

# Work and Pensions Committee

## Oral evidence: Safeguarding vulnerable claimants, HC 146

Wednesday 28 February 2024

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Members present: Sir Stephen Timms (Chair); Debbie Abrahams; Siobhan Baillie; Neil Coyle; Marsha De Cordova; Nigel Mills; Selaine Saxby; Sir Desmond Swayne.

Questions 229-254

### Witnesses

**I:** Rob Behrens CBE, Parliamentary and Health Service Ombudsman, and Rebecca Hilsenrath, CEO, Parliamentary and Health Service Ombudsman.

Written evidence from witnesses:

- Parliamentary and Health Service Ombudsman ([SVC0041](#))



## Examination of witnesses

Witnesses: Rob Behrens and Rebecca Hilsenrath.

**Chair:** Welcome, everybody, to this meeting of the Work and Pensions Committee to take evidence for our inquiry on safeguarding vulnerable claimants. We are very grateful to the two witnesses who have joined us this morning. Could you tell us who you are, starting with Rob Behrens?

**Rob Behrens:** Good morning. I'm Rob Behrens, the Parliamentary and Health Service Ombudsman. I have been the ombudsman since 2017, and I am in my last month of office.

**Chair:** Nice to see you here.

**Rebecca Hilsenrath:** Good morning. I'm Rebecca Hilsenrath, chief executive officer at the Parliamentary and Health Service Ombudsman.

Q229 **Chair:** Thank you both very much for coming. You told us in your written evidence that the DWP "did not do all that it could to recognise the vulnerability of a claimant due to their circumstances and adapt its actions in accordance". I wonder whether you could tell us a little more about what you had in mind with that point, what you have observed and what more you think the Department ought to be doing.

**Rob Behrens:** There are some structural issues I would like to come on to that make it very difficult to call the Department to account, but within the context of what we can do we have had a constructive dialogue with the permanent secretary over a period of time. That is good. It is about better complaint handling in the Department. There is a reasonable approach to investigations. The Department defends its corner. It submits evidence and does not hide stuff. It is quite defensive in the way that it does that, but it is entitled to be. In the cases we have investigated, we have found maladministration and poor service to a number of individuals in key situations. That makes us concerned that vulnerability is not taken as seriously as it might be.

Q230 **Chair:** Could you tell us a little more about the structural problems?

**Rob Behrens:** Sure. The Parliamentary and Health Service Ombudsman is one of the few ombudsmen in the world where citizens do not have direct access to my office on matters concerning Government Departments. If you are a citizen with a complaint about benefits, in most countries you could go directly to the ombudsman to make a complaint. That is what the Venice principles—our guiding document adopted by the United Nations and the Council of Europe—says is exemplary practice. It says that you have the right to go to the ombudsman.

In our case, since 1967 there has been an MP filter. That means that citizens and those who wish to complain about non-health issues have to go to their MP before they can go to the ombudsman. In the case of DWP, you go to the Department and a senior manager. You then go to ICE,



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which is the body set up to review complaints. You then go to your MP, and if you are lucky and have survived all that, you can then come to my office.

We know that this has a substantial impact on the number of complaints we receive from people about DWP. It is not an interpersonal issue: it is a structural issue. We have a very small number of complaints each year about DWP. We know that the reason for that is that we tell people they have to go via their MP; we looked at 2,000 people in our recent survey, and 80% of those people disappear. They do not come back, or if they go to their MP, we do not see those cases. In comparison to health, what it does is cut off legitimate complaints that we can look at about DWP, and the Home Office as well. The MP filter was introduced in 1967 as a temporary measure and has never been addressed since.

**Chair:** And it doesn't apply in the health service.

**Rob Behrens:** It does not. Actually, and paradoxically, the majority of complaints I receive are about the health service, not public administration more generally. The Select Committee on Public Administration has made it clear, since Sir Bernard Jenkin was the Chair, that this is an iniquitous situation that should be resolved. There are some signs that there is incremental movement towards resolving it—there is the victims Bill currently going through Parliament, which removes the MP filter for victims—but legislation is needed more generally, which has not been forthcoming although it has been promised, to reform the powers of my office to ensure that people can approach us in larger numbers to look at those issues. I hope that is clear.

