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

* Receives Universal Credit deductions are being made for rent arrears, and
* Does not have rent arrears, and
* Has already requested mandatory reconsideration of the decision (if your client hasn’t done this, feel free to use the references in this letter to draft your MR request. Explain if there is no MR decision in 14 days, you will send a judicial review pre-action letter)

**WARNING** Before using this letter check your client’s tenancy agreement – how much in advance does it specify s/he should be? **DO NOT USE THIS LETTER IF YOUR CLIENT IS IN CREDIT OF LESS THAN THIS AMOUNT.**

**DELETE BOX BEFORE POSTING**

**This letter challenges:**

* The making of deductions from the claimant’s Universal Credit for rent arrears when the claimant has no rent arrears.

Please read the whole letter carefully and change / edit all text in red and/or [square brackets]. Delete any comments and return all text to black before posting.

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

**DELETE BOX BEFORE POSTING**

**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 [his/her] 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 [date] (14 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 the ongoing deductions from [her/his] UC award which purport to be for rent arrears when C has no rent arrears, contrary to reg 60 and sch 6 of **the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (”UC (CP) Regs”).**

**Background facts**

1. **[C’s personal details, family members including dates of birth, health/disability, any other vulnerabilities]**
2. **[Housing details including landlord and monthly rent]**
3. **C has been receiving UC since [date]. [S/he] claimed UC because [reasons].**
4. **[Explain rent arrears: how much, how they accrued, recovery action taken by landlord]**
5. **Deductions from C’s UC award in respect of the rent arrears began in [month] with [amount] paid monthly thereafter direct to C’s landlord.**
6. **At the date when deductions began, the arrears balance was [amount].**
7. **[Explain how the arrears were cleared – did the client get a Discretionary Housing Payment? Did s/he pay off the balance in another way? Or were the arrears paid off solely as a result of the UC deductions? Include specific amounts and dates.]**
8. **C’s rent is [£x each month / week]. C’s tenancy agreement states this must be paid [weekly / monthly in advance].**
9. **By [date], C’s rent arrears balance [was £x in credit; representing more than one month/one week rent as required by C’s tenancy agreement.]**
10. **However, a further deduction of [amount], purporting to be for rent arrears, was taken from C’s UC subsequent UC payment which was made on [date].**
11. **On [date], C posted in [her/his] UC journal [or called UC] asking for the deductions for rent arrears to be stopped because the balance had been paid in full. [Was evidence provided – and how?]**
12. **This request was refused on [date] with D stating:**

**[text of journal entry or content of phone call: eg C was told s/he would need to speak directly to her/his landlord about this issue, and that DWP would take no further action without the landlord’s instructions.]**

1. **[Describe any further action taken with DWP: more UC journal requests/calls? Further evidence provided? Request for mandatory reconsideration?]**
2. **[Describe any further action taken with landlord: client asking them to stop the deductions, refusal or no answer, delays, refusal to refund credit on rent account, etc.]**
3. **[Describe the consequences of the decision for C. Has the landlord refused to refund the account balance, eg due to an internal policy about rent on account, leaving client out of pocket? Has client been unable to pay for essentials in the affected months, even if the landlord subsequently agreed to a rebate? Has client got into debt? Has client suffered stress/ill-health?]**

**Note on D’s duty of candour**

1. As SSWP 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 for inspection, as part of the response to this letter.

**Legal background**

1. **Under regulation 60 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, SSWP may deduct an amount for rent and service charge arrears where all of specified conditions are met, including that a claimant is in debt for the same:**

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

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

 *(2) The first condition is that in any assessment period the claimant—*

*(a) has an award of universal credit which includes an amount under Schedule 4 (housing costs element for renters) to the Universal Credit Regulations; or*

*(b) occupies exempt accommodation and has an award of housing benefit under section 130 (housing benefit) of the Contributions and Benefits Act*

