***This letter challenges***the gap in / absence of protection under the law for claimants on legacy benefits where the death leads to a claim for UC compared to those already on UC, or those who remain on legacy benefits.

Read the whole letter carefully and edit as appropriate including all text in red and/or [square brackets].

Delete any comments and return all edited text to **lower case** blackbefore posting.

Please send your letter to JRProject@CPAG.org.uk for review before you post it.

**DELETE BOX BEFORE POSTING**

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

* Received Housing Benefit and their partner was the lead claimant ad they were exempt from the bedroom tax.
* Their partner died, HB stopped and your client had to claim UC as a result.
* Is now immediately affected by the bedroom tax,
* No run-on after a death, or HB protection on death was received.

***This letters assumes*** (and so can be edited):

* your client’s partner received PC and HB for both of them before they died, and
* your client’s partner was severely disabled and your client was their carer
* they lived in social housing together

**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 of claimant]**

##### We are instructed by [full name of claimant] **in relation to [her/his] universal credit (“**UC**”) award and non-application of bereavement protection from the social housing under-occupation charge in respect of housing costs. We write in accordance with the Pre-action Protocol for judicial review. Due to the urgency of this matter because of the financial burden put on our client, we are requesting your response as soon as possible and in any event no later than [DATE].**

**Proposed Defendant: Secretary of State for Work and Pensions (“D”) (“SSWP”)**

**Claimant:** [full name] (“**C**”)(“**first name**”)

**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 challenges the failure of SSWP to apply protection on death (or run-on after a death) in respect of [her/his] UC” housing costs.**

***Background facts***

1. **C ([First name of claimant]) and [full name of partner] (“[first name]”) [Date of birth [xx/xx/xxxx] and NINo [XX xxxxxxx]] received Pension Credit as a couple as [first name of partner] was over the qualifying age for Pension Credit. [first name of claimant] was [first name of partner]’s full time carer as [first name of partner] was severely disabled [insert details]. [first name of partner] received [DETAIL DLA/PIP/AA AWARD]. [first name of claimant] received Carers Allowance.**
2. **[first name of claimant] and [first name of partner] lived in social rented accommodation and were joint tenants of [Landlord’s name]. Their property had [insert number] bedrooms. Prior to [first name of partner]’s death, the couple received housing benefit covering their full weekly rent of** [*insert* £AMOUNT]. **Their joint claim was in the name of [first name of partner]. [First name of claimant] and [first name of partner] [were exempt from the social sector under-occupation charge as [first name of partner] was over the qualifying age for pension credit.**
3. **On [DATE], [first name of partner] died.**
4. **On [DATE] [[first name of claimant] and [first name of partner]’s joint claim to Housing Benefit ended.**
5. **[first name of claimant] is working age and [first name of claimant] was not therefore able to make a new claim to Housing Benefit.**
6. **On [DATE], [first name of claimant] had to make a new claim for UC online as a single person and gave details of [her/his] [first name of claimant]’s housing costs. [details of when notified dwp of bereavement]**
7. On [DATE] **[first name of claimant]** was notified by way of [her/his]**[**UC journal the amount of UC awarded for **[her/his]**housing costs. This amount represented [86 % / 75%] of **[first name of claimant]’s** eligible rent. **[first name of claimant]** queried this via **[her/his]** UC journal on [DATE] and a response was posted on [DATE] to explain there is a [25% / 14%] reduction due to under-occupation.
8. [any further background/ contacts with dwp if relevant]
9. [first name of claimant] is experiencing significant financial hardship at a time when [she/he] is also dealing with the loss of **[her/his]** partner. [first name of claimant] and [first name of partner]’s weekly income was [*insert* £AMOUNT] until [first name of partner]’s death, and [first name of claimant] now has an income of only [*insert* £AMOUNT].

**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 issues***

1. Regulation 13ZA of the Housing Benefit Regulations 2006 allows the amount of an award of Housing Benefit to remain unchanged for a period of 12 months following a bereavement:

***Protection on death***

***13ZA****.—(1) In a case where the claimant occupies a dwelling which is the same as that occupied by him at the date of death of a linked person, the maximum rent shall be either–*

*(a) the maximum rent which applied before the death occurred; or*

*(b) in a case where there was no maximum rent, the reckonable rent due before the death occurred,*

*(c) for a period of 12 months from the date of such a death.*

1. Regulation 37 of the Universal Credit Regulations 2013 allows UC entitlement to continue at the same rate as entitlement in the assessment period prior to death, in the assessment period in which the death occurs and in the following two assessment periods:

***Run-on after a death***

***37****.  In calculating the maximum amount of an award where any of the following persons has died—*

*(a) in the case of a joint award, one member of the couple;*

*(b) a child or qualifying young person for whom a claimant was responsible; or*

*(c) in the case of a claimant who had regular and substantial caring responsibilities for a severely disabled person, that person; or*