Q231 **Chair:** It is clear, yes. In terms of the, as you say, fairly small number of complaints you have had from DWP, you have nevertheless spotted some things that make you think all is not well. What kind of things are we talking about here?

**Rob Behrens:** We submitted in our evidence some examples of the cases we are looking at. It is difficult to generalise because the numbers are so small. The very significant case we looked at, which we published and laid before Parliament, was the case of Ms U, who was transferring her disability benefits to employment support. As a result of the failure of DWP, she lived for five years on half the amount of money she was entitled to in order to survive the serious conditions she was living in in terms of poverty, her mental health and her passport payments.

When we investigated this, we found that there were 118,000 other people in the same situation as her, but we could not get the Department to agree that this was a structural issue that should be addressed by dealing with those issues and compensating the people. There was an admission of maladministration and a statement by the Department that if people wanted to complain to them, they would have to do so on an individual basis, despite the evidence of systematic maladministration. That is very concerning. The woman suffered severely as a result of the



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admitted failure of the Department, but in our view the response of the Department was inadequate to deal with that.

Q232 **Nigel Mills:** For some background, where would you rank DWP in the service it provides? Is it better or worse than other Government Departments you look at?

**Rob Behrens:** It is a good question that I cannot answer directly. What I would like to say is that for the last five years we have taken the view that all Departments we have oversight of could benefit from investing in complaints handling in their own Departments through what we call the complaint standards framework. That is a co-produced, best-practice guide for Departments to adopt and to use to benchmark themselves against what they are currently doing. It has been widely adopted not only in the health service but in public administration in general. My conversations with the permanent secretary and the roadshows, which Rebecca may tell you about, in which we go out and have a look on the ground at what things are being done, show that there is buy-in from DWP into this idea that it needs to improve the way in which it handles complaints. We have had good dialogue about that.

Our view is that all Departments—the Home Office, DWP and so on—have to invest in the professional development of complaints handlers in order to do a better job on the frontline, so that we receive only the more significant cases and so that people can get justice on the frontline more quickly than they can by waiting to come to us. In that sense, I would say that the Department has responded constructively, but there are large areas that we cannot make a judgment about because we do not have access to the practice in the Department.

**Rebecca Hilsenrath:** I can add to that. The place to start from—I am completely aware that the Committee knows this—is that we are talking about people who are in extremely vulnerable circumstances. Obviously, many of the Government Departments we work with deal with a range of people for a range of reasons. But looking at benefits applicants, we are talking about people who are all in vulnerable situations and whose situations are likely to change and become more vulnerable as a result of working through these processes.

You are looking at a large Government Department with practice across the country, and by its very nature it is a system. It is not as flexible as it could be. You are working with individuals in challenging places who do not necessarily fit in the system, and there is a need to be proactive in developing practice, in having practice that is innovative, and in working with partners to ensure that you reach people who probably are not going to come up voluntarily and proactively to your front door to tell you about their vulnerability. We have talked to people in the DWP who have worried that people have not identified vulnerability to them; it is really about understanding that it is the other way around. We know that there is very good practice out there.



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We visited areas where there is good, innovative partnership between DWP and third-sector collaboration. But we also know that it is very inconsistent. We have heard stories about people who say, "Well, it depends which caseworker you get, and if you complain, it depends which senior manager you talk to." There is something about recognising the scale of the operation and the need to be flexible but also consistent in terms of what good practice looks like, and to have appropriate protocols for particular vulnerabilities.

To give an example, we spoke to people who were very concerned about people being discharged from prison and not being able to access benefits quickly enough to avoid reoffending and going back into prison, which is to nobody's benefit. What we are seeing is a lack of proactive, innovative thinking to ensure that they are covering a range of challenging circumstances and that it is something the Department is taking on itself and through its outsourced agencies. It is a positive duty. They are working with claimants who need positive, proactive help.

**Q233 Nigel Mills:** Do you think any other Departments are better at that, or is this a general problem across Government services?

**Rebecca Hilsenrath:** I think the issue with DWP is the nature of the circumstances that the claimant is working with. That has to be taken into account in thinking about what they are doing. An example of this is that many of the people who are working with DWP who are applying for benefits cannot really do so without support. They may be suffering from mental health problems or have a long-term disability. There is support available from Citizens Advice, but it is quite limited. I believe it is digital or over the phone, and it stops at the point that you make the application, so it is not there throughout the appeals process. That comes back to the point Rob was making about the lack of oversight and effective challenge and the difficult pathways to appeals. It means there is an in-built inability for DWP to learn about what goes wrong. There are too many barriers to people effectively being able to tell them what is going wrong.

