***This letter challenges*** *DWP’s failure to include C’s full contractual liability in the calculation of her/his UC housing costs element.*

Please read the whole letter carefully and change/delete any text in red and/or [square brackets]. Then return all text to black.

**DELETE BOX BEFORE POSTING**

***Only use this letter if your client:***

* Lives in private rented accommodation and receives UC to help pay her/his rent.
* Has a joint tenancy.
* DWP has **refused to include C’s full contractual rent liability in the calculation of C’s UC housing costs element.**

Seek advice if needed jrproject@cpag.org.uk

**DELETE BOX BEFORE POSTING**

***Before you use this letter:***

Judicial review is a ‘remedy of last resort’. If there is a right of appeal, you must use it before sending a pre-action letter, unless that right of appeal can be said to not be effective.

We suggest sending a mandatory reconsideration request and asking for response within 14 days (explaining why this is a reasonable time e.g. no UC in place so risk of homelessness and/or destitution, DWP already made aware of issue, not a complex issue). Feel free to use the references in this pre-action template when drafting your MR request.

Explain that if a mandatory reconsideration decision is not received within the time requested, you will send a judicial review pre-action letter.

If a mandatory reconsideration decision is not received, your pre action letter should then address the substantive issue AND the delay in providing an MR decision within a reasonable time (see the letter template: UC delay in providing MR decision).

If you are unsure, please contact CPAG to discuss: jrproject@cpag.org.uk

**DELETE BOX BEFORE POSTING**

**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**

[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 and the Defendant’s refusal to include [her/his] full contractual rent liability in the calculation of [her/his] UC housing costs element. We write in accordance with the Pre-action Protocol for Judicial Review. Due to the urgency of this matter because of the financial burden put on our client, we are requesting your response no later than 5pm 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 challenges the failure of SSWP to include [her/his] full eligible rent in the calculation of [her/his] UC housing costs element.**

***Background facts* EDIT WHOLE BACKGROUND SECTION AS APPROPRIATE**

1. **C lives in private rented accommodation at [address] (“the Property”) and receives UC to help pay [her/his] rent.**
2. **C’s tenancy is a joint tenancy in the names of C and [relationship and name] (“[person’s initials eg, AB]”)**
3. **C and [AB] moved into the property [how long ago], and signed a joint tenancy, understanding each was joint and severally liable for the full rent. The couple lived at the property [with e.g. any children].**
4. **[AB] moved out of the property on [date] due to [relationship breakdown? circumstances?] and now lives at: [address], where [s/he] pays rent to [who] and receives UC to help pay [her/his] housing costs [DoB and NINo if known]. DELETE IF NOT KNOWN OR NOT RELEVANT.**
5. **C lives with [details of household, income, disability, children, difficulty budgeting, debts].**
6. **C contacted D via [her/his] UC journal on [date] to notify them that that [s/he] is liable for the full rent at the property:**
7. **D responded on [date]:**

**“[What was said]”**

1. **C tried [her/his] best to meet the shortfall in [her/his] UC housing costs caused by D’s failure, however as UC is a subsistence benefit, [s/he] did not have sufficient income to do so.**
2. **C contacted D again via [her/his] UC journal on [date] to request again that [her/his] full rent be taken into account:**

 **“[What was said]”**

1. **D responded on [date]:**

 **“[What was said]”**

1. **C now has rent arrears of [amount] and [has been threatened with possession action by [her/his] landlord / possession action has been started / taken. If C is evicted from her home, [s/he] has nowhere to move to and [s/he] and [her/his] children will be rendered homeless.] DELETE IF NOT RELEVANT.**
2. **[Prior to C’s UC claim, C was in receipt of Housing Benefit. C signed an affidavit on (date) to notify the Housing Benefit department that [AB] had moved out and C was liable for the full rent, this was accepted by the Housing Benefit department and C was in receipt of full Housing Benefit to help pay [her/his] rent.] DELETE IF NOT RELEVANT.**
3. **[Any rent arrears when on housing benefits? If not say so: current risk to C’s home has been entirely caused by D’s actions.] DELETE IF NOT KNOWN OR NOT RELEVANT.**

**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***

***Schedule 4 Universal Credit Regulations 2013 (UC Regs)***

1. **Part 4 of Sch. 4** of UC Regs applies to private rented tenants. The relevant

 definitions are as follows:

