**This letter challenges** the HMRC’s refusal to award child benefit.

Read and edit whole letter carefully, in particular change any text in red text and/or [square brackets], return all text to black, address and delete all comments before sending.

Feel free to email your letter to jrproject@cpag.org.uk for review before you email it to HMRC.

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

* Stopped working due to the late stages of pregnancy or pregnancy aftermath.
* Was refused child benefit as she is not a ‘qualified person’.
* Has EU pre-settled status.
* This letter assumes your client is female. Edits are needed if your client is male.
* Your client should also request a mandatory reconsideration if they have not already done so.

If you have any questions when using this letter please contact jrproject@cpag.org.uk

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General Counsel and Solicitor to HM Revenue and Customs

HM Revenue and Customs

14 Westfield Avenue

Stratford

London E20 1HZ

**By email only:** **preactionletters@hmrc.gov.uk**

**Our Ref:**

[Date]

Dear Sir or Madam,

**Re: Proposed claim for judicial review against the Commissioners for His Majesty’s Revenue & Customs by [name] in relation to child benefit**

We are instructed by [name] in relation to a claim for child benefit made on [date]. 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 4.00 pm [date] (14 days).

**Proposed Defendant:** HM Revenue & Customs (“**HMRC**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**The details of the matter being challenged**

C challenges the unlawful refusal of child benefit from [date] when C’s child [name] was born.

**Factual background**

1. C came to the UK on [date], and [immediately found work]. She worked [number] hours per week between [date] and [date]. She then gave up work because she was in the late stages of pregnancy on [date]. Her expected week of childbirth was [date] and her baby was born on [date].
2. When she gave up work, C claimed Universal Credit (“UC”) and, following the birth of her [daughter/son], child benefit. She was awarded UC from [date].
3. However, on [date], she was refused child benefit on the basis that she was not a “qualified person”. C sought a mandatory reconsideration of this decision in a letter dated [date]. On [date], she received a mandatory reconsideration notice, which is enclosed. This confirmed the original decision to refuse her child benefit.
4. [Details including dates of contacts with HMRC and what has been said].
5. [Details of financial hardship caused as a result of decision, and how it her feel (not good enough / judged / treated badly just because she was e.g., Polish and pregnant etc) – this helps to show injury to feelings. And is important for the claim for damages)].

**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**

**Ground 1: failure to follow legislation and case law**

1. Section 141 of the Social Security Contributions and Benefits Act 1992 (the “**Act**”) provides that a person who is responsible for one or more children or qualifying young persons in any week shall be entitled to child benefit in respect of that child, subject to the provisions of the Act.
2. Section 146(1) of the Act provides that no child benefit is payable in respect of a child or qualifying young person unless the child is in Great Britain in that week. Section 146(2) provides that no person shall be entitled to child benefit for a week unless he or she is in Great Britain in that week. Circumstances may be prescribed in which any person is to be treated as being, or not as being, in Great Britain for these purposes (s. 146(3), the Act).

C’s right to reside

1. Whether a person is ‘in Great Britain’ for the purposes of s.146(2) of the Act is defined by regulation 23 of the of the Child Benefit Regulations 2006 (“**CB Regs**”). Under reg 23(1) CB Regs a person is treated as “*in Great Britain*” if they are “*ordinarily resident in the United Kingdom*”, including under 23(4) that they have a “*right to reside”*.
2. Rights of residence specified under reg 23(4)(c) CB Regs do not fulfil the requirement in s.146(2). At reg 23(4)(c)(i) this includes those with limited leave to remain under Appendix EU, i.e., pre-settled status. However, reg 23(4)(B) does not exclude those with pre-settled status who also have another right of residence which is not excluded under that paragraph.
3. A person with pre-settled status can rely on the rights of residence set out in the Immigration (European Economic Area) Regulations 2016 (“**EEA Regs”**”) after the end the end of the transition period on 31 December 2020, when the EEA Regs were, in general, revoked. That is because reg 83 and sch 4 paras 1-4 Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (“**ISS Regs**”) contain savings provisions allowing persons with pre-settled status to continue to possess the rights of residence in the EEA Regs for the purposes of accessing benefits, including at sch 4 para 3(o) ISS Regs, reg 23 CB Regs.
4. As HMRC’s Child Benefit Technical Manual (“**CBTM**”) explains:

***CBTM10070 - Residence and immigration: residence - right to reside in the UK***

*For claims made on or after 1 May 2004, regulations 23(4) and 27(3) of the Child Benefit (General) Regulations 2006, require the claimant to have a right to reside in the United Kingdom.*

*The following have a right to reside in the United Kingdom:*

*[…]*

*A ‘qualified person’*

*[…]*

***Qualified persons***

*A ‘qualified person’ is an EEA national or a Swiss national who is in the United Kingdom with Pre-settled status granted by the Home Office and by virtue of EU legislation is a:*

*worker*

*self-employed person*

*self-sufficient person*

*retired person*

*student*

*self-employed person who has ceased activity*

*family member of a ‘qualified person’.*

1. A person with pre-settled status can therefore continue to rely on the EEA Regs for the purpose of claiming benefits. As C has pre-settled status, C can therefore continue to rely on the EEA Regs. In C’s case, she continues to have a right to reside as a ‘qualified person’ (worker).
2. Under reg 6(1) EEA Regs C was, as is not disputed by HMRC, a qualified person as she was a ‘worker’ while she was in work:

***6.****—(1) In these Regulations—*

* + - 1. *“qualified person” means a person who is an EEA national and in the United Kingdom as—*
			2. *a worker;*
1. As a ‘qualified person ‘ (worker) C has under reg 14 EEA Regs a right of residence in the UK for as long as she remains a ‘qualified person’ .

