

# Women's State Pension age: our findings on the Department for Work and Pensions' communication of changes



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# Summary of the complaint and our findings

1. We are investigating complaints that since 1995 DWP has failed to provide accurate, adequate and timely information about changes to the State Pension age for women. This document sets out our findings about the adequacy of DWP's communication. For ease, references to DWP in this document include its predecessor departments as well as its businesses (for example, the Pension Service).

2. We find that between 1995 and 2004, DWP's communication of changes to State Pension age reflected the standards we would expect it to meet. Accurate information about changes to State Pension age was publicly available in leaflets, through DWP's pensions education campaigns, through DWP's agencies and on its website. That reflected those applicable standards.

3. However, DWP's decision making following research reported in 2004 failed to give due weight to relevant considerations. The research recommended information should be 'appropriately targeted'. DWP explored options for targeting information but, having considered the options, what it ended up doing was what it had already done. DWP failed to take adequate account of the need for targeted and individually tailored information or of how likely it was doing the same thing would achieve different results. Despite having identified there was more it could do, it failed to provide the public with as full information as possible. DWP failed to make a reasonable decision about next steps in August 2005 and failed to use feedback to improve service design and delivery. It therefore failed at this point to 'get it right' and 'seek continuous improvement'. That was maladministration.

4. Following research reported in 2006, DWP failed again to 'get it right' and 'seek continuous improvement'. It did not act promptly enough on its November 2006 proposal to write directly to affected women to tell them about changes to State Pension age. And it failed to give due weight to how much time had already been lost since the 1995 Pensions Act. That was also maladministration.

5. We consider that, if DWP had made a reasonable decision in August 2005 and then acted promptly, it would have written to affected women to tell them about changes to their State Pension age by, at the latest, December 2006. This is 28 months earlier than DWP actually wrote to them. It follows that these women should have had at least 28 months' more individual notice of the changes than they got. The opportunity that additional notice would have given them to adjust their retirement plans was lost.

6. This document sets out:
- Our role (including when we cannot investigate and how we make decisions)
  - Background relating to changes in State Pension age for women
  - Evidence we have considered
  - What should have happened - the relevant standards
  - What the Courts have found
  - What did happen
  - Our findings.

## Our role

7. We are an independent complaint handling service for complaints that have not been resolved by UK government departments or the NHS in England. We combine the two statutory roles of Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) and Health Service Commissioner for England (the Health Service Ombudsman). In this case we are acting in our capacity as Parliamentary Ombudsman.

8. The powers of the Parliamentary Ombudsman are set out in the Parliamentary Commissioner Act 1967 (the Act). The Act (s.5(1)) says we may investigate when someone believes they have suffered ‘injustice’ as a result of ‘maladministration’.

9. Maladministration is not defined in the Act, but has been considered by the courts. A 2015 High Court judgment includes that maladministration is a different concept from unlawfulness and will cover ‘bias, neglect, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on’<sup>1</sup>. The judgment underlines that there may be maladministration without unlawfulness, and vice versa.

10. We have discretion to decide how to investigate complaints and to decide what test to apply when making decisions about maladministration. The 2015 judgment says:

‘It is for the Ombudsman to decide and explain what standard he or she is going to apply in determining whether there was maladministration, whether there was a failure to adhere to that standard, and what the consequences are; that standard will not be interfered with by a court unless it reflects an unreasonable approach. However, the court *will* interfere if the Ombudsman fails to apply the standard that they say they are applying.’

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<sup>1</sup> R (Rapp) v The Parliamentary and Health Service Ombudsman [2015] EWHC 1344 (Admin).

## When we cannot investigate

11. The Act (s5.(2)(b)) says we cannot investigate a complaint when a remedy is, or was, available through legal action in the courts or through an appeal to a tribunal - unless it is not reasonable to expect a complainant to resort, or to have resorted, to it.

12. The Court of Appeal has considered what this means with reference to similar provisions applying to the Health Service Ombudsman under s.4(1) of the Health Service Commissioners Act 1993<sup>2</sup>. The Court said that the presence of an alternative legal remedy does not preclude the Ombudsman from investigating, and that the question of reasonableness is one for the Ombudsman.

13. In this case we have carefully considered whether a remedy could be available through legal action. This included pausing our considerations of these complaints while judicial review proceedings into related issues were ongoing<sup>3</sup>.

14. Our view is that a successful legal challenge could in principle provide a remedy for unlawful communication of changes to State Pension age. But we are not considering, nor can we make any decisions about, whether communication of State Pension age changes was unlawful. We are looking at complaints that injustice was suffered as a result of maladministration. In addition, our complainants seek compensation for the health, emotional and domestic consequences of any failure in communication. They also seek acknowledgments of failures, apologies and assurance that action has been taken to ensure failures are not repeated. These are not issues the courts can consider or provide a remedy for.

15. The Act (s.6(3)) says that we shall not investigate a complaint made later than twelve months from the day on which the person first had notice of the matters alleged, unless we consider that there are special circumstances which make it proper to do so.

16. In this case we consider the number of people affected, the fact that many complainants suggest that their lack of awareness of the changes is a key issue, and the scale and significance of the matters complained about, mean there are special circumstances that make it proper to investigate.

## How we make decisions

17. When making decisions we comply with the legal framework set out above.

18. To help public bodies to understand how we will approach complaints, and complainants to understand how we will consider their cases, we publish our Principles. The Principles comprise our Principles of Good Administration,

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<sup>2</sup> Miller & Another v The Health Service Commissioner for England [2018] EWCA Civ 144.

<sup>3</sup> R (Delve) v Secretary of State for Work and Pensions [2019] EWHC 2552 (Admin) and [2020] EWCA Civ 1199.

Principles of Good Complaint Handling and Principles for Remedy. They underpin our assessment of performance, our views on good complaint handling and our approach to putting things right.

19. While we codified and published the Principles in 2007, relevant principles of good administration had long existed. The Principles were based on our (at that time) 40 years' experience of considering those principles in relation to complaints investigated by successive Ombudsmen and reflect that accumulated body of understanding. When they were published, they were not intended to introduce any new concepts, but to help public bodies understand what might be expected and to follow good administrative practices. They do not replace public bodies' own guidance. Examples of agency-specific guidance pre-dating the codification of the Principles include the Benefits Agency Customer Charters of 1993 and 2000.

20. When making decisions about maladministration, we compare what happened with what should have happened. We take account of what information the organisation had available to it at the time. We also take account of relevant law and applicable policy and guidance in place at the time of events complained about. The 2015 High Court judgment (Rapp) says:

‘Even if, with the benefit of hindsight, it may seem obvious that the public body got something wrong, the Ombudsman must look at the question of maladministration on the basis of the information that the public body had at the relevant time, and not with the benefit of hindsight.’

21. In this case, we have considered what policy and guidance applied between 1995 and 2011. We set out the applicable standards we have considered below.

22. If we uphold a complaint, it means we have found maladministration and it led to injustice. We can recommend action the organisation should take to put things right. A finding of maladministration will not automatically result in a finding of injustice or a recommendation for remedy. When making decisions on remedy, we follow our Principles for Remedy.

## Background relating to changes in State Pension age for women

23. Before 1940, men and women's State Pension age was 65. In 1940, women's State Pension age was lowered to 60.

24. In 1991, the Government announced its intention to equalise State Pension age. In December 1991 it published a consultation document, 'Options for Equality in State Pension Age', which described the policy rationale for the change, options for taking the policy forward and the financial effects of the change. The Government received over 4,000 responses to the consultation.

25. The 1993 White Paper 'Equality in State Pension Age' set out the Government's intention to equalise men and women's State Pension age at 65. It highlights four drivers for the change:

- women were increasingly playing an equal role to men in the economy. The change would enhance the future pension entitlement of many women
- people were living longer and healthier lives. A common pension age of 65 would strike a fair balance between generations
- to help Britain maintain its international competitiveness
- a State Pension age of 65 matched the trend in occupational pension schemes.

