



House of Commons  
Committee of Public Accounts

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# Employment and Support Allowance

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**Fifty-Fifth Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## Summary

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Employment and Support Allowance is supposed to help those in need. Yet a major error by the Department for Work and Pensions has resulted in an estimated 70,000 people being underpaid for years. Those affected have lost out on an average of £5,000 each. It is appalling that over 20,000 of those most in need are owed around £11,500 and some as much as £20,000. This unacceptable and entirely avoidable situation stems from multiple failures on the part of the Department. It failed to design a process that reflected its own legislation. It failed to subject that process to proper scrutiny. It failed to listen to its own staff, claimants, or external stakeholders and experts who told it things were going wrong and that it needed to slow down. And it failed to act even when it was painfully obvious that it was underpaying a significant number of people, taking over six years to take the necessary corrective action.

The Department is now finally paying arrears but it is only paying claimants some of the benefit they have missed out on. It is not planning to pay any compensation to reflect the lost value of passported benefits such as NHS prescriptions, dentistry treatment and free school meals.

There is clearly much more to be done to right this wrong. We encourage the Department to act swiftly, decisively and comprehensively to address the harm caused by this mistake and, more broadly, to give much greater priority to correcting benefit underpayments to vulnerable people.

## Introduction

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Employment and Support Allowance (ESA) is a benefit that the Department for Work and Pensions (the Department) pays to people who have limited capability to work owing to disability or illness. In 2016–17, the Department paid out around £15 billion in ESA to approximately 2.4 million people. In 2011, the Department began reassessing people who were claiming older-style benefits such as Incapacity Benefit and transferring those eligible to ESA. In November 2017, the media reported that around 70,000 people who had been transferred to ESA had been underpaid because they had been awarded ESA based on their National Insurance contributions only, when they might also have been entitled to ESA on income grounds and extra premium payments. The Department announced on 14 December 2017 that it had established a special team to contact the people affected and pay back the money they are owed. It expects to pay around £340 million in arrears by April 2019.

## Conclusions and recommendations

1. **The Department's arrangements for transferring people to ESA were fundamentally flawed and implemented without basic checks.** The Department did not consider all the risks of transferring claimants from their old incapacity benefits to ESA. It did not seek legal advice before starting the exercise to make sure that the administrative process it planned was compliant with its own regulations. This woeful omission was made worse by the failure of the Department's senior-level management to sign off the arrangements. The pilot exercise for the process, a good idea in principle, was demonstrably inadequate because the error was not picked up. The Department's implementation of the conversion process was subsequently rushed, despite advice from experts such as the Social Security Advisory Committee that the Department should delay and take stock. As a result, some 70,000 vulnerable people were underpaid for years, losing out on an average of £5,000 each as a result. Over 20,000 of those most in need are owed around £11,500 and some as much as £20,000. The Department now accepts that it got the process wrong and has apologised for the errors.

**Recommendation:** *The Department should identify lessons learned from this error and write to the Committee by the end of October 2018 with details of the concrete actions it is taking to ensure mistakes in converting benefits are not repeated, especially in the roll out of Universal Credit.*

2. **The Department's lack of urgency in taking six years to start to address the error indicates its culture of indifference to underpayments.** Over a period of several years the Department failed to act on information and intelligence from its own front line that the ESA transfer process was not working correctly. The Department acknowledged the error in ESA payments in its published fraud and error statistics in 2014, but front-line staff knew about the issue at least as early as 2013. Once the errors came to light, some in the Department tried to classify them as the claimant's fault. It later accepted that this was wrong and accepted that the mistake was its fault in April 2014. In June 2014 it issued new guidance to correct the process for new cases but did not act to put right existing underpayments. Instead, it waited for the outcome of Tribunal judgements, on which it also took no action. It was the Department's Fraud and Error Team that again escalated the issue to senior management in November 2016. The Department then took a further eight months before commissioning a team to begin identifying and repaying people affected, and only then following advice that it had a legal responsibility to act.

