**This letter challenges** the failure to implement FTT decision that entitled to tax credits and time limit for HMRC to appeal has passed.

Read **the whole letter** carefully and edit all text in red and/or [square brackets]. Delete all comments and return text to black before sending.

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

DELETE BOX BEFORE POSTING

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

* Is entitled to tax credits.
* C’s tax credits stopped.
* C successfully appealed.
* HMRC refuse to pay tax credits despite the FTT decision.

DELETE BOX BEFORE POSTING

##### HM Revenue and CustomsSolicitor’s OfficeSouth West BushBush HouseStrandLondonWC2B 4RD

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

[date]

**Dear Sir/Madam,**

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

##### Proposed claim for judicial review

##### We are instructed by [Full Name] **in relation to [her/his] entitlement to tax credits. 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 4pm on the date at the end of this letter.**

##### ****The claimant****

##### **The proposed Claimant is:**

##### **[full name] (“**C**”).**

##### **National Insurance number:**

##### Address:

##### Date of birth:

1. **The defendant**

##### **The Proposed Defendant (“**D**”) in this matter are the Commissioners for His Majesty’s Revenue and Customs (“**HMRC**”).**

##### ****Details of C’s legal advisers****

##### **C is represented by [name of advice agency] :**

##### **Address:**

##### **Name of caseworker:**

##### **Telephone:**

##### **Email:**

**(5) The details of the matter being challenged**

1. **C is challenging D’s unlawful failure to put into payment [her/his] award of tax credits following the decision of a First-tier Tribunal.**

**(6) The details of any Interested Parties**

1. There are no interested parties so far as we are aware.

**(7) The Issue**

***Background facts [edit whole section]***

1. [Disability, Family, Housing, Employment etc.] He/she works [hours per week] as a [job role] at [employer] and had been in receipt of [child/working] tax credit (“[**C**/**WTC]**”).
2. [date]: D takes the decision ending entitlement to [C/WTC] from [date].
3. [date]: C writes to D, requesting it change the decision of [date] in light of [reason].
4. [date]: D [responds how].
5. C appealed against this decision of [date] to the FTT- case proceeds under reference [xxx].
6. [date]: FTT hears case and issues its decision allowing the appeal- holding that the decision ending tax credits from [date] was wrong.
7. D requests a statement of reasons for the decision.
8. [date]: Statement of reasons for decision issued to the parties.
9. [date]: the time limit for filing an application for permission to appeal against the decision of the FTT of [date] expired.
10. [date] C queries when [her/his] [W/CTC] will be put into payment. {how and what was said by C].
11. [date]: HMRC respond indicating they are currently considering whether to appeal. The letter includes the following:

I have discussed her case with the Appeals Technical Manager who has told me that HMRC is currently considering the decision of the First Tier Tribunal and may be challenging the decision to allow the appeal, as is our right under Tribunal procedures and legislation.

1. [date]: C, via [her/his] adviser, contacted the Tax Credit Helpline by telephone and was told that [her/his] request for a response to the appeal decision would be passed to the relevant department.
2. [date]: His Majesty’s Courts and Tribunals Service confirmed to us that no application for permission to appeal in this matter has been received by the FTT.

***Note on HMRC’s duty of candour***

1. As HMRC 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.

***Ground for Judicial Review***

1. The law carefully delimits the powers which HMRC have to withhold payment of tax credits under an award in the event that there is an ongoing appeal against a decision of an FTT. In the circumstances of this case, HMRC have no power under that legal scheme to withhold payment as claimed and accordingly are acting unlawfully in so doing.
2. **The Tax Credits (Payments by Commissioner) Regulations 2002 (SI No. 2173) (“Payment Regs”) provide at reg. 11 for the circumstances in which payment under an award may be postponed:**

***Postponement of payment***

***11.*** *(1) The Commissioners may postpone payment of the tax credit or element in any of the circumstances specified in paragraphs (2), (2A), (3) and (3A).*

*(2) The circumstances specified in this paragraph are where there is a pending determination of an appeal against a decision of the First-tier Tribunal, the appeal tribunal, the Upper Tribunal, the Northern Ireland Social Security Commissioner or a court relating to—*