**Nigel Mills:** Thank you.

**Q234 Sir Desmond Swayne:** Why didn't DWP become one of the trailblazers for the new process?

**Rob Behrens:** That is a very good question, Sir. You will have to ask DWP that. It was disappointing that it did not, but it has not been negative in its response to the general principles of the complaint standards. What is interesting is that ICE was a member of our working group, which moved towards setting up the trailblazers. But it would have been a really good signal if it had become a trailblazer.

**Q235 Sir Desmond Swayne:** Is there going to be an expectation that all Departments will have to implement the central standard for complaints?

**Rob Behrens:** The ombudsman has no executive power. It cannot force anybody to do anything. It relies on its moral authority. I have been delighted with the way in which public administration has responded to

this, because it is so important to be able to use complaints as a way of improving good practice. We have co-produced it so that it is not us telling people what to do; it is us talking to people on the frontline to agree what constitutes good practice. We have set out what the framework is. We have provided good-practice guides. We now do training for complaints handlers. We have facilitated CPD points for over 500 people to demonstrate their increase in skills. Something we will do and are doing is that if we see in our investigations that Departments have departed from the complaints standards, we will use that in our investigations and our decisions to point out where that has failed. I think that is a good way of proceeding rather than being dictatorial about it.

Q236 **Sir Desmond Swayne:** How could DWP make it easier to complain?

**Rob Behrens:** First of all, in my opinion, Parliament needs to change the MP filter, so that people have an opportunity to complain directly to me.

Q237 **Sir Desmond Swayne:** What was the rationale for introducing that filter in the first place?

**Rob Behrens:** I have read the papers around the creation of the office that I have the privilege to lead, in the 1960s. The Justice report of 1961, which was the founding document for the ombudsman, was a very deferential document in terms of its respect—what I would regard as its over-respect—for Parliament. It talked about the need not to interfere in any way with Parliament's role. It talked about the needs of the "little man" in society who could benefit from an ombudsman. It saw the ombudsman as a way of assisting MPs in doing their jobs. It said that it would review that after five years.

The volume of cases in the early years was very small, and it took until 20 years ago for people really to understand what the impact of the MP filter would be. Now there is that understanding, and there is a common consent that it needs to be changed without undermining the constitutional role that you perform, which is absolutely vital. I am clear that people can still use their MP to come to me if they want to, but they should have the opportunity to bring their case, in line with the Venice principles. That would be a better way of bringing greater scrutiny to the Department. That is the first thing.

I will come on to what DWP could do, because you asked that. The second thing is critical. I conducted a study during covid in 2020 and 2021, in which 58 national ombudsman schemes participated, and most of them have the power of own initiative to look at issues that are important but are not complained about. What we find—this is true of ombudsmen across Europe and the world—is that it is the people who do not complain who are the most in need. The more vulnerable you are, the less likely you are to complain.

Most of my colleagues, in line with the Venice principles, have the power of own initiative, carefully to investigate issues that they believe are of strategic importance that have not been complained about. My office needs that power in order to be effective, to protect vulnerable people.



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The MP filter and the own-initiative investigations are critical to the greater effectiveness of the ombudsman service.

As far as DWP is concerned, there is a very important article by Robert Thomas, professor of public law at Manchester University, reviewing how DWP looks at complaints. What I get from that is that there are, of course, good people doing difficult things, as Rebecca said. We met some brilliant people on our roadshows, working for DWP, doing outreach work, trying to help people by going out from their Department, not just waiting for people to come to them. What is of concern to Robert Thomas and to me is the absence of transparency in what DWP do in their reviews, in their thinking about complaints handling. The number of complaints they receive is published, but the types of complaints they receive are not published, so we do not know a lot about that.

There needs to be much greater transparency and ownership of the need to protect vulnerable people. We will come on to this: I am cautious about having a duty here, but transparency is absolutely critical to enable people to understand better what they are doing and to have a conversation.

