

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No: CO/793/2023

BETWEEN:

**THE KING on the application of
WOMEN AGAINST STATE PENSION INEQUALITY LIMITED**

Claimant

-and-

PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN

Defendant

-and-

SECRETARY OF STATE FOR WORK AND PENSIONS AND OTHERS

Interested Parties

[DRAFT] ORDER

UPON the Defendant's investigation into complaints of maladministration against the Department for Work and Pensions ("**DWP**") in relation, *inter alia*, to the DWP's delay in informing women about changes to the age at which State Pension would be payable

AND UPON the Defendant publishing his report, *Women's State Pension age: our findings on the Department for Work and Pensions' communication of changes*, HC 444 on 19 July 2021 finding that the delay amounted to maladministration ("**the Stage 1 Report**")

AND UPON the Defendant completing (but not yet publishing) stage 2 of the investigation report on 8 December 2022 ("**the Stage 2 Report**") as well as sharing for comment a draft version of stage 3 of the investigation report ("**the Draft Stage 3 Report**") based on the Stage 2 Report

AND UPON the Claimant issuing the claim in CO/793/2023 on 2 March 2023 ("**the Claim**")

AND UPON the Defendant agreeing to reconsider the Stage 2 Report and the Draft Stage 3 Report in light of the issues raised by the Claim

AND UPON the Claimant and Defendant agreeing and consenting to the terms of this Order and to the attached statement of reasons ("**the Statement of Reasons**")

It is hereby ORDERED by consent that:

1. The Stage 2 Report is quashed.

2. The Defendant shall reconsider those aspects of the Stage 2 Report referred to in the Statement of Reasons.
3. The Defendant shall pay the Claimant's costs on the standard basis to be assessed if not agreed.
4. There shall be no order for costs in respect of the Interested Parties.

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STATEMENT OF REASONS

Purpose of this statement

1. This document sets out a statement of the matters relied on as justifying the agreed Order that will end the judicial review proceedings. The statement is prepared in accordance with paragraph 24.4.1 of the Administrative Court Guide. The parties agree that the Order and this Statement of Reasons should be made public to inform affected persons and the general public of the reasons for the reconsideration by the Defendant, who is the Parliamentary and Health Service Ombudsman (“**PHSO**”), of Stage 2 of his investigation into complaints relating to the changes made to the State Pension Age for women (“**Stage 2 Report**”).

Factual context

2. The PHSO received complaints that the First Interested Party, the Department for Work and Pensions (“**DWP**”), had failed to provide accurate, adequate and timely information about changes to State Pension age for women. On 19 July 2021, the PHSO published his findings and presented them to Parliament pursuant to section 10(4) of the Parliamentary Commissioner Act 1967: *Women’s State Pension age: our findings on the Department for Work and Pensions’ communication of changes*, HC 444 (“**Stage 1 Report**”).

3. In the Stage 1 Report, the PHSO found that the DWP had committed maladministration in a number of respects. Materially, the PHSO found that the DWP had not acted promptly in writing directly to affected women to tell them about changes to State Pension age. The PHSO found that, had the DWP made a reasonable decision in August 2005 to write to affected women, letters about the effects of the changes to State Pension age would have started to be sent from no later than December 2006, 28 months before the DWP in fact commenced sending letters. The PHSO's conclusion was expressed as follows:

“172. The maladministration led to a delay in DWP writing directly to women about changes in State Pension age. If the maladministration had not happened, DWP would have begun writing to affected women by December 2006 at the latest, 28 months earlier than it did (in April 2009).

173. It follows that affected women should have had at least 28 months' more individual notice of the changes. For women who were not aware of the changes, the opportunity that additional notice would have given them to adjust their retirement plans was lost. The next stage of our investigation will consider the impact that injustice had.”

4. The Stage 1 Report is not challenged in these proceedings and the PHSO will not be reconsidering the findings it records.
5. On 8 December 2022, the PHSO completed and closed the second stage of its investigation and sent members of the Claimant's organisation, whose complaints he was investigating as sample complainants, a final version of the Stage 2 Report. The Stage 2 Report set out the PHSO's findings on whether and what injustice had been caused by the DWP's maladministration, focusing on the facts of six sample complaints. The six sample complainants included “Mrs W” and “Ms E”, two members of the Claimant's organisation. All six have been served as Interested Parties to this claim. The Stage 2 Report has not yet been published, nor has it been laid before Parliament pursuant to section 10 of the Parliamentary Commissioner Act 1967.
6. The PHSO also shared with the Claimant's organisation, others whose complaints he was investigating and some Members of Parliament, a draft of the third stage of the investigation which set out the PHSO's recommendations for remedying injustice (“**Stage 3 Report**”).