26. The change was to be phased in over a 10-year period between 2010 and 2020. The long lead-in period was to allow people sufficient time to plan ahead.

27. The White Paper stated:

'In developing its proposals for implementing the change the Government has paid particular attention to the need to give people enough time to plan ahead and to phase the change in gradually.'

and:

'The change will not begin to be implemented until 2010. The lead-in period of over 16 years allows plenty of time for people to adjust their plans.'

28. The only reference to how the change would be communicated was in an appendix to the White Paper. Appendix 2 stated: 'Most attendant publicity will be issued through the Government ... Written notification of the change will be made by many employers'.

29. The ensuing Pensions Act 1995 provided that:

- men's State Pension age would remain 65
- women born before 6 April 1950 would retain a State Pension age of 60
- women born after 5 April 1955 would have a State Pension age of 65
- women born between 6 April 1950 and 5 April 1955 would have a State Pension age of between 60 and 65, depending on their birthday. Schedule 4 of the Act set out the State Pension age for women born between these dates.

30. The 1995 Pensions Act made no provision for how the changes to women's State Pension age would be communicated.

31. Further changes to State Pension age followed.

32. Under the Pensions Act 2007, the State Pension age for men and women was to increase to: 66 between 2024 and 2026, 67 by 2036, and 68 by 2046.

33. The Pensions Act 2011 sped up the timetable for raising men and women's State Pension age. Under the 2011 Act, the increase in women's State Pension age was accelerated so that it reached 65 by November 2018, instead of April 2020. The White Paper preceding the 2011 Act explained the drivers for the acceleration, including increasing life expectancy and the need for the State Pension to be affordable.

34. Originally, it was planned to increase State Pension age to 66 by April 2020. During the passage of the Bill, the timetable was adjusted so this would happen in October 2020 instead. The revised timetable capped the further increase consequent to the 2011 Act at 18 months (relative to the timetable set out in the 1995 Act), at a cost to the Exchequer of £1.1 billion. Women's State Pension age would still reach 65 by November 2018, but the increase from 65 to 66 would happen more slowly.

35. The impact assessment for the 2011 Act (published in November 2011, when the legislation came into effect), set out how the Government intended to communicate changes to State Pension age, including:

- ensuring that information about the changes was available on its website and in its leaflets and guides, and
- writing individually to 800,000 individuals born between 6 April 1953 and 5 April 1955 (those affected in the transitional period prior to State Pension age reaching 66, plus those who would have been affected in the transition to 65 under the original timetable).

36. The impact assessment also stated that the Government was considering how to communicate the changes to people born in subsequent years.

37. According to a Work and Pensions Committee Report (2016), 1.1 million women were affected by equalisation of women's State Pension age under the 1995 Act alone. A further 2.7 million women have had their State Pension age increased by both the 1995 and 2011 Acts.

38. For some women, the combined effect of the 1995 Act and 2011 Act meant an increase in State Pension age of up to six years.

# Evidence we have considered

39. We have carefully considered the information made available to us. This includes:

- what complainants have told us and evidence they have sent us
- evidence DWP has provided, including information it gave us about how the changes were communicated, and when
- relevant White Papers and Acts of Parliament
- copies of DWP's communication material, including its pensions awareness campaigns, leaflets, letters and websites
- DWP's published responses to Freedom of Information Act (FOIA) requests
- DWP briefing packs, newsletters and bulletins
- relevant research reports
- relevant House of Commons briefing papers, fact sheets and reports
- press reports
- relevant court judgments
- relevant applicable standards, as set out below
- comments we have received about our provisional views.

## What should have happened - the relevant standards

40. The overarching standard we have applied when considering these complaints is the requirement for good administrative behaviour. As noted above, the Principles of Good Administration codified pre-existing good administrative practices. The Principles of Good Administration explain that good administration by public bodies includes:

- 'getting it right', which includes:
  - public bodies should act according to their statutory powers and duties and any other rules governing the service they provide. They should follow their policy and procedural guidance, whether published or internal
  - public bodies should act in accordance with recognised quality standards, established good practice or both
  - proper decision making should give due weight to all relevant considerations, ignore irrelevant ones and balance the evidence accordingly.

- ‘seeking continuous improvement’ which includes:
  - using feedback to improve public services and performance.

41. In deciding what ‘getting it right’ would have meant in these circumstances, we have considered the following policy and procedural guidance and quality standards.

## The Civil Service Code

42. This sets out the role, duties and standards of conduct for civil servants.

43. The first version of the Code came into force in 1996 and states:

‘This Code should be seen in the context of the duties and responsibilities of Ministers set out in Questions of Procedure for Ministers which include:

... the duty to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or knowingly mislead Parliament and the public.’

44. Minor changes were made in the version published in May 1999, to take account of devolution. It states:

‘This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code, or in equivalent documents drawn up for Ministers of the Scottish Executive or for the National Assembly for Wales, which include:

...the duty to give Parliament or the Assembly and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them.’

45. Following a period of consultation, a significantly revised Civil Service Code was published in June 2006. Relevant sections include that civil servants must:

‘deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability’

‘set out the facts and relevant issues truthfully, and correct any errors as soon as possible’

and must not:

‘ignore inconvenient facts or relevant considerations when providing advice or making decisions.’

46. The Civil Service Code was updated again in November 2010. The content is largely similar to the 2006 version.

47. DWP has suggested to us that the Civil Service Code is not relevant because it ‘has not misled or deceived the general public or withheld information from the public’. It has also suggested we have interpreted the Civil Service Code as requiring government departments to notify the public about changes in the law.

48. It is not our view that the Civil Service Code imposes a duty on government departments to notify the public about all changes in the law. The relevant principle up to 2006 was the duty to give the public as full information as possible. In our view, the context assists in understanding what that duty meant in this case.

49. In this case, DWP itself decided the public should be informed about changes in State Pension age. Once DWP knew information was not reaching the people who needed it and there was more it could do, it should have done more to ensure the public had as full information as possible.

### **DWP’s ‘Public Information Policy Statement’ (the DWP Policy Statement)**

50. The DWP Policy Statement is quoted in our ‘Trusting in the pensions promise’ report (2006). It describes the expected quality standard for information provided by DWP. It goes on to describe DWP’s duty to give information to the public.

51. The DWP Policy Statement states that all information provided by DWP should be ‘appropriate, relevant, correct, up-to-date, clear, concise and to the point, helpful and targeted’. For the purpose of this investigation, we understand ‘targeted’ to mean that information about changes to State Pension age should have been directed to, and tailored for, the people who needed it.

52. The DWP Policy Statement also states:

‘It is widely accepted that the Department has a duty to give information or advice [to] inform the public about any new policies and developments that may affect them and, crucially, keep them informed on a continuing basis of their rights and responsibilities. It would be unreasonable for the Department not to do this and it is clearly a necessary part of our business.

‘... The Department must take care to achieve the necessary balance of resource and effort between announcing changes and new policies and our duty to provide routine information. The common law duty of care means that any information we provide must be timely, complete and correct. The Department may also be held responsible if we give advice and someone relies on our advice to their detriment.’

53. We consider that the DWP Policy Statement applies throughout the period we are looking at. The language used, particularly the statement including that it ‘is widely accepted’ that DWP ‘has a duty’ indicates that this was not a newly introduced position, and that the duty pre-dated the DWP Policy Statement. The

fact that DWP had already been providing information (for example, by publishing leaflets about benefits) for some time before the DWP Policy Statement was issued further illustrates this point. We consider the statement to be consistent with the Principles of Good Administration.