**Recommendation:** *The Department should, by the end of October 2018, write to update us on the additional changes it has put in place to address a management culture which does not proactively and systematically act on intelligence from its front line and fully address mistakes when they first occur.*

3. **The Department's inertia in dealing with ESA payments was compounded by a lack of willingness to listen to experts and stakeholders.** The Department could have acted to correct the process of transferring people to ESA more quickly had it listened more closely to what organisations that represent benefits claimants told it about the extent and systemic nature of the error. The National Association for Welfare Rights Advisers and the Disability Benefits Consortium told us that its

members had realised there was a systemic problem with the Department's transfer process in early 2014 and that NAWRA had written to the Department to highlight the issue in July 2014. They also told us that attempts more broadly to engage with the Department can be frustrated by a lack of engagement or from DWP centrally, and that the Department sometimes responds defensively to organisations raising legitimate concerns. The Department told us that it is now prioritising improving how it works with stakeholders to help prevent this issue from occurring in future.

**Recommendation:** *The Department should, by the end of October 2018, write to us with details of how it will improve its processes for gathering and acting on concerns raised by stakeholders and how it will routinely measure and report its progress on this.*

4. **The Department has not assessed how much money in total claimants have missed out on.** The Department told us that it is currently working on paying arrears to people affected and is aiming for this to be complete by April 2019. The amount owed to each claimant varies according to their circumstances but the average is expected to be £5,000. Some are owed much more, with one in five being owed £11,000 and some as much as £20,000. The Department is working on the basis it will only pay back money claimants are owed after 21 October 2014 and asserted that social security legislation prevents it from paying back underpayments built up before this date. This cut-off is currently subject to legal challenge. If the Department's legal position is confirmed, claimants will miss out on an estimated £100 to £150 million in benefits. Regardless of the ongoing legal case, we were not convinced that the Department's response goes far enough in ensuring that those in need are properly reimbursed. The Department has not assessed how much money claimants have lost in "passported" benefits that they might have been entitled to had they been awarded means-tested ESA, such as free prescriptions, help with dentistry costs or free school meals. The Department has chosen not to provide compensation for its slow response, insisting that it does not pay "blanket compensation". The Department cited concerns for taxpayer's money and the principles of Managing Public Money as the reason for this. However, Managing Public Money specifically provides for remedies and compensation for loss caused by maladministration and service failure.

**Recommendation:** *The Department should calculate the total amount of money claimants have missed out on, including passported benefits, and report back to the Committee by end October 2018 on what it will do to ensure claimants receive appropriate remedies in line with Managing Public Money.*

5. **The Department's abysmal communication with claimants exacerbated the scale and impact of its error.** It is the Department's responsibility to set the rules covering benefit claims and entitlement, and to communicate these clearly to applicants and claimants. How well it does this will affect claimants' ability to claim the benefits that they are entitled to. The Disability Benefits consortium and NAWRA confirmed our experience as Members of Parliament representing our constituents, which is that the Department's communications with claimants are at times incomprehensible. We welcome the Accounting Officer's frank admission that even he does not understand all the letters his Department sends to claimants. In the case of transferring claimants from the old incapacity benefits to ESA, the



Department issued forms to claimants that did not make clear that claimants could be substantially better off if they were also entitled to ESA on income grounds. Without this information, there is no reason why claimants would necessarily have known why it was important to contact the Department about their benefits.

**Recommendation:** *The Department should review urgently: the clarity; accessibility; simplicity; and ease of reading of all its letters to claimants and report back to the committee by the end of November 2018 on the results and what steps it has taken to improve them.*

6. **We are still not convinced that the Department is serious about reducing the £1.7 billion underpayments claimants miss out on each year.** The Department asserts that it prioritises addressing underpayments but this is not supported by the evidence of serious underpayments within ESA. Our constituents and their representatives continue to tell us that when claimants are underpaid, the Department is slow to write to claimants to let them know and correct its mistakes. In comparison, where claimants are overpaid, the Department writes to claimants to inform them of this much more quickly. The Department's current target is that underpayments should be no more than 0.9% of total benefit expenditure. This lacks ambition and amounts to a continuation of the status quo as it matches the level of underpayments in previous years. It does not challenge the Department to improve, nor does it reflect the number of real people's lives affected. We were concerned that other similar significant errors are potentially being made within other benefits meaning that large numbers of vulnerable people could be similarly underpaid. The lack of a target to reduce underpayments significantly alongside a lack of information on the impact of underpayments on claimants' lives makes it more likely that the Department remains complacent and that the real impact of underpayments continues to be hidden from view.