The Judicial Review Proceedings

7. The Claimant commenced proceedings challenging parts of the Stage 2 Report. The Claimant's concerns pertain to Part 5 of the Stage 2 Report concerning “Injustice” (in particular, §§254-313 which is summarised in Part 1 at §§15-17). In the Stage 2 Report, the PHSO decided that the assessment of injustice should be approached in the following way: “*Because we know direct mail should have begun by December 2006 at the latest, we consider what would have happened if the DWP had started issuing letters then, and whether an additional 28 months' notice would have meant women avoiding the injustices they claim*” (Stage 2 Report, §265 (emphasis supplied)). The PHSO went on to state that it was more likely than not that, had the maladministration not occurred, letters would have been issued in

phases based on women's dates of birth, which was the approach taken when direct mailing began in April 2009 (§266).

8. In other words, because of the PHSO's finding in the Stage 1 Report that the DWP should have started sending letters at least 28 months earlier than it did, the question whether this caused women injustice was addressed by identifying when the sample complainants were sent letters by the DWP (or, in the case of women such as Mrs W who never had a letter, when women in similar circumstances received one) and asking whether they would have avoided the injustices they claimed to have suffered if the letters had been sent at least 28 months earlier.
9. The Claimant challenged this approach on the ground that it failed to take into account that, as the PHSO recognised at §82 and §300 of the Stage 2 Report, there had been three periods during which the DWP had paused sending letters to affected women which had extended the time period over which letters were sent .
10. On the PHSO's findings, the direct mailing campaign was conducted by DWP from April 2009 to November 2013 (a period totaling 55 months): see Stage 2 Report at §§82-83 and 266. However, 24 of these 55 months were attributable to three pauses in the mailing campaign. By treating the date on which women should have been sent letters by the DWP as 28 months before the date on which letters were in fact sent the Claimant alleged that the PHSO had failed to take into account the fact that if women should have been contacted before one or more pause periods the delay in notifying them of changes to their State Pension would have been greater than 28 months.
11. Thus, the PHSO found that financial injustice had not been caused to the sample complainants, reasoning, *inter alia*, that key decisions relied upon by the sample complainants as demonstrating injustice, such as Mrs W's decision to give up her job in November 2010, had been taken more than 28 months before the DWP in fact sent letters to sample complainants. In Mrs W's case, the PHSO assessed that women in similar circumstances had been sent letters by the DWP in October 2013 and therefore considered that she should have received a letter in March 2011, 28 months before October 2013 but after she had given up her job. However, October 2013 was the 30th month in which the DWP sent letters to affected women and if the DWP had started sending letters in December 2006 and had Mrs W been sent a letter 30 months later, she would have received the letter in June 2009 before she gave up her job.
12. The PHSO accepts that its approach to calculating injustice, as described above, failed sufficiently to consider the potential effect of the pause periods and was legally flawed for that reason.
13. The Stage 2 Report also found that “[t]here is too much we cannot now know about what would have happened if DWP had written to women about the 1995 Pensions Act sooner”. The PHSO concluded: “We therefore cannot say it is more likely than not the financial impacts claimed would have been avoided. But we find that the sample complainants are left not knowing whether they could have been in a different financial position. That uncertainty would not exist if the maladministration had not happened” (Stage 2 Report, §304). This approach was also based in part on the PHSO's approach to assessing how much notice women would have had about the change to State Pension age, as described above, had the maladministration not occurred. The PHSO accepts

that, in light of the matters set out above, this analysis also needs to be reconsidered.

14. Furthermore, although the PHSO recognised that, according to his applicable policies and established approach to injustice, the loss of an opportunity to make a different financial decision is capable of constituting a form of material injustice, the PHSO failed sufficiently to consider whether the sample complainants suffered lost chances as a form of material injustice (finding only that such lost opportunities amounted to a form of emotional distress: “not knowing”).

Quashing and reconsideration

15. The PHSO has recognised that for the reasons given above, part of the Stage 2 Report is legally flawed and must be reconsidered.
16. That reconsideration will focus on §§254-313 of the Stage 2 Report only and any other aspects of the Report (such as Part 1, which summarises the PHSO’s Stage 2 findings) that are affected by any changes that are made. The PHSO accepts that it is appropriate for the Stage 2 Report to be quashed to that extent.
17. The PHSO has also recognised that the Draft Stage 3 Report is based on the Stage 2 Report, and that it will therefore be necessary for that draft report to remain unpublished and to be reconsidered in light of whatever changes are made to the Stage 2 Report. Since that report has not been completed there is no need for a quashing order in respect of it.
18. The PHSO has also agreed to provide his provisional views on the changes to the Stage 2 and draft Stage 3 reports to the parties along with the evidence on which they are based and allow them an opportunity to comment before reaching a further decision.