**This letter can be used to** challenge DWP suspension of UC for European Nationals who had an EU Right to Reside (R2R) prior to 31/12/20 and who applied to the EU Settlement Scheme (EUSS) before 30/06/21 but have not yet received a decision (or are appealing a refusal).

**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**

**URGENT MATTER – Claimant has no income and is destitute**

**Deadline for response: 7 DAYS**

**Dear Sir or Madam,**

**Re: Proposed claim for judicial review against the Secretary of State for Work and Pensions by [full name]**

**I. Introduction**

1. We act on behalf of the above client, please find attached HER/HIS 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.
4. The following are the proposed claimant and defendant:

**Proposed Defendant**: Secretary of State for Work and Pensions (“**D**”)(“**SSWP**”)

**Claimant**: [full name] (“**C**”)

**NINo**: [xxxx]

**Address**: [xxxx]

**Date of Birth**: [xxxx]

**Note on the address for Pre-action Protocol correspondence**

1. This letter is sent to you because in February 2024 a Senior Lawyer at Decision Making and Debt DWP Legal Advisers, Government Legal Department, Ground Floor Caxton House, Tothill Street, London, SW1H 9NA advised that:

*Pre-action correspondence should now be sent directly to DWP, not to DWP Legal Advisers. DWP Legal Advisers is part of the Government Legal Department, not DWP itself. Pre-action correspondence should be sent to the relevant section of DWP. This will normally be the section of DWP responsible for the decision which is the subject of the pre-action correspondence via their usual communication methods. For example if it relates to a particular benefit decision then the pre-action letter should be sent to the address at the top of that letter.*

1. **This letter is also sent by email to the Treasury Solicitor as** Cabinet Office practice direction ‘Crown Proceedings Act 1947’ (December 2023)[[1]](#footnote-1) requires:

*“****All documents*** *required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall, if those proceedings are by or**against an authorised Government department,* ***be served on the solicitor****, if any, for that department”*

(Emphasis added)

1. The practice direction provides that the solicitor for service in connection with civil proceedings against the Department for Work and Pensions is “The Treasury Solicitor”.
2. **The Government Legal Department webpage**[[2]](#footnote-2) **further instructs:**

***[…]***

*The email addresses above are for the service of new proceedings only.
They should not be used for letters before action, or pre action protocol correspondence. If sending such documents to GLD please email these to**thetreasurysolicitor@governmentlegal.gov.uk**.*

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

1. C challenges D’s decision dated [ ] to suspend [HIS/HER] UC award.

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

1. C is national of COUNTRY and entered the UK on DATE (ie, before 31st December 2020).
2. On DATE C claimed UC and on DATE C received a Habitual Residence Test (‘**HRT**’) decision confirming [HIS/HER] qualifying right to reside as [a worker] on the basis of which [SHE/HE] was treated as ‘*in Great Britain*’ and was eligible for UC.
3. C was awarded UC from DATE on the basis of [HIS/HER] qualifying right to reside and it is not disputed that C continues to meet the conditions for the same.
4. C applied to the EU Settlement Scheme (‘**EUSS**’) on [DATE].
5. The Home Office has not yet made a determination on C’s EUSS application.
6. On [DATE], D indicated to C via [HIS/HER] online UC Journal that [HIS/HER] UC would be suspended if [HE/SHE] did not report [HIS/HER] immigration status.
7. C followed the steps via [HIS/HER] online UC Journal to do so and was given the option of indicating that [HE/SHE] had either ‘*Settled Status*’ or ‘*Pre-Settled Status*’. There was no option available for ‘*applied to but not yet received a decision*’.
8. On [DATE] C wrote on [HIS/HER] online UC Journal that [SHE/HE] has applied to the EUSS but a determination has not yet been made.
9. On [DATE], despite the notification via [HER/HIS] online UC Journal, C’s UC was suspended. The reason provided for this decision by D was:

“[QUOTE THE REASON GIVEN BY DWP?]”

1. [details 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 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.

**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**’), D may only suspend a UC award where there is a question about entitlement (reg 44) or there is a request for information that has not been not provided (reg 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 [HE/SHE] continues to be ‘*in Great Britain*’ for the reasons given below. There is therefore no power for D to suspend C’s award and the decision to do so is unlawful.

*Requirement to be ‘in Great Britain’*

1. Under s. 4(1)(c) Welfare Reform Act 2012 it is a condition of entitlement to UC that a claimant must be ‘*in Great Britain*’.
2. To be treated as ‘*in Great Britain*’ C must have a qualifying right to reside in the UK under reg. 9(2) Universal Credit Regulations 2013 (“**UC Regs 2013**”):

***9.****—(1) For the purposes of determining whether a person meets the basic condition to be in Great Britain, except where a person falls within paragraph (4), 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.*

 *(2) 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.*

(Emphasis added)

*C’s right to reside on 31st December 2020*

1. C was awarded UC on DATE it having being decided by D as notified by an HRT decision dated DATE that C had a qualifying right to reside as a STATUS.
2. By virtue of having been found by D to have a RIGHT TO RESIDE on DATE, C was treated as ‘*in Great Britain*’ prior to the 31st December 2020.

