**DWP UNIVERSAL CREDIT FULL SERVICE**

**Our Ref:**

**DATE**

Dear Sir or Madam

**Re: NAME, ADDRESS, NINO, DOB – Mandatory Reconsideration Request**

We are instructed by X (“**C**”) in relation to his/her claim for universal credit (“**UC**”). We are requesting a mandatory reconsideration of the decision of DATE, where two lots of C’s monthly wages were taken into account when calculating his/her UC amount for the assessment period(s) DATE – DATE.

[In light of the immediate hardship faced by C, we request a response to this mandatory reconsideration request by 7 DAYS FROM DATE OF MR REQUEST *– only include if relevant, otherwise a 14 day response time is appropriate*.]

**Background**

1. C is DETAILS OF C’S CIRCUMSTANCES - EG. LONE PARENT, CHILDREN, LIMITED CAPABILITY FOR WORK ETC..
2. C works as DETAILS OF JOB. C is paid DETAILS OF PAY ARRANGEMENTS – EG. MONTHLY ON 30th OF EACH MONTH / MONTHLY ON THE LAST WORKING DAY OF EACH MONTH. This is a fixed and regular pay date, but one which can vary by up to a few days each month, on account of how weekends/bank holidays fall differently in different months.
3. C’s assessment periods run from X of each month to Y of each month, which is around his/her pay date.
4. As a result of the “non-banking day shift” issue described in the Court of Appeal judgment in *Johnson & Ors v SSWP* [2020] EWCA Civ 778 (the “**Judgment**”), the clash between C’s monthly pay date and his/her assessment period start/end date has resulted in C being paid twice by his/her employer during the assessment period(s) DATE – DATE, on DATE X and DATE Y [*include the dates C was paid by their employer here –one will be at the start of the assessment period and one at the end*]. The relevant wage slips are enclosed / have been provided via C’s UC journal.
5. For the purposes of calculating C’s earned income for this/these assessment period(s), DWP has treated C as receiving two lots of monthly wages during one assessment period, leading a substantial reduction in C’s UC award for this assessment period.
6. This treatment of C’s wages also means that C is unable to benefit from a work allowance in respect of the monthly wage which was paid ‘early’ from which he/she would otherwise be able to benefit. This has resulted in an overall net loss of income for C.
7. C is facing real and immediate hardship as a result of this fluctuation in his/her UC amount and a substantial reduction of overall monthly income. C is facing difficulties covering regular, monthly bills and other outgoings for C and his/her family. ADD DETAILS OF PROBLEMS / CHALLENGES THE ISSUE HAS CAUSED e.g. debts accrued, rent arrears, missed bills, resorting to emergency support via foodbanks or otherwise, any stress/mental health effects.
8. ANY OTHER PARTICULAR CIRCUMSTANCES OF C – eg. C is pregnant/childcare commitments/health/other reasons why difficult to look for alternative work. HAS C ASKED THEIR EMPLOYER TO CHANGE THEIR PAY DATE AND BEEN REFUSED? IS C CONSIDERING LEAVING THEIR JOB TO FIND ALTERNATIVE WORK THAT PAYS ON A DIFFERENT DAY?

**Reason for MR request:**

*Error of law*

1. The Secretary of State is asked to revise her decision on the ground that the earned income calculation method is irrational and unlawful and therefore should not have been applied.
2. C is in the same position as the claimants in *Johnson & Ors v SSWP* [2020] EWCA Civ 778, in which judgment was handed down by the Court of Appeal on 22 June 2020 in that they are a monthly paid employee and they are subject to the “non-banking day salary shift” in the way described in the Judgment.
3. As per the declaration of the Court of Appeal dated 30 June 2020, “***the earned income calculation method in Chapter 2 of Part 6 of the Universal Credit Regulations 2013 is irrational and unlawful*** *as employees paid monthly salary, whose universal credit claim began on or around their normal pay date, are treated as having variable earned income in different assessment periods when pay dates for two (consecutive) months fall in the same assessment period in the way described in the judgment*”.
4. The earned income calculation method in Universal Credit Regulations 2013 (“**UC Regs 2013**”), which is the subject of the declaration from the Court of Appeal, is currently the only “prescribed manner” available to the Secretary of State to deduct earned income from C’s maximum UC amount under s8(3) Welfare Reform Act 2012 (“**WRA 2012**”).
5. There is therefore currently no lawful method by which the Secretary of State can calculate the amount of C’s earned income under the UC Regs 2013 or otherwise, for the purpose of making deductions to the UC amount under s8 WRA 2012 in respect of the assessment period(s) in which C receives two lots of monthly wages. It follows that in the absence of such method, no lawful deduction can be made.

