Judicial review is a ‘remedy of last resort’. If there is a right of appeal, you must generally use it before sending a pre-action letter.

We suggest sending a mandatory reconsideration request and asking for response within 28 days, or 14 days in exceptional circumstances (which you will need to explain e.g. no UC in place so risk of homelessness and/or destitution). 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 you are unsure, please contact CPAG to discuss: jrproject@cpag.org.uk

**This letter assumes:**

* Client is female (changes needed if not)
* Client’s living arrangements are facilitated by Lancashire Shared Lives. Please adapt if your client comes under a different scheme, and check that they do have a direct licence agreement with the householder as described.

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 X **in relation to her universal credit 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 (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. We are challenging the refusal to include a housing element within the maximum amount in the calculation of the award of universal credit (**‘UC’**) to the proposed claimant, purportedly on the grounds that she lives in ‘specified’ supported accommodation.

**Background facts**

1. **C is [personal details, family inc DoBs]**
2. **[Disability / vulnerability]**
3. **[Previous living arrangements including address, landlord if any, costs if any]**
4. **On [date], C moved into her current home under an arrangement facilitated with [NAME OF COUNCIL’S SCHEME].**
5. **Under this scheme, C has a private licence agreement with the householder (‘H’), shares their home, and receives care and support from H [and H’s family].**
6. **H is the [homeowner]/[tenant of this local authority/housing association/privately rented property].**
7. **C signed her licence agreement on [date] and a copy is enclosed.**
8. **C notified the Defendant of her housing costs, ie, her liability under the licence agreement with H on [date]; this was a request that her UC award be superseded to include her housing costs.**
9. **On [date], SSWP made a decision refusing to superseded C’s award on the basis that she occupies supported accommodation (which we have taken to mean ‘specified’ supported accommodation as defined in Schedule 1 of the Universal Credit Regulations 2013).**
10. **Specifically, the decision letter stated:**

**[quote relevant section from the decision letter if possible]**

1. **A mandatory reconsideration request was made on [date] [specify how – journal? What evidence provided?].**
2. **[No decision has been received on that mandatory reconsideration request] – OR:**
3. **[On [date], SSWP made a mandatory reconsideration request again refusing to award the UC housing costs element.]**
4. **[Details of any more journal posts/phone calls by C or her adviser, and any responses. One paragraph per item in chronological order.]**
5. **[Has C tried to claim Housing Benefit? If so please describe what happened.]**
6. **[Has C registered an appeal? Specify date and progress.]**
7. **At the date of this letter, C’s housing costs have not been paid for the period [specify].**
8. **At the date of this letter, C’s licence fee arrears therefore stand at [amount]. This is a direct consequence of SSWP’s decision to refuse to award UC for housing costs.**
9. **[Consequences of the error for C – pressure from H or the Council, threat of eviction, pressurised into making extra payments to H leaving her out of pocket, stress, effects on mental or physical health, effects on success of the shared lives placement.]**

**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 and grounds for judicial review**

**Ground 1: Failure to apply the law and own guidance**

1. **The power to pay the housing costs element of UC is set out in section 11 of the Welfare Reform Act 2012 (‘WRA’):**

***11. – (1) The calculation of an award of universal credit is to include an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home.***

1. Regulation 25(1) (a) and (2) of the Universal Credit Regulations 2013 (‘**UC Regs’**) provide that “*payments in respect of accommodation*” for the purposes of s.11 WRA include rent payments within the meaning of paragraph 2 of schedule 1 of the UC Regs. Paragraph 2 of that schedule is as follows:

***2****.“Rent payments” are such of the following* ***as are not excluded by paragraph 3 -***

*(a) payments of rent;*

*(b) payments for a licence or other permission to occupy accommodation*

*[…]*

(Emphasis added)

1. The excluded cases referred to in paragraph 2 are outlined, for the purposes of the present case, in paragraphs 3 and 3A schedule 1 UC Regs:

***Payments excluded from being rent payments***

***3****. The following are excluded from being “rent payments”—*

*[…]*

*(h) payments in respect of accommodation specified in paragraph 3A*

*[…]*

***Specified accommodation***

***3A****.* *—(1) The accommodation referred to in paragraph 3(h) is accommodation to which one or more of the following sub-paragraphs applies.*