**Recommendation:** *The Department should, by the end of November 2018:*

- *publish statistics on how many claimants are affected by over and under payments;*
- *set and publish a realistic and more stretching target to significantly reduce the level of underpayments; and*
- *write to the committee with a plan setting out how it will achieve its new target over the next three years.*

# 1 The Department's management of the error

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1. On the basis of a report by the Comptroller and Auditor General, we took evidence from the Department for Work and Pensions on the errors it made in its administration of Employment Support Allowance.<sup>1</sup> We also heard from the National Association of Welfare Rights Advisers (NAWRA) and the Disability Benefit Consortium.

2. Employment and Support Allowance (ESA) is a benefit that the Department pays to people who have limited capability to work because of their disability or health problems. There are two main types of ESA:

- contribution-based, which is based on the National Insurance contributions previously paid by claimants; and
- income-related, which is a means-tested benefit. Income-related ESA can be paid on its own or as a top-up to contribution-based ESA.

3. Extra payments, called premiums, are available for claimants who are eligible for income-related benefits. These can significantly increase the amount of benefits paid.

4. In 2011, the Department began transferring people from older benefits, such as Incapacity Benefit, to Employment and Support Allowance. The Department's legislation and related regulations required it to assess each individual case and award what would have been payable had the individual made a new claim for ESA.<sup>2</sup> In practice, the Department followed a different process and assumed that people who had been receiving means-tested benefits would continue to do so and those who had been receiving contribution-based benefits would also continue to do so.<sup>3</sup> This meant that an estimated 70,000 people were awarded only contribution-based ESA when they might also have been entitled to means-tested ESA. As a result some claimants missed out on premium payments which are only available to those in receipt of means-tested benefits.<sup>4</sup> Around 70,000 people have been underpaid an average of £5,000 each. The Department estimates that 20,000 of these will be owed around £11,500 and some as much as £20,000 each.<sup>5</sup>

## The cause of the error

5. The Department did not seek legal advice to make sure that the administrative process it planned complied with its own regulations before starting to transfer claimants to ESA.<sup>6</sup> It told us that its internal review of the process, conducted in late 2017, found that although its policy and operational staff had undertaken a lot of work to design the process, there was no evidence they had sought or received advice from the Department's legal staff. The Department accepted that this was wrong and should not have happened. The Department explained that it had amended its procedures to ensure that appropriate

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1 Report by the Comptroller and Auditor General, [Errors in Employment and Support Allowance](#), Session 2017–19, HC 837, 21 May 2018

2 [C&AG's Report](#), para 2.3

3 Q1, [C&AG's Report](#), para 2.3

4 Qq 47–48

5 [C&AG's Report](#), para 2.14

6 Q 50

legal advice is taken at all times to stop this from happening in the future on other benefits, such as Universal Credit.<sup>7</sup> We asked the Department whether it had identified any other examples where legal advice had not been sought. The Department could not confirm whether it had checked this.<sup>8</sup> The Department's internal review also found no evidence that its senior management had signed off the transfer process its more junior staff had designed. The Department told us that it was confident that a similar mistake would not happen in the future because it had put in place systems and checks to make sure that new operational processes are formally signed off by a strict list of people that includes a senior official and Government lawyers.<sup>9</sup>

6. The Department asserted that it had designed the process for transferring claimants to ESA to reduce the burden on claimants. It explained that it did not want to impose further burden on claimants by asking them for information on their income when they had already been asked to go through a new work capability assessment. The Department conceded that this approach was wrong. The Department also told us that the processes it had put in place to test the roll out of ESA, including its own pilot exercise, did not identify the subsequent error in transferring people's claims to ESA correctly.<sup>10</sup> Nevertheless, experts such as the Social Security Advisory Committee had said that the Department should delay the process of transferring people onto ESA, to take stock and ensure that arrangements were working but the Department did not act on that advice.<sup>11</sup> In response, the Department said that in its view the Social Security Advisory Committee had not raised this specific error in payments as a reason not to carry on and that it had instead wanted to "move on" and make progress and avoid unnecessary delay in transferring people to ESA.<sup>12</sup>

