***This letter challenges*** *a local authority’s failure to follow the law.*

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

Return all text to black before posting.

**DELETE BOX BEFORE POSTING**

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

* Has EU Settled Status
* Has applied for CTR and this has been refused because they are “not in Great Britain”.

Please send your letter to jrproject@cpag.org.uk for review before sending to your local authority.

**DELETE BOX BEFORE POSTING**

Legal Department

Local authority / Council address

By post and email:

Our Ref:

##### DATE

**Judicial Review Pre-Action Protocol Letter Before Claim**

Dear Sir or Madam,

**Re:**  **Proposed claim for judicial review against** [x council / borough of x by full name]

We are instructed by [full name] in relation to [her/his] claim to Council Tax Support / Reduction (“**CTR**”). 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 4pm on [date] (14 days).

**Proposed Defendant:** [x council / borough of x] (“**D**”)

**Claimant:** [full name] (“**C**”)

**NINo:** [xxxx]

**Address:** [xxxx]

**Date of Birth:** [xxxx]

**CTR Reference No:** (xxxx)

**The details of the matter being challenged:**

The failure of D to award CTR on the grounds C does not meet the basic condition of entitlement that [she/he] is ‘*in Great Britain*’ under reg. 12 of the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 as amended by the Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2020 (“**CTR Regs**”).

***Background facts***

1. C is [z] national and has lived in the UK for [number] years.
2. [family, accommodation, work details].
3. On [date] C was granted has indefinite leave to remain in the UK (also known as Settled Status under Appendix EU to the Immigration Rules[[1]](#footnote-1).
4. [on date C applied for CTR because...]
5. On [date] C was refused CTR because [s/he] “failed the habitual residence test” because [she/he] does not have the right type of leave to remain in the UK.
6. [details of any further contact with D].
7. [consequences of non-payment of CTR – bailiffs, inability to meet other costs? Rent arrears etc, impact on mental health?]

**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 for inspection, as part of the response to this letter.

***Legal issues***

***Ground 1- illegality of decision – EUSS status is not a prescribed excluded right of residence***

1. Under s. 13A(2) of the Local Government Finance Act 1992 (“**LGFA 1992**”), each billing authority in England must make a scheme specifying the reductions which are to apply to amounts of council tax payable, in respect of dwellings situated in its area, by (a) persons whom the authority considers to be in financial need, or (b) persons in classes consisting of persons whom the authority considers to be, in general, in financial need.
2. Under Schedule 1A (CTR in England) para (2)(1) LGFA 1992 each such *“scheme must* *state the classes of people entitled to a reduction under the scheme*”.
3. Under para 2(8) and (9)(b) of sch 1A LGFA 1992 the Secretary of State (i.e. not individual authorities) may prescribe classes of people who must, or must not, be included in the authority’s scheme.
4. Part 2 of the CTR Regs prescribes those classes.
5. Under reg. 12(1) CTR Regs persons who are “*treated as not being in Great Britain*” are such an excluded prescribed class:

***12.****—(1) Persons treated as not being in Great Britain are a class of person prescribed for the purposes of paragraph 2(9)(b) of Schedule 1A to the 1992 Act and which must not be included in an authority’s scheme.*

1. To be treated as ‘*in Great Britain*’ C must have a right to reside in the UK – thus reg. 12(2) and (3) CTR Regs provide:

***12****.-(2) Except where a person falls within paragraph (5) or (6), a person is to be treated as not being in Great Britain if the person is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.*

*(3) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.*

1. Under reg. 12(4) CTR Regs certain rights of residence are specifically excluded for the purpose of reg. 12(3):

***12****.-(4) For the purposes of paragraph (3), a right to reside does not include a right which exists by virtue of, or in accordance with—*

*(a) regulation 13 of the EEA Regulations;*

*(aa) regulation 14 of the EEA Regulations, but only in a case where the right exists under that regulation because the person is –*

1. *a jobseeker for the purposes of the definition of “qualified person” in regulation 6(1) of those Regulations, or*
2. *a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker; or*  
     
   *(b) regulation 16 of the EEA Regulations, but only in a case where the right exists under that regulation because the applicant satisfies the criteria in paragraph 5 of that regulation.*

*(4A) For the purposes of paragraph (3),* ***a right to reside does not include a right which exists by virtue of a person having been granted limited leave to enter,*** *or remain in, the United Kingdom under the Immigration Act 1971(*[*1*](https://www.legislation.gov.uk/uksi/2020/23/regulation/6/made#f00010)*) by virtue of****—***

*[omitted]*

*(b) Appendix EU to the immigration rules**made under section 3(2) of that Act; or*

*(c) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act;*

*[…]*

(Emphasis added)

1. C has indefinite leave to remain in the UK (also known as Settled Status) under Appendix EU to the Immigration Rules. This type of leave to remain, as can be seen, is not excluded by reg. 12(4) or (4A) and therefore gives rise to a right to reside meeting the condition in reg. 12(3).
2. It is therefore unlawful to refuse CTR to C on the grounds that [she/he] does not have the right type of leave to remain.
3. The unlawful refusal of CTR is causing [C / the family] hardship. C’s income [is... and is insufficient] to meet [her/his] CT in full. C is eligible for CTR and is in financial hardship; the core requirement of all CTR schemes.
4. Living [on ...and] the delay is causing C stress and anxiety which is having a significant impact on [her/his] mental health. DELETE IF UNTRUE

***Alternative remedies***

1. C acknowledges that [she/he] has a right of appeal to the Valuation Tribunal Service, however that is not a *suitable* alternative remedy for the reasons given below.
2. C’s Council Tax liability will remain payable pending determination of the appeal and D is not prevented from taking enforcement action in respect of any unpaid liability. The Local Government and Social Care Ombudsman (previously the Local Government Ombudsman) has consistently confirmed that:

*“There is nothing in law to prevent councils from pursuing non-payment of council tax through the courts when there is an appeal pending.”[[2]](#footnote-2)*

1. C’s income is only… and [she/he] meets the financial conditions for CTR. It is not in dispute that C does not have the financial resources and cannot afford to meet [her/his] Council Tax liability. It is not therefore unreasonable to predict that some liability will remain unpaid and as such, fall to be enforced. Council Tax arrears are enforced in a variety of ways including in many cases by use of bailiffs / enforcement officers. C is very worried that [her/his] possessions are at risk at a [time she/he] does not have sufficient income to replace anything and finds the prospect frightening. C’s entitlement to CTR is clear. C is experiencing a significant level of stress and anxiety as a result of the financial hardship [she/he] is experiencing. Appeals to the Valuation Tribunal Service take several months and this delay, ongoing Council Tax liability which [she/he has no way of paying], and the real threat of unavoidable enforcement action render Valuation Tribunal Service judicial review the only effective remedy in this case.
2. Secondly, the claimant can obtain *interim relief* from the High Court in an application for a judicial review - requiring the Authority to cease any recovery action whilst her claim is pending.

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

D is requested:

* To award and pay CTR from [date]

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

* C’s confirmation of leave to remain
* Form of Authority signed by C

**ADR proposals**

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

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

[advice agency name, address and email here]

**Proposed reply date**

We expect a reply promptly and, in any event, no later than 4pm on [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.

Yours faithfully,

1. Immigration Rules Appendix EU: [www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu](http://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu) [↑](#footnote-ref-1)
2. Local Government Ombudsman case reference 16 001 558 [↑](#footnote-ref-2)