**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 DWP’s refusal to stop deductions from UC for fuel arrears and ongoing usage when the claimant has cleared all their fuel debt.**

This letter does not address either where the debt is owed by a previous occupant or to a previous supplier, but could be easily adapted, please seek assistance if needed:

Previous occupant

The sch 6 para (8)(2) condition is not met where the debt is not owed by C, they are not ‘in debt’.

Previous supplier

The sch 6 para 8(2) condition is met but SSWP should determine in accordance with their guidance whether to make a deduction and “[Deductions” (V12)](https://data.parliament.uk/DepositedPapers/Files/DEP2022-0860/047._Deductions_V12.0.pdf) states ‘last resort deductions’, of which fuel is one, are appropriate where claimants are at risk of “*risk of homelessness or* ***disconnection of fuel***”.  There is no risk of disconnection where the debt is not to the current supplier.

ADM [D2154](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1070457/admd2.pdf) states “*The DM should supersede the outcome decision which includes the third party deduction decision for fuel costs, when a relevant change of circumstances occurs. For example where ...* ***3****.* ***the claimant changes fuel company and the debt is not transferable***.” The deduction therefore fails to apply their own guidance.

**DELETE BOX BEFORE POSTING**

**Please read this letter carefully and adapt it for the facts of your client’s case.**

Judicial review is a ‘remedy of last resort’. Before sending this letter, you should request a mandatory reconsideration of the decision not to stop deductions. Feel free to use the references in this letter when drafting your MR request. Explain that if an MR decision is not received within 14 daysyou will send a judicial review pre-action letter challenging the delay and the substantive issue.

For use after 6/4/23 when the Social Security Benefits (Claims and Payments) (Modification) Regulations 2022 cease to have effect.

**Read whole letter carefully** and edit all text in [square brackets].

Email **jrproject@cpag** for assistance using this letter.

**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 [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 4pm on [date] (14 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 deductions from [her/his] UC award which purport to be for fuel arrears when C [has no/ no longer has] fuel arrears and for ongoing fuel usage, when no power exists to make ongoing deductions when C has no fuel arrears , contrary to reg 60 and sch 6 of **the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (”UC (CP) Regs”).**

**Background facts**

1. **[C’s personal details, family members including dates of birth, health/disability, any other vulnerabilities]**
2. **C has been receiving UC since [date]. [S/he] claimed UC because [reasons].**
3. **[Explain fuel arrears: how much, how they accrued, any recovery action taken]**
4. **Deductions from C’s UC award in respect of the fuel arrears began in [month] with [amount] paid monthly thereafter direct to C’s supplier, [name of supplier].**
5. **At the date when deductions began, the arrears balance was [amount].**
6. **[Explain how the arrears were cleared – Did s/he pay off the balance in another way? Or were the arrears paid off solely as a result of the UC deductions? Include specific amounts and dates.]**
7. **C’s fuel bill is [£x each month / week]. This must be paid [weekly / monthly in arrears].**
8. **By [date], C’s fuel account balance [was £x in credit.]**
9. **However, a further deduction of [amount], purporting to be for fuel arrears, was taken from C’s UC subsequent UC payment which was made on [date].**
10. **On [date], C posted in [her/his] UC journal [or called UC] asking for the deductions for fuel arrears to be stopped because the balance had been paid in full. [Was evidence provided – and how?]**
11. **This request was refused on [date] with D stating:**

**[*text of journal entry or content of phone call: eg C was told she would need to speak directly to her energy supplier about this issue, and that DWP would take no further action without the energy supplier’s instructions*.]**

1. **[Describe any further action taken with DWP: more UC journal requests/calls? Further evidence provided? Request for mandatory reconsideration?]**
2. **[Describe any further action taken with supplier: client asking them to stop the deductions, refusal or no answer, delays, refusal to refund credit on account, etc.]**
3. **[Describe the consequences of the decision for C. Has the supplier refused to refund the account balance, eg due to an internal policy about credit on account, leaving client out of pocket? Has client been unable to pay for essentials in the affected months, even if the supplier subsequently agreed to a rebate? Has client got into debt? Has client suffered stress/ill-health?]**

**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 60 UC (CP) Regs:**

*“Deductions may be made from benefit and direct payments may be made to third parties on behalf of a claimant in accordance with the provisions of Schedule 6 and Schedule 7”*