### A lack of urgency in tackling the error

7. The Department has taken six years to start to correct this underpayment of people's benefits.<sup>13</sup> Front line staff in the Department had raised the error in transferring claimants to ESA at least as early as 2013 because the Department had responded by issuing advice to its benefit decision-makers recording the correct process for further transfers in June of that year.<sup>14</sup> The Department acknowledged there was a more general problem with underpayments in ESA, stemming from errors in the transfer process, in its annual statistics on the level of fraud and error in the benefits system for the 2013–14 financial year, published in May 2014. In preparing these statistics, the Department took a representative sample of ESA benefit payments and estimated the value of benefits overpaid and underpaid by its staff and found that premiums on claims were regularly being underpaid. At first, the Department tried to claim that this error was the fault of claimants.<sup>15</sup> The Department later admitted this was incorrect when an internal arbitration panel decided in April 2014 that not assessing entitlement to income-related benefit premiums on transferring claims to ESA was the Department's mistake.<sup>16</sup> In June 2014, the Department issued further

7 Qq 50–51

8 Qq 59–60

9 Q 131, [C&AG's Report](#), para 2.5

10 Qq 47–49, 57–58

11 [C&AG's Report](#), para 2.5

12 Q 49, 56

13 Qq 55, 117, [C&AG's Report](#), para 3.1

14 [C&AG's Report](#), para 3.2; NAWRA ([ESA0006](#))

15 [C&AG's Report](#), paras 3.3–3.4

16 Qq 22, 54, 76

guidance to its decision makers on the correct process for dealing with new cases but did not take action to address the stock of cases that had been dealt with incorrectly, which had already built up.<sup>17</sup>

8. If claimants disagree with the outcome of the Department's decisions on their ESA claim, they can ask for it to be reconsidered by the Department. If the claimant disagrees with the decision reached in that reconsideration, they can appeal to a First-Tier Tribunal. On points of law, further appeals to the Upper Tribunal may be possible.<sup>18</sup> Upper Tribunal judgements can have important and wider implications for the Department's interpretation of the legislation and regulations that guide the processes it uses to administer benefits. The Department told us that between the start of 2014 and June 2015 it had been waiting for Upper Tribunal decisions on two particular cases that, in its view, would clarify important points of law relating to ESA.<sup>19</sup> These were decided in October 2014 and June 2015. In the first, the judge decided that there was no legal requirement to make separate claims for the two elements of ESA (contribution-based and income-related) because ESA is a single benefit. In the second, the judge decided that the Department should consider both contribution-based and income-related elements of ESA when converting claims to ESA and if it failed to do this, then it needed to correct what should be viewed as its mistake ('official error').<sup>20</sup>

9. These cases had a significant bearing on the Department's eventual response to its error in transferring people's benefits claims to ESA, but their significance was not fully recognised at the time decisions were made.<sup>21</sup> The Department told us that its internal review had concluded that it had been correct to wait for results of the June 2015 Upper Tribunal decision but it acknowledged that it still took no action to address historic underpayments after this decision. The Department conceded that it had been too slow to act.<sup>22</sup> We were not convinced by the Department's argument that it needed to delay dealing with historic cases of underpayment until the law had been clarified by the outcome of the case decided in June 2015. As NAWRA pointed out, the Department had already recognised its mistake in its statistical bulletin on fraud and error in May 2014 following internal arbitration on the matter in April 2014.<sup>23</sup> NAWRA also said that where it had raised individual cases of this mistake with the Department, some claimants had received arrears payments back to the date when they were transferred to ESA.<sup>24</sup>

10. The Department's Fraud and Error Team began to take further the issue of addressing historic errors in May 2016. Following their analysis, they escalated the matter to the Department's senior management in November 2016. The Department then spent several months exploring the extent of the problem, telling us that it felt it needed clear legal advice on what its liability was, what people were entitled to and what it needed to do. The

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17 Qq 54–55

18 [C&AG's Report](#), para 1.7

19 Q 72

20 [C&AG's Report](#), figure 3

21 [C&AG's Report](#), para 3.7

22 Qq 72–74

23 Qq 22, 66–68

24 Qq 29, 78–79

Department told us that it was only in July 2017, after it had received legal advice, that it was clear what it needed to do next.<sup>25</sup> It commissioned a team in August 2017 to begin contacting a small number of those affected and make repayments.<sup>26</sup>

