**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. 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.**

**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 unlawful reduction by D of C’s UC to £0.00 as a result of deductions paid to third parties and/or overpayment/advance payment recovery. This is unlawful as the law provides that such deductions must not reduce UC to less than £0.01 (1 penny).

***Background facts* [EDIT WHOLE SECTION, THEN RETURN TO BLACK LOWER CASE TEXT]**

1. NAME is a CIRCUMSTANCES, HOUSEHOLD, DISABILITY, OTHER BENEFITS, EDIT
2. NAME is a vulnerable individual. HE/SHE suffers from …
3. Why did NAME claim UC? ETC
4. C’s UC is £x each month before deductions.
5. The following deductions are made from C’s UC before s/he receives it:
* Rent arrears at [10% which is £31.78]]
* Recovery of a tax credit overpayment at [£5.00]
* Recovery of payments on account comprised of:
	1. 1 budgeting advance provided for [NAME] to attend a job interview on 15/02/19 of £201.12 (“Budgeting Advance for Employment”).
	2. 3 budgeting advances made up to the maximum amount (confirmed verbally by the Defendant)
	3. 1 change of circumstances advance provided when ...
1. The deductions from C’s UC total [amount] each month, represent 100% of [her/his] UC per month.
2. This leaves C having to meet the costs of [what] as [s/he] is treated as not in receipt of a passporting benefit.
3. C has had to meet [what costs] as a result of the deductions from [her/his] at a time when C’s income is already reduced by the deductions from [her/his] UC.

**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. The law provides that total deductions cannot be made from a UC award which leave the claimant with less than 1 penny per assessment period.
2. Regulation 60 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (‘**UC (CP) Regs**’) provide for deductions to be made from UC awards in accordance with schedules 6 and 7 to those Regs:

### *Deductions which may be made from benefit and paid to third parties*

***60.****...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. Schedule 6 UC (CP) Regs provides for deductions from benefit and direct payment to third parties to be made:

### *General*

### *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. […]*

1. Including as set out under para 3(2) and defined by para 1 sch 6 for:

(a) housing costs - para 6 sch 6 UC (CP) Regs;

(b) rent and service charges included in rent - para 7 sch 6 UC (CP) Regs;

(c) fuel costs - para 8 sch 6 UC (CP) Regs;

(d) water charges - para 9 sch 6 UC (CP) Regs;

(e) payments in place of payments of child support maintenance - para 10 sch 6 UC (CP) Regs;

(f) eligible loans - para 11 sch 6 UC (CP) Regs;

(g) integration loans - para 12 sch 6 UC (CP) Regs;

(h) deductions from income support etc. - reg 3 Community Charges (Deductions from Income Support) (No. 2) Regulations 1990;

(i) deductions from income support etc. - reg 3 Community Charges (Deductions from Income Support) (Scotland) Regulations 1989;

(j) deduction from debtor's income support etc. - reg 5 Council Tax (Deductions from Income Support) Regulations 1993; and

(k) deductions from offender's income support etc. - reg 4 Fines (Deductions from Income Support) Regulations 1992.

1. Paragraph 3(1)(a) sch 6 UC (CP) Regs then provides unequivocally that the above deductions made under sch 6 must not reduce the amount payable to the claimant to less than 1 penny:

### *Limitations applicable to deductions made under this Schedule*

***3.****—(1) The Secretary of State* ***may not deduct an amount from a claimant's award of universal******credit*** *under this Schedule and pay that amount to a third party if, in relation to any assessment period,* ***that would—***

***(a) reduce the amount payable to the claimant to less than 1 penny***

1. Schedule 7 UC (CP) Regs provides for deductions to be made from a UC award in respect of child support, maintenance and payment to persons with care and for arrears of the same. Para 2(1)(4) sch 7 also provides unequivocally that these deductions must not reduce the amount payable to the claimant to less than 1 penny:

### *Deductions*

***2.****—(4)****No amount may be deducted from any universal credit awarded*** *to the claimant under this Schedule if* ***that would reduce the amount payable to the claimant to less than 1 penny.***

1. The Social Security (Overpayments and Recovery) Regulations 2013 (**’SS (O&R) Regs**’) provide for the recovery of specified amounts from awards of UC, including recoverable amounts set out under reg 3 (where “the Act” is the Social Security Administration Act 1992):