*(d) a person who was a non-dependent within the meaning of paragraph 9(2) of Schedule 4,*

*the award is to continue to be calculated as if the person had not died for the assessment period in which the death occurs and the following two assessment periods.*

1. **[first name of claimant]** was deprived of either of these protections as [she/he**]** had to make a new claim to UC immediately on the death of [her/his] partner, [and on doing so, **[first name of claimant]’s** Housing Benefit claim was terminated / as **[first name of claimant]’s** joint Housing Benefit award had ended on [first name of partner]’s death]. [first name of partner] died prior to the UC claim and therefore [first name of claimant] was applying as a single person and there was no existing joint UC award to continue in place.

**Grounds for Judicial Review**

**Ground 1: Unreasonable absence of protection for those required to move from legacy benefits to UC following the death of their partner**

1. **Where a claimant who was receiving housing benefit has to make a new claim for housing support due to the death of their partner, they can, now that the entire country is UC full service, only do so by making a new claim for UC. It would appear in such circumstances that they neither benefit from the protection available in respect of housing benefit (their housing benefit award having been terminated) nor the run-on after a death available in relation to UC as there is no existing UC award to continue in place.**
2. **The complete absence of protection for people who were in receipt of housing benefit and who are required to make a new claim for UC on the death of their partner in contrast to (i) those whose partner died before their local authority became a UC full service area who benefit from the 12 month protection in respect of housing benefit (**reg 13ZA of the Housing Benefit Regulations 2006 above) **and (ii) those already in receipt of UC as a couple who receive protection for up to 3 months after their partner’s death (**reg 37 of the Universal Credit Regulations 2013) **is irrational.**
3. **Under both legacy benefits (housing benefit) and UC, it is recognised that those who have recently suffered bereavement should not be expected immediately to adjust to life as a single claimant but should instead be given a period of grace with either their housing benefit or their UC award continuing in place as if they were still a couple. The only difference between legacy benefits and UC is *the* *extent* of the protection rather than *the principle* that some protection should exist. There is no rational basis why somebody who has had to move from legacy benefits onto UC as a result of a death should not benefit from some protection while they adjust to their new situation.**
4. **This lack of any rational basis for this lacuna in protection is borne out by the exchange between the Government and the Social Security Advisory Committee in their exchange over the draft version of the Universal Credit Regulations 2013. In its report on those regulations**[[3]](#footnote-3)**, SSAC explicitly commented on the risk of bereaved families being subject to the under-occupancy rules and the fact that the existing 52 week period of grace would be reduced to three months. SSAC expressed sympathy with the concern raised by many of the respondents to its consultation that ‘expecting bereaved families to handle these two significant pressures simultaneously would place an unreasonable level of stress on them’ (§4.12(a)). Accordingly, it recommended that ‘the Government reflects further on the potential consequences of the under-occupancy proposals on the recently bereaved …’ (recommendation 18).**
5. **In its response to SSAC’s report, the Government specifically draw attention to the fact that ‘while there is not a separate run-on for housing costs in Universal Credit, the recently bereaved are entitled to a run-on of the whole of their benefit for a period of 3 months’ (§46).**
6. **There was no suggestion in this response that those who had to move from legacy benefits onto UC as a direct result of their bereavement did not also need protection and should not benefit from some form of protection.**

**Ground 2: Unlawful discrimination**

*Introduction*

1. Article 14 of the European Convention on Human Rights (“**ECHR**”) provides as follows:

***ARTICLE 14***

***Prohibition of discrimination***

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

1. To determine whether not providing protection on death/run-on after a death for [first name of claimant] is incompatible with Article 14, three questions need to be answered:
	1. The first is whether the difference in treatment of which [first name of claimant] complains concerns the enjoyment of a right set forth in the Convention – the test for this purpose being whether the facts of the case fall "within the ambit" of a Convention right.
	2. The second question is whether the difference in treatment is on the ground of a "status" which falls within article 14.
	3. The third question is whether the difference in treatment amounts to unlawful "discrimination" prohibited by article 14. Where the claimant has been treated differently from a class of persons whose situation is relevantly similar, this depends on whether there is an objective and reasonable justification for the difference in treatment.

(see *JT v First-tier Tribunal and Others* [2018] EWCA Civ 1735 at §§39-40)

*Ambit*

1. Welfare benefits (housing benefit or universal credit) are a possession for the purposes of Article 1, Protocol 1 ECHR.
2. The provision of bereavement protection/run on after a death in respect of welfare benefits is also a modality through which the state chooses to exercise its respect for the Article 8 right to family life of a claimant under the Convention (see in similar vein the discussion in relation to widowed parent’s allowance *in the matter of an application for judicial review by McLauhglin* [2018] UKSC 48 ).

