**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 Sending Letter**

**This letter can be used to** challenge DWP suspension of UC in full of an existing joint claim where one member of the couple satisfies HRT and the other does not yet.

C is the partner who satisfies HRT.

**Delete Box Before Sending Letter**

[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]**

**I. Introduction**

1. We act on behalf of the above client, please find attached their signed authority to act.
2. Our client’s Universal Credit (‘**UC**’) has been suspended unlawfully and our client [and their family] are currently destitute. Accordingly, this matter falls within paragraph 6 of the Pre-Action Protocol for Judicial Review and we are requesting an abridged time frame of 7 days for response, i.e. by [DATE].
3. Our client seeks a judicial review of the decision to suspend [his/her] UC award [in full].
4. The following are the proposed claimant and defendant:

**Proposed Defendant:** Secretary of State for Work and Pensions (“**D**”)(“**SSWP**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**II. Details of the matter being challenged [edit as appropriate]**

1. C challenges D’s decision dated [ ] to suspend [his/her] UC award [in full].

**Background Facts** [edit whole section]

1. [C’s details – nationality, how satisfies HRT, date HRT confirmed by DWP]
2. [C’s partner’s details (name, address, DoB, NINO (if held), immigration status, date HRT previously confirmed by DWP]
3. [Date UC claimed by C and partner and paid to C and partner as a couple]
4. [Reason UC claimed, whether C and partner have any other income, disability, children etc].
5. [Reason partner’s HRT is now in question, what info has been requested and is pending for example]
6. [details of when UC suspended, steps taken to try to remedy situation, what DWP have said]
7. [details of financial hardship]

**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.

**IV. The Issue: Grounds for Judicial Review**

**Ground 1: Unlawful suspension of UC award in whole**

1. Under Part 5 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (‘**UC (DA) Regs**’), D may suspend a UC award where there is a question about entitlement (regulation 44) or there is a request for information that has not been provided (regulation 45).
2. In C’s case there is no question about entitlement in respect of C nor is there a failure, on the part of C, to provide information requested. The only issue is a question about entitlement in respect of C’s partner (who is a joint UC claimant) because [reason].
3. While this question is resolved, under regulation 44(1) UC (DA) Regs, D has the discretion to suspend, or not, payment of benefit:

***44.****—(1) The Secretary of State* ***may suspend,* in *whole or part, payment of any benefit*** *to a person (“P”) in the circumstances described in paragraph (2).*

*(2) The circumstances are where—*

*(a) it appears to the Secretary of State that—*

*(i) an issue arises whether the conditions for entitlement to the benefit are or were fulfilled;*

*[…]*

(Emphasis added)

1. Accordingly, D has a discretion to suspend a benefit only in part.
2. D’s guidance ‘Suspension and Termination Guide’[[1]](#footnote-1) confirms unequivocally that this discretion should exercised to suspend only ‘the part of the award in doubt’:

***Period and amount of suspension***

***2100****Before suspending payment, ensure:*

* *suspension is still appropriate (i.e. check that the issue has not been resolved) and*
* ***the suspension is only applied to the part of the award in doubt***

(Emphasis added)

1. D’s Advice for Decision Making guidance (“**ADM**”) confirms where any revision or supersession will only increase entitlement, it not necessary to consider suspension at all:

***A4326*** *Where a question arises about whether a decision awarding benefit should be revised1 or superseded2 the DM should consider whether a suspension of the payment of benefit is appropriate. If it looks as though the revised or superseded decision would result in*

*1. an increase in entitlement, there is no need to consider suspension*

*[…]*

1 SS Act 1998, s 8; 2 s 10

1. The purpose of the suspension power is to therefore ensure that an individual is not overpaid UC where there is a question over their entitlement.
2. C’s individual entitlement is clear, there is therefore no prospect if C is paid as a single claimant (while UC for C’s partner is suspended) of C being overpaid.
3. When exercising a power, a public authority must adhere to the following public law principles:
	1. as stated by Lord Carnwath in *JP Whitter (Water Well Engineers) Ltd v HMRC* [2018] UKSC 31 at [21]): “*any statutory discretion must be exercised consistently with the objects and scope of the statutory scheme”*. Accordingly, in deciding whether to suspend UC in part or in whole, D must consider whether the extent of the suspension is consistent with the purpose of the power, i.e. to prevent overpayments of UC.
	2. Lord Reed, in *Pham v SSHD* [2015] UKSC 19 at [113-114] considered that *“there are a number of authorities in which a finding of unreasonableness was based upon a lack of proportionality between ends and means.*” Accordingly, when considering how to exercise the suspension power, D should consider, to ensure that the power is not exercised in a *Wednesbury* unreasonable fashion, whether full suspension of the UC award would be disproportionate in so far as it is necessary to prevent an overpayment occurring.
4. The suspension of C’s partner’s UC may or may not be justified (and we do not comment on this here). However, there is nothing to suggest that C would be at risk of being overpaid UC for [his/her] part by D continuing to pay C UC at the single claimant rate. Accordingly, D has acted unlawfully in suspending C’s joint award in whole in breach of common law administrative law principles as set out above.

