



Esther McVey MP
House of Commons
London SW1A 0AA

February 9 2017

Dear Ms McVey,

**RE: FAILURE TO FOLLOW CORRECT LEGAL PROCEDURES ON
CONVERSION OF INCAPACITY BENEFIT CLAIMANTS TO EMPLOYMENT
AND SUPPORT ALLOWANCE**

Thank you for your letter which I received on 23 January 2018.

I appreciate this is a complex legal issue but as an association of welfare rights advisers of many years experience I think we are able to understand the relevant concepts. However, we are in disagreement with the arguments you put forward for the following reasons.

You state that *LH v SSWP [2015] AACR 14* established a legal principle and this is the basis of your argument that section 27 of the Social Security Act 1998 applies.

However, LH did not establish a legal principle – it confirmed the law that was already in place – in this case regulation 8 of the *Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010*.

The DWP were already fully aware of what the law meant as it was set out in its own guidance - DMG 45580 onwards which was written in February 2014 – several months before the decision in LH. As I pointed out in my previous letter, example 2 (at DMG 45583) 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.

Therefore, please can you confirm that –

- any migration cases which were not correctly assessed for both income-related ESA and contributory ESA should be revised on grounds of

official error and backdated to the date of conversion from incapacity benefit.

In addition, under Schedule 9 paragraph 11(2) of the *Employment and Support Allowance Regulations 2008*, any arrears of £5,000 or more paid as a result of official error are ignored until then end of that award and this should be clarified on claimant's letters. Please can you therefore confirm –

- arrears of under £5,000 are ignored for 52 weeks;
- arrears of £5,000 or more are ignored until the end of that award; and
- what information is being given to claimants in relation to the treatment of any arrears paid in regard to their means-tested benefits

In respect of the process for contacting individuals we have not yet had any information relating to this. While it is on the agenda for our next stakeholders meeting that is not until 6 March 2018. However, NAWRA members have raised concerns about the way claimants are being contacted, for example claimants have been telephoned with no warning letter and asked to answer security questions. This has created a lot of anxiety – obviously people are generally advised not to give out sensitive information to a cold caller. Please could you urgently clarify –

- the correct process for claimants to be contacted;
- how they will be notified of any decision and their appeal rights; and
- how you will ensure claimants who do not respond to the first contact are assessed and backdated payments made

For ease of response I have bulleted each of the points that I would like you to respond to as a number of issues went unanswered on our previous letter.

I look forward to hearing from you as a matter of urgency.

Yours sincerely,

Daphne Hall

On behalf of NAWRA