**Legal Department**

**[Housing Benefit Authority]**

**By Email and Post**

**Our Reference:**

**Date:**

**THIS LETTER REQUIRES YOUR URGENT ATTENTION**

**Letter of Claim in Compliance with Pre-Acton Protocol for Judicial Review**

**Deadline by:**

Dear Sir/Madam,

**Re: Proposed Judicial Review Claim of the [Housing Benefit Authority] by [Client]**

**[URGENT: RISK OF EVICTION AND HOMELESSNESS]**

**I.** **Introduction**

1. We act on behalf of the above client. Please find attached her signed authority consent form.
2. [Summary of facts and grounds]. Our client is a homeless applicant to the [relevant Local Authority]. On [date], the [Local Authority] accepted a duty to provide accommodation to our client under s.193 of the Housing Act 1996. Consequently, on [date], our client was placed in temporary accommodation at [address]. Our client’s landlord is [private registered provider of social housing/ private landlord]. Our client challenges the decision of [the Housing Benefit Authority] not to award our client Housing Benefit. Our client is not entitled the Housing Costs element of Universal Credit as she/he is in temporary accommodation. As our client is not liable to pay rent to the [relevant Local Authority], the local authority that is to administer and fund his/her Housing Benefit claim is that in whose area the accommodation is situated. In this case, that is [the Housing Benefit Authority].
3. The following are the Proposed Claimant and Defendant:

***Proposed Claimant***

**Name:**: [Client full name] (‘C’)

**Address:** [Address]

**NINO:**

***Proposed Defendant***

[The Housing Benefit Authority] (‘D’)

**II. Details of the matter being challenged**

1. C challenges the decision of D not to make a decision on Housing Benefit within 14 days, or a reasonable time, of the making of a valid claim and after receiving all the relevant information and evidence.
2. [C challenges the decision of D not to make a payment on account of a rent allowance.]
3. [D’s unlawful interference with C’s Article 8 and Protocol 1 Article 1 ECHR rights]

**III.** **Factual background**

1. C (d.o.b. ) is [relevant characteristics – e.g. lone parent, vulnerable individual] and homeless applicant to the [relevant Local Authority]. He/She has been provided temporary accommodation under s.193 of the Housing Act 1996 in the form of [an assured shorthold tenancy]. His/her landlord is [….], [a registered provider of social housing/private landlord].
2. [Details regarding homeless case. Has the Local Authority confirmed that C is owed a s.193 duty? Does C have a bidding number and account? Was a final offer of accommodation made? Was the duty discharged?]
3. On [date], C claimed Housing Benefit for the above property. [Details of claim. What did the Housing Benefit Authority say? Did they process the claim?]
4. [Details of efforts to resolve the issue. Details of contact with Housing Benefit Authority. Details of why Housing Benefit Authority refused to award Housing Benefit.]
5. [Details about impact on C. Emotional and psychological distress? Risk of eviction? Has landlord taken steps to evict?]

**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.** **Legal framework**

1. Where a homeless applicant is owed a duty to provide accommodation under s.193(1) of the Housing Act 1996 as amended, until that duty is discharged, they must be provided with “temporary accommodation”.
2. [Temporary accommodation can be provided by the local housing authority directly or a private landlord or private registered provider of social housing. Where temporary accommodation is provided by a private landlord, the Government Homeless Code of Guidance (version 31 December 2020) stipulates that a tenancy for that accommodation can be in the form of an assured shorthold tenancy:

***Temporary accommodation provided by a private landlord***

***16.23****Section 209 governs security of tenure where a private landlord provides accommodation to assist a housing authority to discharge an interim duty. Any such accommodation is exempt from statutory security of tenure until 12 months from the date on which the applicant is notified of the authority’s decision under section 184(3) or section 198(5) or from the date on which the applicant is notified of the decision on any review under section 202 or an appeal under section 204, unless the landlord notifies the applicant that the tenancy is an assured or assured shorthold tenancy.*

***16.24****Where a private landlord or private registered provider lets accommodation directly to an applicant to assist a housing authority to discharge any other homelessness duty, the tenancy granted will be an assured shorthold tenancy unless the tenant is notified that it is to be regarded as an assured tenancy.*(emphasis added)]

1. By virtue of the Universal Credit Regulations 2013, Schedule 1, para 3B(3), a person who is liable to pay rent for temporary accommodation is not eligible for Universal Credit housing costs. That person should claim Housing Benefit.
2. Under s. 134 of the Social Security Administration Act 1992, where temporary accommodation is provided by a housing authority, that housing authority is to fund and administer the Housing Benefit. Where temporary accommodation is provided by another organisation, such as a private landlord or private registered provider of social housing, the local authority in whose catchment area the temporary accommodation is located is to fund and administer the Housing Benefit.