**Rebecca Hilsenrath:** Can I add to that? First of all, Rob is absolutely right about the lack of publication and transparency of data on the nature of complaints, but I don't actually think the DWP share it inwardly or keep it themselves. We have spoken to people in the DWP who do not know what the data is on previous complaints, so they are unable to do anything about what has happened in the past. To your point about what the DWP can do to make it easier to complain, I endorse everything Rob has said on a structural basis but, to come back to what I said before, these are people in extremely vulnerable circumstances—I know I have said that a lot, but I want to emphasise that—so it is not like what perhaps some of us might do if we were complaining about a car parking fine or something.

The first thing is the need to understand those people's very limited bandwidth to complain, and the need to make it easier for them. At PHSO, we have recently set up a public and user engagement panel, which is helping us through working with people who complain to us and other members of the public, to understand how our processes need to improve in order to be user-friendly to the people we work with. I would encourage the DWP to work with people with lived experience—as they do in some places—to understand better the support that people need to make complaints. People do need support, and more support than they get from Citizens Advice; as I say, that stops at the point at which they have made the application and does not continue through to making a complaint. There are many third-society partners out there who would be able to provide that sort of support if the DWP were able to fund them to do that.

There is also something about looking at the way in which the complaint system works. My understanding is that there is a lot of repetition involved, so people who have gone through something that is difficult, lengthy and probably quite challenging in terms of telling people about your personal circumstances, which may involve trauma and a lot of difficult stuff, are then having to do it all over again because it is not kept



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in a way that is accessible to the person handling the complaint. I know the Committee will be aware that if people who go through the complaint process are not happy and go to a tribunal, the chances of overturning the original decision are very high, so we know that there is something about the original decision-making process that is susceptible to challenge.

We want to make an offer to help DWP to work with them outside the tribunal process. The tribunal process is quite intimidating to people, and the problem is that the decisions are made on a case-by-case basis, so tribunals are not in a place to be able to look systemically at what is going on. We have been talking not only to DWP, but to HMCTS and to the MOJ about the possibility of looking at signposting to see where it is possible for complaints to come to us. That would enable us to take a more strategic and systemic look at what is going on, and hopefully to have more of a strategic impact in saving some people from going through the formality of a tribunal process, and then to understand through that work the critical underpinning of what a statutory duty might look like. Coming back to what Rob was saying about needing to understand better what the value added of the statutory duty would be, to my mind, it is about understanding what compliance with that duty would look like. That has to be about understanding what is not working at the moment.

**Q238 Debbie Abrahams:** Good morning. It is lovely to see you both. I am going to start some questions on the systemic issues or the systemic approach to safeguarding across the DWP. I think you have already, in the evidence you have just provided, indicated that it is not great. There seem to be issues internally and staff themselves do not really know the process. I wondered whether you wanted to comment, particularly thinking about the deaths of claimants, on that particular process. We had the permanent secretary here last month, and questions relating to the deaths—we will be speaking to others in relation to that later this morning—revealed that the Serious Case Panel had looked at only 60 out of the 89 deaths and serious harms. The permanent secretary needed to write to us to give us more information about that, but what a freedom of information request has since revealed is that among the 29 IPR referrals that the Serious Case Panel did not look at, there were 18 deaths, including four suicides, and that contrary to what was understood after the NAO investigation of the suicides of claimants, these were not referred automatically to the Serious Case Panel.

We have been looking at this in terms of what the existing arrangements around safeguarding were. My personal view is that they are very much devolved to the ground level and to individuals, rather than there being a systemic approach. Particularly thinking about the ultimate failure, claimants who are dying, we are not going to be able to stop every death, but we really don't know the scale of these deaths. What do you think of the structural reporting arrangements? Others are going to be talking about transparency in a minute. How do you think this is doing? Who wants to kick off? Rebecca?

**Rebecca Hilsenrath:** In a sense, we have probably covered a lot of this ground by saying that because there is limited oversight, because the





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barriers to complaints mean that we do not see enough complaints, because data isn't published, because of the governance around ICE, which is not actually independent of the DWP, and because there is very little understanding and transparency about what the Serious Case Panel provides and what the independent panel review says, it is actually quite difficult to know, beyond our experience.

Just to come back, Chair, to your question at the beginning about the cases that we put in the submission and the findings that we have made, the reason why we chose those cases was partly that they gave evidence across the breadth of different benefits, indicating that this is not restricted to just one space. It also involved external agencies—different agencies that had been involved in cases. The people involved were all suffering in particularly vulnerable circumstances, and the lack of understanding by the DWP about where they were and the lack of proactivity in terms of safeguarding was quite striking.

