Edit this letter carefully. It unlikely your client will have all the deductions listed, or may have deductions which are not listed (eg, a new claim advance) in which case will need to make significant changes.

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](mailto: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](mailto: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) claim. 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*](mailto:thetreasurysolicitor@governmentlegal.gov.uk)*.*

**The details of the matter being challenged**

1. The Claimant NAME is challenging the unlawful refusal of the Defendant to exercise its discretion to reduce the level of the deductions from HER/HIS UC claim when required to do so by law.

***Structure of this letter***

1. This letter examines in turn how each of the deductions reducing the Claimant’s UC must operate under the relevant legislation, going on to look at how these deductions interact with each other, and argues that where the deductions in practice fail to conform to the provisions of the legislation, including where the level of deductions purport to be correct under the Defendant’s guidance, both the level of deductions and the Defendant’s guidance are unlawful. An index is included at the end of this letter for ease of reference.

***Background facts***

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. Background to deductions

* Rent arrears at 10% £31.78
* Recovery of a tax credit overpayment £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 ...

These are being recovered at a total of £110.36 per month.

1. The deductions from NAME UC total £147.14 each month, representing 46.2% of HER/HIS standard allowance of £317.82 per month.
2. NAME is left with only £170.68 to live on each month (equivalent to £39.39 per week), from which he has to pay for all of his essential expenditure, including FOOD, COUNCIL TAX, GAS, ELECTRICITY, TRAVEL COSTS, TV LICENCE, WATER RATES, ANYTHING ELSE? PLEASE EDIT AS REQUIRED
3. This leaves NAME without enough money to pay for food or heating and HE/SHE has been forced to rely on credit and food banks. NAME now has DEBTS? OF…. And HIS/HER access to credit has been cut off.
4. NAME is experiencing severe financial hardship, and this has been notified to the Defendant HOW?
5. The Defendant responded by refusing to reduce the level of deductions on DATE stating:
6. “….”

**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.

***The Defendant’s Guidance on Debt and Deductions That Can Be Taken from Payments***

1. The Defendant’s guidance “Universal Credit: debt and deductions that can be taken from payments”[[3]](#footnote-3) was updated on 16th of October 2019 to reduce the total maximum deduction from a Claimant’s standard UC allowance from 40% to 30%:

*There is an overall maximum percentage rate for all debts and deductions that can be taken from a Universal Credit payment. The maximum amount that can be deducted is an amount equivalent to 30% of the claimant’s Universal Credit standard allowance.*

*There are 2 exceptions to this rule, Last Resort Deductions (arrears of housing and fuel) and ongoing monthly costs for utilities (gas, electricity and water) where there are also arrears being taken for them.*

1. From 12 April 2021 this 30% reduced to 25% in line with the March 2021 Budget announcement:

*"From next month* [April 2021] *new claimants will be able to spread Universal Credit advances repayments over a 24-month period and* ***the maximum rate of deductions from Universal Credit will be reduced for all to 25%.*** *Reducing the maximum deduction rate to 25% of a claimant’s standard allowance will allow more than 350,000 families with significant debts to retain more of their monthly award for their day-to-day needs.*"[[4]](#footnote-4)

(Emphasis added)

1. The figure of 25% will therefore be used throughout the rest of this letter, however where the Defendant’s guidance for each type of debt or deduction has not yet been updated and so states maximum deductions are 40% rather than the reduced amount of 25%, note this will appear as [25%].