54. The Courts have recently confirmed that DWP had no legal duty to communicate changes to State Pension age. We have considered whether ‘the duty’ referred to in the DWP Policy Statement was no more than any potential legal duty, and whether the Court’s decisions limit any requirements arising out of good administration. We do not consider that is the case. We say this bearing in mind that the requirements of good administration are not the same as requirements in law. What is required for good administration is therefore not limited by what is required by law.

### **The Benefits Agency Customer Charter**

55. The Benefits Agency Customer Charter sets out the standard of service customers could expect to receive from the Benefits Agency.

56. The 1993 edition includes that:

- staff are trained to meet customers’ needs
- its offices will provide general help and information
- from time to time, advice and information points will be set up in places like shopping centres, hospitals, libraries and schools
- Post Offices display leaflets and claim forms.

57. The next edition we have seen was published in 1999. It includes that the Benefits Agency wants to provide a service focused on customers and that:

- customers can expect to receive advice and information that is accurate clear, full and helpful
- a full range of leaflets and other information will be available at its offices
- its staff will give accurate information and advice about benefits.

58. These standards are restated in the 2000 edition. The Benefits Agency Customer Charter became obsolete in 2002 because the Benefits Agency ceased to exist.

### **The Pension Service Customer Charter**

59. The Pension Service’s Customer Charter sets out the standard of service customers could expect to receive from the Pension Service.

60. The Pension Service first published a Customer Charter in 2002. We have been unable to find a copy of that edition. The first edition we have seen was published in 2003. It says: ‘Our Customer Charter tells you what you can expect from the Pension Service from its launch in April 2002’.

61. The 2003 edition includes that the Pension Service:

- aims to put customers firmly at the centre of everything it does
- will ‘make sure you get the information and support you want, when you need it’
- will provide accurate information about basic State Pension
- will be helpful, fair and easy to talk to.

62. The Customer Charter was revised and reissued over the following years. We have seen editions up to 2008. The 2008 version appears to have still been in use in 2010. The core principles of providing a customer-focused service remained the same in each edition.

63. Our Principles of Good Administration say that decision making should give due weight to all relevant considerations. This means taking all relevant factors into account when making decisions, including any known risks. Relevant considerations in this case include what was known at the time about the need for timely, individually-tailored (that is, targeted) information.

64. For example, in February 2004, Andrew Smith, the then Secretary of State for Work and Pensions, issued a press statement about the steps the Government was taking to empower people to make informed choices about working and saving for retirement. He said:

‘The decisions people make about retirement are among the most important they face. We all get a lot of information on pensions, but too often we don’t understand how it relates to our own retirement prospects. Government must help provide people with trustworthy, individually-tailored information that simply explains their situation and the options available to them.’

65. And a 2005 Pensions Commission report recommended that a core principle of pension reform should involve ‘significant pre-warning of changes in [State Pension age]’, so that people approaching retirement know exactly when they will become eligible to receive their State Pension. The report suggested at least 15 years’ notice be given.

66. Finally, the Principles of Good Administration say public bodies should ‘seek continuous improvement’ and use feedback to improve services and performance. This means that DWP should have acted on what research findings (feedback) revealed about levels of awareness of changes to State Pension age, what more needed to be done and how it should be done.

67. The standards and guidance we have quoted here can be summarised as saying DWP:

- had an obligation to provide the public with accurate, adequate and timely information about changes to State Pension age, given its duties set out in the Civil Service Code and the DWP Policy Statement, and

- the quality standards set out in the DWP Policy Statement, the Benefits Agency Customer Charter and the Pension Service’s Customer Charter
- should have taken account of what was known about the need for timely, targeted information when making decisions, and any associated risks
  - should have taken prompt and reasonable action in light of research findings and recommendations.

## What the Courts have found

68. We are aware of the Court judgments relating to recent judicial review proceedings<sup>4</sup>. DWP told us that the Courts have already ruled that:

- there was no legal duty to communicate the changes in State Pension age, and
- the Courts found as a matter of fact that the steps DWP took to communicate the changes were adequate.

69. We agree that the Courts have ruled there was no legal (that is, statutory or common law) duty to communicate the changes. However, as noted earlier, this does not mean that there was no requirement for DWP to adequately communicate the changes as a matter of good administration.

70. On the second point, DWP drew attention to paragraph 123 of the High Court’s judgment, including that ‘we are not in a position to conclude that the steps taken to inform those affected by changes in [State Pension age] for women were inadequate or unreasonable’, and paragraph 120 of the judgment by the Court of Appeal including that:

‘[the High Court] were fully justified in holding that they could not conclude that the notice provided to the Appellants’ cohort had been inadequate or unreasonable ... the Divisional Court were entitled to conclude as a fact that there has been adequate and reasonable notification given by the publicity campaigns implemented by the Department over a number of years.’

71. We have carefully considered the Courts’ judgments. The High Court held that the claim that DWP gave inadequate notice of the changes failed ‘as a matter of law’ because there was no legal duty requiring DWP to give notice of the changes in the first place. We do not consider paragraph 123 of the High Court’s judgment amounts to a positive finding that the steps taken were adequate, judged by reference to any legal duty, given that no such duty was found to exist. And the High Court did not reach a judgment, nor could it have, about what good administration required.

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<sup>4</sup> *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin) and [2020] EWCA Civ 1199.

72. The Court of Appeal could only consider the appeal against the High Court's ruling. In doing so, it dismissed the appeal in relation to the notice requirements 'on the basis that there was no duty to notify those affected by the change in state pension age'. The incidental comment in paragraph 120 of its judgment could not amount to a finding of fact that the steps taken to notify were adequate and reasonable. And it could not amount to a finding in relation to whether the requirements of good administration were met.

73. In summary, therefore, we consider the Courts only reached a binding decision on the question of whether a legal duty to notify existed. No finding of fact was made about the adequacy or otherwise of DWP's communication of changes to State Pension age.

## What did happen

74. Here we consider the various steps DWP took to communicate changes to State Pension age. We then go on to consider the research conducted by and on behalf of DWP and the actions it took following that research.

75. For the purposes of our investigation, we selected a sample of six complaints. The sample complaints reflect the range of issues women have complained to us about. The sample complainants, along with other complainants who are not part of our sample, formed part of the target audience for DWP's communication campaigns. It is therefore appropriate for us to consider DWP's broader communications strategy and its adequacy.

76. DWP told us it made considerable efforts to communicate State Pension age changes and to ensure those affected could access detailed and bespoke information about their State Pension entitlement, including:

- running pensions education campaigns, which included information about State Pension age equalisation
- publishing 'numerous' leaflets from 1995 onwards
- making State Pension age clear in the 22 million State Pension statements issued online, by post or over the telephone since 1995
- issuing around 17.8 million automatic pension forecasts (APFs) between 2003 and 2006 with a leaflet explaining the increase in State Pension age for women
- making information about State Pension age available on its website, including an option for individuals to calculate their State Pension age
- writing to 1.2 million women affected by the Pensions Act 1995 between 2009 and 2011, and those affected by the Pensions Act 2011 between January 2012 and November 2013.

## Pensions education campaigns

77. The evidence we have seen confirms DWP did make considerable efforts - across a variety of formats and using a range of media channels and stakeholders - to promote pensions awareness and planning for retirement through its pensions education campaigns. This included:

- a TUC-led 'Pension Power for You' campaign and helpline in 1997, and a second TUC helpline campaign in 1999 that was partly government-funded
- a 'Monopoly'-themed pensions campaign (June 1998 to April 2000). Adverts were displayed on buses and trams, in telephone boxes, on fast food containers and on screens in Post Offices. Adverts, advertorials and inserts were placed in national and local press, magazines and catalogues. Information was shared through mailings and mailshots (based on marketing data), in pensions packs, on flyers and at exhibitions. A new series of pensions leaflets (PM1-8) and a pensions website were also introduced
- a 'Working Dogs'-themed pensions campaign (January 2001 to March 2004). Adverts were placed in national and local press, on postcards, and shown in cinemas and on television
- various waves of issuing information about pensions, including information about State Pension age changes, direct to people who requested it, who had responded to surveys and to advisers.

