**Dear Sir or Madam**

**Re. Name:** (C)

**NINO:**

**Address:**

**Date of Birth:**

**The details of the matter being challenged**

The failure of the DWP to disregard the fostering allowance that I receive as income for the calculation of my UC entitlement.

My problems with UC began on DATE when I was notified of your decision in respect of my entitlement to UC for the assessment period from DATE to DATE. The amount awarded was at the rate of £ . I enquired as to the reason for this and was provided with a breakdown and it transpired that the reason for the low award was that I am being treated as having earnings as a result of the fostering payments I receive from WHO/WHERE.

I queried this via my online journal and/or by phone and was informed by the DWP on DATE that fostering payments are treated as earnings the purpose of calculating UC.

LIST ANY FURTHER CONTACT WITH DWP AND WHAT HAS BEEN SAID.

The Secretary of State for Work and Pensions published briefings on the policies underpinning the Welfare Reform Act during the Welfare Reform Bill’s passing through Parliament. These included: ‘Universal Credit Policy Briefing Note 8, Foster carers’ (**Briefing Note 8**)[[1]](#footnote-1).

In Briefing Note 8 the DWP explain the unequivocal intention to treat all money received as a fostering allowance as neither earned nor unearned income for UC.

***3.******Key policy proposals: Universal Credit award and treatment of income***

*a) In the current benefits system, the allowances and fees received by foster carers in return for fostering are fully disregarded for the purposes of calculating entitlement to benefits paid by both DWP and HMRC. For the purposes of calculating income-related benefits, foster children are not included in the benefit assessment.*

*b) The same principles will apply within Universal Credit. There are no plans to change this disregard of fostering allowances and fees when Universal Credit is introduced.* ***These payments will not be taken into account as earnings or income, and whether or not a foster carer receives such payments will not affect the amount of Universal Credit they are entitled to.***

#### (Emphasis added)

**The implementation of this “*key policy proposal*” is confirmed clearly in your operational guidance regarding ‘F**oster carers’[[2]](#footnote-2):

*Foster children are not part of the benefit unit for Universal Credit assessment purposes. Foster carers cannot receive an additional award for any foster child because* ***they receive a Fostering Allowance that is not taken into account when assessing the Universal Credit award.***

#### (Emphasis added)

#### **Your operational guidance ‘**Unearned income’[[3]](#footnote-3) further confirms that a fostering allowance is a type of unearned income (i.e. not earned income), and that a fostering payment is not a type of unearned income which is to be taken into account when calculating UC**:**

#### *Adjusting the Universal Credit Maximum Amount – the main unearned income types not taken into account*

#### *The following is a list of regular unearned income types which are not taken into account in Universal Credit – this list isn’t exhaustive as other types of income not listed in regulations may be available:…*

#### *certain payments that are intended to meet additional costs of caring for child dependents, for example:*

#### *• Child Benefit*

#### *• Guardian’s Allowance*

#### *• Fostering Allowance and other Social Services payments*

#### *• Scottish Kinship Care payments*

#### *• continuing care payments*

#### It is clear from the above that you are unlawfully taking fostering payments into account as income

#### It is also clear from the above that fostering payment were not intended to be taken into account either ‘earned income’ or ‘unearned income’ when what became the Welfare Reform Act 2012 was being debated in Parliament, and that under your current operational guidance it is in fact not taken into account as either ‘earned income’ or ‘unearned income’.

#### However, in my case the fostering payment has been taken into account as with the result that my UC is reduced each month.

#### Under s.8(3) of the Welfare Reform Act 2012 UC is reduced by earned and/or unearned income.

##### *Calculation of awards*

***8.-****[…]*

*(3)The amounts to be deducted are—*

*(a) an amount in respect of earned income calculated in the prescribed manner (which may include multiplying some or all earned income by a prescribed percentage), and*

*(b) an amount in respect of unearned income calculated in the prescribed manner (which may include multiplying some or all unearned income by a prescribed percentage*).

The Universal Credit Regulations 2013 (“**UC Regs**”) are made under the Welfare Reform Act 2012 and specify the types of unearned income **to be taken into account** when calculating the amount of UC a claimant is entitled to and what counts as earned income: the foster payments at issue in this case do not fall within either category:

Fostering allowance is not a type of unearned income to be taken into account. Types of unearned income not specified under reg 66 UC Regs, including fostering allowance, must be disregarded in the calculation of my UC award.

Failure to disregard my fostering payments in the calculation of my award fails to follow the law and your own guidance, and is inconsistent with the policy intent underpinning the Welfare Reform Act 2012.

*Earned Income*

The UC Regs define earned income as remuneration derived from a contract, or income treated as earned income under Chapter 2 of the UC Regs.

A fostering payment is not remuneration or profits derived from and of the headings under reg. 52(a)(i)-(iii). Rather, it is a “*payment intended to meet additional costs of caring for child dependents*” as explained in your operational guidance ‘Unearned income,’ and as such does not meet the definition of earned income under reg 52(a) UC Regs.

Neither is a fostering allowance caught by reg. 52(b) as it is not “treated as earned income” under Chapter 2 of the UC Regs.

As fostering payments are not caught by any of those provisions it does not fall to be “treated as earned income” under reg. 52(b).

The fostering payments I receive do not meet the definition of either “unearned income” or “earned income” under the UC Regs. There is therefore no lawful basis for it to be taken into account as income when calculating my entitlement to UC. To treat my fostering payments as either earned or unearned income fails to follow the law or your own guidance

**I request that without delay you should:**

* Disregard the fostering payments I receive in full and reassess my universal credit from the date when your error began
* Ensure that decision makers are made aware of the definitions of earned and unearned income under regs 52 and 66 UC Regs and the approach to be taken when a claimant receives a fostering payment for children in their care.

Yours faithfully

1. www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/resources/further-reading/universal\_credit\_policy\_briefing\_note\_8\_re\_foster\_carers.pdf [↑](#footnote-ref-1)
2. http://data.parliament.uk/DepositedPapers/Files/DEP2019-0980/53.\_Foster\_carers\_v4.0.pdf [↑](#footnote-ref-2)
3. http://data.parliament.uk/DepositedPapers/Files/DEP2019-0980/140.\_Unearned\_income\_v6.0.pdf [↑](#footnote-ref-3)