This letters assumes:

* Claimant is female
* Claimant has majority care for child
* History of domestic abuse
* Child benefit currently paid to ex-partner, and was paid to ex-partner before relationship breakdown
* No decision has been made on C’s CB to claim
* It has been more than 3 months since the claim for CB was made (**do not use this letter if it has been less than 3 months**)

Careful edits are required if your case is factually different to the above.

**DELETE BOX BEFORE POSTING**

Date:

HM Revenue and Customs
Solicitor’s Office
South West Bush
Bush House
Strand
LondonWC2B 4RD

By email: preactionletters@hmrc.gov.uk

Dear Sir/ Madam,

**RE: Proposed claim for judicial review against the Commissioners for Her Majesty’s Revenue and Customs by x**

We are instructed by [X] in relation to her claim for Child Benefit(“**CB**”). We write in accordance with the Pre-action Protocol for Judicial Review. We are requesting your response as soon as possible and, in any event, no later than [DATE] (14 days).

**Proposed Defendant:** Commissioners for Her Majesty’s Revenue and Customs (“**D**”)(“**HMRC**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**The details of the matter being challenged**

The unreasonable delay on the part of HMRC in deciding C’s claim for CB.

***Background facts***

Client details, housing, disability etc.

Child Benefit history, why is C’s ex-partner receiving the CB? Was he receiving CB while living together? DV history. Were C and her ex married?

Current circumstances inc relevant dates, child living arrangements, % of time with C, school, GP etc, and any Court Order on living arrangements (and explain in practice if different from terms of court order).

Details of CB claim and any HMRC response including dates and quotes

Difficulties not having the CB causing C / financial hardship etc.

**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 and grounds for judicial review**

**Grounds for Judicial Review: Unlawful delay in deciding a claim**

1. The Defendant is under a duty to consider all claims for benefit within a “reasonable time” – *R (C and W) v Secretary of State for Work and Pensions* [2015] EWHC 1607 (Admin).
2. The duty to make a decision within a reasonable time applies todecisions on “*any claim for a relevant benefit*” under s.8 of the Social Security Act 1998 (SSA 1998)[[1]](#footnote-1).
3. What counts as a reasonable time depends on the circumstances, including the impact on the claimant and the complexity of the case[[2]](#footnote-2):

***Impact on the claimant***

1. C is HOW VULNERABLE.
2. The delay is causing C / the family what hardship.

***Non-complex case/all information available***

*C is eligible for Child Benefit*

1. Eligibility for CB is dependent on responsibility for “*one or more children or qualifying young persons in any week*” under s.141 Social Security Contributions and Benefits Act 1992 (“**SSCBA**”):

***Child benefit***

***141****.- A person who is responsible for one or more children or qualifying young persons in any week shall be entitled, subject to the provisions of this Part of this Act, to a benefit (to be known as “child benefit") for that week in respect of the child or qualifying young person, or each of the children or qualifying young persons, for whom he is responsible.*

1. “*Person responsible for child*” is defined by s.143 SSCBA:

***143****.- (1) For the purposes of this Part of this Act a person shall be treated as responsible for a child in any week if—*

*(a)* ***he has the child living with him in that week****; or*

*(b) he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child for that week.*

(Emphasis added)

1. In *R(F)2/81* Commissioner Goodman held, considering the identical provision under s.3(1) of the Child Benefit Act 1975, that ‘*living with’* means living in the same house and having “*a settled course of daily living*” with the parent.

*“12. Neither the 1975 Act, nor Regulations made under it, define what is meant by "living with" but I consider that* ***it means that the child must live in the same house******or other residence as the parent******and******moreover be carrying in there, with the parent, a settled course of daily living.****”*

(Emphasis added)

1. D’s internal manual, the ‘Child Benefit Technical Manual’ (“**CBTM**”) confirms at paragraph CBTM06020[[3]](#footnote-3) the factors to be taken into account when determining whether a child ‘lives with a person,’ citing *R(F)2/81* (above), *R(F)2/79, R(G)4/62 and R(F)3/63* and concluding:

*“It is usually accepted that a child or qualifying young person* ***sharing a common household with the claimant is living with them****.”*

(Emphasis added)

1. In *SB v HMRC* [2013] UKUT 24 (AAC) Judge Wikeley reiterated that, in general, the sole relevant question to determine whether a person was responsible for a child or qualifying young person and so entitled to CB is whether the child is “*living with*” the claimant:

*“8. […] Entitlement to child benefit is based on responsibility for a child. The law states that the usual way for this to be shown is by the claimant having the child “living with” them – see section 143(1)(a) of the Social Security Contributions and Benefits Act 1992.”*

1. Compelling evidence was provided to D by POST/EMAIL? on DATE confirming that CHILD is living with C in the “*same house or other residence*”, has a “*settled course of daily living*” and is indeed “*sharing a common household”* including:
* What evidence?
1. It is further not disputed by D that CHILD is *living with* C. Under *SB v HMRC* and D’s own CBTM guidance, C’s eligibility for CB under s.143(1)(a) SSCBA is therefore clear.

