**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

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

* + - * Has a joint social tenancy and the other joint tenant no longer lives at the property.
			* Your client is liable for the full rent.
* **DWP have accepted this at least once but C is required to confirm her/his situation every month to DWP for the correct housing costs element to be paid.**

Seek advice if needed jrproject@cpag.org.uk

**DELETE BOX BEFORE POSTING**

* *Delete boxes before posting*

***This letter challenges*** *DWP’s failure to include C’s full contractual rent liability in the calculation of her/his UC housing costs element.*

***This letter further challenges the DWP’s requirement for the claimant to prompt the appropriate calculation of her/his benefit each assessment period.***

Please read the whole letter carefully and change any text in red and/or [square brackets]. Then return all text to black.

**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 x **in relation to [her/his] universal credit (“**UC**”) award and the Defendant’s continued refusal to include [her/his] full contractual rent liability in the calculation of [her/his] UC housing costs element. We write in accordance with the Pre-action Protocol for Judicial Review. We are requesting your response no later than 5 pm 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. **Our client, C, challenges the failure of the SSWP to automatically continue to calculate the housing costs element of [her/his] award of UC in a manner which reflects that C is, in practice, solely liable for the full amount of [her/his] rent, despite the SSWP’s acceptance that this is the appropriate and reasonable manner in which to calculate [her/his] benefit. In particular, C challenges the SSWP’s requirement for [her/him] to prompt the appropriate calculation of [her/his] benefit each assessment period.**

***Background facts***

1. **C lives in social rented accommodation at address (“the Property “) and receives the housing costs element of UC to help pay [her/his] rent.**
2. **C’s tenancy is a joint tenancy in the names of C and [relationship and name] (“[person’s initials eg, AB]”)**
3. **C and [AB] moved into the property [how long ago], and signed a joint tenancy, understanding each was joint and severally liable for the full rent. The couple lived at the property [with eg any children].**
4. **[AB] moved out of the property number years ago after the relationship broke down. [S/he] now lives [where and with whom]. C continues to live in the property [with eg child (name and DoB, NINo is held). A non-dependant deduction is applied to C’s housing costs in respect of name. DELETE IF UNTRUE]**
5. **[C’s details – work, pay, health]**
6. **C first claimed UC on [date], when [why did s/he claim]. At the point of claiming UC, C was responsible for the full rent on the property, as [AB] had left [number] years earlier.**
7. **C contacted the SSWP via [her/his] UC journal on [date] to notify them that that [s/he] had not been receiving the full amount needed to cover [her/his] housing costs. [S/he] requested a mandatory reconsideration of the decision to pay only 50% of [her/his] housing costs. On date, [s/he] received confirmation that the relevant decisions (ie. the calculation of [her/his] UC payments in respect of the number completed assessment periods occurring from [date] to [date]) had been corrected and that the remainder of [her/his] housing costs would be paid.**
8. **On [date], C contacted the SSWP again via [her/his] journal, to explain that [her/his] payment for the period [date] to [date], and the statement for the expected payment for the period [date] to [date] both included only 50% of [her/his] housing costs. In [her/his] journal entry, C requested that this issue be resolved with finality, explaining that [s/he] was not able to split the joint tenancy due to outstanding rent arrears, but that there was no possibility of [initials] moving back into the property. [S/he] confirmed that [s/he] was aware that [s/he] was obliged to inform DWP if there was a change in circumstances and that [s/he] would do so if a relevant change occurred.**
9. **On [date] C received a response on [her/his] journal stating that [s/he] would need to send a message each month stating that [s/he] was responsible for the full rent. The payment to cover the remaining housing costs in respect of the [number] assessment periods occurring from [date] to [date] was made on [date].**
10. **[Detail further occurrences]**
11. **On [date], C again wrote on [her/his] journal that her payment calculation for the [date] to [date] assessment period suggested that [s/he] had been underpaid again. The response that [s/he] received on date stated that, as there were two people on the tenancy, the housing costs would need to be recalculated manually every month.**
12. **[Problems this has caused, rent arrears, court action etc]**
13. **C is reliant on [her/his] housing costs being paid in full and on time in order to [reason eg, comply with the terms of the suspended possession order and avoid eviction].**