78. Pensions education campaigns focused on encouraging individuals to understand their pension entitlement and plan their retirement. DWP has said these campaigns included material relating to women's State Pension age specifically targeted at women. However, a relatively small proportion of the campaign material we have seen refers to State Pension age:

- one 'Monopoly' advert ('Don't Leave Your Pension to Chance') in the local press from 1999 says, half-way through, that 'all women born after 6 April 1955 will have to wait until they are 65 before they can claim their State Pension'. It does not mention that women born between April 1950 and April 1955 will also be affected by State Pension age changes
- an advertorial in two women's magazines from 2000 says 'from 2020, women will be getting their State Pension at 65 - the same as men'. It includes a table showing when women can claim their State Pension, depending on their birthday
- two 'Working Dogs' adverts in the national press from 2001 say State Pension age is 'changing to 65 to make it the same as men'
- information sent on request during the 'Working Dogs' campaign included a flyer 'What every woman needs to know about pensions', and the PM6 'Pensions for Women' leaflet
- a 'Women's Pensions Pack' which was available through the Pension Service. As well as a leaflet, the pack included a cardboard 'reckoner',

- which allowed individuals to work out their State Pension age by adjusting a slider to their birthday
- information sent to respondents to lifestyle surveys during the campaigns included information about State Pension age changes and/or encouraged them to request leaflets (including PM6).

79. The need for an advertising campaign to tell women about the changes to State Pension age was considered in early 1997. The response to a ministerial submission in February 1997 said ‘Ministers do not see a pressing need at this stage to run such a campaign but would be prepared to re-consider at a later date.’

80. An internal DWP memo from September 1999 recommended that the feasibility and cost of publicising State Pension age changes should be looked into further.

## Leaflets

81. Information about State Pension age changing was publicly available in the leaflets DWP published. We have reviewed almost 250 leaflets and guides published between 1993 and 2012 (various editions of 59 different leaflets and guides). The earliest (EQP1) was issued before the Pensions Act 1995 to forewarn of the proposed changes. It was updated and reissued promptly after the Act was passed in 1995 (EQP1A). Nearly seven in ten leaflets available over the following decade mention that women’s State Pension age is changing. A survey in 1999 found that 96% of respondents considered information in the leaflets was easy to understand.

82. Leaflets were available from Benefits Agency offices, by calling a helpline, by freepost, or (from around 1998) accessible online. Some were displayed in Post Offices, GP surgeries and by other stakeholders (such as Citizens Advice Bureaux). People were encouraged to request leaflets as part of the ‘Monopoly’ and ‘Working Dogs’ campaigns. And DWP sent copies of leaflets to men and women who had requested information about pensions in response to various surveys. Alongside the pensions packs, specific leaflets were enclosed with APFs (APF1 and APF2) and direct mailings from 2009 onwards (SPE01). The information in the EQP1 leaflet was also promoted on an A3-sized poster displayed in Benefits Agency offices.

## State Pension statements

83. From July 1995, DWP started issuing State Pension statements (sometimes known as Individual Pension Forecasts) on request. We have seen an example of a forecast sent in 1999. The first paragraph includes the recipient’s State Pension age.

## Automatic pension forecasts

84. Between May 2003 and November 2006, DWP sent unsolicited pension statements (automatic pension forecasts - APFs) to working-age people who had not received any other pension forecast during the preceding 12 months. It used a

database based on National Insurance records (NIRS2) to issue APFs. DWP has told us APFs were another method of sharing State Pension information, but that communicating State Pension age changes was not the primary purpose of APFs. DWP's Public Service Agreements from 2004 to 2006 show APFs were used as a tool to improve awareness about retirement provision, rather than to let people know when they could expect to receive their State Pension.

85. APFs do not mention that State Pension age is changing.

86. After the self-employed, the first tranche of APFs sent from December 2004 targeted women then aged 50 to 59 with a message that it was 'especially important' for them to think about how much money they would have in retirement because it was often less than men. Two leaflets were included with APFs (APF1 and APF2).

## Website

87. From around 2001, as well as information about State Pension age changing, an online State Pension age checker was available. By inputting their date of birth, women would have been shown their State Pension age.

## Individual letters

88. Between April 2009 and March 2011, DWP wrote to 1.2 million people affected by the 1995 Act (including women born between 6 April 1950 and 5 April 1953). Due to proposals to increase State Pension age to 66, direct mailing was paused in March 2011. It resumed after the Pensions Act 2011 became law. DWP wrote to men and women affected by the 2011 Act between January 2012 and November 2013.

89. Examples we have seen of letters issued in April 2010 and January 2012 are headed, in bold text, 'Important information about your State Pension age'. The date that the recipient can claim their State Pension is clearly stated on the first page. The letters say that further information is available online and include website addresses. A contact telephone number is also included.

90. Three complainants in our sample confirmed they received their letters but say they were given little time to adjust their retirement plans, in part because they say they did not know about the 1995 Act changes before they received letters about the 2011 Act changes. One complainant who turned 60 in December 2015 said she received her letter in 2013 telling her that her State Pension age had increased to 66. Another complainant turned 60 in late April 2015. She received her letter in October 2012 giving her 2.5 years notice of a six-year increase in her State Pension age. A third complainant who turned 60 in February 2019 received her letter in October 2013. This gave her 5 years and 4 months' notice of a six-year increase to her State Pension age.

91. Three complainants from the sample group say they did not receive letters, despite being told during the complaints process that they would have been sent a

letter between October 2012 and November 2013. DWP does not have a record of who it wrote to, so we are not in a position to clarify which women were sent letters. We cannot discount the possibility, though, that some letters were lost in the post, some were undeliverable due to incomplete address data, or some were received and mislaid or forgotten. We also recognise that a direct mail exercise is unlikely to achieve a 100% success rate.

## Research and action taken as a result

92. DWP told us that since 1993 it has published a breadth of research reports relevant to State Pension age changes and pension reform. It also said that awareness of changes in State Pension age has been closely monitored since 1997, and action continuously taken to increase awareness. We have seen reports from the 1990s relating to pensions issues, but they say very little about the change to women's State Pension age.

93. Various research has been done by different organisations over time (for example, the English Longitudinal Study of Ageing and research by Age UK). We focus here on research done by DWP or on its behalf.

94. The earliest DWP research about awareness of State Pension age we have found reference to was from 2000/2001. DWP has been unable to give us a copy of the findings, but they are discussed in a report produced in 2004. It says the research found that less than one third of women aged 18 to 55 in 2000/2001 knew their State Pension age was going to increase in future and only 35% of women knew their own State Pension age. The report says the 2000/2001 research concluded that action was needed to '... improve awareness of the age at which individual women will become eligible to start receiving their State Pension'. We have seen no further information about what more the researchers considered was needed at the time.

95. The first phase of the 'Working Dogs' campaign ran from January 2001 to March 2001 with TV, press and cinema advertising. The campaign continued after the research in 2000/2001 through to 2004. Waves of the campaign from March 2002 onwards included direct marketing as well as press and TV adverts.

96. DWP evaluated reaction to the first wave of its 'Working Dogs' campaign in March/April 2001. The evaluation focused on how the campaign materials were received and people's intended actions, rather than awareness of State Pension age. Respondents were shown TV and press adverts used in the campaign. A quarter of respondents said they recognised at least one of the five press adverts. The press advert about equalisation was the most recognised. Despite this, respondents did not identify change to women's State Pension age as a key message of the advertising.

