[address your letter to either the:

**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**

***This letter challenges:***

* **DWPs failure to exercise the discretion available under Reg 47 of the Universal** Credit (Claims and Payments) Regulations 2013 to make ‘**split payments’ in unequal shares where it is in the** interests of the claimant and of a person with a severe disability to do so;
* DWP’s guidance which putoprts to fetter this discretion.

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

Please send this letter to [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk) for review before sending to DWP.

**DELETE BOX BEFORE POSTING**

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

* is a severly disabled person
* does not have childcare responsibilities
* receives UC ‘split payments’ with their partner
* their partner mismanages their share of the payments
* has requested the split payments be in unequal shares, and this has been refused
* has sought review pf the decision and this has been refused

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

**DELETE BOX BEFORE POSTING**

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 payment of [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 by 4pm on the date at the end of this letter.**

**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. **X through [her/his] Deputy … challenges SSWP’s failure to exercise the discretion available to it under Regulation 47 of the Universal** Credit etc. (Claims and Payments) Regulations 2013 (“**UC (CP) Regs**”) **to apportion UC ‘split payments’ in unequal shares where it is in the** interests of the claimants and of a person with a severe disability to do so.

***Background facts* [edit whole section – then return to black]**

1. **[details of household, income, disability, children, difficulty budgeting? Debts]**
2. **[X suffers from… and receives personal independence payments].**
3. **[X lacks capacity and has a state appointed deputy, her finances are managed by XXX]**
4. **[Y is X’s carer and receives carers allowance].**
5. **[the amount of UC received by X and Y is reduced in full by Y’s carers allowance, offset in part by the inclusion of a UC ‘carer element’ in their award].**
6. **[Y is known to the defendant to be reckless with money and has debts. How? Details?]**
7. [currently X and Y have an alternative payment arrangement under which X and Y receive equal shares of their UC award].
8. [X’s share is paid to her deputy].
9. **[Y receives his share of UC into his bank account, along with the carers allowance].**
10. **[Y does not use his share of the UC or the carers allowance to meet any of the household expenses or bills, including council tax, rent, gas, electricity, water, TV licence, telephone, internet… details].**
11. [all of X’s share of the UC (reduced as it is by the carers allowance) goes towards these expenses, but her income is insufficient to meet the full costs resulting in detail debts, threat to home etc and she is left with nothing for her own personal expenditure].
12. **[on date X / X and Y / X’s deputy asked the defendant to split the payments how to enable essential expenditure to be met and provide X with some income for personal expenditure].**
13. **[on date the defendant replied that this is not possible as: “that this the only way they can make split payments”].**
14. **[any further contacts]**
15. **[detail any financial losses incurred e.g. interest on credit used to pay rent]**

**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***

***Split payments***

1. Under the UC (CP) Regs payments can be split between a UC couple in the interests of the claimants and/or a severely disabled person in such proportion as the Secretary of State considers appropriate:

***Payment of universal credit***

***47.****—*

*(6) The Secretary of State may, in any case where the Secretary of State considers it is in the interests of—*

*(a) the claimants;*

*(b) a child or a qualifying young person for whom one or both of the claimants are responsible; or*

*(c) a severely disabled person, where the calculation of an award of universal credit includes, by virtue of regulation 29 of the Universal Credit Regulations, an amount in respect of the fact that a claimant has regular and substantial caring responsibilities for that severely disabled person,*

*arrange that universal credit payable in respect of joint claimants be paid wholly to only one member of the couple or be split between the couple in such proportion as the Secretary of State considers appropriate.*

 (Emphasis added)

1. SSWP’s Advice for Decision Making guidance (“**ADM**”) chapter B1: payment of UC, PIP, ESA and JSA[[3]](#footnote-3) confirms that the split can be ‘in such proportion as the DM [Decision Maker] sees fit’:

***Splitting UC payments between the couple***

***B1026*** *UC payments made to joint claimants may be split between the couple, in such proportion as the DM sees fit, if it is in the interest of1*

***1****. the claimants* ***or***

***2****. a child2 or qualifying young person3 for whom the claimant or their partner or both are responsible or*

***3****. a severely disabled person, where the claimant’s UC award includes, by virtue of specified legislation4, an amount in respect of the fact that a claimant has regular and substantial caring responsibilities for that severely disabled person*

*1 SS A Act 92, s 5(3B); UC, PIP, JSA & ESA (C&P) Regs, reg 47(6);*

*2 WR Act 12, s 40; 3 UC Regs, reg 5; 4 UC Regs, reg 29*

(Emphasis added)

1. SSWP’s operational guidance ‘Money guidance and Alternative Payment Arrangement’ (V32)’[[4]](#footnote-4) confirms when a split payment should be considered, including where one claimant “*is not managing their financial affairs and is not meeting their family’s day to day needs.”.*
2. The operational guidance however goes on to purport to unlawfully fetter the discretion available to the Secretary of State under reg 47(6) UC (CP) Regs to “*split* [the UC payment] *between the couple in such proportion as the Secretary of State considers appropriate”* where it in the interests of the claimants to do so, and as stated at paragraph B1026 of the Defendant’s ADM “*in such proportion as the DM sees fit,”* where it only suggests unequal shares may be appropriate where there is a child or children in the household, since the larger percentage can only be paid to a claimant “*with childcare*”.