***2.****In this Schedule—*

 *…*

*“joint renter” has the meaning given in paragraph 1(2)[[3]](#footnote-3)*

 *“listed persons”, in relation to a renter, means—*

 *(a) the renter;*

*[...]*

*“renter” means a single renter within the meaning of paragraph 1(2) or either of joint renters*

#### *3. (1) “Relevant payments” means one or more payments of any of the following descriptions—*

*(a) rent payments;*

*[...]*

*(2) “Rent payments”, in relation to any calculation under Part 4 or 5 of this Schedule, has the meaning given in paragraph 2 of Schedule 1.[[4]](#footnote-4)*

1. Paragraph 24 Sch 4 UC Regs confirms in relation how, in the private rented sector, rent liability should be apportioned between liable people, which can be understood as where A is the full rent liability, B is the total number of people liable to pay rent, and C is the number of people liable for the rent included in the UC claim.

***24.****-(4)**Where the persons liable for the relevant payments are one or more listed persons and one or more other persons, the allocated amount is to be found by the applying the formula—*

**

*where—*

*“A” is the amount resulting from step 3 in sub-paragraph (2),*

*“B” is the total number of all persons (including listed persons) liable to make the relevant payments, and*

*“C” is the number of listed persons.*

1. The resulting default eligible rent for joint tenants who do not form part of the same benefit unit and no other deductions apply, is therefore:

Full rent liability

--- x 1 single Claimant

2 joint tenants

1. Paragraph 24(5) Sch 4 UC Regs then provides for the calculation in 24(4) to be disregarded where it would be unreasonable to apply it:

***24.-****(5) If the Secretary of State is satisfied that it would be unreasonable to allocate the amount resulting from step 3 in sub-paragraph (2) in accordance with sub-paragraph (4****), that amount is to be allocated in such manner as the Secretary of State considers appropriate in all the circumstances,*** *having regard (among other things) to the number of persons liable and the proportion of the relevant payments for which each of them is liable.*

 **(Emphasis added)**

***Schedule 2 Universal Credit Regulations 2013***

1. In the alternative, Sch. 2 UC Regs provides DWP guiacne ’:

*SCHEDULE 2*

*Claimant treated as liable or not liable to make payments*

*PART 1*

*Treated as liable to make payments*

 ***Failure to pay by the person who is liable***

*2.— (1) A claimant is to be treated as liable to make payments where all of the conditions specified in sub-paragraph (2) are met.*

*(2) These are the conditions—*

*(a) the person who is liable to make the payments is not doing so;*

*(b) the claimant has to make the payments in order to continue occupation of the accommodation;*

*(c) the claimant’s circumstances are such that it would be unreasonable to expect them to make other arrangements;*

*(d) it is otherwise reasonable in all the circumstances to treat the claimant as liable to make the payments.*

***D’s Operational Guidance***

1. **The relevance of Sch 2 para 2(d) and Sch 4 para 24(5) to circumstances such as C’s is confirmed clearly by D’s operational guidance, which recognises that it is not unusual for one joint tenant to have moved out of the property but continue to be named on the tenancy and defines this as an ‘‘**absent joint tenant - only one joint tenant resident’ **‘in its guidance ‘**Joint Tenancies.’[[5]](#footnote-5) This guidance unambiguously confirms the remaining joint tenant can be treated as liable for the full rent.

***Absent joint tenant – only one joint tenant resident***

*Where the claimant has a joint tenancy but is the only tenant living in the property, the claimant is treated as liable for the total rent. This can apply to both Social Rented Sector (SRS) and Private Rented Sector (PRS) cases. The declaration from the claimant is sufficient to satisfy the verification requirement.*

 *This is an absent joint tenant case.*

1. A Note from the Secretary of State dated 23 June 2020[[6]](#footnote-6) further confirmed:

*“The new to-do allows agents to record how many tenants live in the property and the amount of rent/service charge the claimant pay. This ensures that that both absent joint tenant (Untidy Tenancy) or* ***unequal apportionment of rent within a housing costs support claim are paid correctly.***

*As part of the new guidance explaining the operational process for the new ‘to-do’, Work Coaches and Case Managers are reminded that they* ***must not****:*