*[…]*

*(3) This sub-paragraph applies to accommodation—*

*(a)* ***which is provided by a relevant body;***

*(b) into which the claimant has been admitted in order to meet a need for care, support or supervision;* ***and***

*(c)* ***where the claimant receives care, support or supervision****.’*

*(6) In this paragraph—*

*[….]*

***“relevant body” means a—***

***(a) council*** *for a county in England for each part of which there is a district council;*

***(b) housing association;***

***(c) registered charity;*** *or*

***(d) voluntary organisation.***

 (Emphasis added)

1. The Defendant’s guidance Advice for Decision Makers (‘**ADM’**) further explains accommodation is ‘exempt’ only when provided by the ‘*relevant body’* and support is provided, where it states in Chapter F2:

*F2029* ***Exempt accommodation means1***

*[…]*

*2.* ***accommodation provided by***

***2.1******a non-metropolitan county council or***

***2.2 a housing association or***

***2.3 a registered charity or***

***2.4 a voluntary organisation***

***where they****,* ***or someone acting on their behalf,******also provides*** *a person with* ***care, support or supervision.***

1 UC Regs, Sch 1, para 1; 2 JSA Act, 95, s 30

(Emphasis added)

1. While C occupies the accommodation in order to receive care, support or supervision for the purposes of paragraph 3A(3)(b) and (c) schedule 1 UC Regs, to be exempt the accommodation must also be provided by a ‘*relevant body’* under paragraph 3A(3)(a) as defined by paragraph 6. **The definition under paragraph 6 does not include private landlords or licensors.**
2. C occupies her home as a private licensee. The local authority is not a party to the licence agreement. Evidence of this fact has been provided to SSWP in the form of a copy of C’s license agreement, and it does not appear to be in dispute.
3. Nor can C’s licensor be viewed as a ’voluntary organisation’ for the purposes of paragraph 3A(6). Voluntary organisation is defined by paragraph 1 schedule 1 UC Regs:

*“voluntary organisation” means a body (other than a public or local authority) whose activities are carried on otherwise than for profit.*

1. C’s landlord / licensor is simply a private individual.
2. C does not therefore live in accommodation *‘which is provided by a relevant body’* for the purpose of paragraph 3A(a) schedule 1 UC Regs and her housing costs are not excluded from the definition of “*rent payments*” set out in paragraph 2 of that schedule.
3. C is therefore entitled to have her housing costs paid by means of the UC housing costs element, by virtue of regulation 25 UC Regs and section 11 WRA and as explained by the Defendant’s ADM guidance.
4. It is not of consequence that the living arrangements have been facilitated by the local authority, as the local authority does not, ultimately, ‘provide’ the accommodation. The local authority arranges private sector accommodation for residents in a number of analogous instances, including, for example, in discharging its homelessness duty, and in no such case could it be said to ‘provide’ the accommodation in the sense required by paragraph 3A(a) schedule 1 UC Regs.
5. Nor is it of consequence that the local authority in C’s case pays the licensor an allowance in consideration of care and support provided to C. The local authority pays for domiciliary care in a range of different circumstances, including to home owners, private tenants and licensees to receive care in their own home. In none of these circumstances is the consequence that the person receiving the care becomes a local authority tenant or licensee.
6. It is worth noting, as a corollary, that care homes do not meet the definition of ‘*specified accommodation’*. They, too, are excluded from the application of the housing costs element, but by virtue of paragraph 3(d) schedule 1 UC Regs, not paragraph 3(h). This differentiation of care homes serves as acknowledgement that accommodation provided by a private licensor is not ‘provided by’ the local authority even when it is facilitated by the local authority.
7. The fact that accommodation and care are packaged as a single, local authority service in the materials promoting the NAME OF COUNCIL’S SCHEME does not alter the legal position. The law is clear. An award *‘is to include’* the housing costs element in cases like C’s, by virtue of section 11 WRA and regulation 25 UC Regs. In this case, the decision reached fails to apply the law and the Defendant’s own ADM guidance, and is therefore unlawful.