**Ground 2: failure to consider exercising discretion/failure to have regard to relevant factors in exercising discretion**

1. There is no evidence that D’s discretion under regulation 44(1) UC (DA) Regs to suspend in part has been considered at all. Alternatively, if it has been considered and the decision taken not to exercise the discretion has been made, there is no evidence that relevant factors (including the financial hardship occasioned to C [and C‘s children] whose entitlement is not in question) were taken into account in reaching that decision since no reasons for D’s decision have been provided beyond that C’s partner’s entitlement is in question. It would therefore appear D has fettered the discretion available to her and/or failed to take into account relevant considerations in deciding how to exercise the discretion both rendering her decision to suspend in full unlawful.

**Ground 3: Unlawful discrimination and irrationality**

1. Under reg 3(3) Universal Credit Regulations 2013 and reg 9(1) Universal Credit etc (Claims and Payments) Regulations 2013 it is possible for D to pay a claimant as single person where that claimant is part of a couple but their partner is not entitled to UC, ie, to treat joint UC claims made by couples with mixed immigration status as single claims.
2. As above, where D wants to confirm whether or not one partner of a couple claim is entitled to UC (where the entitlement of the other partner is not in question), D has the discretion under regulation 44(1) UC (DA) Regs, to “*suspend, in whole or part, payment of any benefit”*.
3. D’s exercise of the discretion available under reg 44(1) UC (DA) Regs, to suspend *in whole* rather than *in part*, is discriminatory (see below). This is particularly the case as D has the power and it is accepted practice to pay a claimant as a single person when is confirmed their partner is **not** entitled to UC (rather than their partner’s entitlement simply being ‘in question’). To pay a claimant their UC when their partner is not entitled, but not to pay then when D is unsure if whether their partner is *also* entitled (such that the claimant might be entitled to more UC than the single rate, but there is no prospect of their being entitled to less UC than the single rate), is irrational.
4. D’s decision to suspend UC awards in full rather than in part in situations where in a couple UC award one partner’s habitual residence is confirmed while their partner’s habitual residence is called into question, is likely to disproportionately affect non-UK nationals who are more likely to have partners who are also non-UK nationals whose habitual residence is more likely to be called into question, such that D needs to decide whether to suspend a UC award in full or in part.

*Equality Act 2010*

1. The processing of social security benefits is a public function for the purposes of the Equality Act 2010, and s 29 EA 2010 prohibits a public authority from discriminating against a person in the exercise of a public function.
2. By suspending the entire UC award where one partner’s UC entitlement is unequivocally clear, while their partner’s is not, rather than exercising the discretion available under regulation 44(1) UC (DA) Regs to suspend part of the award in proportion to the difference in amount between a joint and single claim, disproportionately affects non-UK nationals, their children and dependents.
3. This amounts to indirect racial discrimination contrary to s19 Equality Act unless the decision can be justified on the basis that it is a proportionate means of achieving a legitimate aim.

*Human Rights Act 1998*

1. Article 14 of the European Convention on Human Rights provides:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

Welfare benefits are a recognised form of property for the purposes of Article 1, Protocol 1 (see for example *Moskal v Poland* Application no. 10373/05), and are within the scope of Article 8 where they involve amounts for housing and/or children (see for example R (Carmichael and others) v Secretary of State for Work and Pensions [2016] UKSC 58 and *R (DS and Others) v Secretary of State for Work and Pensions*[2019] UKSC 21).

1. The decision to suspend in full (when there is a discretion available to suspend in part), disproportionately affects non-UK nationals compared to UK nationals as set out above and is not a proportionate means of achieving any given aim. Accordingly, the decision amounts to unlawful discrimination contrary to Article 14 ECHR in conjunction with Article 1 Protocol 1 and Article 8 rights. Where there is a prima facie case of discrimination it is for the Secretary of State to justify the interference.

**No Alternative remedy:**

1. C does not have an alternative remedy in this matter. Under paragraph 7 of schedule 3 UC (DA) Regs, C does not have a right of appeal of a decision to suspend [his/her] UC. Accordingly, [his/her] only remedy is by way of judicial review.

**V. The details of action you are expected to take**

* To forthwith reinstate C’s UC award at the single person rate and resume payment of the same.
* Award C HRA damages for discrimination.

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

34. Please find enclosed copies of the following documents:

* Form of authority signed by C and C’s partner
1. All other relevant documents/information are already in the possession of the Defendant.

**VII. ADR proposals**

1. Please confirm in your reply whether D is willing to consider alternative dispute resolution.

**VIII. The address for reply and service of court documents**

[ADVICE AGENCY NAME, ADDRESS AND EMAIL]

**IX. Proposed reply date**

1. C [and his/her family is/are] destitute as a result of D’s unlawful suspension of UC. [Circumstances] In light of this, we expect a reply promptly and, in any event, no later than by [date]. Should we not have received a reply by this time we will take steps to issue judicial review proceedings.

Yours faithfully,

1. www.gov.uk/government/publications/suspension-and-termination-of-benefits-staff-guide/suspension-and-termination-guide [↑](#footnote-ref-1)