***This letter challenges*** *HMRC’s refusal to reinstate tax credits when universal credit has been fraudulently claimed.*

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

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

* *Has experienced an unlawful termination of their child tax credit award due to a fraudulent UC claim by a 3rd party*
* *DWP has accepted that DWP benefits should not have been terminated and has reinstated them*

Seek advice if needed: [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk)

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HMRC Solicitor's Office and Legal Services

First floor, South West Wing

Bush House

Strand

London

WC2B 4RD

By email to: mailbox.litigation@hmrc.gov.uk

**Our Ref**

**Date:**

**Dear Sir or Madam**

**Re: Proposed claim for judicial review against the Commissioners for His Majesty’s Revenue and Customs by [Name]**

##### We are instructed by [Full name] **in relation to [his/her] Child Tax Credit (“**CTC**”) 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 the date at the end of this letter.**

**Proposed Defendant:** Commissioners for HM Revenue and Customs (“**D**”) (“**HMRC**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**The details of the matter being challenged**

HMRC’s refusal to reinstate the claimant’s CTC award when it was incorrectly stopped following a fraudulent Universal Credit (“**UC**”) claim.

***Background facts***

1. **C lives with [partner? Number of children? Disabilities?]**
2. **The family previously claimed [detail benefits]. This totalled [£XXX] per month.**
3. **On [DD/MM/YY], C was contacted by [someone known to them/ family friend/ someone claiming to be from UC/ other]. [He/She] was advised that [he/she] could get a [low interest loan/ cash reward for completing a survey if [he/she] provided some details].**
4. **C [details of how the fraud occurred e.g. was the fraudster using a laptop while the claimant was present, what details did they ask for, did this happen at the claimant’s home or elsewhere?]**
5. **C [details of how much money went to fraudster - did they enter their own details on the UC account or ask client to transfer?]**
6. **On [DD/MM/YY details of when C realised that there had been a fraudulent claim in their name.]**
7. **C reported this to Jobcentre Plus staff and to the police. [His/Her] Crime Reference Number is [XXX].**
8. **C [what happened next? What did JCP staff say/ do? Has C received notification that his/her benefits have stopped? Has he/she requested an MR? Is there any other evidence of the fraud?]**
9. **[C requested a Mandatory Reconsideration (“MR”), with the support of an advice worker. HMRC refused to carry out a MR, stating that this is not possible until the 2019/20 award is finalised on DD/MM/YY.]**
10. **C’s only income now is [explain impact on C. Reliant on food banks/ family/ friends while waiting for UC? Liable for repayment of advance? Rent/ utility arrears?]**

**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***

***Termination of awards when a UC claim is made***

1. **Under s1 of the Social Security Administration Act 1992 (“SSAA 1992”), entitlement to a benefit is dependent on a claim being made.**

***1.-(1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied –***

1. ***he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this Part of this Act; or***
2. ***he is treated by virtue of such regulations as making a claim for it.***

**(Emphasis added)**

1. **In order for a claimant to be eligible for a benefit they must therefore make a valid claim under s1(a), or be treated as having made one under s1(b). In order for a claim to be made, the Act states that the claimant must make the claim.**
2. **Regulation 8 of the Universal Credit (Transitional Provisions) Regulations 2014 (as amended by The Universal Credit (Transitional Provisions) Amendment Regulations 2022) (“UC(TP) Regs”) states that, where a claim for UC is made, all awards of income support, housing benefit or tax credits will end:**

*8.—(1) This regulation applies where–*

*(a) a claim for universal credit (other than a claim which is treated, in accordance with regulation 9(8) of the Claims and Payments Regulations, as having been made) is made, whether or not subsequently withdrawn;*

*(b) …*

1. **From this it is apparent that for legacy benefits, including tax credits, to terminate on the making of a claim for UC, a UC claim must be made, and from s1 SSAA, it is apparent that it must be the claimant who makes that UC claim.**

***Refusal to review decision***

1. **Under s21A of the Tax Credits Act 2002 (“TCA”), HMRC must review any decision within s38(1) if they receive a written application to do so within 30 days of the decision, or within a longer period if permitted by s21B TCA.**
2. **Section 38(1) TCA provides:**

***38.- (1) An appeal may…be brought against –***

1. ***a decision under s14(1), 15(1), 16(1), 19(3), or 20(1) or (4) or regulations under s21…..***
2. **Section 16(1) TCA addresses decisions to end or change awards of tax credit:**

***16.-(1) Where, at any time during the period for which an award of a tax credit is made to a person or persons, the Board have reasonable grounds for believing –***

