**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) 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**.*

**The details of the matter being challenged**

1. The Claimant 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 specifically provided for in legislation.

***Background facts***

1. NAME is CIRCUMSTANCES, HOUSEHOLD, DISABILITY, OTHER BENEFITS
2. NAME is a vulnerable individual. HE/SHE suffers from …
3. Why did NAME claim UC? etc
4. NAME has rent arrears which are being repaid by way of a deduction from HIS/HER UC of £AMOUNT each month, equivalent to 20% of his standard allowance.
5. NAME is left with only £AMOUNT to live on each month (equivalent to £AMOUNT per week), from which HE/SHE has to pay for all of HIS/HER essential expenditure, INCLUDING FOOD, COUNCIL TAX, GAS, ELECTRICITY, TRAVEL COSTS, TV LICENCE, WATER RATES, ANYTHING ELSE?
6. This leaves NAME without enough money to pay for food or heating and he 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. EDIT AS APPROPRIATE
7. NAME is experiencing severe financial hardship and this has been notified to the Defendant HOW?
8. The Defendant responded by refusing to reduce the level of deductions on DATE stating:

“….. UNTIL NOW THEY HAVE REFUSED STATING THE CLIENTS OVERALL DEDUCTIONS ARE NOT UP TO 30% LEVEL…..SAYING THEY WILL BE THE FINAL ARBITER.” EDIT TO WHAT WAS ACTUALLY SAID

**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. Schedule 6 para 7 (5) of the Universal Credit, PIP, JSA, and ESA (Claims and Payments) Regulations 2013 (UC (CP) Regs) 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… 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.*

1. The Defendant’s own operational guidance ‘Deductions’[[3]](#footnote-3) details when the deduction for rent arrears should be reduced from 20% as either a) where another deduction is already in place , or b) in cases of financial hardship where the deduction for rent arrears is being made at more than 10% of the standard allowance:

***Deductions causing financial hardship***

 *If a claimant is struggling financially, they can ask for the amount of deduction to be reconsidered on the basis of financial hardship.*

*Financial hardship decisions are only available when deductions amount to more than 10% of the Universal Credit Standard Allowance and are being made for any of the following:*

*•benefit debt*

*•a Social Fund loan*

*•rent arrears*

*…*

*A Universal Credit decision maker will make the financial hardship decision if deductions are being made for rent arrears at a rate in excess of 10% of the Universal Credit Standard Allowance and there is no recovery of benefit debt and / or a Social Fund loan.*

*If the decision is to reduce deductions, the new reduced overall maximum deduction rate will be applied to the case.*

1. 20% of NAME’S standard allowance is being deducted in respect of HIS/HER rent arrears.

**Grounds for Judicial Review**

**Failure to take relevant facts into account and/or to apply relevant guidance**

1. The Defendant appears to have limited the criteria it has used to reach its decision not to reduce the level of deductions from NAME’S UC to ‘whether the maximum level of permissible deductions has been reached’ and taken no account of the financial hardship NAME is experiencing, and in doing so has unlawfully fettered the discretion available to it.
2. **The Defendant appears not to have considered whether NAME’S circumstances amount to a level of ‘financial hardship’ which would justify a reduction in the rate of the deduction from HIS/HER UC and in doing so has failed to take both the relevant facts of NAME’S circumstances and its own guidance ‘Deductions’ into account, both of which render the refusal to exercise its discretion to reduce the current maximum deduction rate for rent arrears of 20% unlawful.**

**The Defendant is requested to:**

* Exercise its discretion to reduce the amount of the deduction from NAME’S UC for HIS/HER rent arrears to 10% of HIS/HER standard allowance
* Ensure proper training of decision makers as to the guidance on reducing deduction rates and the importance of having regard to individual circumstances and financial hardship when considering a request for such a deduction

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

* **Claimant’s signed authority**
* **All other documents available through NAME’S 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 (14 days).

**Should we not have received a reply by this time 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. <http://data.parliament.uk/DepositedPapers/Files/DEP2020-0646/46._Deductions_v9.0.pdf> [↑](#footnote-ref-3)