*(3) The second condition is that the claimant is in debt for any—*

*(a) rent payments;*

*(b) service charges which are paid with or as part of the claimant's rent.*

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

 **(Emphasis added)**

1. **Schedule 6 para 2 further confirms:**

***2.****—(1) The Secretary of State may deduct an amount from a claimant's award of universal credit and pay that amount to a third party in accordance with the following provisions of this Schedule to discharge (in whole or part) a liability of the claimant to that third party.*

 **(Emphasis added)**

**Ground 1- unlawful deductions from UC**

1. **D is deducting from C’s UC amounts for rent for which C is not yet liable, purporting to deduct ‘rent in advance’. There is no legal power to make those deductions, which are as such unlawful.**
2. **C’s rent account is [amount] in credit (falling to [amount] at the end of each [4 week / monthly] period and rising again to [amount] when the Managed Payment to Landlord (“MPTL”) is received by [her/his] landlord – ie, such that [her/his] rent is paid in advance of each rental period and a credit remains of [amount]). C’s current rent balance therefore represents more than [one month/four weeks] of rent liability and C is not liable for any further sums.**
3. **The power to make a deduction from an award of UC only exists “***to discharge (in whole or part) a liability of the claimant*” and can only be made where “*the claimant is in debt*”.
4. C is not liable for rent that has not yet fallen due, and it is not disputed by D or C’s landlord that C is not in debt with [her/his] rent or services charges.
5. The ongoing deduction from C’s UC award for rent arrears, where there are no rent arrears, does not meet the conditions set out in Schedule 6 UC Regs and is therefore unlawful.

**Ground 2: Failure to follow guidance**

1. **The Secretary of State’s guidance, Advice for Decision-Making (“ADM”) states:**

***D2026 A debt may be disputed by the claimant. This is a factor for the DM to consider when deciding whether they are liable to pay the debt. Although the Department cannot get involved in the dispute, enquiries should be made of the third party.***

***D2027 Give the claimant the opportunity to provide evidence to support any claim that the debt is not liable to be paid.***

***D2028 Deductions should only be made where there is evidence that the claimant is liable to pay the debt. This may be provided by the creditor when a dispute has been resolved or not upheld by any independent Regulatory body.* (Emphasis added)**

1. **C has evidenced the fact that [she/he] is not in rent arrears. This fact is not disputed by D. D’s guidance confirms no deduction should be made in these circumstances. To continue to make a deduction for rent arrears when there are no rent arrears fails to apply the law and is in breach of the Secretary of State’s own guidance.**

**Ground 3: unlawful delegating decision making power**

1. **In replying to C, when C raised the fact that [s/he] was no longer in debt and requested that the deductions should cease, D instructed C that C would have to raise this with [her/his] landlord, D has unlawfully delegated a decision making power vested in D, to D’s landlord.**
2. **The implication of that instruction is that D would only accept that the deductions should cease if the landlord was to request it. However, it is for D (as the law and SSWP’s own guidance makes clear) to establish whether or not C is in debt and hence whether there is a power to make the deductions. Indeed, it is also for D to make a decision about whether to make deductions in general.**

**Alternative Remedy**

1. **It may be arguable that there is a right of appeal in a case where deductions have been made unlawfully under reg. 60 of the UC(CP) Regs. However, in the present case, C has requested that the deductions cease. D’s response has not been to formally reconsider the deductions and so C has not been provided with a mandatory reconsideration notice (which [s/he] would need to pursue an appeal). In that case, C is left with no option but the proposed action for judicial review.**

**Details of the action that the Defendant is expected to take**

**D is asked to:**

* **End deductions purporting to be for rent arrears with immediate effect;**
* **Compensate C for the poor handling by DWP of [her/his] UC award which has added to [her/his] overall stress and anxiety at a time when [s/he] has been having to deal with ... and consequent financial hardship [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, e.g. supporting evidence about rent arrears balance]**
* **All other evidence available though C’s online UC journal**

**ADR proposals**

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

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

**[Advice Agency name and address]**

**[Advice Agency email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than 4pm on [date] (14 days).

**Should we have not received a reply by this date we will issue proceedings for judicial review without further notice to you.**

Yours faithfully,

Encs

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)