**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***

***Housing Costs and ‘Untidy Tenancies’***

1. **The formula to determine the housing costs element of a claimant in a social rented property is provided in paragraph 33 of schedule 4 of the Universal Credit Regulations 2013 (“UC Regs”). For joint tenants in social rented property, paragraph 35 provides further detail on the formula. However, paragraph 35(5) provides a discretion for the Secretary of State to determine the claimant’s housing costs element in an alternative manner, where determining the amount in accordance with the earlier sub-paragraphs would be unreasonable.**
2. **C has an ‘untidy tenancy’ (also known as ‘**absent joint tenant - only one joint tenant resident’)**, which is caused when a couple enters into a joint tenancy but later separates, so while both technically remain liable to pay the rent, only one party lives at the property and so has an interest in paying the rent to avoid eviction. It is apparent that the SSWP considers it unreasonable for a person in C’s situation to have their housing costs calculated in the usual way, described in paragraph 35 of sch 4, which would result in each party to the tenancy being liable for only 50% of the housing cost, as this situation is specifically discussed in the guidance “**Joint Tenancies **(Version 8)”**[[3]](#footnote-3)**:**

 ***Absent joint tenant – only one joint tenant resident***

 ***Where the claimant has a joint tenancy but is the only tenant living in***

 ***the property, the claimant is treated as liable for the total rent. This can***

 ***apply to both Social Rented Sector (SRS) and Private Rented Sector (PRS)***

 ***cases. The declaration from the claimant is sufficient to satisfy the***

 ***verification requirement.***

 ***This is an absent joint tenant case.***

**(Emphasis added)**

1. **The SSWP’s approach to C’s payments when the issue has repeatedly been raised has been to determine the amount of C’s housing costs element in a manner other than the formula set out in paragraph 35(2)-(4) of schedule 4, and instead in accordance with paragraph 35(5) of that schedule. In light of this approach, taken together with the guidance set out above, we do not believe that there is any dispute as to the fact that the SSWP should exercise the discretion available so that C’s housing costs element is calculated based on** [**her/his] being responsible for the full rent unless and until there is a subsequent change of circumstances.**

***Request for Information***

1. **The SSWP may request from a claimant information or evidence that is required in connection to a payment of an awarded benefit or that is required to determine whether a decision on an award of benefit should be revised or superseded, as set out in reg 38 of the Universal Credit etc (Claims and Payments) Regulations 2013 (“UC (CP) Regs”):**

***38.****— (1) This regulation, apart from paragraph (7)* and *(9), applies to any person entitled to benefit, other than a jobseeker's allowance, and any other person by whom, or on whose behalf, payments by way of such a benefit are receivable.*

*(2) Subject to regulation 8 of the Personal Independence Payment Regulations, a person to whom this regulation applies must supply in such manner as the Secretary of State may determine and within the period applicable under regulation 45(4)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 such information or evidence as the Secretary of State may require for determining whether a decision on the award of benefit should be revised under section 9 of the Social Security Act 1998 or superseded under section 10 of that Act.*

*(3) A person to whom this regulation applies must supply in such manner and at such times as the Secretary of State may determine such information or evidence as the Secretary of State may require in connection with payment of the benefit awarded.*

*(4) A person to whom this regulation applies must notify the Secretary of State of any change of circumstances which the person might reasonably be expected to know might affect—*

*(a)the continuance of entitlement to benefit;*

*(b)the amount of benefit awarded; or*

*(c)the payment of benefit,*

*as soon as reasonably practicable after the change occurs.*

1. Reg 38(2)-(3) are discussed further below. However, in relation to reg 38(4) there has been no change in C’s circumstances in relation to [her/his] housing since [s/he] was first awarded UC. In particular, there has been no change in C’s circumstances in relation to [her/his] housing since [s/he] first informed the SSWP on [**date]** that [s/he] was fully responsible for paying the rent and the SSWP’s resulting decision on [**date]** to revise the calculation of [her/his] award and to determine C’s housing costs element in an appropriate and reasonable manner. Reg 38(4) is therefore not relevant, as this only requires the claimant to provide information to the SSWP where there has been a change in circumstances. A claimant is not required to inform the SSWP of a negative ie, a lack of change of circumstances.
2. Further detail on the provision of information can be found in reg 45 of the Universal Credit etc. (Decisions and Appeals) Regulations 2013 (“**UC (DA) Regs**”) including the requirements on the SSWP to give particular notification to a claimant:

