***This letter challenges*** the unlawful suspension of UC for a European National who had Leave to Remain with Recourse to Public Funds and applied to the EUSS prior to that Leave expiring.

Please read the whole letter carefully and edit all text in red or [square brackets]. Delete any comments and return all text to black before posting.

Please send your letter to jrproject@cpag.org.uk for review before sending to the DWP.

**DELETE BOX BEFORE POSTING**

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

* Has had their Universal Credit suspended
* Is destitute (if the client is not destitute, you may still use the template but delete references to destitution)
* Is a European National who had Leave to Remain in Great Britain before applying to the EUSS (LTR now expired)
* Has applied to the European Union Settlement Status (EUSS)

**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]**

**URGENT MATTER: CLIENT HAS NO INCOME AND IS DESTITUTE**

1. We act on behalf of the above client, please find attached their signed authority to act.
2. Our client’s Universal Credit (‘**UC**’) has been suspended unlawfully and our client [and their family] are currently destitute. Accordingly, this matter falls within paragraph 6 of the Pre-Action Protocol for Judicial Review and we are requesting an abridged time frame of 7 days for response, i.e. by [DATE].
3. Our client seeks a judicial review of the decision to suspend [his/her] UC award.

I. **Proposed Claimant and Defendant**

*Proposed Claimant :*

**Name:**  [Full Name](‘**C**’)

**Address:**  [Address]

**NINo:** [National insurance Number]

**DoB:** [Date of Birth]

*Proposed Defendant :*

The Secretary of State for Work and Pensions (‘**D**’)(‘**SSWP’**)

**II. Details of the matter being challenged**

1. C challenges SSWP’s decision dated [DATE] to suspend [his/her] UC award.

**III. Background Facts** [edit whole section]

1. [C’s personal details : nationality, what type of leave they had prior to its expiration date, when they applied to extend the leave, what leave type applied for, indication that they have not received a determination] C is a [Country ] national. C is the primary carer of [number] British children: [details of children]. C was granted Limited Leave to Remain with Recourse to Public Funds under Appendix FM on [date] with an expiration date of [date].
2. On [date], C applied to the European Union Settlement Scheme (‘**EUSS**’) as a [Zambrano carer / other EUSS right]. The Home Office has not made a determination on C’s EUSS application.
3. On [date], D indicated to C via [her/his] online UC Journal that [her/his] UC would be suspended if [she/he] did not report [her/his] immigration status. C was given the option of indicating that [she/he] had Settled Status or Pre-Settled Status. On [date] C wrote on [her/his] Journal that [she/he] has applied to the EUSS but a determination has not been made.
4. On [date], despite the notification via [her/his] online UC Journal, C’s UC was suspended [WHAT WAS THE REASON GIVEN BY DWP?]
5. [C’s personal circumstances especially in so far as it engages the urgent procedure for pre action protocol e.g. destitution, risk of eviction]

**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.

**IV. The Issue**

**Ground for Judicial Review: Unlawful Suspension of UC**

1. Under Part 5 of the UC, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (‘**UC (DA) Regs**’), SSWP may only suspend a UC award where there is a question about entitlement (regulation 44) or there is a request for information that has not been provided (regulation 45).
2. No such grounds exist in C’s case; there is no question as to C’s entitlement since C has provided information to D which confirms unequivocally that [she/he] continues to be ‘in Great Britain’ for the reasons given below. There is therefore no power for D to suspend C’s award.
3. By s. 4(1)(c) Welfare Reform Act 2012 it is a condition of entitlement to UC that a claimant must be “in Great Britain”. Whether a person is ‘in Great Britain’ is defined by regulation 9 of the UC Regulations 2013 (as amended) (‘**UC Regs**’). Under regulations 9(1) and (2), a person is treated as “in Great Britain” if they have a right to reside.
4. Limited Leave to Remain with Recourse to Public Funds is not excluded by regulation 9(3) UC Regs and therefore counts as a right to reside.
5. Under section 3C of the Immigration Act 1971, a person whose immigration application is being considered by the Secretary of State has their immigration status extended until a decision has been made:

***“Continuation of leave pending variation decision***

***3C****.-(1) This section applies if—*

*(a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,*

*(b) the application for variation is made before the leave expires, and*

*(c) the leave expires without the application for variation having been decided.*

*(2) The leave is extended by virtue of this section during any period when—*

*(a) the application for variation is neither decided nor withdrawn,*

*(b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),*

*(c) an appeal under that section against that decision, brought while the appellant is in the United Kingdom,] is pending (within the meaning of section 104 of that Act),*

*(ca) an appeal could be brought under the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 (“the 2020 Regulations”), while the appellant is in the United Kingdom, against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),*

*(cb) an appeal under the 2020 Regulations against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of those Regulations), or*

*(d) an administrative review of the decision on the application for variation—*

*(i) could be sought, or*

*(ii) is pending.”*

1. D’s Advice for Decision Making’ (‘**ADM**’) published for decision makers acting under the authority of SSWP explains:

*Continuation of leave*

***C1385*** *Where a person has a limited period of leave to remain in the UK and they make a timeous application (i.e. before their existing leave to remain expires) to the HO to have their leave extended, the person’s existing leave continues until the HO has made a decision on the application (or until the application is withdrawn)1. If the application to extend the leave period is made after the applicant’s current leave has expired, the applicant’s leave period is not extended and the person is treated as an ‘overstayer’.*

*1 Immigration Act 1971, s 3C*

1. C previously had Limited Leave to Remain with Recourse to Public Funds [insert type of leave, e.g. granted under Appendix FM]. C therefore had a right to reside which satisfied the Habitual Residence Test and C was treated as being “in Great Britain”.
2. C applied for variation of [her/his] Leave to Remain (i.e. an EUSS application) on [date] before C’s Leave to Remain expired on [date].
3. The Home Office has not made a determination on C’s application. Accordingly, C’s Leave to Remain with Recourse to Public Funds has continued under s. 3C of the Immigration Act 1971 and [she/he] continues to be entitled to UC.
4. C provided D with information on [her/his] Online UC Journal that [she/he] had applied to the EUSS before [her/his] Limited Leave to Remain with Recourse to Public Funds expired and that a decision is pending.
5. Accordingly, as there is no question as to C’s entitlement there is no power under the UC (DA) Regs to suspend C’s UC, D’s decision to do so is unlawful, and is also breach of D’s own guidance.

**No Alternative remedy**

1. C does not have an alternative remedy in this matter. Under paragraph 7 of schedule 3 UC (DA) Regs, C does not have a right of appeal of a decision to suspend [her/his] UC. Accordingly, [her/his] only remedy is by way of judicial review.

**D’s position**

1. Following pre-action correspondence on this issue from Hackney Community Law Centre (“**HCLC**”) to D, a DWP manager informed HCLC by telephone on 21/10/21 that the matter would be raised with the relevant policy teams to consider how to prevent this issue reoccurring.

**The details of action you are expected to take**

1. SSWP should:
* Forthwith reinstate C’s UC award and resume payment of the same, and is asked to
* confirm what action has been taken further to actions agreed in response to HCLC above.

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

1. Please find enclosed copies of the following documents:
* Form of authority signed by C
* C’s expired BRP
* Evidence of C’s application to EUSS
1. All other relevant documents/information are already in the possession of the Defendant.

**VII. ADR proposals**

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

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

ADVICE AGENCY NAME,

ADDRESS

EMAIL

**IX. Proposed reply date**

1. C [and her/his family is/are] destitute as a result of D’s unlawful suspension of UC. In light of this, we expect a reply promptly and, in any event, no later than by [date]. Should we not have received a reply by this time we will take steps to issue judicial review proceedings.

Yours faithfully,

 [Name]