***Split Payments***

*[…]*

*Split Payments are to prevent hardship to the claimant and their family and must only be considered in certain specific situations such as for budgeting purposes in domestic abuse cases or where financial abuse occurs and one partner mismanages the Universal Credit payment.*

*A Split Payment can be paid to 2 separate members of the household with the larger percentage allocated to the person with primary caring responsibilities, this means the one with childcare. […]*

***When are Split Payments considered?***

*Split Payments are normally considered to prevent hardship to the claimant and their family. This can be when the claimant is not managing their financial affairs and is not meeting their family’s day to day needs. Split Payments must be considered when the claimant:*

*• states financial mismanagement and/or financial abuse*

*• states that there are domestic abuse issues*

*• cannot or will not budget for their own or their family’s basic day to day*

*needs[…]*

***Appeal against an Alternative Payment Arrangement***

*There is no right of appeal against the outcome. […]*

*(Emphasis added)*

**Grounds for judicial review: Failure to follow the law and own guidance/failure to take into account relevant evidence/failure to exercise discretion**

1. The legislation and SSWP’s own Advice for Decision Making are clear and unequivocal. Split payments may be divided “*in such proportion as the DM sees fit” in the interests of “the claimant(s)*” and/or “*a severely disabled person*”. The Defendant’s assertion that:

*[“can only be divided 50/50” edit]*

clearly fails to follow the law and its own guidance and has no legal basis.

1. C has provided the following information and evidence which demonstrates “*financial mismanagement and/or financial abuse*” and that Y “*cannot or will not budget for their own or their family’s basic day to day needs*” and the consequent financial hardship X is experiencing as a result of the 50/50 split of UC.

* [what evidence]

1. D has provided no details to suggest any consideration was given to the evidence and information provided by C in reaching the decision on what of division of UC is in the interest of either ‘*the claimant(s*)’ or X who is ‘*a severely disabled person*’.
2. **It is therefore reasonable to infer that SSWP did not consider the information and evidence provided by C showing [her/his] financial hardship in reaching the decision.**
3. **SSWP also appears not to have considered the requirements of SSWP’s own ADM guidance, detailed above, in reaching the decision.**
4. **This failure by SSWP to consider C’s personal situation or to have regard to material facts is unlawful and any decision reached in consequence of this failure is therefore unlawful.**
5. **SSWP’s statement further suggests** operation of a blanket policy.
6. **It is unlawful to operate a ‘blanket policy’ when a discretion is available. In *R (S) v Secretary of State for the Home Department* [2007] EWCA Civ 546 the Court of Appeal summarised this principle when it stated:**

***“[a] public authority may not adopt a policy which precludes it from considering individual cases on their merits*”.**

1. By failing to exercise the discretion available under the law, or take account of C’s personal circumstances and SSWP’s own guidance, D has acted unlawfully.

**Alternative remedies**

1. **There is no right of appeal against this failure to exercise discretion, as confirmed in the SSWP’s operational guidance. Judicial review is therefore the only available remedy.**

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

**The Defendant is requested to:**

* **Immediately apportion X and Y’s UC payments as follows:**

**[how?]**

* **Amend SSWP’s operational guidance to make clear DM’s discretion to apportion split payments in unequal shares i**n the interest of the claimants, a child or qualifying young person or a severely disabled person and does not fetter this discretion by specifying unequal shares should only be considered where one claimant has childcare responsibilities.
* **Deliver staff training to ensure staff are fully aware of the discretion available to them and that in exercising this discretion to decide how to apportion UC payments account must be taken of each individual claimant’s personal circumstances.**

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

* **Evidence of financial hardship caused by the current APA**
* **X and Y’s signed authority**

**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**

**Due to the urgency of this matter, we expect a reply promptly and in any event no later than [date]. Should we not have received a reply by this time our client will seek representation to 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. [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/945889/admb1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945889/admb1.pdf) [↑](#footnote-ref-3)
4. <https://data.parliament.uk/DepositedPapers/Files/DEP2023-0791/105._Money_guidance_and_Alternative_Payment_Arrangements_V32.0.pdf> [↑](#footnote-ref-4)