97. Further evaluation of the 'Working dogs' campaign in 2002 does not appear to have looked at awareness of the changes to women's State Pension age. Following this evaluation, DWP made proposals to the Secretary of State about continuing the pensions education campaign into autumn 2002. Those proposals

included that women would be a particular target audience. The submission notes the campaign aimed to change people's attitudes towards retirement saving, and that understanding pensions was part of that.

98. Research done the same year into attitudes to pensions and savings for retirement found that 70% of women whose State Pension age had increased to 65 still expected to retire before they reached that age. 40% expected to retire at 60. Respondents were not asked if they knew their State Pension age. This research was done in 2002 but reported in 2003. The 'Working Dogs' campaign, including direct marketing, continued after the research was done.

99. DWP research in 2003/2004 looked specifically at public awareness of State Pension age equalisation, and was reported in October 2004. 62% of working age women knew State Pension age was going to rise. This increased to 73% amongst all respondents aged 45 to 54 (women born in the 1950s would have been aged 45 to 54 in 2004). But only 43% of all women affected by the changes knew their State Pension age was 65, or between 60 and 65 years.

100. The research report says the findings were a cause for concern, as they showed that information about increasing State Pension age was not reaching 'the group of individuals who arguably have the greatest need to be informed'. It recommended particular groups, including women who would be affected by the changes, should be 'appropriately targeted with accessible information on the equalisation of [State Pension age]'. The research report also says the findings would contribute to DWP's marketing campaign about equalisation of State Pension age.

101. We have seen copies of internal DWP emails from early 2005 discussing proposals for further marketing activity about State Pension age equalisation. A range of options was being considered, including 'wider direct mailing activity' to men and women (and buying mailing lists to enable direct mailing), and whether more individual information could be provided with pensions forecasts (including APFs).

102. A DWP policy document appears to draw on these proposals. The document is undated, but DWP told us it dates from August 2005. The policy document notes the research findings and discusses proposed communication channels, including leaflets, departmental websites and media advertising (television, press and radio). It notes that 'the survey showed that most people do not get their information from leaflets' but it was important they were updated for those people who did, and explores the use of advertorials in women's press magazines and national press supplements. It includes:

'we do not recommend carrying out any major advertising specifically focused on State Pension age equalisation, as any activity should be part of [wider campaigns].'

103. The policy document discusses including information about State Pension age equalisation in pension forecasts, and direct mailing activity. It says:

‘We will review with colleagues the possibility of giving people who receive automatic, individual or combined pension forecasts more specific information about State Pension age. This will be dependent on timing, cost and feasibility but we think this is a key route to explore because of the specific information that forecasts give to individuals.’

104. The document proposes ‘some direct marketing activity’ to 300,000 people who had responded to surveys, which ‘would include messages on equalisation for relevant people in this group’. It notes DWP could buy lists from databases that would enable it to target people, and that it had a database of around 83,000 advisers who were ‘intermediaries for some of the people we are trying to target’. It also looks at the possibility of targeting employers.

105. Research in 2005 and 2006 evaluating APFs found that 97% of women aged over 50 knew when they would receive their State Pension. This compared to 55% of women aged under 50 (women born in the 1950s would have been aged 46 to 56 years at the time, so would have fallen into both groups). Significantly, the research also found that 38% of women aged 40 to 49 (born 1956 to 1966) thought they could draw their State Pension at 60, when their actual State Pension age was 65.

106. In 2006 DWP carried out the first of three ‘Attitudes to Pensions Surveys’. The survey found that 83% of respondents were aware women’s State Pension age was going to rise in future. This included 90% of women aged 45 to 54 (women born in the 1950s would have been aged 47 to 56 in 2006). The survey did not ask respondents about their own State Pension age, so we do not know if respondents knew whether and/or how the changes affected them.

107. An internal DWP memo from November 2006 refers to a survey that year that found 50% of women whose State Pension age was between 60 and 65 thought it was 60. The memo proposes:

‘a direct mail to this group (supplemented by a range of related planned activity) was the most appropriate way of minimising the risk of future criticism that the Department has not been sufficiently proactive in communicating to those women affected by this change [in State Pension age].’

108. The memo sets out options for how to identify and contact ‘women in the target group’, when to write and what information to include. Three options were offered for what to include in letters:

- general information about State Pension age equalisation and pension reform
- general information, plus providing each woman with her exact State Pension age
- general information, plus an APF.

109. The memo proposes letters be sent in phases starting in 2009, to give women whose State Pension age was due to increase by 3.5 years or more at least 30 months' notice. If approval was given, DWP planned to start contacting suppliers to get detailed cost estimates. A working group was to be set up to take the work forward, and the approach was to be shared with Ministers 'before Christmas'. A formal feasibility study would follow with a progress report planned for early 2008.

110. The memo refers to an options appraisal paper. We have seen an undated options appraisals paper that includes more detail about the issues discussed in the memo, including a possible approach to phasing. It includes:

'Previous attempts to increase awareness of equalisation among the target group have had a limited impact. Given this, we are proposing that a targeted, personalised mail-out is the most appropriate option for providing information to these women to raise their awareness of equalisation.'

111. DWP told us it believes this options appraisal paper was created in late 2006. The content of the paper, reflecting the November 2006 memo, supports that. It appears, though, that the options appraisal paper was updated over time since it also includes reference to research not available until 2007.

112. The schedule proposed in the paper gives women increasing periods of notice depending on when they turn 60. For example, women whose State Pension age increased by between one and 12 months would receive one years' notice. Women whose State Pension age increased by between 52 and 60 months would receive three years' notice. The document says direct mail was considered the best way to try to ensure information about the increase reached as many women in the transitional group as possible and was the only sensible option left to increase awareness.

113. The options appraisal document notes that the option of 'high profile' activity, for example, advertising, had been discounted because 'previous attempts to get the message across in highly targeted advertorials has not been effective in terms of raising women's understanding of their own situation [sic]'. It notes that 'experience suggests that more is needed', and that research showed that the target audience 'has a strong preference for printed material, being generally positive towards direct mail and particularly its presentation'.

114. The proposed schedule for issuing letters included women who turned 60 between April 2010 and May 2015. We have seen no evidence of what - if anything - DWP proposed to do to tell women who turned 60 after May 2015 (whose State Pension age had increased to 65 under the 1995 Act) at this stage.

115. Unpublished DWP research from 2007 found 85% of women aged 48 to 59 knew State Pension age was going to be equalised, but many women did not know when it would happen. The research also found that 50% of women whose State Pension age had risen to between 60 and 65, and 36% of women whose State Pension age had risen to 65, still thought that it was 60. DWP told us that if people are aware of the changes, they can find out their own State Pension age.

116. An internal DWP memo from April 2007 described the 2007 research findings as ‘depressing reading’. The memo reflects on the lack of progress since 2004 and the prospect of future complaints from women. It states:

‘You floated the idea of contacting the Ombudsman to get a feel for how she would react to claims from women saying they had never been told or were not aware that state pension age is increasing. In the light of the lack of upward movement from our 43% base figure from 3 years ago, we suggest putting this off until we can explain our strategy from here to get the message over. If we go now, we face being painted into a corner. Despite a really strong defensive brief, we still have 50% “ignorance levels” with three years to go. [The Ombudsman’s] first question will be what are you proposing to do about it?’

117. A ministerial submission from December 2007 shows DWP knew people did not understand the impact of the changes for them. It says: ‘One of the key issues is that whilst some women do in fact have an awareness of the impending change, they do not understand how this relates specifically to them’.

118. The submission notes that steps taken to communicate the changes, including ‘leaflets, pensions forecasts and other communication channels’, had not succeeded in raising awareness of the effect of the changes among a significant proportion of affected women.

