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for Work &
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Dear Colleagues,

Further to the Written Statement tabled on 18 July 2018 in the House of Lords concerning the Employment and Support Allowance (ESA) underpayments, I am now in a position to provide more details in response to the Urgent Question raised.

The Department estimates around 1.5 million people were transferred from incapacity benefits to ESA and the proportion of cases with an underpayment is estimated to be around 5% of those who transferred. Clearly the mistakes should not have happened and that is why it is vital it is rectified as quickly as possible.

Initially we believed that we were legally restricted to only making repayments from 2014 due to a statutory rule (section 27 of the Social Security Act 1998). This provision governs the position with regard to payment of arrears when a court or tribunal finds that the Department has made an error on a point of law.

We have now undertaken further analysis of the relationship between “official error” and section 27 in regulating how and to what extent arrears can be paid. As a result, we will now be paying arrears to those affected back to their date of transfer from incapacity benefits to ESA (transfers commenced in 2011).

To clarify, when we refer to cash loss, we mean a loss in the amount of ESA paid to a claimant. As referred to in the debate no-one suffered a cash loss when they were transferred from incapacity benefits to ESA because where the amount of ESA they were entitled to was lower than the previous incapacity benefits award, it was ‘topped up’ to match their previous award by a transitional addition.

We sent out letters and attempted to call people at the time to advise them that they could also be entitled to income-related benefit and to contact the Department if they believed they were eligible.

Only until we have gathered the necessary information (by way of an ESA3 form) and reviewed their award are we able to say for certain whether a claimant has been underpaid when they were transferred from incapacity benefit to ESA and should be paid arrears of benefit. We are currently assessing timescales for completion of this exercise. Our aim is for all claimants to receive the benefit they are due as quickly as is practicable.

We have been proactive in keeping the House updated on this exercise and with this in mind, I have shared this update with all Noble Lords who contributed to the debate.

A copy of this letter will also be deposited in the House library.

A handwritten signature in black ink, appearing to read 'Buscombe', written in a cursive style.

Baroness Buscombe

Minister for Work and Pensions (Lords)