**This letter challenges:**

* DWP failure to correctly apply s 1 of the Social Security Administration Act 1992, ie, to recognise that a claim is only made if made by the claimant, not by someone fraudulently pretending to be the claimant.

**Read whole letter** carefully and edit all text in red and/or [square brackets]. **Delete all comments**, return text to black (and not bold), and put on headed paper.

DELETE BOX BEFORE POSTING

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

* Was in receipt of Employment and Support Allowance.
* A third party fraudulently made a claim for UC in their name. This has been reported to the police.
* ESA has been terminated and efforts to have it reinstated have failed.

Pleaseverify then include **all relevant dates** in your letter.

**Please send your letter for review** to [jrproject@cpag.org.uk](mailto:jrproject@cpag.org.uk) before sending it to DWP/ HMRC.

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](mailto: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](mailto: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]**

##### We are instructed by [Full Name] **in relation to [her/his] Employment and Support Allowance (“**ESA**”) award. 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 the date at the end of this letter.**

**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*](mailto:thetreasurysolicitor@governmentlegal.gov.uk)*.*

**The details of the matter being challenged**

1. The Defendant’s failure to reinstate the Claimant’s Income Related Employment and Support Allowance (“**irESA**”) award when it was incorrectly stopped following a fraudulent Universal Credit (“**UC**”) claim.

***Background facts***

1. **C lives with [partner? Number of children? Disabilities?]**
2. **[C / The family] previously claimed [detail benefits]. This totalled £[XXX] per month.**
3. **On [DD/MM/YY], C was contacted by [someone known to them/ family friend/ someone claiming to be from UC/ other]. [She/he] was advised that [she/he] could get a [low interest loan/ cash reward for completing a survey] if [she/he] provided some details.**
4. **C [details of how the fraud occurred eg, was the fraudster using a laptop while the claimant was present, what details did they ask for, did this happen at the claimant’s home or elsewhere?]**
5. **C [details of how much money went to fraudster - did they enter their own details on the UC account or ask client to transfer?]**
6. **On [DD/MM/YY details of when C realised that there had been a fraudulent claim in their name.]**
7. **C reported this to Jobcentre Plus staff and to the police. [Her/his] Crime Reference Number is [XXX].**
8. **C [what happened next? What did JCP staff say/ do? Has C received notification that her/his benefits have stopped? Has [she/he] requested an MR? Is there any other evidence of the fraud?]**
9. **C’s only income now is [what?] [explain impact on C. Reliant on food banks/ family/ friends while waiting for UC? Liable for repayment of advance? Rent/ utility arrears]**

**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: Unlawful termination of ESA when no claim to UC has been made***

***Termination of awards when a UC claim is made***

1. **Under s1 of the Social Security Administration Act 1992 (“SSAA 1992”), entitlement to a benefit is dependent on a claim being made for it by the person claiming the benefit.**

***1.-(1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other condition relating to that benefit being satisfied –***

1. ***he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under this part of this Act; or***
2. ***he is treated by virtue of such regulations as making a claim for it.***

**(Emphasis added)**

1. **Under s.33(1)(b) of the Welfare Reform Act 2012 (“WRA”) income-related ESA is abolished.**

***Abolition of benefits***

***33.-(1) The following benefits are abolished—***

***[…]***

***(b) income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007;***

***[…]***

***(2) In subsection (1)—***

***[…]***

***(b)“income-related employment and support allowance” means an employment and support allowance entitlement to which is based on section 1(2)(b) of the Welfare Reform Act 2007.***

1. **Various WRA Commencement Orders made under s.130(3) of WRA specify in a complicated way the circumstances in which s.33 WRA comes into force in respect of a particular claim or award. For example, under article 4(1)(a) of the WRA (Commencement No. 9 and Transitional and Transitory Provisions and Commencement No. 8 and Savings and Transitional Provisions) Order 2013 (as amended), section 33(1)(b) WRA, is brought into force on the day a claimant makes a claim for UC**[[3]](#footnote-3)**.**

***Day appointed for the abolition of income-related employment and support allowance and income-based jobseeker’s allowance***

***4.—(1) The day appointed for the coming into force of—***

***(a) section 33(1)(a) and (b) and (2) of the Act (abolition of benefits);***

***[…]***

***in relation to the case of a claim referred to in paragraph (2)(a) to (d) and any award that is made in respect of such a claim, and in relation to the case of an award referred to in paragraph (2)(e) and (f), is the day appointed in accordance with paragraph (3).***

***(2) The claims and awards referred to are—***

***(a) a claim for universal credit, an employment and support allowance or a jobseeker’s allowance or a jobseeker’s allowance where, on the date on which the claim is made [or treated as made], the claimant-***

***i) resides in one of the relevant districts; and***

***ii) meets the gateway conditions;***

***(3) Subject to paragraph (4), the day appointed in relation to the cases of the claims and awards referred to in paragraph (2) is—***

***(a) in the case of a claim referred to in paragraph (2)(a) to (d), the first day of the period in respect of which the claim is made or treated as made; and***

***[…]***

**[4 relates to claims treated as made on formation of a couple and is not relevant]**

***[…]***

**(Emphasis added)**

1. **From this it is apparent that for irESA to terminate on the making of a claim for UC, a UC claim must be made. A claim for benefit is made by the person claiming the benefit. In cases of fraud, where the person making the UC claim does so using somebody else’s details, the purported claim for benefit by third party in the claimant’s name, is not a claim for benefit under s.1(1)(a) SSAA 1992 by the person in whose name it is made. No claim for UC by C has therefore been made and the date for the abolition of irESA has not come into effect for C.**
2. This was accepted by the Secretary of State in her oral evidence to the Work and Pensions Committee on 24/07/2019:[[4]](#footnote-4)

