



National Audit Office

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## **Report**

by the Comptroller  
and Auditor General

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## **Department for Work & Pensions**

# Investigation into errors in Employment and Support Allowance

# Summary

## Key findings

The error and how it affects claimants

**1 Since 2011, the Department for Work & Pensions (the Department) has underpaid an estimated 70,000 people who transferred to Employment and Support Allowance (ESA) from other benefits.** The error related to people who may have been entitled to income-related ESA but were instead only awarded contribution-based ESA, and therefore may have missed out on premium payments. This issue is most likely to affect those with the most limiting illnesses or disabilities, who transferred to ESA from older-style benefits between February 2011 and the end of 2014, by which point the majority of the transfers were complete and the Department had changed the process (paragraphs 2.2 and 2.6 to 2.8).

**2 The average underpayment is likely to be around £5,000 by mid 2018-19, with the Department owing an estimated total of £340 million in underpaid benefits.** The Department's initial review of a sample of 1,000 cases suggests that 45,000 claimants entitled to the enhanced disability premium only may be due around £2,500 and that around 20,000 claimants who are entitled to the severe disability premium may be owed around £11,500 each on average. One example in the Department's sample indicated that a small number of people could be owed around £20,000 (paragraphs 2.13, 2.14 and Figures 5 and 7).

**3 The Department has committed to correcting its error and paying arrears by April 2019.** The Department has tasked over 400 staff, mostly experienced ESA processors, with reviewing around 300,000 cases to identify the people affected and pay arrears where these are due. It is recruiting 245 staff to make up the shortfall in other areas of ESA, with the exercise estimated to cost around £14 million (paragraphs 2.16 to 2.19).

**4 The Department estimates it will need to pay a total of between £570 million to £830 million more ESA than it previously expected by the end of the 2022-23 financial year.** Its central estimate is £680 million more. This is because, in addition to the £340 million in arrears payments, people affected will receive higher amounts of ESA after their claim is corrected (paragraph 2.21 and Figure 7).

**5 Eligible claimants will only be paid arrears as far back as 21 October 2014.**

On 21 October 2014, the Upper Tribunal (Administrative Appeals Chamber) decided that contribution-based ESA and income-related ESA were a single benefit and that the Department must assess people for both elements when determining their entitlement to ESA. Under social security legislation, the date when a ruling on law is made becomes the date from which the relevant law takes effect. The Department is therefore proceeding on the basis that it can only legally pay arrears as far back as the date of this ruling. The Department estimates that there may be approximately £100 million to £150 million of underpayments accrued before 21 October 2014, which it cannot pay, in addition to the estimated £340 million it will pay for the period from 21 October 2014 (paragraphs 2.10, 2.11 and Figure 3).

How the error happened

**6 The Department's process for converting people's benefits to ESA did not reflect its own legislation.** Social security legislation from 2010 obliged the Department to check people's entitlement to both income-related ESA and contribution-based ESA, but in practice the Department did not always do this. The Department told us it wanted to avoid delaying the transfer process, reduce administration costs and prevent breaks in payment for claimants. It could not provide evidence that it had carried out any analysis at the time to assess the legal risks involved, or that senior managers had reviewed any such analysis (paragraphs 2.3 to 2.5).

How the error was identified and acted on

**7 The Department did not recognise the issue as systemic until 2014.**

It issued advice on the correct process to its staff in 2013, indicating that a problem was known to exist, but it does not have a record of how many times the issue was raised. The Department's fraud and error statistics team identified the error as a major cause of ESA underpayments when it was preparing the Department's 2013-14 financial year fraud and error statistics. In April 2014, the Department agreed to classify these cases as official error (paragraphs 3.2 to 3.4).

**8 In June 2014, the Department issued new guidance designed to prevent further errors occurring but did not take steps to assess existing cases.**

The Department published guidance for decision-makers on its intranet. The Department later updated its formal guidance in February 2015 (paragraph 3.5).

**9 The Department's guidance improved the process for people in the ESA 'support group' for those with the most limiting illnesses and disabilities.** However, the revised guidance did not cover people in the work-related activity group (who are required to undertake activity such as training or CV skills courses as a condition of their benefit). Although this group is less likely to be eligible for premiums, some will qualify. The Department has now committed to reviewing an additional 6,000 cases in response to our findings about the limits of its guidance (paragraph 3.6).

**10 From June 2014 and throughout 2015, the Department did not address existing errors.** During this time, two key Upper Tribunal cases helped to clarify the law on ESA claims, including conversion cases. The Department did not recognise at the time that the first of these decisions on 21 October 2014 should have triggered a formal exercise to identify people whose legal entitlements might be affected. Similarly, a further decision in June 2015 prompted discussion but no clear action (paragraphs 3.7 to 3.10 and Figures 3 and 9).

**11 From May 2016, the Department's fraud and error team prompted the Department to take action.** Following production of the 2015-16 fraud and error statistics in May 2016, the Department's fraud and error strategy and policy team identified an ongoing and significant issue with underpayment of ESA premiums. Their escalation of the issue to the Department's senior management led to an options paper in December 2016. This recommended that the Department should undertake a formal exercise to identify the people affected and provide redress. However, in the first briefing to ministers on this issue in February 2017, the Department recommended undertaking further analysis and seeking further legal advice, while reserving its position on the potential response (paragraphs 3.11 to 3.13).

**12 In July 2017, the Department recognised that it had a legal responsibility to identify the people affected and developed a response.** The Department first undertook an exercise to review a sample of 1,000 cases and has paid arrears where they were due in those cases. Using the information it gathered through this exercise, it has developed a detailed plan to pay people affected by April 2019 (paragraphs 2.17, 2.18 and 3.14).

### Lessons the Department has learned

**13 The Department undertook two internal reviews in late 2017 to identify lessons.** The first, led by a senior government lawyer and member of the Department's executive team, concluded that a stronger grasp of the Department's legal obligations and risks would have supported better-informed discussions in 2014. It recommended that decisions involving legal risk should be made by sufficiently senior managers. The second review, undertaken by the Department's financial controller, concluded that the Department's finance staff could have been notified about the error more quickly so that they could understand the implications for the Department's financial reporting and its budget once the Department had begun to address the issue in late 2016 and July 2017 (paragraphs 3.15, 3.16 and Figure 9).