***Legal background***

**A. Payments on account of benefit**

1. ***The power to make payments on account***
2. Section 71ZG of the Social Security Administration Act 1992 (SSA Act)[[5]](#footnote-5)allows the Secretary of State to recover any amounts paid on account under s. 5(1)(r) SSA Act.
3. Section 5(1)(r) provides that regulations may provide for payments on account of benefit:

***5****.-(1) Regulations may provide –*

*(r) for the making of a payment on account of such a benefit–*

*(i) in cases where it is impracticable for a claim to be made or determined immediately, or for an award to be determined or paid in full immediately,*

*(ii) in cases of need, or*

*(iii) in cases where the Secretary of State considers in accordance with prescribed criteria that the payment can reasonably be expected to be recovered.*

1. The relevant regulations made pursuant to s5(1)(r) SSA Act are the Social Security (Payments on Account of Benefit) Regulations 2013(SS (PAB) Regs) which provide for both payments on account of benefit (Part 2) and payment of budgeting advances (Part 3).
2. The advance NAME was paid IN EXPECTATION OF HIS/HER CHILDREN MOVING IN (change of circumstances) was made under reg. 6 SS (PAB) Regs which provides:

### *Payment on account of benefit where there is an award of benefit*

***6.****—(1) The Secretary of State may make a payment on account of benefit to A if—*

*(a) an award of benefit has been made to A;*

*(b) any of paragraphs (2) to (5) applies; and*

*(c) the Secretary of State is satisfied that A is in financial need.*

*[…]*

*(4) This paragraph applies where there has been a change of circumstances which would increase the amount of benefit payable under the award and—*

*(a) the award has not yet been revised or superseded to reflect that change; or*

*(b) the award has been revised or superseded to reflect that change but the date on which the payment of benefit is due to be made in accordance with the revised or superseded award has not yet been reached.*

1. The 3 budgeting advances NAME was paid which did not relate to HIS seeking employment were made under regs. 11 and 12(1) SS (PAB) Regs, notwithstanding that such regs provide that a budgeting advance must not be provided in any case where a previous budgeting advance is outstanding (reg 14):

***Payment of budgeting advances***

***11.****—(1) The Secretary of State may make a payment on account of universal credit to a person (“B”) in accordance with this Part.*

*(2) A payment under this Part is to be known as a budgeting advance.*

***Conditions for payment of budgeting advances***

***12.****—(1) The Secretary of State may make a budgeting advance to B for the purpose of defraying an intermittent expense of B if—*

*(a) B makes an application to the Secretary of State for a budgeting advance;*

*(b) B, or in a case where B is a member of a couple, B or their partner, is in receipt of universal credit;*

*(c) except where paragraph (2) applies, B or, in a case where B is a member of a couple, B or their partner, has been in receipt of benefit for a continuous period of at least 6 months on the date of the application for a budgeting advance;*

*(d) the earnings condition in regulation 13 is satisfied; and*

*(e) the recovery condition in regulation 14 is satisfied.*

***Recovery condition***

***14.****The recovery condition is satisfied where—*

*(a) no amount in respect of any budgeting advance previously paid to B or, if B is a member of a couple, B or their partner, remains to be recovered by the Secretary of State; and*

*(b) taking into account all debts and other liabilities of B or, if B is a member of a couple, of B and their partner, the Secretary of State is satisfied that the budgeting advance can reasonably be expected to be recovered.*

1. The budgeting advance for employment C was paid to attend an interview was made under reg. 11 (set out above) and reg. 12(2) SS (PAB) Regs which provides:

***12.-****(2) This paragraph applies where the intermittent expense to be defrayed is necessarily related to B or, in a case where B is a member of a couple, their partner, obtaining or retaining employment.*

1. ***Recovery of payments on account***
2. Reg.3(b) of the Social Security (Overpayments and Recovery) Regulations 2013 (SS (OR) Regs) confirms *recoverable amounts* include amounts under s. 71ZG SSA Act (which are payments on account of benefit made under s. 5(1)(r) SSA Act including advances, budgeting advances and budgeting advances for employment) and goes on to set the **maximum** rates of recovery deduction at reg. 11(2) as, in summary:
3. hardship payments (in the case of a person being sanctioned) and overpayments where the claimant or their partner has been found guilty of an offence, or has accepted a caution or agreed to pay a penalty – 40% of the standard allowance;
4. deductions from earned income except where a) applies - 25% of the standard allowance;
5. all other cases - 15% of the standard allowance
6. As such, the maximum rate of recovery by deduction in respect of payments on account is 15% of a person’s standard allowance.
7. No minimum rate of deduction is set, providing the Defendant with the discretion to suspend recovery altogether.
8. Under Reg 11(5) the above deductions are subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. (Claims and Payments Regulations) 2013 (UC (CP) Regs) (see further below).
9. ***The Defendant’s Guidance on Advances***
10. The payments on account available to a UC claimant are summarised as[[6]](#footnote-6):