### Failing to draw on external expertise

11. The National Association of Welfare Rights Advisors told us that its members started identifying errors with ESA payments in 2013 or 2014, and that the extent of the errors meant that it realised the problem was systemic in early 2014. NAWRA told us that it first raised the issue of underpayments formally with the Department in July 2014.<sup>27</sup> NAWRA told us in written evidence that some members of the online Rightsnet forum had pursued individual cases with front-line Departmental officials from 2011.<sup>28</sup> The Department's revised guidance to its decision makers, issued in June 2014 for all new transfers to ESA, did not fully address early concerns raised by external organisations because it was not accompanied by action to refund underpayments for all those affected.<sup>29</sup>

12. NAWRA and the Disability Benefits Consortium told us that, more generally, the Department's attitude towards external organisations that attempt to raise what they consider to be legitimate concerns can be unconstructive. NAWRA and the Disability Benefits Consortium told us that while their engagement with the Department's front line staff can be positive, those front-line staff can appear to face a Departmental "brick wall" when trying to address stakeholder concerns.<sup>30</sup> Despite the Department establishing forums to consult with external organisations, the Disability Benefits Consortium and NAWRA said that these arrangements are not always used effectively<sup>31</sup>. NAWRA told us that the Department's central teams can be less than helpful in its engagement with stakeholders. For example it told us that it had recently received a letter from a senior Departmental official accusing NAWRA of "scaremongering" for raising concerns about the migration of claimants from ESA to Universal Credit.<sup>32</sup> We were encouraged to hear that working better with stakeholders is one of the new Accounting Officer's four senior management priorities for his Department.<sup>33</sup>

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25 Qq 68, 72, 78, [C&AG's Report](#), paras 3.11–3.12

26 Q 86, [C&AG's Report](#), para 3.14

27 Qq 3–6

28 Qq 1–7, NAWRA ([ESA0006](#))

29 Qq 54–55

30 Qq 12–16

31 Qq 16–17

32 Q 13

33 Q 62

## 2 The impact of the error on claimants and the taxpayer

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### Arrears and compensation

13. The Department told us it expects to pay a total of £340 million in arrears and for ESA payments to increase by £680 million by 2022–23 as a result of correcting its mistake. The Department estimates that it will pay around £5,000 per person in arrears to people affected by its error. However, over 20,000 of those most in need are owed around £11,500 and some as much as £20,000.<sup>34</sup>

14. This is not, however, the total amount of ESA the Department has underpaid. The Department intends to limit the arrears it pays claimants to the value of underpayments they have incurred since 21 October 2014, which it believes to be the extent of claimants' legal entitlement.<sup>35</sup> Under Section 27 of the 1998 Social Security Act, when the Upper Tribunal or court considers an appeal under social security legislation and establishes the relevant points of law, the law as established takes effect from the date of the court's decision.<sup>36</sup> The Department asserted that the Upper Tribunal decision on 21 October 2014 established relevant law and, therefore, creates a statutory bar to payment of arrears before this date.<sup>37</sup> NAWRA questioned the Department's logic given that the Department had already recognised its mistake in April 2014, some six months before the legal case in question was decided.<sup>38</sup> An outstanding appeal and separate judicial review will test the Department's interpretation of the law. If the Department's interpretation of the law is confirmed, claimants will miss out on an estimated £100 to £150 million in underpaid benefits relating to the period before October 2014.<sup>39</sup>

15. The Department aims to pay people their arrears by April 2019. It told us that it set up a dedicated team of 400 staff in August 2017.<sup>40</sup> The Department told us that expected this exercise to cost £14 million and that it is hopeful that it will not impact negatively on the service it provides to other ESA claimants.<sup>41</sup> The Department explained that it is still developing some aspects of its process for contacting people and making payments and it is yet to finalise arrangements for contacting the next of kin of claimants who have died since the error took place.<sup>42</sup> We asked the Department why it had taken so long to develop its procedures for claimants who have died. It told us that it wanted its approach to be as compassionate as possible. It also explained that getting in touch with people who do not have a next of kin identified on its system can be challenging.<sup>43</sup> We were concerned that the Department has also yet to guarantee that large arrears payments will not count against claimants as part of any future claims for means-tested benefits. NAWRA explained that arrears payments which result in claimants having over £6,000 in

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34 Q 122, [C&AG's Report](#), para 2.14