***s. 134 Arrangements for Housing Benefit***

*(1) Housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (in this Part referred to as “the housing benefit scheme”) shall be funded and administered by the appropriate housing authority or local authority.*

*(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.*

1. Under regulation 91 of the Housing Benefit Regulations 2006 (‘**the Regulations**’), it is for “the relevant authority” to “pay housing benefit to which a person is entitled”. “Relevant authority” is defined in regulation 2 of the Regulations as “an authority administering housing benefit”.
2. Under regulation 89 of the Regulations, where a claim for Housing Benefit is made in the prescribed manner and the information and evidence required to determine that person’s entitlement to Housing Benefit has been provided, the relevant authority must make a decision on the claim within 14 days or as soon as reasonably practicable thereafter.
3. [Regulation 93 of the Regulations places a duty on local authorities to make payments of rent allowance where, for a reason out of the claimant’s control, the local authority is unable to make a determination within 14 days of the claim being made:

### *“Payment on account of a rent allowance*

***93.****—(1) Where it is impracticable for the relevant authority to make a decision on a claim for a rent allowance within 14 days of the claim for it having been made and that impracticability does not arise out of the failure of the claimant, without good cause, to furnish such information, certificates, documents or evidence as the authority reasonably requires and has requested or which has been requested by the Secretary of State, the authority shall make a payment on account of any entitlement to a rent allowance of such amount as it considers reasonable having regard to—*

*(a) such information which may at the time be available to it concerning the claimant's circumstances; and*

*(b) any relevant determination made by a rent officer in exercise of the Housing Act functions.*

*(2) The notice of award of any payment on account of a rent allowance made under paragraph (1) shall contain a notice to the effect that if on the subsequent decision of the claim the person is not entitled to a rent allowance, or is entitled to an amount of rent allowance less than the amount of the payment on account, the whole of the amount paid on account or the excess of that amount over the entitlement to an allowance, as the case may be, will be recoverable from the person to whom the payment on account was made.*

*(3) Where on the basis of the subsequent decision the amount of rent allowance payable differs from the amount paid on account under paragraph (1), future payments of rent allowance shall be increased or reduced to take account of any underpayment or, as the case may be, overpayment.”*] [For Advisors – please note that this could result in an overpayment]

**V. Grounds of review**

***Ground 1: Unlawful failure to make a decision***

1. D have unlawfully failed to make a decision on C’s entitlement to Housing Benefit. C has made a valid claim for Housing Benefit and provided the required evidence and information that is necessary to determine entitlement. [This includes ID, tenancy agreement, evidence of income/benefits]. This was provided on [date]. [C contacted D to clarify whether there was any further evidence or information required. D did not respond.] 14 days have passed since the required evidence and information was provided to D. Therefore, D is in breach of their statutory obligation to determine the Housing Benefit claim within 14 days of receiving the relevant evidence and information.
2. D is entitled to Housing Benefit and applied to the correct authority. C is not able to claim Universal Credit Housing Costs as he/she is in temporary accommodation. On [date], C, therefore, made a claim for Housing Benefit. D has a duty to administer and fund C’s Housing Benefit because C’s accommodation falls under s. 134(1B) of the Social Security Administration Act 1992:
	1. He/she is not “*liable to make [payments of rent] to a housing authority*” so s.134(1A) does not apply.
	2. His/her case is “*any other case*” so that the Housing Benefit should be “*funded and administered by the local authority for the area in which the dwelling is situated*” and s.134(1B) does apply.
	3. C’s accommodation is located within the catchment area of D. Therefore, D is the appropriate local authority under s.134(1) and should award her entitlement to Housing Benefit.

 ***Ground 2: Unlawful failure of D not to make a payment on account of a rent allowance.***

1. In the event that it is impracticable for D to make a decision on C’s claim for Housing Benefit, D should make payment on account to C’s landlord for the following reasons:
	1. C has provided all the information, certificates, documents or evidence as reasonably requires and has requested, including evidence of income and evidence of rental liability.
	2. D has the requisite information to make a determination on C’s entitlement to Housing Benefit and the amount of award.

***[Ground 3: Unlawful Interference with Article 8 and Protocol 1 Article 1 ECHR***

1. As a result of the failure to make a determination on C’s Housing Benefit within the legal time frame or to make a payment on account, C is at risk of eviction [and any other details, stress etc.]
2. Article 8 of the European Convention on Human Rights provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. D’s failure to process C’s application and award Housing Benefit has placed C’s home at risk. [Details].]
2. Welfare benefits, including Housing Benefit, are a recognised form of property for the purposes of Article 1 of Protocol 1. D has unlawfully interfered with C’s Protocol 1 Article 1 right by failing to make a decision on C’s rightful entitlement to Housing Benefit or make payments on account.

**VI. Alternative remedies**

1. We understand that judicial review is a remedy of last resort and should not be used if there is a right of appeal. C is unable to appeal to the First-tier Tribunal as a decision has not been made on his/her case. [Further, C is at risk of eviction due to accumulating rent arrears. His/her landlord would be entitled to seek possession on mandatory grounds for rent arrears, for which there would be no defence.]
2. C is seeking HRA damages. Judicial review is the only way to achieve the remedy sought.

**VII. The details of the actions you are expected to take**

1. Within 14 days:
	1. To make a decision on C’s Housing Benefit claim.
	2. To award C Housing Benefits from [date of claim].
	3. To provide guidance to decision makers that, where a person is placed in temporary accommodation within your local authority area, and they are not liable to pay rent to another local authority, it is for D to administer and fund Housing Benefit.
	4. To pay compensation for breach of the Human Rights Act 1998.

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

1. Please find enclosed copies of the following documents:
	1. Form of authority signed by C
2. All other relevant documents/information are already in the possession of the Defendant.

**IX. ADR proposals**

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

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

1.

**XI. Proposed reply date**

1. [explain why certain date is required for example if urgent].
2. In light of the above, we expect a reply promptly and, in any event, no later than by 4 pm on [date]. Should we not have received a reply by this time we will take steps under the pre-action protocol to commence judicial review proceedings on the grounds of delay and failure to follow the law.

Yours faithfully,