### *Recovery by deduction from benefits*

***10.****—(1)****Subject to regulations 11*** *to 14, the Secretary of State may recover a recoverable amount from a liable person by deduction from the benefits specified in paragraph (2) which are payable to them.*

*(2) Those benefits are—*

*[…]*

*(b)* ***universal credit;***

###  *Recoverable amounts*

***3.****—(1) In these Regulations, “recoverable amount” means—*

*(a) subject to regulations 7 to 9,* ***the amount of any overpayment****;* ***and***

*(b) any other amount recoverable under any provision of the Act specified in* ***paragraph (2).***

*(2) Those provisions are—*

*(a) section 71ZE(3) (costs of court action etc.);*

*(b) section 71ZG (recovery of payments on account);* (Including UC advance payments)

*(c) section 71ZH (recovery of hardship payments);*

*(d) section 115B(4)(recovery of penalties imposed as an alternative to prosecution);*

*(e) section 115C(4) (recovery of civil penalties for incorrect statements); and*

*(f) section 115D(4) (recovery of civil penalties for failure to disclose information).*

1. Note that “*amount of any overpayment*” for the purposes of reg 3(1)(a) SS (O&R) Regs includes, as well as overpayments of UC:
	1. other DWP benefits which are recovered from UC in the same way as overpayments of UC (see reg. 16(7A)-(7B) of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 which apply reg. 11 of the SS(O&R) Regs to these overpayments), overpayments of:
* Housing Benefit under reg 105(1)(h) Housing Benefit Regulations 2006, under which overpayments of housing benefits may be recovered from UC, and
* Tax credits under section 28(1)(b) of the Tax Credit Act 2002 (“**TCA**”), under which a tax credit overpayment may be treated as if it is a recoverable overpayment of benefit under s.71ZB Social Security Administration Act 1992 (as amended) (“**SSAA**”) and under s.29(4)(b)(i) TCA where notice is provided, recovered under s.71ZC SSAA.
1. Where any of the above are to be recovered by deduction from UC, reg 11(7) SS (OR) Regs provides unequivocally that no deduction is to be applied so as to reduce the universal credit in respect of an assessment period to less than 1 penny:

### *Recovery by deduction from universal credit*

***11.****—(1) The following paragraphs apply where the recoverable amount falls to be recovered by deduction from universal credit payable to the liable person.*

*(2) Subject to paragraphs (5) to (9), regulation 10 is to apply to the amount of universal credit to which the liable person is presently entitled to the extent that there may be recovered in any one assessment period—*

*(a) in a case to which paragraph (3) applies, an amount equivalent to not more than 40 per cent. of the appropriate universal credit standard allowance;*

*(b) in a case to which paragraph (4) applies but paragraph (3) does not apply, an amount equivalent to not more than 25 per cent. of that allowance; and*

*(c) in any other case, an amount equivalent to not more than 15 per cent of that allowance.*

[…]

***(7)******No deduction made under paragraph (2) is to be applied so as to reduce the universal credit in respect of an assessment period to less than 1 penny.***

[…]

1. The purpose of this limitation is to ensure that the claimants from whom deductions are made from their UC to recover monies owed by them for various reasons are not additionally sanctioned by loss of passported benefits associated with UC – as set out in the DWP operational guidance ‘Passported Benefits’ (V9) to include, non-exhaustively:

*• help with health costs, including prescriptions and dental treatment*

*• free school meals and other educational benefits*

*• Healthy Start vouchers*

*• legal aid*

*• help with the costs of using courts or tribunals*

*• help with prison visiting costs*

*• help from energy and water suppliers*

*• warm home discount*

*• Cold Weather Payments*

*• Sure Start Maternity Grant (Best Start in Scotland)*

*• funeral payments*

*• low cost phone packages*

*• travel discount schemes*

**Grounds for Judicial Review**

**Ground 1: Combined deductions unlawfully reduce UC to zero**

1. The legislation is clear. C has the following deductions:
* List deductions (and check all covered in lists above, seek advice if not jrproject@cpag.org.uk)
* List
* list
1. These deductions are specifically listed under reg 3 SS (O&R) Regs and/or sch 6 or 7 UC (CP) Regs such that para 3(1)(a) sch 6 and/or para 2(1)(4) sch 7 UC (CP) Regs, and/or reg 11(7) SS (O&R) Regs operate to prevent C’s award being reduced to less than 1 penny. The reduction of C’s UC to zero is unlawful.
2. The impact of this is to leave C unlawfully financially liable for [what] costs. [impact on C of this]

**Ground 2: Guidance inaccurate by implication and omission**

1. By implication and omission D’s guidance, taken as a whole, leads decision-makers to reduce UC payments to less than 1 penny, contrary to the law.
2. In *R (Timson) v SSWP* [2022] EWHC 2392 (Admin) the High Court considered the lawfulness of SSWP’s:

“*written guidance to officials (“decision-makers”) who are responsible for deciding whether it is in a benefit claimant’s interests to have deductions made from their subsistence benefit in order to pay sums which are owed by those claimants to utility companies. The deductions are known as Third Party Deductions (“TPDs”)*” (para 1).

