



David Gauke MP  
House of Commons  
London DW1A 0AA

Dear Mr Gauke,

**RE: FAILURE TO FOLLOW CORRECT LEGAL PROCEDURES ON  
CONVERSION OF INCAPACITY BENEFIT CLAIMANTS TO EMPLOYMENT  
AND SUPPORT ALLOWANCE. (letter previously sent to Damian Green)**

I am writing on behalf of The National Association of Welfare Rights Advisers (NAWRA) which was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations who provide legal advice on social security and tax credits. NAWRA currently has more than 240 member organisations.

Our members have identified many former Incapacity Benefit/Severe Disablement Allowance claimants who have been migrated to Employment and Support Allowance (ESA), and only been awarded contributory ESA as the Department for Work and Pensions have failed to apply the regulations and their own guidance and undertake a financial assessment to check entitlement to any top up of Income Related ESA.

The DWP guidance states:

*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 ESA 1.*

*1 ESA (TP, HB, CTB) (EA) (No2) Regs, Sch 1, para 13 (a); SS (C&P) Regs, reg 32 (1)*

*45414: 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.*

The legal requirement for conversion decisions from incapacity benefit to ESA to consider entitlement to income-related ESA is confirmed in [\[2015\] UKUT 342 \(AAC\)](#)

The migration process started in March 2011 and we are calling on the Department for Work and Pensions to revisit all claimants nationally where they failed to adhere to the legal requirement and their own guidance and assess them any entitlement to an income related top up.

Many of our members have taken up cases in respect of individual claimants and found that they have been underpaid by thousands of pounds (see [rightsnet discussion thread](#) for more details). This only demonstrates the claimants that have been in a position to obtain advice. There are likely thousands more who have had their benefit incorrectly calculated due to DWP failing to follow the law. NAWRA believes that the DWP is obliged to correct those cases and seeks to ensure that the DWP trawl all cases to pick up any outstanding errors of law.

NAWRA strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members. It is in this vane that we request this piece of work is undertaken to ensure that all claimants receive the correct amount of benefit that is due to them.

We look forward to hearing your response, and the action you will be taking to ensure that any cases where the legislation has not been applied correctly will be picked up and arrears paid.

Yours sincerely,

Daphne Hall

On behalf of NAWRA