**UC HM2: REQUEST FOR MANDATORY RECONSIDERATION AGAINST FAILURE TO INCLUDE CHILD ELEMENT WHEN AWAITING CHILD BENEFIT TO BE PUT IN PAYMENT**

DWP

Date:

Dear Sirs

##### Re: Request for a Mandatory Reconsideration of your decision not to include a child element in my UC award

Name:  
Address:  
NINO:

I am writing to you regarding your decision not to include a Child Element for xxxxxxxxxxxx.  
  
I have been told that a Child Element cannot be included until my claim for Child Benefit in respect of xxxxxxxxxxxxxxxxxx is in payment.

I believe this decision to be unlawful because:

* The Universal Credit Regulations state that a Child Element should be included (subject to the two child limit rules) for each child / young person the claimant is responsible for (Reg 24, UC Regs).
* And that a claimant is responsible for a child / young person who normally lives with them (Reg 4, UC Regs).
* Whilst being in receipt of Child Benefit may be an indication that a child / young person is living with the claimant, the Child Benefit rules do not state that Child Benefit can only be paid where the child / young person is living with the claimant – someone can get Child Benefit for a child who is not living with them in certain circumstances.
* Indeed, the DWP’s own Guidance correctly states, when deciding where a child is normally living, that who is getting the Child Benefit is not relevant – [para F1010](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607307/admf1.pdf) of the Advice for Decision Makers states:

*‘“Normally lives” is not defined in legislation and should be given the meaning that a child or qualifying young person normally lives with a person where they spend more time with that person than with anyone else. Note: which person gets CHB is not taken into account.* ’

Either:

I have provided / Please find attached evidence that xxxxxxxxxxxxxxxxxxx is living with me and that this is their normal home.

Or

Whilst I am currently unable to provide any written evidence that xxxxxxxxxxxxxxxxxxx is living with me and that this is their normal home, general benefit law means that this statement should be believed unless it is contradictory or inherently improbable.

I understand that it is taking HMRC approximately 12 weeks to process a claim / change in circumstances for Child Benefit. Obviously to have to wait this period of time before I receive the financial support I am entitled to for xxxxxxxxxxxx is causing/will cause extreme financial hardship. Your insistence, therefore, that Child Benefit is in payment when this is not a requirement in law is unjust and perverse and I would be grateful if you could revise my award of Universal Credit as soon as possible or provide me with a statement of reasons for your refusal quoting the relevant Regulation/s used.

Thank you for your consideration of this matter.

Yours faithfully