***45.****—(1) This regulation applies where the Secretary of State requires information or evidence from a person mentioned in paragraph (2) (“P”) in order to determine whether a decision awarding a benefit should be revised under section 9 of the 1998 Act or superseded under section 10 of that Act.*

*(2) The persons are—*

*(a) a person in respect of whom payment of any benefit has been suspended in the circumstances set out in regulation 44(2)(a) (suspension in prescribed cases);*

*(b) a person who has made an application for a decision of the Secretary of State to be revised or superseded;*

*(c) a person from whom the Secretary of State requires information or evidence under regulation 38(2) (evidence and information in connection with an award) of the Claims and Payments Regulations 2013;*

*(d) a person from whom the Secretary of State requires documents, certificates or other evidence under regulation 31(3) (evidence and information) of the Jobseeker's Allowance Regulations 2013;*

*(e) a person whose entitlement to an employment and support allowance or universal credit is conditional on their having, or being treated as having, limited capability for work.*

*3) The Secretary of State must notify P of the requirements of this regulation.*

*(4) P must either—*

*(a) supply the information or evidence within—*

*(i) a period of 14 days beginning with the date on which the notification under paragraph (3) was given or sent to P or such longer period as the Secretary of State allows in that notification, or*

*(ii) such longer period as P satisfies the Secretary of State is necessary in order to comply with the requirements, or*

*(b) satisfy the Secretary of State within the period applicable under sub-paragraph (a)(i) that either—*

*(i) the information or evidence does not exist, or*

*(ii) it is not possible for P to obtain it.*

*(5) In relation to a person to whom paragraph (2)(d) refers, paragraph (4)(a)(i) has effect as if for “14 days” there were substituted “7 days”.*

*(6) The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4).*

*(7) In this regulation, “evidence” includes evidence which a person is required to provide in accordance with regulation 2 (evidence of incapacity for work, limited capability for work and confinement) of the Social Security (Medical Evidence) Regulations 1976.*

**Grounds for judicial review**

**Ground 1: Ultra Vires application of reg 38 UC (CP) Regs**

1. **Regulation 38(2) requires the claimant to provide such information or evidence as is required by the SSWP in order to decide whether to revise or supersede a decision. Regulation 38(3) requires the claimant to supply such information or evidence as the SSWP may require “in connection with payment of the benefit awarded”.**
2. **In C’s case the SSWP is satisfied that C is responsible for the full rent, as is evidenced by the decision of [date] to revise the earlier payment decisions, and the subsequent revisions of the UC payments of [date], [date], [date] and [date]. The information that C has been asked to provide is therefore not required in order to decide whether to revise or supersede a decision, under reg 38(2), as the SSWP already has this information and is satisfied that C’s housing costs element should be calculated in a manner which reflect the fact that [s/he] is responsible for the full rent.**
3. **Given that reg 38(4) does not apply either (no requirement to notify of the lack of change of circumstances), we can only presume that the request for C to post something on [her/his] UC journal on the [date] of each month as to [her/his] continued full responsibility for the rent is made under reg 38(3). However, the purpose of this regulation is to obtain the information that the SSWP requires in order to determine the amount of an award. In C’s case, the SSWP already has that information available and the reason for requesting the information would appear to be solely for the purposes of prompting a manual recalculation of C’s housing costs element, and the resulting UC payment, to account for the fact that C is solely responsible for the rent at the property.**
4. **The purpose of the request for information is therefore not properly *“in connection with the payment of an award of benefit”*, in the sense of information that is required to enable the payment of an award of benefit. Rather, it is a mechanism by which the SSWP is reminded to adjust C’s payment so that [s/he] receives the amount to which [s/he] is entitled, based on the information and evidence that the SSWP already holds.**
5. **In fact, it is not clear that the SSWP requires any additional information from C on the date of each month. For example, the SSWP was content to manually recalculate [her/his] housing costs element of [her/his] UC in month following C’s note in [her/his] journal of date which stated:**

**“***I have just looked at my new payment for Feb 28th and I have been awarded just £106.05. I assume I have been underpaid again*”.