I will cite one—a woman who had been suffering from poor health and had a stroke and therefore her health deteriorated considerably and her needs escalated. She was transferring from DLA to PIP and had to wait twice as long as she should have for a home visit for an assessment, which obviously caused significant hardship because she was living off too little money for her needs in the meantime. Our concern, when we investigated this case, was that the DWP had said that she could have halved that waiting time if she had not had a home visit but had come into the offices, which indicated a profound lack of understanding of the purpose of the visit, but also a profound lack of understanding of her circumstances. I think, had we looked at the case and they had just said, "Oh, this is terrible. Mea culpa; we got this one wrong," we would have had less concern.

When you talk about safeguarding, it is about that lack of understanding and looking at the circumstances of a complainant, whether due to training or a lack of policy. We have actually been told that they get very good training, but I suspect it is very much a question of inconsistency across the piece. There seems to be a lack of proactive questioning and saying, "We've seen this issue, so that means we might want to ask about this, and we might want to assume that there's a need for more support." That is not happening.

I mentioned earlier that we have been told about a lack of protocol and lack of framework for people who have been discharged from prison. That seems to me an obvious circumstance where there would be a need for particular care and safeguarding and a particular process. To my understanding, that is absent. It is a lack of structure and curiosity and professional understanding that we have seen in the cases we have looked at.

**Rob Behrens:** Could I come in? I think there is an issue of accountability here. With due respect to all my colleagues who are working very hard in Departments, when we published the case I mentioned we found, as I said, that there were 118,000 people in the same position—one which the



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Department accepted had been created because there had been maladministration, a service failure; but it would not comply with our view that these people should be compensated. Historically, what would normally happen if there was non-compliance is that the Select Committee on Public Administration and Constitutional Affairs would question the Department about why it chose not to comply, and there would be a public debate about that. In this case, for reasons that I am prepared to accept, that has not happened in PACAC.

There has been a kind of exchange between this Committee and the Department about it, but there has been no public hearing about this issue. This means that if people do not comply with our recommendations about vulnerable people, they could have a sense that they do not need to defend themselves publicly for that. I may be wrong, but I think it is very important that this Committee and PACAC continue the practice of looking at non-compliance to make sure that the Department is aware that Parliament is supporting its ombudsman in this respect.

**Q239 Debbie Abrahams:** Thank you. That is a very important point indeed.

I will be very brief, as I am conscious that colleagues want to get in as well and I do not think this is on our set of questions. We have said that there is a bit of a hotch-potch and a lack of transparency. In a safeguarding sense, what would a good regulatory system look like from your point of view, so that we do not get the complaint and your workload does not increase? What would that look like?

**Rob Behrens:** I am not an expert on this, but I could give you my experience of regulatory oversight in other sectors, which works and which does not work. I think it is very important—I have read previous evidence that people have given—not to talk about vulnerable people but to talk about situations in which people are vulnerable. Those are different things. There is a danger of stereotyping people by calling them vulnerable and creating special measures. For me, the key issue is the fundamental approach to how you deal with people in general who are in what are already very difficult situations. We have said that there is a lot of work that can be done on that.

My experience of the health service makes me very sceptical of what a specific duty can do in the situation you are looking at. There is a duty of candour on the health service, requiring people to tell the truth about what happened when things have gone wrong, but despite the fact that it has been adopted, it does not work. It simply has no traction in the health service. Time and again, parents are not told the truth about what has happened to their children in care. Merely having the duty is not a guarantee that it is going to be abided by, because there is a cultural issue that has to be addressed related to the learning and the accountability in the Department and the transparency associated with it.

**Rebecca Hilsenrath:** I would just add to that—

**Chair:** Briefly, if you would.



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**Rebecca Hilsenrath:** Very briefly. I think the issue is about flexibility, going out into the community, working with lived experience and understanding that trust is a key element. That has to be about working in collaboration with the third sector and with people who have actually been there.

I would add one other thing really quickly. I don't come from a place of expertise, but I do think it is important not to worry about money in this space, because there is a false economy. What happens at the moment sends people back into vulnerable places and back into prison, instead of being able to turn them around into being contributing members of society, which would be a far better outcome.