*Q162****Chris Stephens:****Will those who have been victims of fraud be allowed to move back to legacy benefits, and will they have the money that was claimed in their name wiped off the record?*

***Amber Rudd:****Yes,* ***people who have been moved to universal credit by virtue of fraud, and who tell us that, will move back to legacy benefits if they choose that.***

*Q163****Chair:****So you can move them back?*

***Amber Rudd:****We can. People who have been victims of fraud and whose money has been stolen—*

*Q164****Chair:****No lobster pot, then.*

***Neil Couling:****That is not a phrase we would use in the Department, but* ***because the claim was not properly made, you can revert the claimant back to their legacy benefit entitlement.***

**(Emphasis added)**

1. **It is also clear from *ED v Secretary of State for Work and Pensions* [2020] UKUT 352 (AAC). In that case, the opposite situation arose: a person who had claimed (and been awarded a benefit) using a fictitious identity was caught in the act. In the subsequent appeal against a First-tier Tribunal decision by that person against recovery of the money paid from them, the Upper Tribunal held that there had never been a claim for benefit to satisfy the condition of s.1 of the SSAA 1992.**
2. **In order for Article 4 of the relevant Commencement Order to apply, there must be a valid claim for UC.**
3. **It is not disputed that C meets the basic conditions for UC and so, had [she/he] made a claim, [her/his] existing benefits would have been terminated.**
4. **However, C did not make a claim for UC and so the requirements of making a claim, under s1(1)(a) SSAA 1992, were not met. Without a claim for UC made by C, there is no legal basis for terminating C’s entitlement to ESA.**
5. **Further, even though a claim was made in C’s name, the claim was made by someone fraudulently using C’s details [and assuming [her/his] identity in order to obtain credit, i.e. the advance, in [her/his] name]. C was not aware that the claim had been made, or that this was the intention of the person that took [her/his] details. The fraudulent procurement of [her/his] details and their subsequent use in the making of a false claim was reported to the police, as it is a criminal offence.**
6. **C [has provided DWP with a CRN/ bank statements/ other relevant evidence to prove the fraud].**
7. **A fraudulent claim is not a claim under s1(1)(a) SSAA 1992. Without a claim made by C, the requirements for Art 4 to apply are simply not met. There is consequently no lawful basis for terminating C’s existing benefits.**
8. **Indeed, the Defendant must itself be taken as accepting that the requirements of Art 4 are not met because it has cancelled [(or whatever was done to annul the award)] the claim for UC on the basis that it was made fraudulently. It is irrational to hold the position that no valid claim for UC has been made while also refusing to reinstate C’s legacy benefits which could only have been terminated if the requirements for Art 4 to apply were met.**

**Alternative remedies**

1. In the present case C has requested revision (a mandatory reconsideration) of the decision to end [her/his] irESA. [She/he] has been told by [REF TO BIT ABOVE] [that the ESA decision maker will not conduct a mandatory reconsideration because this is “up to UC”]. In circumstances where the Secretary of State is refusing to conduct a revision and thus allow the normal dispute procedure through the tribunal system, then the only remedy is judicial review.
2. Furthermore, we are aware that there have been a considerable number of fraudulent UC claims made and so clarifying whether or not Article 4 can be relied on to terminate and refuse to reinstate legacy benefits in such circumstances is an issue of wider general importance. As such, the remedy sought is not only reinstatement of C’s legacy benefits, but a declaration that reliance on Article 4 was unlawful in this instance, as the conditions for Article 4 to apply, namely that a claim for UC is made, has not been met as the claim was fraudulent. Such a remedy would not be available in appeal proceedings.

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

**The Defendant is requested:**

* **To review immediately their decision of [DD/MM/YY] to terminate C’s ESA award, and reinstate the payments.**
* **To backdate the payments to [DD/MM/YY], giving C [her/his] correct entitlement for the period that [she/he] was not paid.**
* **To acknowledge that the advance was obtained fraudulently, that C did not benefit from it and that C is not liable to repay it.**
* **To pay C compensation for the stress, anxiety and severe hardship that has been caused to [her/him] [and [her/his] family] as a result of the Defendant’s ongoing failure to reinstate [her/his] ESA award, despite knowing that the UC claim was made fraudulently.**

**ADR proposals**

**Please confirm in your reply whether the Defendant is willing to consider alternative dispute resolution.**

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

**[Advice agency name, address and email]**

**Proposed reply date**

We expect a reply promptly and in any event no later than [**DD/MM/YY] ([7 / 14] days). Should we not have received a reply by this time our client will seek representation to issue proceedings for judicial review without further notice to you. (Only include the following if requesting a response within 7 days, e.g. where the termination of the benefit is causing severe hardship).** 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 to terminate ESA award after DWP accepted that there was no validly made UC claim as UC was stopped / not awarded and; (b) (Delete if not appropriate) the fact that the issue is not new to DWP as it has already been raised by C in her mandatory reconsideration request; and (c) C has brief details of reliance on lost benefit. This decision is therefore causing severe hardship.

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

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. **See further Article 4 of the Welfare Reform Act 2012 (Commencement No. 21 and Transitional and Transitory Provisions) Order 2015, and Article 4 of The Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) Order 2015**  [↑](#footnote-ref-3)
4. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/the-work-of-the-secretary-of-state-for-work-and-pensions/oral/104011.html> [↑](#footnote-ref-4)