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To Whom it May Concern

Re: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (your child’ name)

NI Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(young person’s National Insurance number)

DOB: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (young person’s DOB)

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I’m writing to complain about your Department’s refusal to allow me to lodge a claim for new-style Employment and Support Allowance (nsESA) and national insurance credits on behalf of my disabled child.

My child is severely disabled and has the following conditions \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

They have a limited capability for work as a result of their disabilities. They are in receipt of PIP and have an appointee to manage their benefit claims. I undertake this role and am my child’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (state relationship to child i.e. mother/father etc).

On \_\_\_\_\_\_\_\_\_\_\_\_\_(date) I contacted the Universal Credit Helpline to make a ‘credits only’ claim for new style ESA. According to the GOV.UK website this is the procedurally correct way to apply for new style ESA where a young person requires an appointee. I spoke to a member of staff called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

I explained that while I was aware that my child would not meet the national insurance tests to be entitled to new style ESA itself, I still wished to make a ‘credits only’ claim for new style ESA. This was for two reasons:

1. To apply for national insurance credits on the basis of having a limited capability for work.
2. To establish a limited capability for work in order to be eligible for Universal Credit as someone receiving education under Regulation 14(b) of the Universal Credit Regulations.

Despite this your colleague refused to provide me with the necessary claim form or to provide links to an electronic form. Instead, they simply informed me that my son/daughter was not entitled to new style ESA. I would note that this decision has not been confirmed in writing nor have I been advised of my appeal rights.

Furthermore, a work capability assessment has not been arranged to confirm my child’s limited capability for work nor national insurance credits awarded on the basis of their limited capability. A decision not to award national insurance credits has not been confirmed in writing and we have not been advised of my child’s appeal rights regarding these credits.

**National Insurance credits**

As you will be aware my child has a right to apply for national insurance credits under Regulation 8B of the Social Security (Credits) Regulations 1975. It’s my understanding that your department’s chosen mechanism for a claimant to give notice under Regulation 8B (4) that that they wish to be assessed for national insurance credits is to make a claim for new style ESA – what is known as a ‘credits only’ claim. If your Department disputes that this is the correct mechanism then please state what the alternative mechanism for giving notice is. A failure to put in place any mechanism would be unlawful given that the need for such a mechanism is clearly contemplated in the regulations.

Given this, your department’s refusal to accept a claim for new style ESA (and for national insurance credits) or to provide the necessary claim forms unlawfully prevented my child from furnishing your department with written notice of the grounds on which she is entitled to national insurance credits.

**Universal Credit**

As a result of Regulation 14(b) of the Universal Credit Regulations a young person who is treated as receiving education, cannot qualify for Universal Credit until AFTER it has been established that they have a limited capability for work. Therefore, showing he/she has a limited capability for work is one of two conditions my son/daughter must meet (alongside being in receipt of Personal Independence Payment) as a prerequisite to establishing an entitlement to Universal Credit.

My child WILL qualify for Universal Credit if he/she is assessed as having a limited capability for work and this means that your department are under a duty to assess whether he/she meets that test or not.  You have a public duty to properly administer Universal Credit claims and that includes ensuring that a work capability assessment is properly undertaken where this is integral to a decision establishing entitlement to a benefit. Your department’s refusal to accept a credits only claim for new style ESA and/or to otherwise assess my child’s capability for work by some alternative means is therefore both irrational and unreasonable and is in breach of your public duties.

**The refusal to allow an ESA claim to be made and frustration of appeal rights**

In my child’s case your staff appear to have taken the view that because they did not believe he/she was entitled to new style ESA, no claim could be allowed. This reverses the correct legal order. Under section 1 of the Social Security Administration Act 1992 a decision on entitlement to benefit can only be made once a claim has been made. Your Department cannot prevent someone from exercising their rights to make a claim simply because it takes the view that there will be no entitlement. The refusal to accept a claim for new style ESA/national insurance credits is unlawful as it means the Department evades it duty to properly decide claims whilst also depriving claimants of their rights to appeal a decision that they dispute.

In order to resolve this complaint send me the necessary paperwork (or a link to an electronic claim) allowing me to claim new style ESA on behalf of my child. I would also ask you to ensure that a work capability assessment is organised as soon as possible given the delays already caused by maladministration of this claim. If we have not received a satisfactory reply by this time we will contact your Department’s solicitors in accordance with judicial review pre-action protocol.

**I expect a** reply promptly and in any event no later than**\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (14 days).

Yours faithfully

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_