*C’s continuing right to reside*

1. Specific provision is made by the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (“**CR (Deadline) Regs**”) for claimants in C’s position, who:
* had a qualifying right to reside prior the Implementation Period (‘**IP**’) completion day, ie, 31 December 2020 at 11.00pm under s. 39 of the European Union (Withdrawal Agreement) Act 2020 (reg 4(2)(b) CR (Deadline) Regs), and
* applied to the EUSS before the application deadline, ie, 30th June 2021 (regs 2 and 4(2)(a) CR (Deadline) Regs), and
* have not yet received a decision on their EUSS application, are within time to, or are appealing a decision on the same (reg 6(b) CR (Deadline) Regs),

 to continue to be entitled to be treated as "*in Great Britain*" for UC pending a decision on their EUSS application (CR (Deadline) Regs with reg 9 UC Regs).

1. Regulation 2 CR (Deadline) Regs provides “*The end of 30 June 2021 is the deadline for submission of an application for residence status (“application deadline”)”.*
2. Regulation 4 CR (Deadline) Regs sets out protection for those who had a right to reside on 31st December 2020, have applied to the EUSS “*in-time*” (before 30th June 2021) but not yet received a decision, to continue for a “*relevant period*” starting on 31st December 2020 and ending when a positive decision is made on the EUSS application, time to appeal has expired, or an appeal is decided:

### *Applications which have not been finally determined by the application deadline*

***4.****—(1) This regulation has effect if the EEA Regulations 2016 are revoked on IP completion day (with or without savings).*

 *(2)****This regulation applies to a person*** *(“the applicant”) who—*

*(a)* ***has made an in-time application*** *(see paragraph (6)), and*

*(b)* ***immediately before IP completion day—***

***(i) was lawfully resident in the United Kingdom by virtue of the EEA Regulations 2016, or***

*(ii)had a right of permanent residence in the United Kingdom under those Regulations (see regulation 15).*

 *[…]*

 *(4)****The provisions specified in regulation 11 apply in relation to the applicant during the relevant period as if any reference to the EEA Regulations 2016*** *or any provision of those Regulations are to the Regulations or provision of the Regulations as* ***continued in effect*** *and modified by regulations 5 to 10.*

 *[…]*

 *(6) For the purposes of this regulation—*

***(a) an in-time application is an application for leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules which—***

***(i) is valid under residence scheme immigration rules;***

***(ii) is made on or before the application deadline, and***

***(iii) has not been withdrawn;***

***(b) the relevant period begins immediately after the application deadline and ends—***

*(i)* ***if the applicant is, by virtue of the in-time application, granted leave to enter or remain*** *in the United Kingdom, on the day on which that leave is granted;*

*(ii)* ***if a decision is taken not to grant any leave to enter or remain*** *in the United Kingdom in response to the applicant's application and the applicant does not appeal against that decision,* ***on the first day on which the applicant is no longer entitled to appeal against that decision*** *(ignoring any possibility of an appeal out of time with permission);*

*(iii)* ***if a decision is taken not to grant any leave to enter or remain*** *in the United Kingdom in response to the applicant's application and the applicant brings an appeal against that decision, on* ***the day on which that appeal is finally determined****, withdrawn or abandoned, or lapses under paragraph 3 of Schedule 1 to the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020;*

 […]

(Emphasis added)

1. Reg 11 provides ongoing entitlement for UC:

### *Entitlement to benefits and public services*

***11.****The provisions specified in this regulation are—*

*(t) regulations 2 (interpretation) and 9 (persons treated as not being in Great Britain) of the Universal Credit Regulations 2013*

1. D’s guidance Advice for Decision Making (“**ADM**”) ADM Memo 30/20[[3]](#footnote-3) confirms unequivocally C’s ongoing entitlement to UC, including that “*[t]he relevant savings may continue to apply to these individuals until well after 30.6.21”* and summarising the above:

***Applications which have not been finally determined by the application deadline***

***12*** *Provision1 is made for individuals who have made an application for EUSS leave on or before the application deadline (30.6.21), but whose application has not been finally determined by that date. The amendment provides that certain provisions of the Imm (EEA) Regs 2016 continue to apply to such individuals until their application has been finally determined. This period of time is referred to as the “relevant period”2.*