*Contravention of C’s human rights*

1. In the alternative and without prejudice to the above ground, the Secretary of State is requested to revise her decision because the lower UC award and loss of work allowance against one month’s salary which C has experienced is in violation of C’s rights under Article 14 of the European Convention on Human Rights (“**ECHR**”), read in conjunction with Article 1 to the First Protocol (“**A1P1**”) as a woman /or lone parent/or a person with limited capability for work, or alternatively as a working parent/worker with LCW and/or worker whose monthly assessment period falls on or around his/her monthly pay date.
2. The Secretary of State is aware of her duty under section 3 of the Human Rights Act 1998 which provides that:

*“3 (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which compatible with the Convention rights.*

*(2) This section –*

 *(a) applies to primary legislation and subordinate legislation whenever enacted;*

*(b) does not affect the validity, continuing operation or enforcement on any incompatible primary legislation; and*

*(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.”*

1. The Secretary of State has previously accepted that situations such as C’s fall within the ambit of A1P1 and that Article 14 ECHR is therefore engaged.
2. The Secretary of State is also aware that consideration of the issue of a potential Article 14 breach was not undertaken by the Court of Appeal, since it considered it was not necessary to conduct the analysis in light of its finding on irrationality ([108] of the Judgment). There are no findings either way by either the Court of Appeal or the High Court in relation to the potential breach of Article 14, although the Court of Appeal noted that SSWP recognised that being a woman and being a parent were a relevant status.
3. C also has the status of a working parent/a worker with LCW. By providing for a work allowance for those workers with childcare responsibilities/LCW, the DWP recognises that they are in a different position than other workers and need additional support in securing and maintaining work that pays.  Yet, having recognised the need for such differential treatment, for several assessment periods a year, C is treated no differently from a non-working parent in that he/she loses the benefit of one month’s work allowance.
4. Alternatively, C has the status as a worker yet is treated differently from other monthly paid workers purely because of the ‘clash’ between my pay dates and her UC claim date:  but for such ‘clash’ she/he would not be subject to any oscillating UC awards or the loss of the work allowance.
5. Irrespective of which of the above statuses is used, in light of the overall findings in the Judgment of the irrationality of the effect of this issue; the recognised “*perverse*” and “*extreme*” effects on the claimants in *Johnson*, which are also effecting C; and the “*considerable hardship*” which C is facing, it would be “*odd in the extreme*” were the Secretary of State to consider that the differential treatment of C / failure to treat C differently is justified in the circumstances and so decline to read regulation 54 of the UC Regs 2013 in a way which gives effect to C’s Convention rights, in accordance with the Secretary of State’s duty under section 3 HRA 1998.

**Summary**

We request that the Secretary of State revises the decision awarding C UC for the assessment period(s) DATE so as to either:

1. apply no deductions for ‘take home pay’ from C’s entitlement for the specified assessment period(s) on account of there being no lawful prescribed method of calculating the amount to deduct in the circumstances; or
2. interpret regulation 54 of the UC Regs 2013 in a way which avoids the unlawful discrimination of C.

We also request that the Secretary of State makes a note on C’s UC account so that this issue is avoided in future assessment periods, through adjustments made by the Secretary of State in advance of the date UC payment is due in respect of those future assessment periods.

Yours faithfully

[*Adviser’s details*]