• New Claim Advance

• Change of Circumstances Advance

• Benefit Transfer Advance

• Budgeting Advance

1. The Defendant’s operational guidance ‘Advances – Change of Circumstances’[[7]](#footnote-7) states:

*Recovery*

*Claimants should be informed that they have 6 months to repay the Advance (the maximum period). To guard against hardship, the repayment deduction amount will be no more than the equivalent of* [25%] *of the claimant’s Universal Credit Standard Allowance.*

*During the recovery of the advance there may be exceptional circumstances (for example a child going into hospital, resulting in unexpected regular bus or taxi fares for parents to visit) which means that recovery over 6 months will push the claimant into genuine hardship. In these circumstances, payments can be deferred for up to 3 months. Full recovery must be completed within 9 months.*

1. The Defendant’s guidance “Find out about money taken off your Universal Credit payment”[[8]](#footnote-8) specifies the types of debt which may be deducted:

* Advance payments
* Universal Credit overpayment
* Benefit overpayment
* Recoverable hardship payment
* Budgeting and crisis loan repayment
* Other debts you owe – ‘third party deductions’

1. Deductions for all of which are subject to the 25% maximum; an amount over 25% may only be taken to prevent eviction or fuel disconnection:

*Normally the most that can be taken from your payment is 25% of your Universal Credit Standard Allowance. This is the basic amount you are entitled to, before money for things like childcare and housing costs are added.*

*You may have more than 25% of your Standard Allowance taken off if you pay a ‘last resort deduction’. A ‘last resort deduction’ helps to prevent you from being evicted or having your utilities cut off. It is paid directly to the person or organisation you owe money to.*

1. The Defendant’s operational guidance ‘Advances- Budgeting Advance’[[9]](#footnote-9)(including budgeting advances for employment) states that repayment must be made with 12 or 18 months, repayment arrangements can be changed, and that only one Budgeting Advance must be paid at a time:

*Recovery*

*Budgeting Advances will be recovered over 12 months (or 18 months in exceptional circumstances).*

*During the recovery of the advance, a change in the circumstances of the benefit unit could mean that recovery over 12 months will push the claimant into genuine hardship. In these circumstances, it is possible to defer payments for up to 6 months.*

*…*

*Only one Budgeting Advance can be paid at a time. No further Budgeting Advances will be made available until the balance of the previous Budgeting Advance is cleared.[[10]](#footnote-10) If two benefit units merge and one claimant is liable for an outstanding Budgeting Advance, the new benefit unit is ineligible for a further Budgeting Advance until the first has been*

*repaid in full.*

1. £62.86 is deducted from NAME award each month, representing 25% of his personal allowance.
2. NAME is repaying 3 budgeting advances. 2 budgeting advances (not including the budgeting advance for employment) having been issued before he had repaid the first and at the same time as HE/SHE is repaying an advance notwithstanding the clear guidance and legislation on the recovery condition.
3. The Defendant has informed the Claimant that HE/SHE must repay the total of the five advances he has received (i.e. three budgeting advances for intermittent expenses, one payment on account for employment and one payment on account for change of circumstances within 12 months.

