**Notes from stakeholder meeting on the trawl of IB to ESA cases incorrectly assessed – 26 February 2018**

This meeting was to look at the process for how DWP contact ESA claimants who were migrated from IB to contributory ESA only (ie no irESA) between 1/1/11 and 31/12/14 of which there about 300,000. DWP’s current view is that they will pay backdating where applicable to 21 October 2014. The people at the meeting were not in a position to discuss whether s27 of the SSA 1998 applied - however, should it later emerge that it doesn’t apply and full backdating should be paid, then they will have information on the system to identify all the people who need extra money.

Key points about the trawl are -

* A pilot of about 1000 cases has been done and they are making some amendments following feedback from this – in particular, not to do a cold call without having written to the claimant first
* They aim to have 400 staff in place by beginning of April and for the whole process to be completed within a year (ie before UC managed migration starts) – the staff are specifically trained and their only work will be this trawl
* They will deal with the identified claimants in batches – they may prioritise to do ones who look most like to be eligible first
* First stage in process is to carry out a scrutiny looking at what data they have and can get from, for example, housing benefit about the claimant on the day they were migrated. If they have evidence that they had a partner working more than 24 hours, or capital over £16,000 then they will deselect them from process as could not have qualified for irESA – these two criteria are the only ones they can use to deselect at this stage
* To all others a warm-up letter is sent (we couldn’t get a copy to take away but it explains a bit about error and that need to assess for income-related ESA) and saying will call within next two weeks. Also there is a short form to fill in if you want to deselect yourself on the basis of capital/ working (24 hours +) partner
* A call is made to any who don’t deselect after about 10 days – ESA 3 can be completed over phone either as part of that call or can agree callback when have had a chance to collect info, or can ask for ESA3 to be sent – see next bullet
* If no response on call, ESA3 is sent with covering letter which again explains what has happened and being assessed for irESA. They have specially designed ESA3s which ask the claimant about their situation from their date of migration onwards or, if the claim has subsequently closed, to the date it closed. Any mention of the WCA has been removed from the ESA3s to avoid claimants thinking it is about that. We also asked that the front of the ESA3s could say ‘we are checking your entitlement for income-related ESA’ as opposed to ‘we are checking whether you are getting the right amount of money’ which could sound like a fraud investigation – they took that away to think about
* The ESA3 is chased twice but if no response a closure letter is sent which also makes it clear that the issue can be looked at again at any time in the future if the claimant wants
* If the claimant is now deceased they will contact a next of kin if they can but they welcome suggestions about how to find out who the appropriate person is if they can’t access it via their own records or other governmental records
* A decision letter is issued after the ESA3 whether or not arrears are paid. The letter says arrears are not counted as capital for 52 weeks. We raised the fact that if over £5,000 they should be ignored to end of award as official error – they said they are still taking legal advice on that
* A specific helpline for the process will be in place from 5 March 2018

Other points –

* I asked if they would make payments under the Financial redress for maladministration process - <https://www.gov.uk/government/publications/compensation-for-poor-service-a-guide-for-dwp-staff> - which says DWP can make special payments where claimant has not been paid statutory entitlement due to official error. They said they have not made a decision on this yet, but I guess claimants would be well advised to put in a request for this in case the argument about full backdating is lost
* I also raised loss of passporting benefits – we suggested they liaise with NHS Business Services Authority to come to some agreement about backdating for prescriptions, dental costs etc and they said they would think about that. They did not have an answer for other losses eg local welfare provision, warm home discount