119. DWP told us it cannot now be confident that the 2007 research results are nationally representative and it does not know how the research assessed knowledge of State Pension age. It told us there are different ways of assessing people’s knowledge of State Pension age, and the methodology used will affect accuracy of the findings. It says this research has to be treated with caution. It also questions the robustness of earlier research.

120. It is not our role to assess the validity of the research but to consider what information DWP had available to it when making decisions. The ministerial submission indicated that a recommendation for direct mail was based on the 2007 survey findings ‘to be sure of addressing this lack of awareness’. The ministerial submission goes on to specifically note the problem of women being aware of the impending change, but not understanding how it relates to them. We have seen no evidence DWP had concerns about the research methodology, or questioned the research findings, at the time. DWP identified at the time that more needed to be done. In fact, it had recognised this a year earlier when direct mailing was proposed in November 2006.

121. The December 2007 ministerial submission includes that writing to women would ‘give [DWP] the opportunity to provide the clarity needed by including each individual’s actual state pension age’. Direct mail was scheduled to start in 2009, and to take place in phases in order to ‘... minimise operational burden, and reach women at the optimal time ...’. It is not clear how DWP decided what ‘the optimal time’ was.

122. The submission includes that a working group was being set up ‘to scope this work out in the new year’. The working group developed proposals for delivering the direct mailing from 2009. The group’s terms of reference included how to identify women (using the available databases), what should be included in the letters, and how the mailing would be phased, taking account of other activity likely to take place. The two main purposes of direct mailing were to:

- ‘increase women’s awareness of how State Pension equalisation affects them personally (which should be achieved by providing each woman with her exact [State Pension age] date)’, and
- ‘ensure that the Department is in the best possible position to avoid any criticism that it has failed to take sufficient action to inform women in the affected group of the increase in their [State Pension age].’

123. DWP has told us that direct mailing required planning and 2009 was the earliest possible start date. It explained it needed to engage with suppliers to get detailed costings on the preferred option, which involved working with private companies and ‘relatively new’ IT systems. It also says due diligence was needed because of the significant sums of public money involved. Even now, with modern IT, DWP says, a mailing would have a lead in time of months rather than weeks.

124. DWP used its CIS database to identify women to write to. It told us CIS went live in March 2005, was piloted for the first year, and enhancements were made between April 2005 and June 2008 to make it a more comprehensive source of customer data. It said that citizen data was not robust before the introduction of CIS, and this only gradually changed once CIS was introduced. It told us that, given CIS was continually improving, ‘it would have been strongly preferable not to conduct a mail-out at least prior to 2008’.

## Our findings

125. It is not our role to substitute DWP’s decisions about how changes to State Pension age should have been communicated with our own, and we recognise the discretion available to DWP in these matters. When considering whether there was maladministration, we look at whether applicable standards of good administrative behaviour were met. We have considered whether DWP exercised its discretion in line with the relevant standards.

126. DWP says it took adequate steps to encourage people to check their State Pension position, including their State Pension age. It also says that it is reasonable to expect members of the public to investigate how pension and retirement rules apply to them, and that employers routinely provide information about retirement and pensions. Employers did have a role to play, as envisioned in the 1993 White Paper. But information communicated via employers was likely to be highly variable. In our view, employers having a role to play does not relieve DWP of its

duty to have met principles of good administration. In any event, information from employers would not reach women not in paid employment.

127. Complainants have told us they began work after leaving school with the expectation that they would receive their State Pension at the age of 60. They say there was no reason for them to question that expectation or whether new rules had been introduced, and so they should have been personally notified that their State Pension age had changed around the time the 1995 Pensions Act was enacted, or soon after. However, there is no applicable standard that required DWP to write to affected women around the time of the 1995 Pensions Act to tell them their State Pension age had changed.

128. We accept that DWP's pensions education campaigns encouraged the public to consider their State Pension and retirement plans. While Ministers did not see a pressing need in 1997 for a campaign specifically about changes to State Pension age, the pensions education campaigns included information about State pension age changing, and from 1993 information was publicly available about changes to State Pension age in leaflets, through DWP's agencies and online.

129. Leaflets containing information about State Pension entitlement were available through DWP's agencies, online and via stakeholders. This reflects commitments set out in the Benefits Agency Customer Charter and the Pension Service's Customer Charter. Around 70% of the leaflets we reviewed included that women's State Pension age was changing. Given the subject matter and target audience for the range of leaflets, it was appropriate they did not all include reference to State Pension age changing. We recognise that communicating changes to State Pension age was just one strand of a wider pensions campaign.

130. Where State Pension age changes were mentioned, generalised messages that State Pension age was 'being equalised' from 6 April 2010 and would increase 'from 2010 to 2020' or 'by 2020' would not necessarily have alerted women that they could be personally affected. We recognise, though, that leaflets cannot deliver individualised information and the majority we have seen did include advice about how to ask for a State Pension statement or forecast, check the online State Pension age calculator, and/or seek additional information by requesting other leaflets that contained more targeted explanations about the changes (for example, EQP1, EQP1A and/or PM6).

131. A few leaflets we have seen misquote by a day when State Pension age would begin to change or who would be affected. For example, BR19L (April 2003) says 'Women born on or before 6 April 1950 are not affected [by State Pension age change] and will still be able to claim their State Pension at age 60'. This is inaccurate. Women born on 6 April 1950 would be affected.

132. APF1 (August 2004) says 'In 2020, when the State Pension age for women is raised from 60 to 65 ...'. In fact, the State Pension age for women was due to increase incrementally from 2010 so that it reached 65 by 2020, rather than rise from 60 to 65 in 2020. Elsewhere, APF1 accurately states State Pension age is '... between 60 and 65 for women, depending on your date of birth. But from 6 April 2020, the State Pension age for both men and women will be 65'.

133. Given we have found errors in only a few leaflets among the almost 250 we have reviewed, we do not consider the overall standard of accuracy fell far short of the DWP Policy Statement requirement to produce information that was ‘correct’.

134. Complainants in our sample told us they did not see any leaflets or posters in Jobcentre Plus<sup>5</sup> including during fortnightly visits over a six-month period in 2009. And we note that a 2006 Government response to a Work and Pensions Committee report<sup>6</sup> includes that it was concerned to learn that some leaflets relating to pensions were not available at DWP sites and were difficult to obtain elsewhere. The Work and Pensions Committee report drew on information from a National Audit Office study testing the accessibility of up-to-date leaflets at sites where people might ask for them. This suggests some variation in the accessibility of information between different DWP sites.

135. Complainants have told us about women who worked for DWP saying they did not recall issuing leaflets or displaying posters about changes to State Pension age, nor being aware of this information being given to staff. And we have seen a ministerial submission from December 2007 that says a recent staff survey showed some awareness of pension reform amongst staff in the Pension Service, but indicated that more needed to be done to ensure ‘a deeper understanding of the detail’.

136. We cannot say now what happened in individual offices, and we cannot now know which aspects of pension reform the submission refers to. We have reviewed DWP’s staff bulletins and training material explaining changes to State Pension age. The evidence shows DWP gave its staff the information they needed to be able to correctly advise enquirers about their State Pension age. This reflects the commitment in the Benefits Agency Customer Charter.

137. Clear information about State Pension age was included in the example of an early State Pension statement we have seen. APFs do not mention that State Pension age is changing. DWP has said it deliberately did not include an individual’s State Pension age or the earliest date they could claim their State Pension in APFs because of concerns about the accuracy of address information held on its systems, the risk of exposing citizens’ personal data, and the need to comply with data protection laws. We consider DWP’s decision here took account of relevant considerations.

138. One of the leaflets included with APFs (APF1) mentioned State Pension age change. As already noted, a section of the 2004 version of the APF1 could be read to say that State Pension age would rise from 60 to 65 in 2020, rather than State Pension age would rise incrementally from 2010. That ambiguity was corrected in revised versions of the leaflet issued in 2005.