**Ground 2:** **Adopting a policy contrary to law**

1. D’s operational guidance ‘Specified Accommodation’ (V7)[[3]](#footnote-3)states:

*Supported Accommodation* ***is accommodation where residents are provided with care, support or supervision*** *to help them live as independently as possible. It includes short-term supported accommodation for those in crisis, such as hostels and refuges, long-term supported housing for people with ongoing disabilities and sheltered accommodation/extra care housing mainly for older people (usually over 55s).*

***Housing costs support for those living in Supported Accommodation is not available in Universal Credit.***

**(Emphasis added)**

1. **This guidance suggests that accommodation is exempt as soon as “***care, support or supervision”* **is provided, regardless of who the accommodation is provided by.**
2. **Under reg 25 and sch 1 para 3A(3) and (6) UC Regs, and explained in D’s ADM guidance (all set out above) the law is clear that accommodation is exempt, as supported accommodation, only when** the *accommodation* is provided by a council/housing association etc **and** *care, support or supervision* is received.
3. D’s operational guidance fails to reflect that the accommodation must be provided by a *“relevant body”,* ie, a council, housing association, charity or voluntary organisation (sch 1 para 3A(3) and (6) UC Regs) as well as *care, support or supervision* being received, and as such unlawfully adopts a position contrary to the law. Further, any decision reached in reliance on this guidance will be contrary to law.
4. Although D’s guidance in the ADM is correct, the Operational Guidance undermines that and leads to wrong decisions such as the one in this case.

**Ground 3: Failure to take account of relevant evidence**

1. The claimant has provided SSWP with a copy of her license agreement which should, for the reasons stated, have been decisive for SSWP in including an amount for housing costs in her UC. Failure to award the UC housing costs element therefore suggests the Defendant has failed to take into account this evidence.
2. The Defendant’s operational guidance ‘Specified Accommodation’ (V7) states that:

*The local authority Housing Benefit team will decide whether the accommodation a claimant occupies is Supported Accommodation and deals with any disputes regarding their decision.*

*If the local authority determines that the accommodation is not classified as*

*Supported Accommodation and Housing Benefit is not payable, housing costs are available in Universal Credit. In such circumstances the claimant must redeclare housing as either ‘I rent from a council or housing association’ or ‘I rent from a private landlord’.*

1. C’s local authority is NAME‑ Council. C made a claim for housing benefit on [DATE], and NAME‑ Council Housing Benefit Team unequivocally responded that C is not eligible for housing benefit, stating in a decision dated [DATE]

“…………………………………….”

1. C redeclared HIS/HER housing costs to D as “…..” on DATE, to which D responded “…..”, yet D, contrary to this guidance, has refused to supersede C’s award to include HIS/HER housing costs.
2. The local authority Housing Benefit Team have in respect of **NAME‑ County Council’s scheme,** in C’s case and numerous others, decided that that claimants with care provided by the **NAME OF COUNCIL’S SCHEME who do not also live in accommodation provided by the Council, do not live in specified accommodation and are not eligible for housing benefit. This does not appear to have been taken into account by the Defendant, even though the Defendant’s own guidance makes clear this is a decision for the**local authority Housing Benefit Team **to make.**
3. If there is a reason that the Secretary of State maintains that C lives in ‘specified’ accommodation in spite of this evidence, C is entitled as a matter of public law and as a basic principle of natural justice to have an explanation as to why this is the case so that she is aware of whether any irrelevant matters have been taken into account or relevant matters not considered and challenge such a finding accordingly. No such reasons have been given.

**Ground 4: Unreasonable delay in providing a mandatory reconsideration decision [delete whole ground if not applicable]**

1. **The Defendant is under a duty to consider all claims for benefit within a “reasonable time” – *R(C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).**
2. **The duty to make a decision within a reasonable time applies equally to s.9 of the Social Security Act 1998 (SSA 1998) under which Secretary of State may “revise” any decision made under s.8 or s.10, as to the analogous provision at s.8 under which the Secretary of State shall “decide any claim for a relevant benefit”.**
3. **What counts as a reasonable time depends on the circumstances, including the impact on the claimant and the complexity of the case.**