1. ***that the rate at which the tax credit has been awarded to him or them for the period differs from the rate at which he is, or they are, entitled to the tax credit for the period; or***
2. ***that he has, or they have, ceased to be, or never been, entitled to the tax credit for the period,***

***the Board may decide to amend or terminate the award.***

1. **A decision to end an award is therefore covered by s38(1) and so must be reviewed under s21A.**

**Grounds for judicial review**

**Ground 1: Unlawful termination of child tax credits**

1. **In order for reg 8 UC (TP) Regs to apply, there must be a valid claim for UC.**
2. **It is not disputed that C is able to make claim for UC so, had [he/she] made a claim, [his/her] existing benefits should have been terminated under reg 8 UC(TP) Regs.**
3. **However, C did not make a claim for UC and so the requirements of making a claim, under s1(a) SSAA 1992, were not met. Without a claim for UC, there is no legal basis for terminating C’s entitlement to CTC.**
4. **Further, even though a claim was made in C’s name, the claim was made by someone fraudulently using C’s details and assuming [his/her] identity in order to obtain credit, i.e. the advance, in [his/her] name. C was not aware that the claim had been made, or that this was the intention of the person that took [his/her] details. [The fraudulent procurement of his/her details and their subsequent use in the making of a false claim was reported to the police, as it is a criminal offence.]**
5. **The Department for Work and Pensions (“DWP”) [immediately accepted that the claim was fraudulent and so no valid UC claim had been made.] They therefore accepted that regulation 8 should not have been triggered and reinstated the correct benefits.**
6. **DWP have advised HMRC that the claim that was made was fraudulent and so regulation 8 did not apply. Therefore, HMRC terminated C’s CTC award with no legal basis for doing so, and have acted unlawfully.**

**Ground 2: Unlawful refusal to carry out a Mandatory Reconsideration**

1. **C’s CTC was stopped on [date]. HMRC have refused to carry out a mandatory reconsideration, as requested, stating that they are unable to do so until the [2022/23] award is finalised on [dd/mm/yy].**
2. **This seems to assume that a decision can only be reviewed after the final s17 notice is given to the claimant, confirming their tax credit entitlement for the year.**
3. **This is incorrect and, as set out in the statutory provisions above, HMRC not only has the power to, but must, review any decisions that fall under s38 TCA, where a request is made that meets the requirements.**
4. **The decision to end C’s CTC award was made under s16 TCA, which gives HMRC power to terminate an award at any time, if they have reasonable grounds for believing that the claimant is no longer entitled to tax credits. In C’s case, the grounds for making the decision to terminate the award was the mistaken belief that a claim for UC had been made. The decision was based on incorrect information and so the decision should be reviewed and C’s benefits reinstated.**
5. **Decisions under s16 are covered by s38 and this is therefore an appealable decision. Further, under s21A, decisions covered by s38 must be reviewed by HMRC if the request is made within 30 days of the decision. In addition, s21A(2) states that the review should be carried out as soon as is reasonably practicable.**
6. **The reasons that HMRC have given for refusing to review the decision to terminate the CTC award are therefore incorrect and their continuing refusal to carry out the review is unlawful.**

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

**D is requested:**

* **To review immediately their decision of [date] to terminate C’s CTC award, and reinstate the payments.**
* **To backdate the payments to [date]], giving C [his/her] correct entitlement for the period that [he/she] was not paid.**
* **To pay C compensation for the stress, anxiety and severe hardship that has been caused to [his/her] and [his/her] family as a result of D’s ongoing failure to reinstate [his/her] CTC award, despite knowing that the UC claim was made fraudulently and that DWP have reinstated [his/her] other legacy benefits and the ongoing failure to consider substantively [his/her] request for mandatory reconsideration.**

**ADR proposals**

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

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

**[Advice agency address**

**Address**

**Email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than [DATE]**. Should we not have received a reply by this time we will issue proceedings for judicial review without further notice to you.** This is less than the usual 14 days. However, we consider this shortened timeframe to be entirely appropriate given (a) the unlawfulness of the decision to terminate the CTC award after HMRC were informed by the DWP that there was no UC claim and; (b) the fact that the issue is not new to HMRC but has already been raised by C in [his/her] mandatory reconsideration request; and (c) C has [six] children and CTC makes up the majority of [his/her] income. This decision is therefore causing severe hardship as C tries to meet the needs of a family of [eight] with subsistence benefits intended for [two] people.

**If you consider** that you require 14 days from the date of this letter to reply, please immediately inform us in writing, giving full reasons. S**hould we not have received such a request for further time nor a substantive reply by the given deadline our client reserves the right to issue proceedings for judicial review without further notice to you.**

Yours faithfully