requests?**
12. **Since date, C’s UC payment has been £/zero as £/the entire amount has been paid direct to the landlord.**
13. **Details of any DHP award**
14. **Consequences for C of full housing costs being paid to landlord**

**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 issues***

**Ground for judicial review: unlawful exercise of alternative payment arrangement power**

1. **The power to make an alternative payment arrangement to a landlord (“MPL”) is set out in regulation 58 of the Universal Credit (Claims and Payments) Regulations 2013:**

**(1) *The Secretary of State may direct that universal credit be paid wholly or in part to another person on the claimant’s behalf if this appears to the Secretary of State necessary to protect the interests of –***

***(a) the claimant***

***(b) their partner***

***(c) a child … for whom the claimant … are responsible***

**(Emphasis added)**

1. **There are references in C’s UC journal to the fact that [s/he] still has [what] income. However, these total £x to live off per month, less than the UC standard allowance for [her/himself] and** **[her/his] children, demonstrably less than the subsistence level income needed to meet essential expenditure for C and [her/his] children and is affecting the quality of life of C and [her/his] children. The entries on C’s UC journal show that when C posted entries outlining the hardship [s/he] and [her/his] children were facing, those administering [her/his] UC award considered that [s/he] could apply for a discretionary housing payment (“DHP”) (e.g. entry on date). However while C has applied for and been awarded a DHP, this has been awarded to cover the shortfall between [her/his] rent and the housing element paid and goes direct to [her/his] landlord. It does not cover [her/his] day to day living expenses.**
2. **There is nothing to indicate from the information available on C’s UC journal as to how it was concluded that payment of the housing element of C’s UC award direct to [her/his] landlord was considered to protect C’s interests or those of [her/his] children when it leaves [her/him] and the children with a maximum UC payment of only £x per month.**
3. **When C expressly requested on date that payment of [her/his] UC award be made direct to [her/him], [s/he] was told this could not be done ‘without the agreement of the landlord’.**
4. **This is not the correct test as per regulation 58. Even if, which is not accepted, the initial setting up of the alternative arrangement to the landlord was lawful, keeping it in place when C had expressly requested that it be cancelled and without further consideration of whether the payment of % of UC award / the entire UC award to the landlord was necessary to protect C’s and/or C’s children’s interests was an unlawful exercise of the power to make alternative payments under regulation 58.**
5. Regulation 58 requires SSWP to decide whether it is in the interests of a claimant and their children for payments to be made, not to them, but to a third party. By refusing to end the MPL because the C’s landlord does not agree, the interests of C’s landlord have been considered before, or instead of, the interests of C and C’s children.
6. In most cases where a MPL is made then the rationale will be that SSWP making the payment direct, guarantees that the money intended for rent reaches the landlord. That can in many cases be considered to be in the claimant interest as it will ensure that they cannot be evicted for rent arrears due to not making the payment to the landlord in cases where they are paid the full UC direct.
7. However, with a capped benefit claimant or a claimant whose rent is very much larger than their housing cost element, then the effect of making a MPL of the full amount will be that they are left with far less than the amount of UC intended for them and their children.
8. In such cases, SSWP is required to take account of not just the risk to C’s security of housing (factoring in the relevant local authority’s duty to rehouse where should C become homeless as a result of **[her/his]** housing being ‘unaffordable’ to **[her/him]**, see *Samuels* below) but also to the harm done to C and C’s children of having insufficient income to meet essential living expenses including food. Consideration does not appear to have been given to whether C has sufficient income to meet **[her/his] a**nd **[her/his]** children’s essential living costs and as such SSWP has unlawfully failed to take account of relevant information when reaching his decision to set up and /or keep the MPL in place, and has unlawfully prioritised the financial interests of C’s landlord when this is not a criteria for decision making under regulation 58.
9. **In** *Samuels v Birmingham City Council* [2019] UKSC 28 the Supreme Court considered what constitutes reasonable expenditure for a tenant in receipt of welfare benefits, **noting:**

**“…***benefit levels are not generally designed to provide a surplus above subsistence needs for the family*.” [35]

1. The Court held that Ms Samuels’ household spending was not “unreasonable” as it was lower than the level of subsistence benefits set for herself and her children for living expenses, including her Income Support, Child Tax Credit and Child Benefit (analogous to C’s Universal Credit and Child Benefit) finding:

“*It is difficult to see by what standard those expenses could be regarded as unreasonable*” [36].