35 Qq 100–101

36 [C&AG's Report](#), para 2.10

37 Qq 72, 78, 93

38 Q 22

39 Q 122

40 Q 86

41 Qq 111–113

42 Qq 106–109

43 Q 109



capital could affect their eligibility for means-tested benefits in the future simply because the Department had paid their earlier entitlement as a belated lump sum and because of the type of error in this case.<sup>44</sup>

16. The Department has also not assessed how much in total claimants have missed out on because of the broader implications of its error.<sup>45</sup> As well as the direct financial impact of being underpaid ESA, some people are also entitled to additional support, such as free prescriptions, help with dentistry costs and free school meals because they receive means-tested benefits from the Department.<sup>46</sup> The Department has not assessed the amount that claimants would have received through these passported benefits had it paid them the correct type of ESA.<sup>47</sup> NAWRA told us that some people have also been penalised by government bodies such as the NHS Business Services Authority for claiming passported benefits they thought they were entitled to; for example: receiving fines for claiming free prescriptions.<sup>48</sup>

17. We asked the Department whether it had considered paying claimants additional compensation for losses incurred because of its mistake.<sup>49</sup> NAWRA asserted that people affected by the Department's error should receive financial redress in addition to being paid their arrears. The Department told us that it does not intend to pay any additional money to claimants beyond paying them their arrears. It told us that it does not pay "blanket compensation" in a situation where a court has told it to interpret a piece of legislation in a particular way and that it has made no financial provision for this.<sup>50</sup>

18. The Department asserted that its decision not to pay claimants compensation was based on its concern that this could set a precedent which could put taxpayers' money at risk. The Department explained that it had based this view on the principles set out in the HM Treasury Guidance, *Managing Public Money*, which sets out how Departments should use public money. We were not convinced by the Department's assertion given that the Department has acknowledged that it made an error.<sup>51</sup> We note that on the issue of remedies and compensation, *Managing Public Money* (Annex 4.14) specifically states that: "If their services have been found deficient, public sector organisations should consider whether to provide remedies to people or firms who complain."<sup>52</sup> It also states that: "when public sector organisations have caused injustice or hardship because of maladministration or service failure, they should consider providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly."<sup>53</sup>

## Communications with claimants

19. The Department issued letters and forms to claimants transferring from old incapacity benefits telling them of their entitlement and inviting those who thought they might be

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44 Q34

45 Qq 90, 101

46 [C&AG's Report](#), para 2.15

47 Qq 26, 100

48 Qq 8, 27

49 Qq 22, 133–134

50 Qq 101–102, 132–135

51 Qq 97–99

52 HM Treasury: [Managing Public Money](#), Annex 4.14 (Remedy)

53 HM Treasury: [Managing Public Money](#), Annex 4.144

entitled to make a claim for income-related ESA. NAWRA told us that the quality of letters the Department sent to ESA claimants was “shocking”.<sup>54</sup> The Department told us that its attempts to contact claimants had had some effect, as around 130,000 claimants who had been placed on contribution-based ESA initially subsequently also claimed income-related ESA.<sup>55</sup> However, the Department accepted that its letters did not make clear that people could be substantially better off if they were also entitled to ESA on income grounds. Therefore, the advantages to claimants of providing the additional information needed for an income-related ESA claim may not have been clear.<sup>56</sup> NAWRA also told us that many of the people affected by the Department’s error may not yet be aware of its significance for them despite media coverage.<sup>57</sup>

20. This poor standard of communication is not an isolated example. As Members of Parliament, we have had experience of attempting to decipher letters sent to claimants by the Department.<sup>58</sup> NAWRA also provided us with an example of an anonymised letter sent to an ESA claimant, which was supposed to notify the claimant of a change in their benefit rate, but which did not say what this would be.<sup>59</sup> The Department’s Accounting Officer admitted that even he did not understand all the letters his Department sends to claimants, citing an example of a confusing Universal Credit letter he had seen on a recent visit to a Jobcentre.<sup>60</sup> We welcomed the Department’s acknowledgment that it needs to improve its communications.<sup>61</sup>