**B. Deductions for rent arrears**

***i) Power to make payments of rent arrears direct to landlord***

1. Under reg. 60 of the Universal Credit, PIP, JSA, and ESA (Claims and Payments) Regulations 2013 (UC (CP) Regs) deductions may be made from a person’s UC award and paid direct to third parties in accordance with the provisions of Schedules 6 and 7.
2. Schedule 6, para 7 in turn allows the SSWP to deduct an amount from a person’s UC standard allowance to cover rent arrears and pay this direct to the person’s landlord.

***ii) Rates of recovery***

1. Schedule 6, para 7 (5) limits the deductions in respect of rent arrears (except where a claimant earns above a certain amount) to between 10 and 20% of a claimant’s standard allowance:

***7****.- (5) - Where this paragraph applies, but subject to sub-paragraphs (6) and (7), the Secretary of State may, in such cases and circumstances as the Secretary of State may determine, deduct in relation to that assessment period an amount from the claimant's award [which is* ***no less than 10%and no more than 20%]****of the standard allowance and pay that amount to the person to whom the debt is owed.*

(Emphasis added)

1. As considered in more detail below, Schedule 6, para 4(4) provides an exception to the [25%] total limit of recovery in cases where a sanction or penalty is applied or an advance is being recovered, allowing for rent arrears deductions at the minimum rate of 10% of the benefit unit’s UC standard allowance to be taken, even if this takes the aggregate for deductions above [25%], when it is in the claimant’s best interests:

***4.****-(4) ...the Secretary of State may deduct an amount from the claimant’s award under paragraph 6 (housing costs), paragraph 7 (rent and service charges included in rent) or paragraph 8 (fuel costs) of this Schedule and pay that amount to a third party* ***where the deduction appears to the Secretary of State to be in the claimant’s best interests****, even though the deduction would result in the maximum amount being exceeded.*

***iii) The Defendant’s Guidance***

1. The Defendant’s operational guidance ‘Deductions’[[11]](#footnote-11) states total maximum deductions may exceed [25%] where there are rent arrears and an advance is being recovered, but fails to include that it must be in the ”claimant’s best interests” as required by Sch 6, para 4 UC (CP) Regs:

*Rent Arrears*

*There will be both a maximum and minimum deduction rate for rent arrears. The amount taken will vary depending on other deductions that are being made.*

*A rent arrears deduction can be a maximum of 20% of the Standard Allowance or as low as 10% of the Standard Allowance if other deductions are being taken.*

*The amount of no less than 10% and no more than 20% will be reduced pound for pound by any other deductions being made from the Universal Credit award. This is because the amount deducted must not go above the overall maximum deduction rate of [25%] of the benefit unit’s Universal Credit Standard Allowance. The exception to this is if a sanction or penalty is applied, or an advance is being recovered, rent arrears deductions at the minimum rate of 10% of the benefit unit’s Universal Credit standard allowance are taken - even if this takes the aggregate for deductions above [25%].*

*If there is insufficient Universal Credit in payment to take the full 10% minimum, nothing will be deducted.*

1. 10% of NAME standard allowance is being deducted in respect of his rent arrears.

**C. Deductions for tax credit overpayments**

1. Under reg. 28(1)(b) of the Tax Credits Act 2002[[12]](#footnote-12) an overpayment of tax credits may be treated and recovered by the SSWP as an overpayment of UC.
2. The maximum rates of recovery for overpayments falls under reg. 11 SS (OR) Regs, as also applies to payments on account (set out above).
3. The Defendant has in this case already exercised its discretion and agreed to reduce the rate of recovery to £5 per calendar month, which represents less than the maximum 15% of the standard allowance ordinary recovery rate and demonstrates use of the Defendant’s discretion as provided by reg. 11 SS (OR) Regs.