**Debbie Abrahams:** Absolutely. Thank you so much, both of you.

**Chair:** Siobhan Baillie has a brief question.

Q240 **Siobhan Baillie:** Taking you back, Rob, I was struck by your points on the own-initiative investigations that other countries have. If you feel able to tell us some of areas that you've spotted already for which you would initiate that type of investigation, that would be very interesting.

**Rob Behrens:** Perhaps I could leave this study with the Committee because it is all in here. One of the most interesting things was that countries with an ombudsman with own-initiative powers were able to look very quickly at some of the issues arising out of covid. We have had to wait until we have had complaints.

Something struck me about own initiative when I looked at the Windrush cases—a big scandal: the failure of a huge central Government Department where we had very low numbers of complaints, although of course we did find maladministration in those cases. What complainants told us was that they were intimidated by the idea of going to their MPs on this very sensitive issue; they didn't feel comfortable about doing that, so the issue didn't come through to us.

We could have looked at that issue much more quickly than has been done if we had seriously addressed the concerns that we might be interfering in the legitimate space that the Government adopt. I have talked to Ministers about this. They have said, "If you have own-initiative powers, that's okay, provided that you use them responsibly. You don't just pick up something from a newspaper and run with it; you make sure that somebody else isn't dealing with it." But in lots of cases around disability benefit, for example, we could have run with that. It is still ongoing. Since we published the report in 2022, we could have returned to it. But without the cases, you can't do that.

Could I give you one other example, from health? We know that sometimes in mental health hospitals young people die very quickly after they are admitted. I had a case where that had happened. I investigated it and found 19 examples of maladministration in this case in which a young man subsequently took his life. His care plan was doctored after he died, and so on—it was disgraceful. I subsequently found out that 25 other



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people had died in the same way in the same hospital, but I could not investigate those cases because the families had not complained about them.

**Chair:** Thank you very much.

Q241 **Marsha De Cordova:** Good morning. In your opinion, is the DWP adequately transparent about its policies around safeguarding and safeguarding failures?

**Rebecca Hilsenrath:** I think we have already spoken to this. It is actually quite difficult for us to understand the range of policies and what the oversight looks like. It has been really interesting understanding their submission to this Committee, because that has provided us with more information than we had previously. By way of an example, we talked to a DWP office where we were told that a team was in place—I know this is slightly off-subject, but it is relevant—who were essentially checking applications for benefits for fraud. During the time that those checks were carried out, which was a matter of perhaps two or three months, the process was suspended so that payments were not made until they were completed.

The point that the team made to us was that not only had this actually not resulted in any finding of fraud, but they had not seen the guidance to which this other team were working, so the team who were looking at processing the complaints did not have the information or guidance on what the fraud checks would look like. They do not themselves have the information needed to be able to process those complaints in an appropriate way. So there is a lack of transparency inherent in the way that the DWP operates. We do not know what these policies are, and I am not convinced—we do not have the evidence—that they are sufficiently widespread across the piece.

**Marsha De Cordova:** Would you like to add anything, Rob?

**Rob Behrens:** I have been on these roadshows, and we were in an impoverished part of England this week to talk to people who would not normally come to us. We met good people working in outreach work from the DWP, doing exactly what they should be doing. I do not want to come here and say, "Fundamentally this is wrong." There are good people and good policies operating in the DWP; I want to make that clear. However, I think Rebecca is absolutely right that transparency is not sufficiently built into the culture of the organisation that you could legitimately say it is a learning organisation, because I am not sure that it is.

Q242 **Marsha De Cordova:** Thank you. In relation to how the DWP work effectively with the PHSO, when it comes to engaging with you, are they willing, open and transparent in terms of any of the changes you recommend and how they would implement them?

**Rebecca Hilsenrath:** We have a great relationship with the DWP. Obviously we work with them across many levels. Rob can speak to his conversations—and mine, for that matter—with the permanent secretary,



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which are really helpful and constructive. We find sometimes that they can be quite fixed in their views on what should or should not happen. Rob has already spoken about the case of Ms U, where we believe that there are 118,000 people who should at the very least have been made aware that they have been underpaid in the benefits they were received. Our conversations with the DWP have shown that they see that as quite backward-looking, meaning that it is focused on the past instead of the future. We believe that that is essentially not fair, this having been an outcome of maladministration on their part. However, that is not to say that we do not have very good conversations with them across the piece.