## Tackling benefit underpayments and reducing fraud and error

21. The Department has set a target that it should underpay benefit claimants by no more than 0.9% of total spending on benefits.<sup>62</sup> It failed to meet this and estimated that it underpaid claimants by 1% of benefit expenditure, equivalent to £1.7 billion.<sup>63</sup> The level of underpayment varies across different types of benefit. The level of underpayment within ESA was 2.6% in 2017–18, compared to 0% or 0.1% for the state pension.<sup>64</sup> We questioned whether the Department’s target is challenging enough, given that even had it met its target to reduce the level of underpayments 0.9%, this would not represent a significant improvement on performance in previous years. Underpayments were 0.8% of benefit expenditure in 2011–12.<sup>65</sup>

22. The Department agreed that the level of underpayments should be lower but argued that it also had to consider the costs of pursuing these cases. It could not tell us what level of underpayments or overpayments would be the optimum balance between awarding claimants the correct amount of money and the costs to the Department of identifying and correcting errors.<sup>66</sup> The Department stated that it had recently strengthened its response to

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54 Qq 3, 48

55 Qq 48, 49

56 Q 104

57 Q 8

58 Q 71

59 NAWRA ([ESA0006](#))

60 Qq 69–71

61 Q 69

62 [Department for Work and Pensions](#), 31 January 2017

63 Department for Work and Pensions, [Fraud and Error in the Benefit System: 2017–18 Preliminary Estimates](#), 17 May 2018

64 Qq 115, 119

65 Q 119

66 Qq 126–128



fraud and error by reorganising its fraud and error teams under a single director, creating a ‘heat-map’ analysis of the causes of fraud and error and by recognising the importance of prevention through good design of benefit systems and better use of data.<sup>67</sup>

23. We were surprised that the Department could not tell us in its oral evidence how many people were affected by the £1.7 billion of underpayments in 2017–18.<sup>68</sup> Our experience as Members of Parliament and what we heard from NAWRA tells us that overpayments of benefit are pursued more quickly and vigorously than underpayments where the Department is slower to correct its mistakes.<sup>69</sup> The Department told us that one of the main lessons from its underpayment of ESA has been to get better at drawing in legal advice from the start and understanding its legal obligations.<sup>70</sup> Our view is that this continues to underplay its moral obligation to act promptly and comprehensively to make good its mistakes when they occur.<sup>71</sup>

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67 Qq 114–115

68 Qq 120–121

69 Qq 12, 71

70 Q 51

71 Qq 68, 82, 114, 117

## Formal minutes

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**Wednesday 11 July 2018**

Members present:

Meg Hillier, in the Chair

Bim Afolami	Layla Moran
Sir Geoffrey Clifton-Brown	Anne Marie Morris
Caroline Flint	Bridget Phillipson
Luke Graham	Gareth Snell
Gillian Keegan	

Draft Report (*Employment and Support Allowance*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Introduction agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

*Resolved*, That the Report be the Fifty-fifth of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Monday 16 July 2018 at 3.30pm]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Monday 21 May 2018

*Question number*

**Geoff Fimister**, Policy Co-Chair, Disability Benefits Consortium and **Daphne Hall**, Vice-Chair, National Association of Welfare Rights Advisers [Q1–34](#)

**Peter Schofield**, Permanent Secretary, **Emma Haddad**, Director, Working Age Benefits, and **James Wolfe**, Director for Disability Employment and Support, Department for Work and Pensions [Q35–158](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

ESA numbers are generated by the evidence processing system and so may not be complete.

- 1 Department for Work and Pensions ([ESA0009](#))
- 2 Law Centre (NI) ([ESA0007](#))
- 3 Mark Lucas ([ESA0008](#))
- 4 NAWRA ([ESA0006](#))

## List of Reports from the Committee during the current session

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	Tackling online VAT fraud and error	HC 312 (Cm 9549)
Second Report	Brexit and the future of Customs	HC 401 (Cm 9565)
Third Report	Hinkley Point C	HC 393 (Cm 9565)
Fourth Report	Clinical correspondence handling at NHS Shared Business Services	HC 396 (Cm 9575)
Fifth Report	Managing the costs of clinical negligence in hospital trusts	HC 397 (Cm 9575)
Sixth Report	The growing threat of online fraud	HC 399 (Cm 9575)
Seventh Report	Brexit and the UK border	HC 558 (Cm 9575)
Eighth Report	Mental health in prisons	HC 400 (Cm 9575) (Cm 9596)
Ninth Report	Sheffield to Rotherham tram-trains	HC 453 (Cm 9575)
Tenth Report	High Speed 2 Annual Report and Accounts	HC 454 (Cm 9575)
Eleventh Report	Homeless households	HC 462 (Cm 9575) (Cm 9618)
Twelfth Report	HMRC's Performance in 2016–17	HC 456 (Cm 9596)
Thirteenth Report	NHS continuing healthcare funding	HC 455 (Cm 9596)
Fourteenth Report	Delivering Carrier Strike	HC 394 (Cm 9596)
Fifteenth Report	Offender-monitoring tags	HC 458 (Cm 9596)
Sixteenth Report	Government borrowing and the Whole of Government Accounts	HC 463 (Cm 9596)
Seventeenth Report	Retaining and developing the teaching workforce	HC 460 (Cm 9596)