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<sup>5</sup> In 2001 the Benefits Agency and the Employment Service were merged to form Jobcentre Plus.

<sup>6</sup> Report on Pension Reform: Government response to the Fourth Report of the Works and Pensions Select Committee, Session 2005-06 [HC 1068-1] Cm 6956.

139. From around 2001 the online State Pension age calculator was available for people to find out their own State Pension age. Complainants have pointed out that, during this time, fewer people had internet access, and that women would have had to have been aware of the changes to State Pension age to seek further information online. We recognise that internet use at the time was more limited than it is now. But we also recognise that DWP did not rely only on information being available online; it was one among a number of means by which information about State Pension age changing was available. Personalised information about State Pension age was also available on request through DWP.

140. Complainants have also told us the Government Gateway website incorrectly stated State Pension age for women was 60 as late as 2016. DWP has acknowledged that incorrect information was shown on an index page of the Government Gateway website, which had not been updated. The pension forecasting tool (to which the link on the index page had pointed) had been updated and correctly calculated State Pension age. DWP became aware of the problem on 1 February 2016 and corrected the index page within 24 hours. It took prompt steps to correct the error and ensure publicly available information was accurate. In our view that reflected the Civil Service Code (2006).

141. We recognise that communicating changes to State Pension age was one strand of a wider pensions education campaign and at the time DWP was publicising information about a range of pension reforms. Based on the evidence we have seen, our view is that, between 1995 and 2004, adequate and accurate information about changes to State Pension age was available through DWP's campaigns, in leaflets, through DWP's agencies and on its website. This reflects expectations set out in the Civil Service Code, the DWP Policy Statement, the Benefits Agency Customer Charter and the Pension Service's Customer Charter. The DWP Policy Statement says information should be 'targeted'. Up to this point, information was generally targeted at particular audiences, for example, people reading women's magazines, people who responded to surveys or people visiting Benefits Agency offices, rather than individuals. Individualised information was, however, provided in response to requests.

142. Complainants have told us they did not see any of the publicly available information because, for example, they did not read magazines, did not see leaflets, or had no reason to visit Benefits Agency offices. And they say that because they had no reason to question their State Pension age, they did not request information. While we now know some women were not aware of the changes, we have to consider whether there was reason at the time for DWP to think information about changes to State Pension age was not reaching the people who needed it, and what DWP did if that were the case. DWP had a responsibility, as set out in the DWP Policy Statement, to balance 'resource and effort' and spend money appropriately. We cannot expect it to divert additional resource to fixing a problem if it did not know, or could not be expected to know, a problem existed.

143. As DWP says, it has monitored awareness of State Pension age changes. In line with our principle of 'getting it right', DWP should have given due weight to relevant considerations when making decisions, including what was known about the need for individualised, targeted, information. In order to 'seek continuous

improvement' it should have used feedback to improve service delivery, including research about levels of awareness of changes to State Pension age, what more needed to be done and how it should be done.

144. A DWP memo from September 1999 recommended that the feasibility and cost of publicising State Pension age changes should be looked into further. We have seen no evidence or research about what prompted that recommendation. Neither have we seen any evidence that DWP gave any additional thought to the options for further publicising State Pension age changes then, or to making State Pension age changes a more prominent feature of its pensions education campaigns. DWP has told us the lack of evidence does not mean that conversations did not take place. We acknowledge that conversations may have taken place, but we have seen no evidence they did. At the same time, we have seen nothing to show that at this point DWP had reason to suspect the steps it was taking to let people know about changes to State Pension age were insufficient or ineffective. We therefore cannot say that more should have been done at this stage.

145. The earliest research we are aware of that pointed to concerns about awareness of changes to State Pension age was in 2000/2001. We have not seen the detail of that research, but we know the researchers considered action was needed to improve women's awareness of when they would receive their State Pension. While we have no evidence of how this research influenced DWP's thinking at the time, we know the 'Working Dogs' campaign continued after this point and that campaign included information about changes to State Pension age. Later stages of the 'Working Dogs' campaign included communication channels not used in the first waves in 2001. In 2002 it included two phases of direct marketing in addition to TV and press adverts.

146. The 2003/2004 research, reported in October 2004, focused specifically on public awareness of State Pension age equalisation. It showed information was not reaching the people who needed it, and recommended information should be 'appropriately targeted', including at women who would be affected by the changes in State Pension age. The August 2005 policy document, and the emails preceding it, show DWP was actively considering what it might do in light of that research and options for targeting information, for example, through including information about State Pension age in APFs and through direct marketing activity as well as through leaflets, online and through the media. Despite having identified further options, what it ended up doing was what it had already done.

147. Most APFs did follow this research, but DWP has emphasised to us that communicating changes in State Pension age was not their primary purpose, and the recipient's State Pension age was not included in APFs because of data protection concerns.

148. Complainants have told us that APFs could have included a general message about State Pension age changes. Given that DWP had already issued APFs to a proportion of the women affected by the time it was considering the 2003/2004 research, it was already too late for some people. But we cannot see that, having

considered that research, DWP did anything different to what it had already tried to target information at the women who needed it.

149. We do not think DWP's decision making following the 2003/2004 research was in line with the principles of good administration. The steps DWP took, having considered the research and discussed the options, had already been tried. DWP knew those steps had not resulted in information reaching the people who needed it. It also knew that too often people do not understand how information about pensions relates to their own situations and that individually tailored information was needed - the Secretary of State for Work and Pensions had made that point in February 2004. It is not reasonable to do the same thing and expect a different result.

150. DWP did not 'get it right' at this point because it failed to give due weight to all relevant considerations. It did not take adequate account of the need for targeted and individually tailored information, or of how likely it was that doing the same thing would achieve different results. Despite having identified more it could do, DWP failed to provide the public with as full information as possible, as required by the Civil Service Code. And it did not 'seek continuous improvement' by using feedback to improve performance and services. That was maladministration.

151. DWP first proposed writing to women individually to tell them about changes to State Pension age after the survey in 2006 found 50% of women whose State Pension age had increased still thought it was 60. The proposal to write directly to affected women was reasonable, given what the research showed. And the fact an options appraisal document was prepared demonstrates DWP was exploring the merits of options available to it so it could make a considered decision.

152. Evidence suggests the November 2006 proposals were not progressed until December 2007, after further 'depressing' research results. The December 2007 ministerial submission includes that a working group would identify women to write to, as well as consider what should be included in the letters and how the mailing would be phased. However, the November 2006 memo had already set out options for how to identify and contact women in the target group, when to write and what information to include.

153. The plan in December 2007 was to begin writing directly to women in 2009. DWP has told us a start date of April 2009 for a mailing of the scale proposed in December 2007 seems 'unremarkable'. Writing directly to the numbers of women affected would have required significant planning and DWP needed to effectively manage spending public money. But the evidence suggests that DWP first proposed direct mailing in 2006, not 2007.

154. The 2006 Civil Service Code required DWP to deal with the public and their affairs promptly. The public's need for time to adjust their retirement plans was set out in the 1993 White Paper and the need for significant pre-warning of changes in State Pension age had been highlighted again by the Pensions

Commission in 2005. The 2006 research showed a significant proportion of time had already been lost, given the changes were due to take effect from 2010.

155. DWP failed to act promptly on its 2006 proposal to write directly to affected women, or to give due weight to how much time had already been lost for women who remained unaware of the changes in the 11 years since the 1995 Pensions Act. It appears to have made no progress in developing its proposals between November 2006 and December 2007, despite the November 2006 memo saying an approach for direct mailing would be shared with Ministers before Christmas. We take that to mean Christmas 2006. We have seen no evidence a ministerial submission was made until December 2007.

