Department for Work & Pensions

GUY OPPERMAN MP
Minister for Pensions

Rt Hon Stephen Timms MP
Chair
Work and Pensions Committee
House of Commons
London
SW1A 0AA

15 October 2020

Dear Stephen,

Thank you for your letter of 15 September in which you raised a number of questions relating to the underpayment of State Pension to some individuals.

As noted in your letter, a number of women have contacted DWP to check if their State Pension amount is correct. Where we have identified that an individual is being underpaid, we have paid any backdated State Pension due.

In the paragraphs that follow I have responded to the questions you raised in your letter.

What is the maximum number of people who may be affected by these State Pension underpayments, and to whom DWP now owes backdated payments? What is the value of these payments, and what amount has been paid in backdated payments so far?

We are unable to provide the information requested at this time.

DWP are checking State Pension records held on the legacy IT system to identify married women who may be being underpaid State Pension. Only after each case identified has been reviewed will we know the number of cases that have been underpaid and the overall level of underpayments.

You have said that people who think they are affected should come forward. How many people have come forward? What has the Department done to ensure that this message is heard and understood by the people likely to be affected, so they can receive the money to which they are entitled?

We are unable to provide the information requested at this time.

There is already information available on Gov.uk within the basic State Pension guide (www.gov.uk/state-pension/eligibility) and "pension through a partner" tool (www.gov.uk/state-pension-through-partner), which encourages those who have concerns to contact the Pension Service.

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I have repeatedly encouraged people to contact DWP, through the Freephone service (for those in the UK) or to write, if they believed they were being underpaid State Pension.

We are in the process of reviewing what additional information we could include either on-line or via other channels to help people identify if they should claim the Category BL top up.

Lane Clark & Peacock LLP says that DWP should be working through its caseload to identify anyone who has been underpaid, and should be completing the checks listed below:

- ***That married women, whose husband turned 65 on or after 17th March 2008, are receiving any applicable pension uplift based on their husband's contributions;***
- ***That all widows are now receiving the correct pension based on the contribution record of their late husband;***
- ***That those who are now widows were receiving the correct rate of state pension when their husband was still alive;***
- ***That women who have now died were receiving the correct rate of pension;***
- ***That pensioners over 80 are receiving the Category D state pension where applicable.***

Is the Department completing each of the checks listed above so that it can find any underpayments? Can you confirm that where these checks find underpayments, DWP will owe backdated payments either to the person who was underpaid or, where that person has died, to their heir?

Yes, in accordance with the law – as set out in the Social Security Claims and Payments Regulations 1987, and amended by The Social Security (Claims and Payments) Amendment Regulations 2008.

We are also exploring how DWP can most effectively analyse State Pension accounts to identify other instances where those widowed or over age 80 are being underpaid.

How long will it take to identify all the people you have underpaid, and when will people receive the money that DWP owes to them?

When does the Department expect to finish the checking exercise? Will people affected receive any amounts they are due, from arrears and in future benefit payments, without needing to do anything further themselves?

I can assure you work is in progress.

The activity to identify those that are being underpaid their State Pension entitlement in accordance with the law is a significant, resource intensive task. It requires careful examination of many records in what is a complex area of historic State Pension rules. At the same time the Department must continue to manage other priorities – including responding to the consequences of the COVID 19 pandemic.

Those who have been underpaid in accordance with law will be contacted by the Pension Service once their entitlement has been reviewed. The comprehensive letters they receive will set out their revised entitlement and the amount of arrears they are due.

How does DWP inform married women that they are entitled to an increased amount of State Pension based on their husband's contributions, and that they need to submit a claim form to receive this?

How did DWP let these women know about their entitlement to higher State Pension amounts, at the time they first became eligible?

Before July 2007, the claim process for State Pension was postal only. A claim form (BR1) was automatically issued approximately 4 months prior to a customer reaching State Pension age – at that time age 60 for women or 65 for men. The BR1 claim form was also accompanied by an information booklet (form BR33). When a married woman received her claim pack at age 60, form BR33 was included along with information about the possibility of getting a State Pension based on her husband's National Insurance contributions, when her husband reached State Pension age. When a married man reached State Pension age, the standard procedure was that his invitation to claim would then have included two BR1 claim forms – one for the him to claim and the other to encourage and enable his wife to claim Category BL top-up. These subsequent documents were issued to the husband because until he retired and claimed State Pension, no entitlement to the Category BL top-up existed.

In July 2007 the DWP introduced the Pension Transformation Programme (PTP) which enabled customers to claim State Pension by telephone. This was an additional means of claiming State Pension. DWP alerted citizens approaching State Pension age to this new claims service. From this time, DWP's invitation letter to claim State Pension did not routinely include the BR1 claim form but gave the option of claiming by telephone or by requesting a form for themselves, or if a married man and his wife were over State Pension age, an additional claim form for the wife. The invitation to claim from 2007 still included the BR33 information booklet.