*Status*

1. Those who, as a result of the death of their partner, have their housing benefit award terminated and have to claim UC have an “other status” under Article 14. See the broad approach taken by the domestic courts and Strasbourg to what constitutes a ‘status’: see *R (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63, [2009] 1 AC 311, §§42-43 and *Stevenson v Secretary of State for Work and Pensions* [2017] EWCA Civ 2123 (15 December 2017), §§36-41 and §50.

*Discrimination*

1. [first name of claimant] is treated differently from (i) those whose partner died before their postcode became a UC full service area and who benefit from the 12 month protection in reg 13ZA of the Housing Benefit Regulations 2006 and (ii) those who were already claiming UC as a couple before the death of their partner and who benefit from the 3 month protection in reg 37 Universal Credit Regulations 2013. Both [first name of claimant] and those in both of the comparator groups are in the same position in that they have recently suffered a bereavement while on benefits and need some protection of those benefits while they adjust to their new reality. However, they are treated differently with [first name of claimant] receiving no such protection whatsoever.
2. We are not aware of any justification put forward by the State for this difference in treatment- see the earlier reference to the exchange between the Government and SSAC in respect of the draft 2013 regulations. It is submitted that it is manifestly without reasonable foundation for the State to treat [first name of claimant] differently to another benefit claimant whose partner has recently died purely because of the fact that she has had to move from legacy benefits to UC rather than remaining on either legacy benefits or on UC throughout.
3. In SC & Ors v Secretary of State for Work And Pensions & Ors [2018] EWHC 864 (Admin) (the “two child rule” judicial review) it was held that it was irrational for the State to grant a third child element to a family which already had two biological children and then took on a child under kinship care arrangements but to refuse to give a third child element to a family which had two children, at least one of whom was looked after under kinship care who then had a biological child. It is submitted that the situation of [first name of claimant] is equally irrational - if [she/he] and [her/his] partner had already been receiving UC she would have benefited from the run on under reg 37. However, as she had to move from housing benefit to UC as a result of [her/his] partner’s death she fails to qualify for any protection whatsoever.
4. **In addition to the arguments above, it is to be noted that the majority of claimants likely to be affected by the absence of any bereavement protection when moving from legacy benefits to UC will be women.**
5. **The majority of mixed age couples, where a claim to Pension Credit will end on the death of the older partner, are women.** Women are therefore more likely to find themselves required to make a new claim to UC on the death of their older partner.
6. In circumstances where the older partner in mixed age Pension Credit couple dies, they are denied any protection against the social housing sector size criteria under the current provisions in stark contrast to both those able to remain on legacy benefits and those already in receipt of UC.
7. **For the same reasons as given above, such absence of protection amounts to unlawful discrimination on the grounds of sex.**

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

**The Defendant is requested to:**

* **Provide for [first name of claimant] and those in similar situation to [her/his] to continue to benefit from the 12 months protection on death in respect of Housing Benefit upon the death of their partner. Specifically, a determination can be made under reg 4 of the Universal Credit (Transitional Protection) Regulations 2014, that no new claims for UC should be accepted from those recently bereaved who would otherwise neither benefit from the current protections in respect of Housing Benefit nor UC.**
* **In the alternative, extend the up to 3 month ‘Run-on after a death’ UC provision to include [first name of claimant] and other people making a claim to UC as a direct result of a bereavement and the resulting end of a claim to legacy benefits. Pending the coming into force of any such amending legislation, a determination should be made under reg 4 of the Universal Credit (Transitional Protection) Regulations 2014 that no first time claims for UC should be accepted from those recently bereaved who would otherwise not benefit from the run-on after a death in UC for existing claimants.**
* **Pay [first name of claimant] the difference between what she would have been entitled to if she had remained on housing benefit and not been required to make a new UC claim or, in the alternative, the difference between [her/his] current UC award as a single person and what she would have received if she had already made a joint claim to UC before [her/his] partner died and benefited from the run on after a death protection.**
* **Accept that [first name of claimant] has been unlawfully discriminated against contrary to the ECHR/HRA and agree to pay [her/his] HRA damages for the financial and non-financial loss suffered as a result.**

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

* **[first name of partner]’s death certificate**
* **[first name of claimant] and [first name of partner]’s Pension Credit termination of award letter**
* **[first name of claimant] and [first name of partner]’s Housing Benefit award letter showing full Housing Benefit**
* **Correspondence with the DWP on this issue**
* **Documents available to the DWP on [first name of claimant]’s UC journal**
* **[first name of claimant]’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

Email]

**Proposed reply date**

**Due to the urgency of this matter 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.**

Thank you for your consideration of this matter.

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. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/185958/ssac-universal-credit-report.pdf [↑](#footnote-ref-3)