**D. Limit on total combined deductions**

1. Schedule 6, para 4(1) of the UC (CP) Regs limits the total level of deductions to a maximum of 40% of the standard allowance; as above, the Defendant’s Guidance has now reduced this to 25%[[13]](#footnote-13). However, this limitation is subject to the qualification under para 4(4) that the SSWP may deduct the minimum amount for rent arrears ie, 10% and pay that amount direct to the landlord where it is considered to be in the claimant’s ‘best interests’ even though this deduction would result in the maximum [25%] amount being exceeded (set out above).
2. Deductions for payments on account are included in the calculation of the total deduction (which should not exceed [25%]), as are deductions for rent arrears and overpayments.

### *Maximum amount*

***4.****—(1) Except as provided for in sub-paragraph (4), the Secretary of State may not deduct an amount from a claimant's award of universal credit under a provision mentioned in paragraph 5(2) of this Schedule if, in relation to any assessment period, that would result in the Secretary of State deducting an amount in excess of [25%] of the standard allowance (“the maximum amount”) from the claimant's award under one or more relevant provisions.*

*(2) The relevant provisions are—*

*(a) those mentioned in paragraph 5(2) of this Schedule;*

*[…]*

*(d) section 71ZG (recovery of payments on account) of the Administration Act;*

*[…]*

*(4) … the Secretary of State may deduct an amount from the claimant's award under … paragraph 7 (rent and service charges included in rent) of this Schedule and pay that amount to a third party where the deduction appears to the Secretary of State to be in the claimant's best interests, even though the deduction would result in the maximum amount being exceeded.*

***5.****— (2) The provisions are—*

*[…]*

*(b) paragraph 7 (rent and service charges included in rent) of this Schedule where the amount of the deduction equals 10% of the standard allowance;*

*[…]*

*(n) section 71 (overpayments – general), …or an overpayment of working tax credit or child tax credit, where in each case, the overpayment (or part of it) is not the result of fraud;*

**Grounds for Judicial Review**

**Ground 1: Combined deductions unlawfully exceed 25%**

1. Universal Credit is a subsistence level benefit providing only enough for basic expenditure and the Defendant explicitly acknowledges that hardship is a concern in its operational guidance ‘Deductions’[[14]](#footnote-14) where it explains why maximum deduction levels are set:

***Maximum rates of deductions***

*There is an overall maximum amount that can be deducted from someone’s Universal Credit. This is the equivalent to [25%] of the benefit unit’s Universal Credit Standard Allowance. This limit is set to reduce the risk of claimants facing hardship because of the amount being deducted from their Universal Credit payment.*

1. Total monthly deductions from NAME UC amount to 46.2% of his standard allowance of £317.82, amounting to £147.14 and leaving him with only £170.68 to live on.
2. Schedule 6, para 4(1) of the UC (CP) Regs (set out above) clearly stipulates that deductions cannot be made for provisions listed in para 5(2) (the relevant ones here being rent arrears and overpayment) where to do so would result in a total deduction of over [25%] of a claimant’s standard allowance under one or more of the provisions in para 4(2) (the relevant ones here are rent arrears, overpayment and recovery of payments on account).
3. As such, it is unlawful for the Defendant to make deductions for NAME rent arrears and overpayment when that results in a combined total deduction with the recovery of the advances of 46.2%
4. We are aware that there is a qualification to the [25%] maximum amount limit in para 4(4) which allows for debts for rent arrears to be continued to be paid to a claimant’s landlord where it is considered in the claimant’s best interests to do so, notwithstanding that this results in total deductions of over [25%]. However, there is nothing to indicate that such a ‘best interests’ assessment has been conducted.
5. Even if such an assessment had been conducted, to find that it is in NAME best interests for such deductions for rent arrears to continue to be made fails to take into account material considerations and/or is irrational.
6. Specifically, the resulting total deductions of 46.2% leaves NAME with £39.39 per week to live on resulting in him experiencing severe financial hardship [ANY MORE SPECIFIC DETAIL AS TO WHAT YOU ARE GOING WITHOUT].
7. FURTHERMORE, NAME’s LANDLORD HAS EXPRESSLY SAID THAT HE WISHES FOR THE RENT TO BE REPAID AT A LOWER RATE OR PAYMENT SUSPENDED. IS THIS CORRECT?
8. If there has been a ‘best interests’ assessment (which it is not accepted that there has) concluding that it is in NAME best interests for the deductions for rent arrears to continue fails to take account of the above material factors.
9. In the event that such factors have been taken into account, then the conclusion that, notwithstanding such hardship AND THE LANDLORD’S OWN POSITION, it is in NAME’s best interests to continue to have rent arrears deducted is irrational.
10. In all the circumstances, deducting a total of 46.2% of NAME standard allowance is unlawful.