### *Extended right of residence*

***14.****—(1) A qualified person is entitled to reside in the United Kingdom for as long as that person remains a qualified person.*

1. In *Saint Prix v SSWP, C-507/12* [2014]ECLI:EU:C:2014:2007 the European Court of Justice held that a ‘worker’ also includes a woman who has given up work due to the late stages or aftermath of pregnancy, at para 47 stating that ‘worker’:

*‘must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of ‘worker’, within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child’*

1. In order to decide what constitutes a ‘reasonable period’, the national court should, at para 42:

*‘take account of all the specific circumstances of the case in the main proceedings and* ***the applicable national rules on the duration of maternity leave****…’*

(Emphasis added)

1. In *SSWP v SFF, ADR v SSWP, CS v B Barnet and SSWP* [2015] UKUT 0502 the Upper Tribunal applied *St Prix* and considered what constitutes a “reasonable period” for a woman to not be in work before and following the birth of a child, in the context of domestic law.
2. Judge Ward held that a woman’s ‘*St Prix* period’ of worker status will generally *start* 11 weeks before the expected date of childbirth, but this date may be ‘displaced’ depending on the facts of the case, analogously to a woman’s ability to ‘put back’ the start of her statutory maternity leave depending on her and her baby’s circumstances. At para. 26:

*“It is when the reason for “giving up work or seeking work” is “the physical constraints of the late stages of pregnancy and the aftermath [or “immediate aftermath”] of childbirth.” This* ***is liable to be fact-specific****, depending both on the woman and unborn child concerned and on the job the woman has been doing. That this is* ***so is reflected in law in such matters as a woman’s right to put back the start of her maternity pay period for statutory maternity pay purposes to later than the 11th week before the expected date of childbirth*** *and in the ability, referred to in [15] above to continue to sign on as available for work and to claim jobseeker’s allowance beyond that time. It seems to me that for this purpose* ***the 11th week before the expected date of childbirth which appears as the earliest permitted commencement of a maternity pay period*** *and for payment of maternity allowance and, more importantly, as the start of a period when a claimant for income support fulfils, without more, the requirement to fall within a “prescribed category” of person (see[14] above)* ***provides a convenient yardstick by which to assess whether the test is fulfilled but one that is capable of being displaced in particular cases.****”*

* + 1. (Emphasis added)
1. Judge Ward further confirmed the duration of the ‘reasonable period’ for which a woman will retain her worker status as in line with national maternity leave provision, i.e., 52 weeks. At para 35 of the judgement:

*“I therefore conclude that in the UK the "reasonable period" for the purposes of a Saint Prix right is to be determined taking account of the 52 week period of OML [(ordinary maternity leave)]- and AML [(additional maternity leave)] and of the circumstances of the particular case. As a matter of practice rather than of law, it seems likely that it will be an unusual case in which the period is other than the 52 week period.”*

1. In C’s case she remained in work and therefore with ‘worker’ status until date when she stopped work due to the late stages of her pregnancy, [number] weeks before her expected date of childbirth. C’s *St Prix* period of worker status therefore began on [date], the day after her last day in work as, had she been entitled to statutory maternity leave and pay, this would have analogously been ‘put back’ to begin on this date.
2. C’s *St Prix* period of worker status continued until [date], 52 weeks from her last day of work.
3. By refusing C child benefit for the period [date] to [date] D has failed to apply the legislation and case law as set out above and has reached a decision which is in consequence, unlawful.

**Ground 2: incorrect HMRC guidance**

1. HMRC’s guidance at CBTM10070[[1]](#footnote-1) fails to reflect the case law as set out above in so far as it states:

*“A person who has taken time off work in connection with childbirth or placement for adoption and is intending to return to their employment once the leave has expired remains a worker whilst they are on statutory leave from their employer.”*

1. This guidance incorrectly omits *Saint Prix* claimants who have temporarily left employment altogether due to the late stages and aftermath of pregnancy and who have therefore taken time out of work in connection with childbirth but are not on statutory leave from their employer. Where a decision is reached in accordance with erroneous guidance and not in accordance with legislation and established case law, that decision will be, as in this case, unlawful.

**Alternative remedies**

1. We are aware that in normal circumstances C could appeal with regard to the mandatory reconsideration decision of [date] (and is doing so separately). However, C is seeking a change to HMRC’s guidance, which is a remedy not available on appeal.
2. Further, C [INCLUDE DETAILS OF RENT ARREARS ETC IF RELEVANT].
3. Therefore, there is no effective alternative remedy to judicial review.

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

The Defendant is requested to:

* Accept C’s claim for child benefit and pay her as from the birth of [name] on [date] and make the payment of arrears as a matter of urgency.
* Amend HMRC guidance and deliver staff training on the correct application of *Saint Prix*.

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

* **C’s signed authority**
* **Correspondence with HMRC**

**ADR proposals**

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

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

Advice agency name:

Address:

Email:

**Proposed reply date**

We expect a reply promptly and in any event no later than DATE. 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 and that the issue has already been brought to HMRC’s attention HOW and (b) the C / family DETAILS are experiencing significant financial hardship and are unable to meet what costs.

**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 may issue proceedings for judicial review without further notice to you.**

Yours faithfully

1. [gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm10070](file:///C%3A/Users/jstrode/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/UGDTBDTA/www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual/cbtm10070) [↑](#footnote-ref-1)