**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

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

* begun a new tenancy and notified DWP but rent payments by APA/MPTL continue to be made to their *previous* landlord.
* Requested a mandatory reconsideration and this has not been responded to within a reasonable time

***This letter assumes*** (so can be changed):

* Deductions from UC in respect of rent arrears owed to the previous landlord have also continued.

DELETE BOX BEFORE POSTING

***This letter challenges:***

DWP’s failure to pay the claimant’s housing cost element of UC to a new landlord, and continuing to pay it to the former landlord despite evidence of the claimant’s change of landlord/housing.

Read the whole letter carefully and edit as appropriate including all text in red and/or [square brackets].

Delete any comments and return all text to black before posting.

Please send this letter to jrproject@cpag.org.uk for review before sending to DWP.

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 [full client 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 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. C is challenging:
2. SSWP’s payment of C’s UC housing costs element to [wrong landlord’s name] under a managed payment to landlord/alternative payment arrangement (**“MPTL”**), during a period when [wrong landlord’s name] is/was not [her/his] landlord.
3. The making of unlawful deductions from C’s UC for rent arrears in respect of C’s former tenancy, deducted from C’s UC after that tenancy ended, and
4. SSWP’s failure to provide a decision within a reasonable time in respect of the proposed claimant’s mandatory reconsideration request dated [date] which challenged a) and b).

**Background facts**

1. **C is [personal details, family inc DoBs]**
2. **[Disability / vulnerability]**
3. **C has claimed UC since [date].**
4. **C’s previous tenancy, with [previous landlord’s name], started on [date]. [Her/His] rent was paid by MPTL to [previous landlord’s name] from [date].**
5. **Deductions from C’s UC award, paid to [previous landlord’s name] in respect of rent arrears, began on [date] and were made at a rate of [£X] monthly.**
6. **C’s current tenancy began on [date]. [Her/His] landlord is [landlord’s name]. [Her/His] rent is [£X. Specify if rent has changed during tenancy, with dates].**
7. **C informed SSWP of [her/his] change of circumstances on [date]. [Specifics: was this done by journal post? If so please copy and paste the post below. Was it by phone? If so, what did C say? Did C supply evidence?]**
8. **This communication should clearly have caused the deductions for rent arrears to cease as the result of [her/his] change of circumstances and for the MPTL to stop to [previous landlord’s name].**
9. **[DWP’s response if any]**
10. **On [date], the date of C’s subsequent UC award payment, the MPTL of [£X] and a deduction of [£X] was again paid to [previous landlord’s name].**
11. **[£X] represents the amount of C’s [CURRENT / FORMER] rent liability.**
12. **Further such payments and deductions were made on:[list all dates and amounts].**
13. **On [date], C wrote again challenging SSWP’s refusal or failure to stop arrears deductions. [what did she/he do?]**
14. **[Details of any more journal posts/phone calls by C, and any responses. One paragraph per item in chronological order.]**
15. **[delete if does not apply:] On [date], the first payment was made by MPTL to the correct landlord, [landlord’s name].**
16. **[delete if does not apply:] On [date], C’s UC award was paid without any deduction being made in respect of rent arrears owed to [previous landlord’s name].**
17. **At the date of this letter, C’s rent arrears on [her/his] current tenancy with [landlord’s name] stand at [amount]. This is as a direct consequence of the fact that [sum of all incorrect MPTL payments] has been sent by MPTL to the wrong recipient.**
18. **Further, at the date of this letter, [£X] in total has been paid to [previous landlord’s name] by direct deductions in respect of rent arrears on a *former tenancy*, leaving C in considerable financial hardship and [her/his] new tenancy at risk due to rent arrears.**
19. **[Any interactions with previous landlord including dates– have they acknowledged the error? Have they been asked to/agreed to take any action?]**
20. **[Any interactions with current landlord including dates – what have they done to tell DWP C is their tenant?]**
21. **[Consequences of the error for C – pressure from new landlord, threat of eviction, pressurised into making extra rent payments to correct landlord leaving [her/him] out of pocket, stress, effects on mental or physical health, effects on other household members]**

**Note on D’s duty of candour**

1. **As SSWP will be aware, the duty of candour arises as soon 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 issues and grounds for judicial review**

**Ground 1: Unlawful exercise of alternative payment arrangement power**

1. **The power to make an alternative payment arrangement, in this case a managed payment to a landlord, is set out in regulation 58 of the Universal Credit (Claims and Payments) Regulations 2013 (“UC (CP) Regs”):**

**58.-(1) *The Secretary of State may direct that universal credit be paid wholly or in part to another person on the claimant’s behalf if this appears to the Secretary of State necessary to protect the interests of –***

***(a) the claimant***

***(b) their partner***

***(c) a child or qualifying young person […]***

***(d) a severely disabled person […]***

**(Emphasis added)**

1. On no reasonable interpretation of regulation 58 of the UC (CP) Regs can a payment be said to be in the claimant’s ([her/his] partner’s, or child[ren]’s] best interests if it is made to the wrong recipient, in this case, if a rent payment is made to a party which is not the C’s landlord, and so is *not* made to the C’s current landlord, with the consequence that C accrues rent arrears to [her/his] current landlord and [her/his] tenancy, ie, [her/his] home, is put at risk.
2. C provided full and timely information to SWWP confirming the identity of [her/his] landlord. [SSWP does not dispute the factual accuracy of this information.]
3. [C’s current landlord has further confirmed C is a tenant of CURRENT LANDORD.]
4. [C’s former landlord has further confirmed C’s tenancy with FORMER LANDLORD ended on DATE; that C is no longer a tenant of FORMER LANDLORD.]
5. The explanation which has been offered by SSWP for the ongoing MPTL to [FORMER LANDLORD] is that SSWP, in making an MPTL, must act on instructions received through its ‘landlord portal’, even where these instructions are in direct conflict with evidence provided by the claimant, and in this case both [her/his] former and current landlords.
6. Regulation 58 of the UC (CP) Regs requires SSWP to decide whether an alternative payment arrangement is in the interests of a claimant [partner, and their children]. In refusing to end, begin or alter an MPTL for its given reason, SSWP has unlawfully considered questions of administrative policy ahead of, or to the exclusion of, the interests of C [and her/his partner and children]
7. Further, the SSWP’s stated position in this case fails to follow SSWP’s own published guidance *Alternative Payment Arrangements*, updated 17 January 2024[[3]](#footnote-3):