*HMRC procedure where there is an existing Child Benefit award*

1. When a recently separated parent makes a new claim for CB in her name, HMRC is unable to award CB to her until the existing recipient’s (i.e. her ex-partner’s) award is terminated under s.144(3) SSCBA because only one person can be entitled to CB in respect of the same child in the same week. Where it appears that more than one person would be entitled to CB, HMRC must determine which of the eligible personsis entitled in accordance with Sch. 10 SSCBA:

***Exclusions and priority***

***144****.- […]*

*(3) Where, apart from this subsection, two or more persons would be entitled to child benefit in respect of the same child or qualifying young person for the same week, one of them only shall be entitled; and the question which of them is entitled shall be determined in accordance with Schedule 10 to this Act.*

1. HMRC have previously explained to the Child Poverty Action Group (“**CPAG**”)[[4]](#footnote-4) that the following steps are taken to determine entitlement where there is a pre-existing award.
2. HMRC writes to the existing CB recipient (in cases of domestic abuse such as here, usually the father) asking him to complete a form (CH102) confirming that the child(ren) have indeed moved and that he is willing to surrender his entitlement to CB. He will have a month and a day to complete the form.
3. If the abusive partner sends back the form agreeing to surrender his award, or if he does not respond within this time limit, his award will automatically be terminated and the mother’s claim accepted.
4. If the abusive partner returns the form without surrendering his award, i.e., maintaining that he still has responsibility for the children, HMRC will make an assessment of which parent should receive CB.
5. As above, HMRC should carry out this assessment in accordance with Schedule 10 SSCBA.

*C’s claim for Child Benefit has priority*

1. Under s.143 SSCBA (set out above) ‘*responsibility*’ for the child derives from either living with the child under s.143(1)(a) or contributing financially to the child’s upkeep under s.143(1)(b).
2. Schedule 10 SSCBA provides priority where there is a person with a prior award for 3 weeks as initially the person with the prior award, and then after 3 weeks, unequivocally, the person with whom the child is living:

***Person with prior award***

***1****.- (1) Subject to sub-paragraph (2) below, as between a person claiming child benefit in respect of a child or qualifying young person for any week and a person to whom child benefit in respect of that child or qualifying young person for that week has already been awarded when the claim is made, the latter shall be entitled.*

*(2) Sub-paragraph* ***(1) above shall not confer any priority where the week to which the claim relates is later than the third week*** *following that in which the claim is made.*

***Person having child living with him***

***2****.- Subject to paragraph 1 above, as between a person entitled for any week by virtue of paragraph (a) of subsection (1) of section 143 above and a person entitled by virtue of paragraph (b) of that subsection* ***the former shall be entitled.***

(Emphasis added)

1. As more than 3 weeks have elapsed since C’s claim, and CHILD is living with C, whether or not the current CB recipient is contributing financially under s.143(1)(b) SSCBA, C has priority and NAME’s CB award should be terminated.
2. D’s guidance CBTM is instructive. This confirms at paragraph CBTM08030 that at the end of the 3-week period (under sch 10 para 1(2) SSCBA) “*rival*” claims will be decided in favour of the person with whom the child is living, in this case C.
3. HMRC has previously informed CPAG that where conflicting information is received from rival claimants (ie, where both parents state that the child is living with them), this can take up to 12 weeks to resolve in some cases, however HMRC has not provided the procedures or detailed timescales for resolving rival claims.[[5]](#footnote-5) In C’s case the delay has been significantly more than 12 weeks. It has been HOW MANY weeks since C claimed CB in respect of CHILD, on the basis that CHILD is living with C.
4. Given the impact on C and her child(ren) together with the clear evidence that she has provided that her child(ren) live(s) with her, the delay in deciding her claim, even given the fact that there was an existing award in favour of X, is unreasonable and so unlawful.
5. **No reason has been given by D for the ongoing failure to decide C’s claim for CB (and to terminate her ex-partner’s claim).** That no decision has been made, suggests D has unlawfully failed to take into account material factors, ie, the evidence / information listed above.
6. **It is further reasonable to infer that D has not considered D’s own guidance, from which it is clear that C has priority over NAME, as if considered, a decision would necessarily have been reached to award CB from the 4th week after the date of C’s claim.**
7. **Where guidance exists, decision makers are under a duty to take it into account. That no decision has been made, suggests D has unlawfully failed to take into account D’s own guidance.**

**Alternative remedies**

1. There is no right of appeal against this delay. Judicial review is therefore the only available remedy.

**The details of the action Dis expected to take**

1. Award C CB without further delay from the 4th week **after the date of C’s claim.**

 **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**

NAME ADDRESS AND EMAIL OF ADVICE AGENCY

By email:

**Proposed reply date**

We expect a reply promptly and in any event no later than 4pm on [date] (14 days). Should neither a satisfactory substantive response nor a request for more time be received by this date we will seek representation to issue judicial review proceedings without further notice to you.

Yours faithfully

Enc

1. S. 50 Tax Credits Act 2002 transferred the functions of the Secretary of State for Work and Pensions under Chapter 2 of Part 1 of the SSA and SSCBA to HMRC, however the primary legislation governing administration and adjudication remains the same (including s.8 SSA). [↑](#footnote-ref-1)
2. R(C and W) v Secretary of State for Work and Pensions [2015] EWHC 1607 (Admin) [↑](#footnote-ref-2)
3. [www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm06020](http://www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm06020) [↑](#footnote-ref-3)
4. [cpag.org.uk/sites/default/files/files/policypost/A%20question%20of%20responsibility.pdf](https://cpag.org.uk/sites/default/files/files/policypost/A%20question%20of%20responsibility.pdf) page 4 [↑](#footnote-ref-4)
5. [cpag.org.uk/sites/default/files/files/policypost/A%20question%20of%20responsibility.pdf](https://cpag.org.uk/sites/default/files/files/policypost/A%20question%20of%20responsibility.pdf) page 4 [↑](#footnote-ref-5)