I am writing on behalf of the above client whose written authorisation is enclosed. Please find enclosed Client’s ESA3 form requesting re-assessment of his ESA claim.

**Backdating request – Enhanced Disability Premium**

We write to request that Client’s income-related ESA, including the Enhanced Disability Premium is backdated to the date of the conversion of Client’s Incapacity Benefit. Client was in receipt of Incapacity Benefit until DATE and from DATE he was in receipt of ESA with the Support Group component. You appear not to have assessed him for the additional amount of income-related ESA, arising from the Enhanced Disability Premium, on his conversion from IB.

We draw your attention to Regulation 8(1) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010 which provides that:

'**Amount of an employment and support allowance on conversion**

8. (1) For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

Step 1
Determine in accordance with Part 1 of the 2007 Act and the 2008 Regulations the amount (if any) of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person–
(a) it had been determined that the person was entitled to an award of an employment and support allowance; and
(b) the assessment phase had ended.

Step 2
Determine in accordance with regulations 9 to 12–
(a) whether the notified person is entitled to a transitional addition; and
(b) if so, the amount of the transitional addition.

Step 3
Aggregate the amounts (if any) which result from Steps 1 and 2.'

We also draw your attention to the Decision Maker’s Guidance, **Chapter 45 - IB, SDA and IS - Claims and reassessment**, Vol 8 Amendment 18 June 2015:

**‘Obtaining information**

45413 The claimant’s duty to disclose information relevant to their existing award of benefit is modified to enable the Secretary of State to require from the claimant information or evidence for the purposes of determining whether that award should be converted to ESA1. *1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 13(a); SS (C&P) Regs, reg 32(1)*

45414 This enables the Secretary of State to establish whether a claimant whose existing award is IB or SDA, and who is not entitled to IS, might be entitled to ESA(IR) as well as ESA(Cont) on conversion.

**Example**

Carlton is entitled to IB of £91.40. During the conversion phase the Secretary of State establishes that he has no other income. Following application of the WCA, Carlton is placed in the support group. On conversion, Carlton is entitled to ESA of £110.50 made up of ESA(Cont) of £96.85 and ESA(IR) of £13.65 (EDP).’

We also draw your attention to the Upper Tribunal case of **[2015] UKUT 342 (AAC)**, where Judge Wright found that:

'Given the unified nature of ESA as described in paragraph 25 above, the determination by the Secretary of State of the amount of ESA to which a person would be entitled on conversion under regulation 8(1) in my judgment must encompass consideration of both the contributory amount and the income-related amount.

Accordingly, whether on the original conversion decision where the support group criteria are met, or revision of an original conversion decision so as to find the support group criteria are met, given the obviousness of the 'better-off' calculation for a person if they are not otherwise disqualified from income-related ESA (e.g. by having too much capital), and ignoring claimant contribution to any error, in my judgment **it will amount to an official error for the conversion decision maker or the revision decision maker not to have considered and investigated whether the claimant qualified for the EDP**.  To talk in terms of a claimant having to apply for or 'claim' the EDP or income-related ESA is, at least in the conversion context, simply wrong and misplaced. **The clear effect of regulation 8(1) of the Existing Awards Regs is to impose a legal duty on the Secretary of State to ascertain and determine whether on conversion the claimant qualifies, inter alia, for the EDP regardless of whether the claimant has made a “claim” for income-related ESA or the EDP**.' (paragraphs 28 and 29, our emphasis)

We therefore believe that Client is entitled to an amount of income-related ESA going back to the date of the conversion of his IB. Please reassess his claim and copy us into your response to our client.

Etc.