***2 Who can request a Managed Payment to Landlord?***

*Either the claimant, or their landlord can make this request.*

*If the claimant is making the request, this can either be:*

* *using their online Universal Credit account*
* *talking to their work coach or case manager*
* *phoning Universal Credit on 0800 328 5644*

(Emphasis added)

1. **Clearly, then, as a matter of DWP policy, the new MPTL in this case should have been considered when requested by C, regardless of details supplied via the ‘landlord portal’.**
2. **SSWP has failed to comply with the requirements under regulation 58 of the UC (CP) Regs in setting up and maintaining C’s MPTL. SSWP has further failed to follow SSWP’s own guidance. As a result, the MPTL payments made by in this case to [wrong landlord] from [date] are unlawful.**

**Ground 2: Making of unlawful deductions for rent arrears, for rent owed on a property where C no longer lives**

1. **Under regulation 60 of the UC (CP) Regs:**

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

1. **Under Schedule 6 UC (CP) Regs an amount may be deducted for rent and service charge arrears where all of specified conditions are met:**

### ***Rent and service charges included in rent***

**7.**—(1) This paragraph applies where all of the following conditions are met.

 [**…**]

 *(4) The third condition is that the claimant occupies the accommodation to which the debt relates.*

 **(Emphasis added)**

1. **To make deductions from a claimant’s UC award in respect of rent arrears on a former tenancy unequivocally does not meet the conditions set out in para 7 Sch 6 UC (CP) Regs and all deductions from C’s UC award in respect of rent arrears owed to [wrong landlord] from [date] when C ceased to occupy the accommodation to which those arrears related, are therefore unlawful.**

**Addendum to Grounds 1 and 2**

1. **As a consequence of SSWP having failed to follow the regulations, deductions were made from C’s UC award and paid to third parties when there was no legal authority allowing that to happen.**
2. **Reg. 47 of the UC (CP) Regs provides that UC is payable monthly in arrears. Reg. 46 provides that it may be paid into the bank account of the claimant. There is no power to pay it to a third party in this case and so reg. 46 should have been applied (or alternatively payment could have been made to the current landlord). Accordingly, C has not been paid the UC to which [she/he] is entitled to have paid to [her/him] and which [she/he] has been awarded.**
3. **SSWP must therefore now pay these sums to C without further delay.**
4. **In particular, SSWP cannot seek to recover the sums paid to the old landlord in error prior to paying them to C. The issue of whether those sums can be recovered from that landlord is a matter between SSWP and that landlord and cannot affect C’s rights.**

**Ground 3: unreasonable delay in providing a mandatory reconsideration decision**

1. SSWP 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 tosection 10 of the Social Security Act 1998 (“**SSA 1998**”) under which the Defendant may ‘supersede’ any decision made under sections 8 or 10, as to the analogous provision at section 8 under which SSWP 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[[4]](#footnote-4).

*Impact on the claimant and complexity of the case*

1. The delay in this case is causing [C/the family] hardship. The delay relates to a decision affecting the amount of UC C receives.
2. UC is a subsistence benefit. C is deprived of [£X] of [her/his] UC award each month, which is the amount designed to meet C’s current housing costs, yet C is having to try to meet [her/his] current housing costs from [her/his] standard allowance, causing C significant financial hardship and, since C’s remaining UC is insufficient to meet [her/his] current rent in full, at risk of eviction and homelessness due to rent arrears.
3. The delay, consequent financial hardship and risk to C’s home, is causing C stress and anxiety which is also having a significant impact on [her/his] [mental/physical] health. [DELETE IF UNTRUE]
4. The details of this non-complex matter are set out in grounds 1 and 2.

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

**The Defendant is asked to:**

* **End the MPTL to [wrong landlord] with immediate effect.**
* **End deductions from C’s UC award in respect of rent arrears owing to [wrong landlord] with immediate effect.**
* **Pay to C the amount of [£X], being the sum of all unlawful deductions from [her/his] UC award in respect of the amounts withheld from C’s UC payments as a result of the unlawful MPTL and rent arrears deductions [dates].**
* **Compensate C for the poor handling of [her/his] UC claim which has added to [her/his] overall stress and anxiety at a time when [she/he] has been having to deal with a wrongly reduced monthly income, threat of losing [her/his] tenancy, [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/him] 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.**

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

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

* **Client’s Form of Authority**
* **[Anything else ]**

**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]. We recognise that this is 7 days rather than the usual 14 days. However, we consider such a shortened period is appropriate given the clear unlawfulness of the decision, the risk to C’s home [and impact on her/his mental health], and the fact that SSWP has been made aware of the issue via [the Claimant’s online journal].

**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 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. gov.uk/government/publications/universal-credit-alternative-payment-arrangements/alternative-payment-arrangements#managed-payment-to-landlord [↑](#footnote-ref-3)
4. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-4)