We also work with ICE, which is a key part of our conversations with Government complaints handlers across the piece. It is enthusiastic and engaged. We find that the quality of its investigations is really good, and it is often incredibly helpful in really getting to the nitty-gritty of what happened, as opposed to what should have happened. Where we struggle sometimes with ICE is that its conclusions on what remedy might be appropriate tend to be in the same sort of space, often £200, regardless of what has gone on. We are not sure that it is as clear as we would like it to be about the nature of the injustice and what remedy needs to look like, although ICE has been quite clear to us that there are instances of the DWP not following their own protocols and processes, which has been helpful to us. We have those really helpful conversations, but it is inconsistent. I suppose the key thing is transparency and wanting to see more evidence of there being a learning culture embedded.

Q243 **Chair:** What would adequate transparency look like? What are you asking for?

**Rob Behrens:** You have had evidence about the six-point plans, the internal process reviews, "Help to Claim" and the Serious Case Panel. We do not really know enough about how those excellent initiatives operate, because they are not really put into the public domain. I think it is legitimate for there to be an account of that, not in order to criticise it but in order to understand and to de-mythologise the process.

Q244 **Chair:** So more about the processes should be in the public domain?

**Rob Behrens:** Yes.

**Chair:** It is not data you are looking for. It is process descriptions.

**Rob Behrens:** Yes.

**Rebecca Hilsenrath:** It is also data. This comes back to the article Rob mentioned, written by Professor Robert Thomas. The number of complaints that have been made to DWP have gone down dramatically, but for the complaints that have been made the data is not kept. It is not possible for DWP or anybody else to say, "There have been this number of complaints made about this part of the DWP or this aspect of the process." Without that transparency, there cannot be true understanding. I would like to apologise for the fact that a lot of what we have said is anecdotal,



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and we acknowledge the inconsistency. But that is because of a lack of hard data for us to understand what is really going on.

**Rob Behrens:** Could I make one other structural point? You talked in your previous sessions about whether there should be a new body set up to oversee safeguarding. I am very nervous about the tendency of Government continually to create new regulatory bodies without integrating or rationalising the regulatory oversight in a way that enables us to be joined up and to operate effectively together. I would be very nervous about the creation of another body when the ombudsman, for example, does not have the powers she or he needs in order to effectively bring the Department to account.

**Chair:** We are coming to that very point in just a moment.

Q245 **Selaine Saxby:** Good morning. Part of my question has been covered in some detail, but to clarify your views, would a statutory duty to safeguard vulnerable claimants help to create a better culture of safeguarding and a greater level of accountability in DWP? Would a statutory duty achieve anything above and beyond improving safeguarding processes?

**Rob Behrens:** I think I have been clear that I am a sceptic as far as that is concerned. There are examples of where, with good intentions, a statutory duty has been created but has not necessarily worked. It is not a quick fix. It is very important to balance the legal aspects of what is done with the culture of the organisation. They are mutually dependent. I think Rebecca could say what would need to be done, but I am full of examples of where it has not worked, where it over-complicates the environment and does not lead to a better safeguarding process.

Q246 **Selaine Saxby:** Are there any examples of it working elsewhere in Government that you are aware of?

**Rebecca Hilsenrath:** I will come to that in a second, but I will just follow up on what Rob said. I agree that there is a need to not over-complicate, but I would like to come back to the point the Chair just made about the lack of transparency. We do not feel that we know enough about what is going on to want to advocate for a statutory duty. If we were able to signpost more complaints to us so we could work with the DWP and HMCTS to look at what strategic investigations might yield, we might then be able to come back to you and say, "We've carried out a few significant strategic investigations, and we think this piece, this piece and this piece aren't working and we need that and that."

By all means have a statutory duty to underpin this, but at the moment it would feel quite a high-level thing, and in a sense I do not know whether it would just layer more bureaucracy on top of what is going on at the moment. The obvious example of a public duty along the lines of what you say is the public sector equality duty, which I think has led to an increased awareness. It also involves the need for public bodies to set themselves clear objectives and to carry out impact assessments. That has led in many places to the over-bureaucratisation of the issue and to excessive



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amounts of work. It is about thinking about what you are trying to achieve and how you implement it.

