



Esther McVey MP  
House of Commons  
London SW1A 0AA

January 8 2018

Dear Ms McVey,

**RE: FAILURE TO FOLLOW CORRECT LEGAL PROCEDURES ON  
CONVERSION OF INCAPACITY BENEFIT CLAIMANTS TO EMPLOYMENT  
AND SUPPORT ALLOWANCE. (letter previously sent to Damian Green)**

I am writing on behalf of The National Association of Welfare Rights Advisers (NAWRA) in follow up to Mr Gauke's letter of 5 October 2017 when he confirmed that DWP officials were investigating the above matter. Although the letter offered to contact me when the work was completed, and I accepted this offer, I have heard nothing. However, I am of course aware of Mr Gauke's [written statement](#) on 14 December 2017.

NAWRA has major concerns about the statement in Mr Gauke's letter that, although the Department is carrying out an exercise to contact all individuals who you believe are affected, arrears will only be paid from 21 October 2014. We seek urgent clarification on the following –

1. How are you identifying claimants who you believe may have been affected?
2. How are you contacting them and what is your procedure if the claimant does not respond?
3. When completing the assessment for income-related ESA how are you ensuring that all the necessary information is gathered to assess eligibility for the severe disability premium?
4. On what basis do you believe that backdating should be limited to 21 October 2014? The caselaw quoted - LH v SSWP [\[2017\] UKUT 480 \(AAC\)](#) - is not relevant as that deals with new claims for ESA and is not concerned with cases that are migrated from IB which do not require a claim.
5. Where backdating is paid what advice is given to claimants about its treatment in respect of capital limits and means-tested benefits?

The error in question is clearly an official error – on migration from IB the claimant should be assessed for both income-related ESA and contributory ESA as set out in regulation 8 of the *Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010*. Example 2 in DMG 45583 (which incidentally

is from an amendment in February 2014 prior to the above caselaw) clarifies this –

*Naomi is entitled to IB of £112.05, including an age addition of £10.70. She is not entitled to IS. On conversion, Naomi is placed in the SG. She entitled to ESA(Cont) of £112.05, made up of £71.70 personal allowance, support component of £34.80 and a TA of £5.55. She is also entitled to ESA(IR) of £9.60 (£71.70 + £34.80 + £15.15 EDP – £112.05). Naomi's overall ESA award on conversion is £121.65.*

Any cases where the law has not been applied correctly as above should be revised on grounds of official error and backdated to the date of conversion.

I welcome your comments on this as a matter of urgency as I am aware of a number of cases where claimants are being paid incorrectly.

I look forward to hearing from you.

Yours sincerely,

Daphne Hall

On behalf of NAWRA