There were numerous other ways in which married women were made aware they may be able to claim a Category BL State Pension. For instance, in the accompanying information sent within the many millions of requested State Pension forecasts, and also in the Automatic Pension Forecasts the Government issued between 2003 and 2006 to over 17 million people.

A large scale pensions education campaign between 1998 and 2000 encouraged ownership of retirement planning. This included the specific changes to State Pension age as a result of the equalisation measures in the 1995 Pensions Act. The campaign also launched a new range of Plain English, Campaign-approved leaflets (referred to as "the PM leaflets"). This series included a leaflet tailored specifically for women - leaflet PM6 which also included information about married women claiming State Pension based on their husband's contributions.

As noted earlier, there is also information available on GOV.UK that encourages individuals to contact the Pension Service if they believe they are not getting the Category BL State Pension they may be entitled to.

Where people have not made claims because the Department did not communicate clearly to them that they could do so, why are payments backdated only for a year? Have you considered whether payments should be backdated to the point at which the person became entitled to them?

Married women whose husband reached State Pension age after them but before 17 March 2008 must claim the Category BL top up (Section 1 of the Social Security Administration Act 1992 refers).

If an individual makes a delayed claim for the Category BL top up, the maximum period of 12 months backdating is provided for in law – the Social Security Claims and Payments Regulations 1987, Schedule 4, para 13. There is no discretion to go beyond this period and there are no plans to change the law.

Extract from Social Security Claims and Payments Regulations 1987 – Schedule 4 Paragraph 13

Description of benefit	**Prescribed time for claiming benefit**
13. Retirement pension of any category **[**or state pension under Part 1 of the Pensions Act 2014**]**.**]**	**13. [**As regards any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to the pension, that day and the period of 12 months immediately following it.**]**

Some people will have received, or will be due to receive, lump sum amounts in respect of underpayments which have been going on for many years. How is interest applied to backpayments, to make sure people don't lose out because of a DWP mistake?

Steve Webb has told us that one woman was told DWP "is not a bank" when she asked for interest on her backpayments. Is interest applied to all DWP backpayments? Should customers have to ask for interest to be applied or should it happen automatically?

Those who have been underpaid their State Pension will be paid what they are due in accordance with law.

DWP operates a discretionary special payment scheme, which provides financial redress for the impact of DWP maladministration.

Tax should only be applied to the year to which the payment applies rather than wholly in the current year. How do DWP and HMRC work together to ensure that those who receive these payments are not inadvertently overtaxed? How do DWP and HMRC ensure that people who have received lump sum repayments understand what they have received, and are aware of the tax treatment of those repayments?

HMRC recently responded to a specific Parliamentary Question (65108 – answered 1 July 2020) as follows:

"To ask the Chancellor of the Exchequer, what the tax liability is for women who receive back payments of underpaid state pension in a single financial year; and if he will make a statement.

Income tax is calculated on arrears of state pension for the tax year in which the pensioner was entitled to receive it, and not in the year in which a lump sum is paid.

Where arrears of state pension are paid, income tax will only be due on any income that exceeds the personal allowance for the respective tax year.

In addition, HM Revenue and Customs can only collect income tax for the current tax year and the four preceding tax years. Any arrears of state pension relating to earlier years will not be subject to income tax."

DWP officials has worked closely with HMRC to ensure any customers that receive an arrears payment will have their tax liability considered without needing to make direct contact themselves with HMRC.

Whilst the letters that advise of arrears payments will also give information on the possibility of further tax liability, this is a HMRC matter and the personal implications of this cannot be confirmed until HMRC have reassessed the individuals tax position.

Steve Webb has said that some DWP staff are giving out incorrect and inconsistent information about State Pension entitlement to the affected women. What have you done to make sure that the people answering these calls have the necessary knowledge and understanding of the system to identify past errors, and ensure new errors are not made?

It is right that people who call the Pension Service are given accurate and consistent information. Again, if specific cases are brought forward, the department will investigate further.

In May, the Pension Service established a specialist team to handle the enquiries that have been received to date. They have also ensured that all agents across State Pension hold details of how to identify cases and refer to the specialist team immediately for a review of the customer's award.

We also commissioned and are continuing to deliver bespoke and enhanced training for the additional staff who are redeployed to look at the cases identified.

I hope that this letter provides reassurance to the Work and Pension Select Committee that DWP are taking significant and urgent action to identify those who are being underpaid and that appropriate steps will be taken to rectify records that are identified.

Guy Opperman MP
Minister for Pensions and Financial Inclusion