Q247 **Selaine Saxby:** Thank you. Some of your views have already been made clear on my second question, around a new independent body to oversee DWP safeguarding practices. Would that be beneficial to improving standards and accountability? Is there anything further either of you would like to add?

**Rob Behrens:** I would repeat that it over-complicates an already over-complicated arena. Government should be using what they have in the most rational way they can. My office is desperately in need of the modernisation of its powers to make it even more effective.

**Selaine Saxby:** Thank you.

Q248 **Chair:** Thank you for giving us some very helpful, interesting answers. I want to ask about a couple of other things. Can you tell us when you expect to publish the findings of your investigation into DWP's handling of the increased state pension age for women?

**Rob Behrens:** Sure. Rebecca has personal responsibility for this, so she's in the best position to respond.

**Rebecca Hilsenrath:** Thank you for asking the question, because this case is obviously hugely important to us. You will be aware that we shared provisional views on this with the claimants and their MPs on 21 November, and asked them to come back to us by January with any comments or views they had on that. We are currently working through those comments. We are committed to publishing a final decision as soon as we can, but we are not able to give you a specific date at this point.

Q249 **Chair:** Are you able to give us a rough date?

**Rebecca Hilsenrath:** No, sorry.

**Chair:** Okay.

**Rob Behrens:** We do regard it as very important to get this out as quickly as possible, but it has to be done rigorously and with respect for the very serious issues involved in this case.

Q250 **Chair:** Will it be before the summer?

**Rob Behrens:** Well, I'm going in a month, so I can only speak for the office for the next month.

**Rebecca Hilsenrath:** I can assure you that it is our most important and most serious case. It is taking up a considerable amount of our resource. As Rob said, it is really important that we get it right. I am actually more interested in getting it right, in a sense, than rushing it out. That said, we will publish it as soon as we possibly can.

Q251 **Chair:** Thank you; we look forward to seeing that. Secondly, you found that the DWP fell short in telling people with large guaranteed minimum



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pensions about the impact on them of the new state pension. How would somebody show entitlement to compensation over that failing?

**Rebecca Hilsenrath:** I will answer that one as well—thank you for that. We have obviously found failings by the DWP in various aspects of communication in relation to pension rights. Where a public sector body has been responsible for poor communication, which amounts to maladministration, we would expect it to compensate affected individuals for both financial and non-financial loss. In terms of non-financial loss, I am talking about stress, shock, distress and frustration, as I am sure the Committee will be aware. In relation to both kinds of loss, we would also expect complainants to be able to provide evidence to that body in relation to the impact on them. Financial loss is not straightforward; it tends to be about evidencing what complainants would have done had they been provided with different information at a different time, which is often something that can be judged based on what happens when they are provided with the correct information.

In relation to the guaranteed minimum pension, if, for example, there were complainants whose behaviour changed once they were provided with different information—say, they perhaps started to put a lot more effort into aggressive savings—it would then be possible for the implication to be that their behaviour would have been different earlier, but quite often in those sorts of cases, we don't see a change of behaviour and we don't see circumstances suggesting that in fact the miscommunication had any impact on their finances. It is an evidential, evidence-based investigation and process, and it will be determined on a case-by-case basis.

Q252 **Chair:** So what do you think the DWP should be doing to establish potential eligibility?

**Rebecca Hilsenrath:** That is what I think they should be looking at. It is something that needs to be done person by person, case by case. It is about looking at all the circumstances of the individuals—looking very seriously at how they were impacted in a non-financial way. We know that these issues of poor communication do cause very real distress and very real impacts on people and on their families. It also means the DWP looking into their circumstances to be able to satisfy themselves that in fact the original, poor communication had an impact on how the person conducted their financial affairs. That is going to be different on a case-by-case basis.

Q253 **Chair:** In this particular case, do you think the Department has such an arrangement?

**Rebecca Hilsenrath:** I'm afraid I am not aware, Chair.

Q254 **Chair:** Okay, fine. Thank you both very much indeed. You have given us a very helpful set of evidence. We thank you, Mr Behrens, for your work in this office ever since 2017 and wish you well for the future. Has your successor been announced?

**Rob Behrens:** That is a very good question. The answer is no.





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**Chair:** Well, we look forward to seeing who it is. Thank you both very much indeed.