1. Mr Justice Cavanagh held that the claim for judicial review succeeded on one aspect-

*'This is that the Defendant's written guidance to decision-makers in relation to TPDs is unlawful because, by implication and omission, it has the effect that, read as a whole, the guidance presents a misleading picture of the true legal position to decision-makers...’* (paragraph 292)

1. Reaching this conclusion not because D’s written guidance on TPDs “*states in terms that decision-makers should not seek representations or information from claimants*” (para 222) but that, contrary to the legal position:

 *“a reasonable and objective reading of the DMG and Overview documents, taken as a whole, is that decision-makers are directed that they are under no obligation to contact claimants for representations/information before they take their decision*” (para 226)

1. Mr Justice Cavanagh was encouraged in this conclusion:

“*by the fact that decision-makers have in practice read the guidance as not requiring them to seek the representations/information from claimants before taking a TPD decision. Whilst the meaning and effect of the written guidance is a matter of law, the fact that in practice the decision-makers have read it as I interpret it gives me encouragement in my interpretation*.” (para 227)

1. Thus, the guidance challenged in *Timson v SSWP* was held to be unlawful under the third type of case identified in *R(A) v Secretary of State for the Home Department* [2021] UKSC 37; [2021] 1 WLR 3931:

*46 In broad terms, there are three types of case where a policy may be found to be unlawful by reason of what it says or omits to say about the law when giving guidance for others… (iii) where the authority, even though not under a duty to issue a policy, decides to promulgate one and in doing so purports in the policy to provide a full account of the legal position but fails to achieve that, either because of a specific misstatement of the law or because of an omission which has the effect that, read as a whole, the policy presents a misleading picture of the true legal position.*

1. Analogously in the present case, D’s operational guidance ‘Deductions’ (V12)[[3]](#footnote-3), Deductions Priority Order (V7)[[4]](#footnote-4) and Overpayments’ (V9[[5]](#footnote-5)) purport to provide a full account of the legal position but fail to achieve that because of an omission,since none of this guidance includes the restriction present in the legislation to not make deductions which reduce the UC payment in respect of an assessment period to less than 1 penny. By implication it is open to decision-makers to make such a deduction.
2. As in *Timson v SSWP* decision-makers in practice read the guidance as not limiting deductions to no less than 1 penny, since CPAG have received multiple reports from multiple advice agencies of deductions reducing UC payments to zero.
3. D’s guidance unlawfully omits the restriction not to make, and by implication permits, deductions which reduce UC to less than 1 penny in a given assessment period. When this guidance is replied upon decision-makers, which there is evidence it is, it results in unlawful decisions.

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

The Defendant is requested to:

* In line with legislative requirements, ensure immediately that NAME’s total deductions do not amount C’s full UC award.
* Amend its operational guidance to correctly reflect the legislative requirements on maximum deductions set out above.
* Introduce automated safeguards in the UC operating system which prevent UC awards from be reduced to zero (ie, always leaving 1 penny).

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

* **Claimant’s signed authority**
* **All other documents available through C’s UC online account (Journal and Claimant Commitment).**

**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 (7 days).

We recognise that this is 7 days rather than the usual 14 days. However, we consider such a shortened period is appropriate given the difficult financial circumstances of my client and the fact that the Department had the opportunity to respond to this matter through the earlier post of DATE.

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)
3. https://data.parliament.uk/DepositedPapers/Files/DEP2022-0452/047-Deductions\_V12.0.pdf [↑](#footnote-ref-3)
4. https://data.parliament.uk/DepositedPapers/Files/DEP2022-0452/048-Deductions\_priority\_order\_V7.0.pdf [↑](#footnote-ref-4)
5. https://data.parliament.uk/DepositedPapers/Files/DEP2022-0452/110-Overpayments\_V9.0.pdf [↑](#footnote-ref-5)