Legal Department

Local Authority address

By email:

**Our Ref:
DATE**

**Dear Sir or Madam,**

**Re: Proposed claim for judicial review against THE LONDON BOROUGH OF /… COUNCIL BY X**

##### We are instructed by X **in relation to HER/HIS claim for housing benefit (HB) and the refusal by the X to make these payments calendar monthly in line with** HER/HIS **calendar monthly rent liability. We are requesting your response as soon as possible and in any event no later than DATE.**

**Proposed Defendant**: X COUNCIL/BOROUGH OF X

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**HB reference no:** [xxxx]

**The details of the matter being challenged**

**C challenges the failure of LB / COUNCIL to pay** HER/HIS **HB per calendar month in line with** HER/HIS **rent liability.**

**Background facts**

1. **X (d.o.b DATE) lives in private rented accommodation and receives HB to help pay HER/HIS rent.**
2. **DETAILS OF HOUSEHOLD, INCOME, DISABILITY, CHILDREN, DIFFICULTY BUDGETING? DEBTS**
3. **The Claimant contacted the Defendant on DATE to request that HER/HIS HB be paid calendar monthly and explained the hardship that the frequency of payment is causing:**

“….”

1. **The Defendant replied on DATE stating:**

“…”

1. **ANY FURTHER CONTACTS**
2. **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**

1. HB paid to a private tenant is defined by s.134(1B) of the Social Security Administration Act 1992 as ‘rent allowance’ being a payment *not* in respect of “property within the authority’s Housing Revenue Account” under s. 134(1A):

***Housing benefit***

***134****.—(1A) Housing Benefit in respect of payments which the occupier of a dwelling is liable to make to a housing authority shall take the form of a rent rebate or, in prescribed cases, a rent allowance funded and administered by that authority.*

*The cases that may be so prescribed do not include any where the payment is in respect of property within the authority’s Housing Revenue Account.*

*(1B)* ***In any other case housing benefit shall take the form of a rent allowance*** *funded and administered by the local authority for the area in which the dwelling is situated or by such other local authority as is specified by an order made by the Secretary of State.*

(Emphasis added)

1. Under Regulation 92 of the Housing Benefit Regulations 2006 (HB Regs), the local authority is given the discretion to make rent allowance payments at intervals of one month where the claimant’s rent liability is incurred monthly and where payment of the rent allowance is made directly to the landlord:

***Frequency of payment of a rent allowance***

***92****.—(1) Subject to the following provisions of this regulation any* ***rent allowance*** *other than a payment made in accordance with regulation 91(2) or (3) or 93 (time and manner of payment, payment on account of rent allowance)* ***shall be paid at intervals of*** *2 or 4 weeks* ***or one month*** *or, with the consent of the person entitled, at intervals greater than one month.*

*…*

*(3) Except in a case to which regulation 96(2) applies and subject to paragraph (4), this paragraph applies* ***where payment of a rent allowance is being made to a landlord*** *(which for these purposes has the same meaning as in regulations 95 and 96 (payments to a landlord)), when that payment shall be made–*

*(a) at intervals of 4 weeks; and*

*(b) at the end of the period in respect of which it is made.*

*(4) Where paragraph (3) applies–*

 *(a) i****n a case where the liability in respect of which the rent allowance is paid is monthly, the authority may make payment at intervals of 1 month****;*

(Emphasis added)

1. How the discretion under Reg. 92 (4) HB Regs should be exercised is set out in the Housing Benefit Guidance Manual[[1]](#footnote-1):

***Frequency of payment***

*6.140 You must consider the reasonable needs of the claimant when deciding the frequency of payments.*

 *HB Reg 91, 92 & (SPC) 72, 73*

***Allowance cases***

*6.143 Rent allowance should be paid in arrears and usually at intervals of two weeks, four weeks, one month, or with the claimant’s consent more than one month…*

*HB Reg 92 & (SPC) 73*

**Grounds for judicial review**

**Ground 1: Failure to correctly apply the law and guidance**

1. **The law and guidance shown above are clear. The Defendant has the discretion under** reg. 92 (4) HB Regs **to make HB payments calendar monthly to the Claimant’s landlord where HER/HIS rent liability is incurred calendar monthly.**
2. **On DATE** the Defendant stated:

**“**…”

1. **In doing so, the Defendant has completely failed to consider and apply the relevant law and guidance set out above which clearly enables it to pay HB on a monthly basis where the rent liability is incurred monthly.**

**Ground 2: Unlawful fettering of discretion**

1. **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. **In stating that “…”, it would appear that the Defendant operates a blanket policy not to pay** HB monthly despite the discretion available to it and, in so doing, has **refused to consider the Claimant’s individual circumstances in deciding the frequency of HER/HIS HB payments. As such the Defendant has unlawfully fettered the discretion available to it under reg 92(4) HB Regs.**

**Ground 3: Failure to take account of relevant information**

1. The Housing Benefit Guidance at para 6.140 and 6.143 (above) instructs local authorities on how to exercise their discretion under reg 92(4) HB Regs. This makes clear that the interests and reasonable needs of the claimant, which would include the need to keep rent payments up to date to protect the claimant’s home, are a relevant factor.
2. The Claimant’s rent liability is calendar monthly.
3. The Claimant’s landlord has threatened LEGAL ACTION? EVICTION? If the Claimant does not pay her rent calendar monthly.
4. The Claimant’s rent is £ HOW MUCH per month. The Claimant’s landlord is paid £ HOW MUCH every 4 weeks. The Claimant’s landlord regards this as non-payment of rent of £ HOW MUCH each month (regardless of the fact that HE/SHE will receive this payment 13 times over the calendar year).
5. The Claimant has a private tenancy and as such it is very easy for HER/HIS landlord to evict NAME from HER/HIS home, HER/HIS landlord needs only to give HER/HIM two months’ notice to terminate HER/HIS tenancy if HE/SHE is unhappy with the way the Claimant’s rent is being paid[[2]](#footnote-2).
6. HOUSING BENEFIT is a subsistence benefit. Where the payment made to her landlord does not correspond with HER/HIS calendar monthly rent liability, the Claimant is left with the impossible decision of whether to cut back on essentials such as food or heating, or risk incurring rent arrears and/or being regarded as a poor payer by HER/HIS landlord, putting HER/HIS home at significant and imminent risk. This creates serious difficulty budgeting.

**22. In refusing to exercise its discretion under reg 92(4) HB Regs, the Defendant has unlawfully failed to consider relevant information, namely the Claimant’s subsistence level income, consequent inability make additional payments to** HER/HIS **rent account, and the risk of losing** HER/HIS **home as a result.**

**Alternative remedies**

1. **There is no right of appeal against this decision under the Schedule to the** Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001. **Judicial review is therefore the only available remedy.**

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

**The Defendant is requested to:**

* **Start paying the Claimant’s HB calendar monthly to** HER/HIS **landlord with immediate effect.**
* **Compensate C for the financial losses SHE/HE has incurred to meet the rent shortfall.**
* **Ensure its staff are fully aware of the discretion available under Reg 92(4) HB Regs to pay HB monthly and given guidance on the proper exercise of this discretion**

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

* **A breakdown of C’s income and expenditure**
* **C’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 we will issue proceedings for judicial review without further notice to you.**

Yours faithfully

Enc.

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/236955/hbgm-a6-deciding-and-paying-benefit.pdf [↑](#footnote-ref-1)
2. s. 21 of the Housing Act 1988 [↑](#footnote-ref-2)