*Note: “Finally determined” includes an application being successful or exhausting any rights of appeal that the individual may have3.*

*1 The Citizens’ Rights (Application Deadline and Temporary*

*Protection) (EU Exit) Regulations 2020, reg 4; 2 Reg 4(6)(b); 3 Reg 4(7)*

***13*** *Provision is made for those individuals who have*

*1. made an in-time application for EUSS leave to enter or remain in the UK on or before the application deadline1, and*

*1.1 whose EUSS leave has not yet been granted or*

*1.2 who have an appeal pending and*

*2. by virtue of the Imm (EEA) Regs 20162 they*

*2.1 resided lawfully in the UK (i.e. any qualifying right to reside) immediately before 11pm on 31.12.203 or*

*2.2 had a right of permanent residence in the UK at any point in the 5 years preceding 11pm on 31.12.204.*

***Note 1****: An in-time application is one which is valid under EUSS, is made on or before the application deadline (30.6.21), and has not been withdrawn5.*

***Note 2:*** *This does not include family members of those individuals, who may have a pending application.*

***Note 3****:* ***The relevant savings may continue to apply to these individuals until well after 30.6.21.*** *The provisions6 saved in the Grace Period SI continue to apply to such individuals until their application is successful or the individual has exhausted any rights of appeal that they may have i.e. is finally determined.*

*1 The Citizens’ Rights (Application Deadline and Temporary*

*Protection) (EU Exit) Regulations 2020, reg 4(2)(a);*

 *2 Reg 4(2)(b); 3 Reg 4(2)(b)(i); 4 Reg 4(2)(b)(ii); 5 reg 4(6)(a); 6 Reg 4(7)*

(Emphasis added)

1. D’s guidance ADM Memo 19/21 ‘Claimants without a status under the European Union Settlement Scheme at the end of the Grace Period’[[4]](#footnote-4) (November 2021) further recently specifically confirmed ongoing entitlement for claimants in C’s position:

***Claimants who made an EUSS application prior and up to 30.06.21***

*7. Where an EEA or Swiss national, in scope of Article 10 of the Withdrawal Agreement,* ***made a valid application to the EUSS prior to the end of the grace period on 30.06.21 and that application is yet to be finally determined,*** *they are protected by the Withdrawal Agreement. Additionally, they are protected if they are appealing a Home Office (HO) refusal decision to grant them EUSS. This means that* ***they can continue to reside and access benefits as they did before the end of the grace period.*** *Decision Makers (DMs) should ensure that reviews are set for these claimants to check when they are finally granted status.*

(Emphasis added)

*Summary*

1. Under regs 2, 4 6 and 11 CA (Deadline) Regs C continues to be treated ‘*in Great Britain*’ for the purpose of reg 9 UC Regs. NAME therefore meets the condition of entitlement in s.4(1)(c) WRA 2012 that SHE/HE is "*in Great Britain*".
2. D is aware C had a qualifying right to reside prior to 31st December 2020 since C was awarded UC on DATE which was in payment until suspended on DATE.
3. C has provided D with information/ evidence via [her/his] Online UC Journal that [he/she] applied to the EUSS before [his/her] the deadline and that a Home Office decision is pending.
4. Accordingly, as there is no question as to C’s entitlement to UC 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 in breach of D’s own unequivocal 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 [his/her] UC. Accordingly, [his/her] only remedy is by way of judicial review.

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

* To forthwith reinstate C’s UC award and resume payment of the same.

**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
* 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 AND EMAIL]

**IX. Proposed reply date**

1. C [and his/her family is/are] destitute as a result of D’s unlawful suspension of UC. [Circumstances] 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,

1. assets.publishing.service.gov.uk/media/657c891d83ba380013e1b66c/List-of-Authorised-Government-Departments-under-s.17-Crown-Proceedings-Act-1947-15.12.2023.pdf [↑](#footnote-ref-1)
2. gov.uk/government/organisations/government-legal-department [↑](#footnote-ref-2)
3. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950775/adm30-20.pdf> [↑](#footnote-ref-3)
4. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033100/adm19-21.pdf> see also D’s Housing Benefit guidance ‘HB Circular A10/202’: [www.gov.uk/government/publications/housing-benefit-adjudication-circulars-2021/a102021-claimants-without-a-status-under-the-european-union-settlement-scheme-at-the-end-of-the-grace-period](http://www.gov.uk/government/publications/housing-benefit-adjudication-circulars-2021/a102021-claimants-without-a-status-under-the-european-union-settlement-scheme-at-the-end-of-the-grace-period) and legacy DWP benefits: ‘[DMG Memo 14/21](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033107/dmg14-21.pdf)’: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033107/dmg14-21.pdf> [↑](#footnote-ref-4)