**The payment was amended with no further request for clarification.**[[4]](#footnote-4) **Presumably this was done on the basis of the more detailed explanation and information provided by C previously on [date] and in line with the outcome of the earlier mandatory reconsideration request. The purpose of C’s monthly contact is simply to act as a prompt for the SSWP to pay C the amount of UC to which the SSWP has already recognised [s/he] is entitled.**

1. **For the reasons set out above, the SSWP’s request is not an appropriate use of the regulation and is outside the intended purpose of this information gathering power.**

**Ground 2: Error of law in the Defendant’s response to C’s non-compliance with purported request for information under reg 38 UC (CP) Regs**

1. **In the alternative to the above point, if the SSWP does not accept that the request is beyond the power afforded by reg 38 of the UC (CP) Regs, the response to C’s failure to provide information is not the remedy permitted by the regulations.**
2. The consequences of failing to comply with a request under reg 38(2) of the UC (CP) Regs is set out in reg 45 of the UC (DA) Regs, set out above, and specifically reg 45(6) as follows:

***(6)****The Secretary of State may suspend the payment of a benefit, in whole or part, to any person to whom paragraph (2)(b), (c), (d) or (e) applies who fails to satisfy the requirements of paragraph (4).*

1. Therefore, even if the SSWP asserts that C was (and continues to be) required to (re)provide the information under reg 38(2) of the UC (CP) Regs, which is disputed, the remedy that would be available to the SSWP for C’s failure to (re)provide such information is to suspend the payment of all or part of the benefit. Instead, the SSWP informed C that, if the information was not (re)provided, the SSWP would use a different method of calculating C’s housing costs element, one which the SSWP had already concluded to be unreasonable. There is no provision in the regulations to make such a decision.
2. **Further, reg 45 applies only to decisions on whether or not to revise or supersede a decision. For the reasons set out above, we do not believe that this information is being requested to assist the SSWP in deciding whether or not to supersede a decision, but rather as a reminder to the SSWP to override the automatic calculation to treat C as liable for only 50% of the housing costs. At no stage has C, on the occasions when [her/his] payment calculations initially included the lower housing costs element, been informed that the SSWP’s earlier decision to pay the higher amount had been superseded.**
3. **If we were to accept that the request for information was made within the SSWP’s powers under reg 38(3), which we do not, the SSWP’s action of making a decision that the SSWP knows to be unreasonable given the information which is within the SSWP’s knowledge, in response to C’s failure to (re)provide information, is not a remedy that is based in law.**

**Proposed Solution**

1. **We recognise that this issue appears to be caused by the automated nature of the UC system, which recognises that the claimant holds a joint tenancy and so calculates [her/his] UC payment based on [her/him] being liable for 50% of the housing costs. The automated system is unable to apply the discretion provided in the regulations and the guidance to treat C as liable for the full amount because the other joint tenant does not live at the property.**
2. **One possible way forward which is not dependent on the SSWP’s unlawful use of any powers to request information is that C reports a formal change of circumstances using the ‘report a change of circumstances’ provision on [her/his] UC journal that [s/he] is a sole tenant. While this is not legally correct, in practical terms it is a far more accurate reflection of her current housing liability. The result will be that the automated system will pay 100% of her housing costs each month without the need for the manual override.**
3. **This would be done on the understanding that, should C’s circumstances change, [s/he] will inform UC immediately.**

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

**The SSWP is requested to:**

* **Confirm acceptance of the above proposal, that C enters a change of circumstances to state that [s/he] is the sole tenant of the property on the understanding that should C’s circumstances change in relation to [her/his]housing situation [s/he] will immediately inform UC.**
* **If the above is not possible, propose an alternative work around to the automated system, which is in line with legislative requirements.**

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

* **C’s signed authority**
* **All other documents available via C’s online UC journal**

**ADR proposals**

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

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

**[Advice agency name, address and email]**

**Proposed reply date**

**We expect a reply promptly and in any event no later than 5pm on date. Should we not have received a reply by this time our client reserves the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully,

Adviser name and signature

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. data.parliament.uk/DepositedPapers/Files/DEP2022-0452/083-Joint-tenancies\_V8.0.pdf [↑](#footnote-ref-3)
4. The Defendant has most recently amended the calculation following C’s note of 22/04/20 stating “*Just messaging to remind you to check I get the right amount of UC money this month*”. [↑](#footnote-ref-4)