**Ground 2: Unlawful deduction for advances in excess of the legal maximum**

1. Maximum rates of recovery deduction are set by reg. 11(2)SS (OR) Regs and the **maximum** rate of recovery by deduction in respect of payments on account is 15% of a person’s standard allowance i.e. the ‘in any other case’ in reg 11(2)(c).
2. In the event that change of circumstances advances, as a payment on account of benefit under Part 2 SS (PAB) Regs, and budgeting advances, under Part 3 SS(PAB) Regs, are recovered as separate matters, a maximum deduction rate of 15% should apply to each category, resulting in a total deduction of no more than 30%.
3. NAME payments on account and budgeting advances are being recovered at £110.36 each month which represents 34.72% of his standard allowance and is therefore unlawful as above the maximum 15%+15% rate provided in the SS(OR)Regs.[[15]](#footnote-15)

**Ground 3: Incorrect guidance**

1. The Defendant’s operational guidance fails to reflect the legislation set out above and is therefore incorrect and, to the extent that it is relied upon by decision makers, results in unlawful decisions on deductions being made.
2. The Defendant’s operational guidance ‘Advances - Budgeting Advance’ fails to reflect the legal position set out at reg. 11(2) SS (OP) Regs which provides a ‘**maximum’** deduction of 15% of the standard allowance (in the Claimant’s circumstances) and is explicit in its fettering of this discretion by requiring a recovery within a fixed period of 12 or, in exceptional cases, 18 months. Depending on the amount of budgeting advance to be recovered, recovery will in some cases unlawfully exceed the 15% maximum permitted under reg. 11(2) SS (OP) Regs. Further requiring recovery within a fixed period does not allow for the discretion provided by reg. 11(2) SS (OP) Regs to be exercised in those cases where recovery within this fixed period means that the 15% maximum deduction rate is applied.
3. The Defendant’s operational guidance ‘Advances- Change of Circumstances’ fails to reflect the legal position set out at reg. 11(2) SS (OP) Regs which provides a ‘**maximum’** deduction of 15% of the standard allowance and instead refers to a maximum [25%] recovery rate and is explicit in its fettering of its discretion under reg. 11(2) SS (OP) Regs by requiring a recovery within a fixed period of 6 or 9 months. Depending on the amount of advance to be recovered, recovery will in some cases unlawfully exceed the 15% maximum permitted under reg. 11(2) SS (OP) Regs. Further requiring recovery within a fixed period does not potentially allow for the discretion provided by reg. 11(2) SS (OP) Regs to be exercised.
4. In respect of NAME own circumstances, the Defendant has failed to follow its own guidance (albeit challenged as above) by refusing to allow recovery of his Budgeting Advances over 18 months where “recovery over 12 months will push the claimant into genuine hardship”. The Defendant is aware of NAME clear financial hardship yet has refused to make any adjustment resulting in a repayment rate which, as set out above, exceeds the maximum amount.
5. Furthermore, operational guidance ‘Deductions’[[16]](#footnote-16) states at ‘rent arrears’ that total maximum deductions may exceed [25%] where there are rent arrears and if a sanction or penalty is applied, or “*an advance is being recovered*”. Critically, it fails to include that it must be in the ”claimant’s best interests” as required by Sch 6 para 4 UC (CP) Regs with the result that where the guidance is followed in preference to the actual legislative requirements, as in NAME’s case, an unlawful deduction rate is applied.