1. **Ms Samuels had therefore not made herself “**intentionally homeless” when she was evicted for rent arrears accrued when she did not pay the shortfall between her housing benefit award and the amount of her rent from her benefit income designed to meet living expenses. In these circumstances Lord Carnwath concluded that Birmingham City Councilhad a duty to rehouse Ms Samuels under Part VII of the Housing Act 1996, as her previous accommodation had not been “affordable”.
2. It is clear from *Samuels* that “reasonable” expenditure for a family is up to the amount of benefits awarded for living expenses for parents and children, here UC and Child Benefit. For C this equates to £x each month. Whereas after the MPL C is left with only £X, clearly insufficient to meet the family’s reasonable subsistence level expenditure.
3. **No consideration appears to have been given to whether C is able to meet [her/his] reasonable expenditure with reference to level of subsistence benefit set for [her/him] and [her/his] children’s living expenses, or how a managed payment “*protect[s] the interests”* of C and [her/his] children, when C and C’s children would be owed a duty to be rehoused under** Part VII of the Housing Act 1996 if C were to be evicted for rent arrears accrued because C’s subsistence level income is insufficient to meet both C’s reasonable living expenses and C’s full rent such that C’s accommodation is unaffordable to **[her/him].**
4. **Even if (which is again not accepted) consideration was given to the ‘protect C’s and/or [her/his] children’s interests’ under regulation 58, the conclusion that it was in [her/his]/their interests for % of / the entire UC award to be paid to the landlord was irrational:**

**(i) it puts the financial interests of the local authority / housing association before those of a vulnerable individual and [her/his] number children;**

**(ii) it means that… eg C has been forced to access foodbanks and has limited opportunities to buy fresh fruit or vegetables for [her/himself] and [her/his] growing children;**

**(iii) it means that ...**

1. **No consideration appears to have been given to whether an alternative payment arrangement for part of C’s housing element would be sufficient to protect [her/his] and/or [her/his] children’s interests. Thus, for the sake of argument, it might be contended that payment of some of C’s rent direct to [her/his] landlord to limit the amount of arrears [s/he] falls into and therefore limit the risk of eviction, is necessary to protect [her/him] and [her/his] children’s interests while, at the same time, ensuring that the family does receive some UC payment for daily living.**
2. **There are two ways in which it could be assessed what was a reasonable amount of the capped UC award to pay the landlord:**

**(i) in UC the reduction due to the benefit cap is applied to the totality of the UC award and not simply the housing element. This compares to legacy benefits where the reduction is applied only to housing benefit so, while a capped person’s housing benefit award may be reduced to nil – albeit kept at a token .50p for passporting purposes - their other benefits are essentially protected. If the reduction due to the cap was applied only to the housing element of C’s UC award, this would mean that on [her/his] last month’s award (month), the housing element would have been reduced from £x to £x which would still have left [her/him] with a UC payment of £x after other adjustments.**

**(ii) C’s housing element represents 62% of [her/his] maximum UC award. For the benefit cap to be applied proportionately across all the elements, rather than any one particular element taking precedence, [her/his] total housing element after the cap would be 62% of £x or £x. This would leave C with a UC payment of £x.**

1. **For all the above reasons, there has been a failure to comply with the requirements under regulation 58 in the setting up and maintaining of the alternative payment arrangement to C’s landlord. As a result the ongoing reduction of her UC payment to £ is unlawful.**

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

**SSWP is requested to:**

* **End the managed payment to C’s landlord with immediate effect;**
* **In addition, the poor handling by DWP of C’s UC claim has added to [her/his] overall stress and anxiety at a time when [s/he] has been having to deal with … Contrary to DWP’s stated priority of delivering ‘outstanding services to our clients and customers’, C finds [her/himself] having all [her/his] UC award paid to [her/his] landlord despite repeated entries on [her/his] journal to the effect that [s/he] cannot manage; having to resort to food banks to feed [her/his] children, and ... Such poor handling is also contrary to DWP’s customer charter, with its commitments inter alia to understand C’s circumstances and to provide C with the correct decision and information.**

**In light of the above, we are requesting an award of compensation to be made to C, a full explanation for the failures in [her/his] case and a reassurance that systems and training are in place to prevent them being repeated.**

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

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

* **Client’s Form of Authority**
* **[Anything else]**

**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 service name and address**

**and email**

**Proposed reply date**

We expect a reply promptly and in any event no later than **date.** We recognise that this is 7 days rather than the usual 14 days. However, we consider such a shortened period is appropriate given the dire financial circumstances of our client and the fact that SSWP has been made aware of the issue via C’s online journal.

**Should you consider that you need the full 14 days to respond, please inform me of the same with reasons by return, otherwise if we have not received a reply by date we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

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)