1. **Under paragraph 2 of Schedule 6 UC (CP) Regs:**

***2.****—(1) The Secretary of State may deduct an amount from a claimant's award of universal credit and pay that amount to a third party in accordance with the following provisions of this Schedule to discharge (in whole or part) a liability of the claimant to that third party.*

 **(Emphasis added)**

1. **Paragraph 8 of Schedule 6 UC (CP) Regs provides for deductions to be made from UC for ‘fuel costs’.**
2. **Under paragraph 8(1) SSWP may deduct an amount for both fuel arrears and ongoing fuel usage when the condition in para 8(2) is met. The condition under para 8(2) is that the claimant is fuel debt:**

### ***Fuel costs***

***8.*** *—(1)****This paragraph applies where the following condition is met.***

***(2) The condition is that in any assessment period the claimant is in debt for any fuel item.***

*(3)****Where this paragraph applies****, but subject to sub-paragraphs (5) and (6),* ***the Secretary of State may,*** *in such cases and circumstances as the Secretary of State may determine,* ***deduct*** *in relation to that assessment period the following amounts from the claimant's award and pay them to the person to whom the payment is due.*

*(4) The amount which may be deducted in respect of any fuel item is—*

*(a)* ***an amount equal to 5% of the standard allowance****; and*

*(b)* ***an additional amount which the Secretary of State estimates is equal to the average monthly cost necessary to meet the claimant's continuing need for the fuel in respect of which the debt arose****, plus such monthly amount as is required to meet any payments required to be made under a green deal plan within the meaning of section 1 of the Energy Act 2011 (“the 2011 Act”), except where current consumption is paid for by other means such as a pre-payment meter*.

[…]

**(Emphasis added)**

**Ground 1- unlawful deductions from UC**

1. **C’s fuel account is in credit of [£amount] as at [date].**
2. **By making an ongoing deduction for fuel debt under para 8(4)(a) sch 6 UC (CP) Regs, D is deducting from C’s UC amounts for fuel for which C is not yet liable. There is no legal power to make those deductions, which are as such unlawful.**
3. **The power to make a deduction from an award of UC only exists “***to discharge (in whole or part) a liability of the claimant*” under **para 2** and can only be made where “*the claimant is in debt*” under para 8(2). C is not liable for fuel that [s/he] has not yet used and it is not disputed by D or C’s supplier that C is not in debt with [her/his] fuel.
4. **The deduction from C’s UC** for ongoing fuel usage under para 8(4)(b), ceased to meet the conditions for a fuel deduction to be made under para 8(2) as soon as C’s fuel arrears were cleared as [s/he] ceased to be “*in debt for any fuel item*”, as such the deduction for ongoing consumption is unlawful.

**Ground 2: Failure to follow guidance**

1. **SSWP’s guidance Advice for Decision-Making (“ADM”) confirms:**

***Rules for third party deductions***

***D2131*** *Third party deductions may be made and paid direct to the person to whom they are due for any fuel item1* ***where the claimant is in debt in respect of that fuel item****2 .*

*1 UC, PIP, JSA & ESA (C&P) Regs, Sch 6, para 8(3); 2 Sch 6, para 8(2)*

***When deductions should cease***

***D2143*** *Deductions for normal consumption* ***must*** *cease when deductions for arrears ceases.* ***This may be because the arrears are fully repaid.***

(Emphasis added)

1. **This is by way of a supersession decision under s.10 Social Security Act 1998, as the ADM explains:**

***Superseding the third party deduction decision***

*D2154 The DM should supersede the outcome decision which includes the third party deduction decision for fuel costs, when a relevant change of circumstances occurs1 . For example where*

*[…]*

*2. the original debt has been cleared and deductions stop (see D2143)*

*[…]*

1 SS Act 98, s 10 […]

1. **There is no discretion available to SSWP to continue deductions for arrears or current consumption once arrears have been cleared, regardless of the preference of the energy supplier. SSWP should supersede the decision to make** third party deductions for fuel costs (‘fuel direct’)**.**
2. **C has evidenced the fact that [s/he] is not in fuel debt. This fact is not disputed by D. D’s guidance confirms no deduction should be made in these circumstances. To continue to make a deduction for fuel when there is no fuel debt fails to apply the law and is in breach of the Secretary of State’s own guidance.**