156. DWP failed again to 'get it right'. It did not act promptly as required by the Civil Service Code and did not give due weight to how much time had already been lost. And it failed again in its responsibility to 'seek continuous improvement' in response to the 2006 research. That was also maladministration.

157. DWP began writing to people affected by the 2011 Pensions Act within a couple of months of the Act becoming law. An effect of the maladministration, however, is that letters were not issued unsolicited about the effects of the 1995 Pensions Act until 14 years after that Act was passed. A 2016 Work and Pensions Committee report notes that Paul Lewis (a financial journalist) had calculated that letters informing women about the effect of the 1995 Pensions Act were received, on average, one year and four months before they turned 60.

158. The 2006 options appraisal paper includes that DWP considered 'a targeted, personalised mail-out' was the 'most appropriate' option for getting information to the women who needed it. The December 2007 ministerial submission includes that writing to women would 'provide the clarity needed'. It is reasonable to infer that DWP would have reached a similar decision about the merits of direct mail, and begun exploring how to write directly to women sooner, if it had made a reasonable decision about targeting information in August 2005 in response to research reported the previous year.

159. DWP told us it could not have written to women sooner than it did because CIS was not sufficiently reliable in 2005, and there would have been concerns about the accuracy of address and other personal information held on its IT systems at the time. It said this is demonstrated by:

- it having deliberately omitted State Pension age from APFs sent between 2003 and 2006 due to concerns about protecting personal information
- internal research about APFs from 2008 showing that 'of the 2.2 million records for women in the UK "in the age group in question" around 235,000 were marked "DLO" (a marker suggesting that previous communications had been returned undelivered), and that of a further 65,000 the address quality was such that the Post Office would have been unable to deliver a letter. In other words, the DWP could not have reached at least 1 in 10 of the women it wanted to reach with its direct mailings'.

160. APFs were issued using the NIRS2 database rather than CIS. As we have already noted, we accept DWP's reasons for why APFs did not include personal information. The fact APFs omitted personal data is evidence of contemporaneous concerns about the reliability of NIRS2. The internal research from 2008 that DWP mentions is about CIS. But DWP could not have known in 2005 what research done in 2008 would show.

161. DWP told us it does not consider it unreasonable 'not to decide to use a new and untested system immediately to undertake a complicated individualised mailing operation'. We understand that improvements would have been made following the introduction of a new database. But from evidence DWP gave the courts for judicial review proceedings<sup>7</sup>, the introduction of CIS in 2005 reduced concerns about 'out-of-date' citizen data, and was a more reliable and cost-effective database than NIRS2. We have seen no evidence that DWP decided not to use CIS for targeting mailing before 2009. The options appraisal paper created in 2006 includes that DWP had 'identified that only two IT systems contain the relevant data to allow us to identify women in the target group' - CIS and NIRS2. It includes 'there is little, if anything, to choose between the two systems in terms of data quality'.

162. DWP also told us the situation changed between 2005 and 2007 (when the decision to send letters in 2009 was made). It said that in 2007, having considered further research from 2006, it considered 'the risks associated with the use of CIS and NIRS2 databases (even with the inaccuracies they contained) were justified'. The 2006 research may have influenced DWP's decisions in 2007 about direct mail. But the lack of awareness evident from the 2006 research was already clear from the 2004 research. We have seen no evidence that DWP decided not to use CIS in 2005 on the basis of a risk and benefit consideration.

163. Finally, DWP told us it had 'alternatives available to it' in 2005 that it considered would address the lack of awareness. We agree DWP had alternatives available: the options it was discussing then demonstrate that. But what it ended up doing was what it had already done.

164. We cannot now second guess what DWP might have decided in 2005 about the reliability of CIS. That said, using CIS for a direct mail exercise was not the only available option. As DWP identified at the time, it could have purchased databases to enable information to be targeted at the people who needed it. Or it could have written to affected women with a targeted message, tailored to that group of women's needs, without including personal information. For example, it could have shared information about State Pension age as set out in Schedule 4 of the 1995 Pensions Act (listing State Pension age within certain age brackets) without including the recipient's own date of birth in the letter. We know it could identify and write to these women using NIRS2 because it did so to issue APFs.

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<sup>7</sup> *R (Delve) v Secretary of State for Work and Pensions* [2019] EWHC 2552 (Admin) and [2020] EWCA Civ 1199.

165. We know that it took 16 months for letters to be issued once DWP decided in December 2007 to send them. If DWP had made a reasonable decision about direct mail in August 2005, and over a year of planning and implementation time had not been lost between November 2006 and December 2007, it is likely letters about the effects of the 1995 Pensions Act would have been issued within 16 months of August 2005 (that is, from December 2006). That is 28 months earlier than when DWP actually started to issue them (April 2009). Had DWP issued letters from December 2006, there would have been no need to pause direct mailing pending the 2011 Pensions Act.

166. DWP has told us that, even if it had decided to pursue direct mail in 2005, letters would not have been sent by December 2006. It highlighted:

- the issues with CIS
- it would not have undertaken such communication activity so soon after a general election
- operational factors would have needed to have been taken into consideration.

It is reasonable to infer, however, that the lead-in time would have been similar to the actual time taken once DWP decided to write to women in 2007. We have seen no evidence to suggest otherwise. And we cannot see how a sitting Government winning the May 2005 general election would have impacted those timescales. Further, it is possible that using a purchased database or sending a targeted message to women to whom DWP had already written would have led to letters being issued sooner.

167. DWP has also told us that individualised letters are not the most effective way of communicating information about changes to State Pension age. It has drawn attention to a research pilot done in 2014 showing just under half of people who had received a direct-mail letter remembered getting it. Of those who recalled receiving the letter, just over half said they had read all or some of it. DWP has also told us it cannot be expected to provide individualised communications about all the issues it deals with.

168. Our view is not that direct mail was the only effective way of communicating the changes, and we are not suggesting DWP has a duty to provide individualised communication about all policy matters. In this case, research showed targeted information was needed and DWP itself identified in 2006 that direct mail was necessary and would target information at the people who needed it. Based on the decisions DWP itself made in 2006, we think it is likely it would have made a similar decision earlier but for the maladministration in 2005. It could not have known then what a research pilot in 2014 would show.

# Summary

169. Between 1995 and 2004, accurate information about changes to State Pension age was publicly available in leaflets, through DWP's pensions education campaigns, through DWP's agencies and on its website. What DWP did reflects expectations set out in the Civil Service Code, the DWP Policy Statement, the Pension Service's Customer Charter and the Benefits Agency Customer Charter.

170. However, DWP's decision making following the 2003/2004 research failed to give due weight to relevant considerations, including what research showed about the need for 'appropriately targeted' information, what was known about the need for individually tailored information, or how likely it was doing the same thing would achieve different results. Despite having identified more it could do, DWP failed to provide the public with as full information as possible. DWP failed to make a reasonable decision about next steps in August 2005. It did not 'get it right'. And its failure to use feedback to improve service delivery meant it did not 'seek continuous improvement'. That was maladministration.

171. DWP then failed to act promptly on its 2006 proposal to write directly to affected women, or to give due weight to how much time had already been lost since the 1995 Pensions Act. It did not 'get it right' because it did not meet the requirements of the Civil Service Code, and it did not take all relevant considerations into account. And it failed again to use feedback to improve service delivery and 'seek continuous improvement'. That was also maladministration.

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). We say this bearing in mind that it took DWP 16 months to issue letters from when it decided to send them using CIS in December 2007, and it is possible using a different database could have enabled letters to be issued sooner than December 2006.

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.





## Parliamentary and Health Service Ombudsman

Citygate  
Mosley Street  
Manchester  
M2 3HQ  
United Kingdom

Telephone: 0345 015 4033  
Textphone: 0300 061 4298  
Fax: 0300 061 4000  
Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)  
[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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