* *Ask the claimant to re-declare housing costs as a single tenancy, unless there is a genuine change of circumstances.*
* *Make a housing declaration on behalf of the claimant that it is a single tenancy.*
* *Ask the claimant to get a new tenancy from their landlord or a landlord letter to confirm the claimant is solely liable.*

*(Emphasis added)*

***Grounds for judicial review***

**Ground 1: Failure to correctly follow the law and guidance**

1. **The law set out above is clear. D is required under Sch 2 para 2(d) and/or Sch 4 para 24(5) to include C’s full rent in the calculation of [his/her] UC housing costs and C meets all of the conditions set out in Sch 2 (**the other person liable to make the payments is not doing so; C has to make the payments in order to continue to occupy the Property, it would not be reasonable to expect [her/him] to make other arrangements; and it is reasonable in all the circumstances to treat [her/him] as liable).
2. **D has stated that C must provide confirmation from [her/his] landlord that [s/he] is liable for the full rent even though [s/he] has provided [what? a signed affidavit, accepted by the local authority in respect of [her/his] housing benefit award, that [her/his] partner has moved out]. This is not a requirement under Sch 2 para 2 or Sch 4 UC Regs, under which it must be ‘reasonable’ to include the full housing costs and D’s own guidance ‘Joint** Tenancies’ **(above) even gives the example of C’s circumstances as an instance in which it will be reasonable and confirms “***The declaration from the claimant is sufficient to satisfy the verification requirement”***.**
3. **By refusing to do so it is clear that D** has **refused to consider C’s individual circumstances in making its decision and as such D has failed correctly to apply the law and its own guidance.**

**Ground 2: Failure to take account of relevant information**

1. C has provided [what? a copy of the signed affidavit] confirming [AB] moved out of the property on [date].
2. [C was previously in receipt of Housing Benefit in respect of the full rent for the property. [Her/his] circumstances have not changed and the DWP have provided no reason as to why it believes they have.]
3. UC is a subsistence benefit. Where the payment made in respect of housing costs is unlawfully reduced, C does not have the means to meet the rent shortfall to [her/his/ landlord and D’s actions have therefore placed the security of C’s home at risk for [herself/himself] [and [her/his] children].
4. **In refusing to exercise its discretion, D has unlawfully failed to consider relevant information, namely [the evidence provided in the form of an affidavit], [the acceptance of the same in consideration of C’s previous housing benefit claim], C’s subsistence level income, the consequent inability to make additional payments to [her/his] rent account, and the risk of losing [her/his] [and [her/his] children’s] home as a result.**

**Alternative remedies**

1. It is recognised that C has the right of appeal against the amount of [her/his] UC award. However, given the clear failure by D to follow the law and its own guidance in what are not unusual circumstances, the profound financial hardship caused to C including a risk to [his/her/the family] home, and that this matter has already been brought to D’s attention via C’s online UC Journal [more than once], judicial review is the only effective remedy available to provide a speedy resolution to this clear unlawfulness.

**The details of the action the Defendant is expected to take**

**SSWP is requested to:**

* **Increase C’s UC housing costs with immediate effect and from the start of the C’s UC claim to cover [her/his] full rent liability.**
* **If the above is not possible, propose an alternative work around to the automated system, which is in line with legislative requirements.**

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

* **C’s signed authority**
* **All other documents available via C’s online 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]**

**Proposed reply date**

**We expect a reply promptly and, in any event, no later than 5pm on date [14 days] Should we not have received a reply by this time our client reserves the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

[Adviser name and signature]

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. Claimants to whom regulation 26(2) UC Regs applies, which is those who meet all the criteria in Reg 25 including: payment condition, liability condition and occupation condition [↑](#footnote-ref-3)
4. ####  Under para 2 Sch 1 UC Regs “rent payments” include “payments of rent”

 [↑](#footnote-ref-4)
5. data.parliament.uk/DepositedPapers/Files/DEP2022-0452/083-Joint-tenancies\_V8.0.pdf [↑](#footnote-ref-5)
6. [www.housing.org.uk/news-and-blogs/news/new-advice-dwp-universal-credit-calculations/](file:///C%3A/Users/jstrode/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/UGDTBDTA/www.housing.org.uk/news-and-blogs/news/new-advice-dwp-universal-credit-calculations/) [↑](#footnote-ref-6)