*(a) the case in question; or*

*(b) another case where it appears to the Commissioners that, if the appeal were to be determined in a particular way, an issue would arise as to whether the award in the case in question should be amended or terminated under section 16(1) of the Act.*

 *[…]*

*(4) For the purposes of paragraph (2), the circumstances where a determination of an appeal is pending include circumstances where a decision of the First-tier Tribunal, the appeal tribunal, the Upper Tribunal, the Northern Ireland Social Security Commissioner or a court has been made and the Commissioners—*

*(a) are awaiting receipt of the decision;*

*(b) in the case of a decision by the First-tier Tribunal or the appeal tribunal, are considering whether to apply for a statement of reasons or have applied for, and are awaiting receipt of, a statement of reasons; or*

*(c) have received the decision or statement of reasons and are considering—*

*(i) whether to apply for permission to appeal; or*

*(ii) where permission is not needed or has been given, whether to appeal.*

*(5) “Appeal tribunal” has the meaning given by section 63(10) of the Act.*

*(6) “Northern Ireland Social Security Commissioner” has the meaning given by section 63(13) of the Act.*

1. Rule 38(2)-(3) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI No. 2685) (“**Tribunal Procedure Rules**”) provide that the deadline for seeking permission to appeal following a statement of reasons for a decision being issued is one month:

***38.-****(2) A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal.*

*(3) An application under paragraph (2) must be sent or delivered to the Tribunal so that it is received* ***no later than 1 month*** *after the latest of the dates that the Tribunal sends to the person making the application—*

*[…]*

 *(a) written reasons for the decision, if the decision disposes of—*

*(i) all issues in the proceedings; or*

*[emphasis added]*

1. **The time limit for HMRC to request permission to appeal in this case expired on** [date]**.**
2. **At that time (and indeed since that time), no application for permission to appeal was (or has subsequently) been made.**
3. **The power to withhold payment under reg. 11(2) of the Payment Regs only exists whilst there is a pending determination of an appeal against the FTT decision. The circumstances which can be described as a pending determination of an appeal are defined in reg. 11(4). Although those circumstances include the position where HMRC are considering whether to apply for permission to appeal, that cannot include circumstances where they have missed the deadline for so doing as set out in the Tribunal Procedure Rules. That is because, once that time limit has expired there is no right to apply for permission to appeal unless the FTT extends the time for doing so under rule 5(3)(a) (see rule 38(5)(b)).**
4. **The power to withhold payment under reg. 11(4) thus only exists during the period when an in time application for permission to appeal can be made. Once the deadline is missed the power to withhold payment can no longer be relied upon. If HMRC wishes to rely on it then it needs to make its applications on time. To hold otherwise would in effect allow HMRC to delay indefinitely payment under FTT decisions even in circumstances where its application was hopelessly late and had no prospect of being admitted under the strict test for late applications in such matters (see** *JP v SSWP and London Borough of Brent* [2017] UKUT 0149 (AAC)). It is clear therefore that the power in reg. 11(4) is limited to giving HMRC time to delay payment whilst it considers whether to appeal only in the period in which permission applications can be made.
5. **It is thus unlawful, for HMRC to take the position, [apparently taken in correspondence with C’s MP] that it is withholding payment on the grounds consideration is being given as to whether to appeal in circumstances where any such application to appeal should have been filed two weeks previously.**
6. **The ongoing failure to make payment is a further unlawful action for the same reason.**

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

1. **D is requested to:**
	1. **Implement the decision of the FTT by making payment of [C/WTC] to C for the period from** [date] **to [date].**
	2. **Reinstate the ongoing award of tax credits to C.**

**(9) ADR Proposals**

1. **We are not aware of any alternative dispute resolution mechanism- we would be happy to consider any suggestions made by D. The Adjudicator’s Office carrying out an independent review is not an acceptable alternative route in circumstances where HMRC is acting outside its powers – a complaint is appropriate for poor customer service and not for challenging an *ultra vires* act of HMRC.**

**(10) The details of any information sought**

1. **None.**

**(11) The details of any documents that are considered relevant and necessary**

1. **C’s signed authority to act.**

**(12) The address for reply and service of court documents**

1. As at §4 above.

**(13) Proposed reply date**

1. Please reply no later than 4:00pm on [date] (within 14 days). Should we not have received a response by then we may issue judicial review proceedings without further notice to D.

Yours faithfully,