Eighteenth Report	Exiting the European Union	HC 467 (Cm 9596)
Nineteenth Report	Excess Votes 2016–17	HC 806 (Cm 9596)
Twentieth Report	Update on the Thameslink Programme	HC 466 (Cm 9618)
Twenty-First Report	The Nuclear Decommissioning Authority's Magnox	HC 461 (Cm 9618)
Twenty-Second Report	The monitoring, inspection and funding of Learndirect Ltd.	HC 875 (Cm 9618)
Twenty-Third Report	Alternative Higher Education Providers	HC 736 (Cm 9618)
Twenty-Fourth Report	Care Quality Commission: regulating health and social care	HC 468 (Cm 9618)
Twenty-Fifth Report	The sale of the Green Investment Bank	HC 468 (Cm 9618)
Twenty-Sixth Report	Governance and departmental oversight of the Greater Cambridge Greater Peterborough Local Enterprise Partnership	HC 896 (Cm 9618)
Twenty-Seventh Report	Government contracts for Community Rehabilitation Companies	HC 897 (Cm 9618)
Twenty-Eighth Report	Ministry of Defence: Acquisition and support of defence equipment	HC 724 (Cm 9618)
Twenty-Ninth Report	Sustainability and transformation in the NHS	HC 793 (Cm 9618)
Thirtieth Report	Academy schools' finances	HC 760 (Cm 9618)
Thirty-First Report	The future of the National Lottery	HC 898 (Cm 9643)
Thirty-Second Report	Cyber-attack on the NHS	HC 787 (Cm 9643)
Thirty-Third Report	Research and Development funding across government	HC 668 (Cm 9643)
Thirty-Fourth Report	Exiting the European Union: The Department for Business, Energy and Industrial Strategy	HC 687 (Cm 9643)
Thirty-Fifth Report	Rail franchising in the UK	HC 689 (Cm 9643)
Thirty-Sixth Report	Reducing modern slavery	HC 886 (Cm 9643)
Thirty-Seventh Report	Exiting the European Union: The Department for Environment, Food & Rural Affairs and the Department for International Trade	HC 699 (Cm 9643)
Thirty-Eighth Report	The adult social care workforce in England	HC 690
Thirty-Ninth Report	The Defence Equipment Plan 2017–2027	HC 880

Fortieth Report	Renewable Heat Incentive in Great Britain	HC 696
Forty-First Report	Government risk assessments relating to Carillion	HC 1045
Forty-Second Report	Modernising the Disclosure and Barring Service	HC 695
Forty-Third Report	Clinical correspondence handling in the NHS	HC 929
Forty-Fourth Report	Reducing emergency admissions	HC 795
Forty-Fifth Report	The higher education market	HC 693
Forty-Sixth Report	Private Finance Initiatives	HC 894
Forty-Seventh Report	Delivering STEM skills for the economy	HC 691
Forty-Eighth Report	Exiting the EU: The financial settlement	HC 973
Forty-Ninth Report	Progress in tackling online VAT fraud	HC 1304
Fiftieth Report	Financial sustainability of local authorities	HC 970
Fifty-First Report	BBC commercial activities	HC 670
Fifty-Second Report	Converting schools to academies	HC 697
Fifty-Third Report	Ministry of Defence's contract with Annington Property Limited	HC 974
Fifty-Fourth Report	Visit to Washington DC	HC 1404
First Special Report	Chair of the Public Accounts Committee's Second Annual Report	HC 347
Second Special Report	Third Annual Report of the Chair of the Committee of Public Accounts	HC 1399