**Ground 3: failure to take account of relevant facts/failure to make enquiries**

**27. On [date] C informed D [how] that [his/ her] fuel account is no longer in arrears and provided evidence in support of this. D has not disputed the fact that the account is no longer in arrears.**

**28. The legislation and guidance, as detailed above, are clear that the claimant must have a debt in respect of a fuel item in order for deductions to be made. If there is no debt, the conditions under para 8 of Sch 6 UC (CP) Regs are not met and there is no legal basis for the deductions.**

**29. On receiving the information and supporting evidence from C, D became aware that C’s circumstances had changed, as [s/he] no longer had a fuel debt, and that deductions should therefore cease. The decision that included the third party deductions should have been superseded when D became aware of the change of circumstances, in line with ADM D2154.**

**30. In continuing to make deductions for ongoing payments, D has failed to take into account relevant facts; specifically, that C is no longer has a fuel debt and the conditions required for deductions to be made are no longer met.**

1. **In the alternative, if D is not satisfied that the information and supporting evidence provided by C is sufficient to confirm that the account is no longer in arrears, D has failed to make appropriate enquiries before making the decision to continue deducting payments from C’s UC award.**
2. **D previously received data from C’s fuel provider in respect of [his/ her] account, as this was needed in order to make the initial decision that deductions should be made from C’s UC award.**
3. **In *Kerr v Department for Social Development* [2004] UKHL 23, Lady Hale found:**

***“…****where the information is available to the department rather than the claimant, then the department must take the necessary steps to enable it to be traced”*.

1. In this case, C has provided the information available to [her/him], demonstrating that there are no fuel arrears. D continued to make deductions from the UC award after this information was provided.
2. D had previously been able to obtain details of the account balance, which was needed to make the initial decision that deductions should be made. D could therefore have obtained a recent statement of the account balance using the same means.#
3. On being notified by C that the account was no longer in arrears, D was alerted to a change of circumstances that would potentially affect the lawfulness of continued deductions from C’s UC award. If D was not satisfied that the information provided sufficiently demonstrated that there were no arrears, D should have made reasonable enquiries in order to determine whether a supersession should be made, ie, whether the conditions for deductions to be made were still met.

**Ground 4: Frustration of appeal rights by refusal to provide a decision**

1. **On [date] C requested via [her/his] [UC journal / telephone/letter] that decision to make the deduction be changed. This was a** supersession request under s.10 of the Social Security Act 1998 (“**SSA 1998**”), acceptance or refusal of which carries a right of appeal under s.12 SSA.
2. D has declined to provide an appealable decision and as such has frustrated C’s ability to appeal under s.12 SSA.

**Alternative Remedy**

**It may be arguable that there is a right of appeal in a case where deductions have been made unlawfully under reg. 60 of the UC(CP) Regs. However, in the present case, C has requested that the deductions cease. D’s response has not been to formally reconsider the deductions and so C has not been provided with a decision notice (which [s/he] would need to pursue an appeal). In that case, C is left with no option but the proposed action for judicial review.**

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

**D is asked to:**

* **End deductions purporting to be for fuel arrears with immediate effect.**
* **End deductions for ongoing fuel consumption with immediate effect.**
* **Compensate C for the poor handling by DWP of [her/his] UC award which has added to [her/his] overall stress and anxiety at a time when [s/he] has been having to deal with ... and consequent financial hardship [and any other surrounding circumstances]. Contrary to DWP’s stated priority of delivering ‘outstanding services to our clients and customers’, C has found DWP unwilling to address the issue despite [repeated contact and clear evidence]. Such poor handling is also contrary to DWP’s customer charter, with its commitments inter alia to understand C’s circumstances and to provide her with the correct decision and information.**
* **Provide a full explanation for the failures in C’s case, and reassurance that systems and training are in place to prevent them from being repeated.**
* **Amend guidance to case managers on actions needed when a claimant notifies DWP that they no longer have fuel arrears. Where evidence is provided, a supersession should be carried out. Where the claimant is unable to obtain evidence, further enquiries should be made in order to determine whether continued deductions are lawful.**

**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, eg supporting evidence about rent arrears balance]**

**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 service name and address]**

**[and email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than 4pm on [date] (14 days).

**Should we have not received a reply by this date we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

Encs

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)