***Impact on the claimant***

1. **The circumstances of and the impact on the claimants in *R(C and W) v Secretary of State for Work and Pensions* led Mrs Justice Patterson to conclude, with the agreement of both parties, that the delay in deciding their claims “*was not only unacceptable, as conceded by the defendant, but was unlawful*” as:**
2. ***“Both claimants’ cases called for expeditious consideration. They each suffered from significant disabilities… They were each properly to be regarded as amongst the most vulnerable in society.”***
3. **C is [describe vulnerabilities]. This is clearly also a case which would calls for ‘*expeditious consideration*’.**
4. **The delay in this case is causing C hardship. The delay relates to a decision on entitlement to the UC housing costs element. Delays in these types of decisions can have severe consequences for claimants, leaving them unable to pay their rent or license costs and so at risk of homelessness and destitution. As stated, [reiterate consequences of the decision for C – threat of eviction/breakdown of living arrangements/effect on finances/effect on mental or physical health].**
5. **A suitable comparator for a reasonable time to process a review request of a decision involving housing costs is housing benefit. The Local Government Ombudsman has found that one Council’s delay in reviewing a Housing Benefit claim for three months caused “*significant injustice requiring a remedy*,” while a complainant in another case was advised to make an additional complaint if the delay had “*caused any further injustice such as loss of his home*,” recognising the direct link between housing benefit and the claimant’s ability to pay their housing costs and so maintain their tenancy or licensed residence.**
6. **The delay in this case [far exceeds three months] and C is a private licensee with extremely limited security of tenure. It is therefore vital that C’s UC is brought into payment or that she is given the opportunity to challenge the incorrect refusal of her UC.**

***Non-complex case/all information available***

1. **C is eligible for the housing costs element of UC.**
2. **C has provided [specify what evidence]. The Defendant appears to have wilfully misunderstood, or failed to consider, the evidence and the arguments raised in the mandatory reconsideration request.**
3. **This is not a particularly complex case and the SSWP has given no reason for the continued delay [apart from?] It should be simple for the Secretary of State to re-consider whether or not her initial decision was correct.**

***Purpose of mandatory reconsideration process***

1. **Finally, of relevance to the circumstances and therefore what constitutes a reasonable or unreasonable delay is, the statutory purpose for introducing the mandatory reconsideration process. According to the Government’s consultation paper, the stated purpose “*to deliver timely, proportionate and effective justice for claimants, make the process for disputing a decision fairer and more efficient.”* (emphasis added). The delay in this case of [NUMBER] weeks and the consequent frustration of C’s appeal rights clearly fails to deliver on this stated purpose and is therefore unlawful.**

**Alternative remedies**

**C would have a right of appeal to the First-tier Tribunal under s.12 Social Security Act 1998. However, such a right only arises once D considers her revision – which D has failed unlawfully to do, frustrating any possibility C could pursue an appeal as a remedy. OR C recognises that she has a right of appeal and has exercised it by requesting a mandatory reconsideration.**

**Further, judicial review is appropriate as a last resort as NAME OF ADVICE AGENCY are aware of this issue coming up ON HOW MANY OCCASSIONS in decision made by WHAT JOBCENTRE, demonstrating that this is an issue of wider public importance.**

**On each occasion so far the issue has been ultimately resolved on appeal; however, the repeated failures to follow the law and DWP guidance demonstrate a need for training and an improvement in guidance available to front line DWP staff. Further on each occasion of the repeated failure, significant and unnecessary distress is caused for exceptionally vulnerable residents, which could be avoided by staff training and an improvement to guidance. These remedies are not available through the Tribunal.**

**Additionally, part of the relief sought is a change to D’s guidance as set out below – that is not a remedy which she could obtain at tribunal.**

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

**The Defendant is asked to:**

* **Revise C’s UC to include the housing costs element from the start of C’s award with immediate effect.**
* **Compensate C for the poor handling by SSWP of her UC award which has added to her overall stress and anxiety at a time when she has been having to deal with new, alien and insecure living arrangements [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 its operational guidance ‘Specified Accommodation’ (V7) to make clear that it is when the *accommodation* is provided by the council/housing association etc, rather than as soon as *care* is received that the accommodation is exempt.

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

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

* **C’s Form of Authority**
* **[Copy of C’s licence agreement]**
* **[Anything else ]**

**ADR proposals**

**Please confirm in your reply whether the Defendant 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).**

**If we have not received a reply by 4pm on [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)
3. <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/142_Supported_accommodation_v7_0.pdf> [↑](#footnote-ref-3)