**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 total deductions do not amount to more than 25% of his standard allowance.
* Amend its operational guidance to correctly reflect the legislative requirements on maximum rates of deductions set out in Reg. 11(2) of the Social Security (Overpayments and Recovery) Regulations 2013 and Sch 6, para 4UC (CP) Regs.

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

* **Claimant’s signed authority**
* **All other documents available through NAME Universal Credit online account (Journal and Claimant Commitment).**

**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 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

**Index**

|  |  |  |
| --- | --- | --- |
|  | Page no. | |
| The details of the matter being challenged | 2 |
| Background facts | 2 |
| Defendant’s Recent Guidance | X |
| **Legal Background** | X |
| A. Payments on account of benefit | X |
| 1. *The power to make payments on account* | X |
| 1. *Recovery of payments on account* | X |
| 1. *The Defendant’s Guidance on Advances* | X |
| B. Deductions for rent arrears | X |
| *i) Power to make payments of rent arrears direct to landlord* | X |
| *ii) Rates of recovery* | X |
| *iii) The Defendant’s Guidance* | X |
| C. Deductions for tax credit overpayments | X |
| D. Limit on total combined deductions | X |
| **Grounds for Judicial Review** | X |
| Ground 1: Combined deductions unlawfully exceed 25% | X |
| Ground 2: Unlawful deduction for advances in excess of the legal maximum | X |
| Ground 3: Incorrect guidance | X |
| Details of the action the defendant is expected to take | X |
| Details of documents considered relevant and necessary | X |
| ADR proposals | X |
| The address for reply and service of court documents | X |
| Proposed reply date  Index | X  X |

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://www.gov.uk/guidance/universal-credit-debt-and-deductions-that-can-be-taken-from-payments#how-much-can-be-taken-from-universal-credit-payments> [↑](#footnote-ref-3)
4. DWP Touchbase 5th March 2021 [↑](#footnote-ref-4)
5. As inserted by the Welfare Reform Act 2012 (Commencement No. 8 and Savings an Transitional Provisions) Order 2013 (SI 2013/358) art 5(2) (April 29 2013) [↑](#footnote-ref-5)
6. <http://data.parliament.uk/DepositedPapers/Files/DEP2019-0465/Advances-_Budgeting_Advances_v2.0.pdf> [↑](#footnote-ref-6)
7. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/05._Advances_Change_of_Circumstances_v8.0.pdf> [↑](#footnote-ref-7)
8. <https://www.gov.uk/guidance/universal-credit-debt-and-deductions-that-can-be-taken-from-payments#what-order-will-debts-be-dealt-withpaid-off> [↑](#footnote-ref-8)
9. <http://data.parliament.uk/DepositedPapers/Files/DEP2021-0349/4_Advances_Budgeting_Advances_v9_0.pdf> [↑](#footnote-ref-9)
10. This is in line with SS (OP) Regs, regs 12 and 14 [↑](#footnote-ref-10)
11. <http://data.parliament.uk/DepositedPapers/Files/DEP2016-0778/Deductions_V2.0.pdf> [↑](#footnote-ref-11)
12. As amended by Reg 12 of the Universal Credit (Transitional Provisions) Regulations 2014 [↑](#footnote-ref-12)
13. <https://www.gov.uk/guidance/universal-credit-debt-and-deductions-that-can-be-taken-from-payments#how-much-can-be-taken-from-universal-credit-payments> [↑](#footnote-ref-13)
14. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/46._Deductions_v9.0.pdf> [↑](#footnote-ref-14)
15. This would appear to be a consequence of NAME being granted several budgeting advances in breach of the recovery condition. It goes without saying that NAME should not be the one facing additional hardship due to his having been granted budgeting advances when there was no lawful power to do so. [↑](#footnote-ref-15)
16. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/46._Deductions_v9.0.pdf> [↑](#footnote-ref-16)