

Written Evidence from Women Against State Pension Inequality (WASPI)¹ (HSO23)

Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2022-23 inquiry

1. About Women Against State Pension Inequality (“WASPI”)

As Public Administration and Constitutional Affairs Committee (“PACAC”) members will be aware, we are a campaign group fighting for justice for all women born in the 1950s affected by the lack of information about changes to the State Pension age. We aim to educate women in pensions rights and take action to achieve those rights.

We are made up of around 50,000 volunteer members including our local groups. We also have a paid membership scheme and in excess of 150,000 followers on social media who look to us for guidance, support and information on this very complex matter. We are all women who found out far too late that we could not retire at 60 and whose plans were shattered. We lost opportunities to make different choices and have suffered financial losses, anguish and distress due to the Government’s actions.

Years on, we are still seeking a just remedy.

Many of us have made complaints to the Parliamentary and Health Service Ombudsman (“the Ombudsman”) which are under consideration. The Ombudsman prevented many others from doing so by refusing to take new complaints on the basis that they would be similar to those already under consideration.

2. WASPI and the Ombudsman

WASPI is not campaigning for a reversal of the effects of State Pension age legislation as we consider that this is very unlikely, as are the retrospective transitional measures we originally campaigned for. Our main objective now is to secure fair and adequate compensation for women for the lack of notice of the pensions changes commensurate with the degree of loss and emotional impact we suffered as a result of that lack of notice.

For that reason, in 2017-2018 we decided to advise our members and 1950s born women generally to complain to the DWP and then to the Ombudsman asking him to investigate the injustices they have suffered as a result of DWP maladministration.

In short, we placed our trust in the Ombudsman.

¹ Submitted by Angela Madden, Chair, The WASPI Campaign

PACAC will be well aware that the Ombudsman decided to investigate a very small selected sample (six) of those complaints, summarised in the following terms:

Since 1995 DWP has failed to provide accurate, adequate and timely information about State Pension age and the number of qualifying years national insurance contributions required for a full State Pension. These failures have led to financial loss, financial hardship and suffering, and meant opportunities to make informed decisions and effectively plan for retirement were lost. They have also negatively impacted on the affected women's health and wellbeing, and caused disruption to domestic life. DWP's failure to adequately consider and respond to complaints relating to these issues has compounded the affected women's stress and anxiety. ICE [Independent Case Examiner] has failed to adequately consider, respond to, and remedy complaints about the appropriateness and timeliness of DWP's communication relating to State Pension age changes. This has led to frustration, anxiety and distress.

These complainants are seeking financial redress, and compensation for the health, emotional and domestic consequences of the DWP's and ICE's failures. They also seek acknowledgement of failures, apologies and assurance that action has been taken to ensure failures are not repeated.

We make this submission to the 2022-2023 PACAC scrutiny in order to:

- provide evidence on the Ombudsman's casework performance against key performance indicators in his investigation of DWP's communication of changes to women's State Pension age, and in relation to value for money;
- draw the PACAC's attention to WASPI's recent judicial review challenge leading to the withdrawal and reconsideration of the Ombudsman's Stage 2 Report, and the reasons for this;
- set out recommendations for the steps that should in our view be taken to ensure that reconsideration exercise is thorough, fair and impartial and capable of identifying a fair remedy for affected 1950s women; and
- ask the PACAC to take evidence direct from us about our experiences – this investigation is the largest in scale the Ombudsman – possibly any Ombudsman – has embarked upon, serious errors have been made and the pace has been glacial at times. That is unacceptable in circumstances where victims of the injustices the Ombudsman identified at stage 1 are dying every day.

We hope that this submission is of assistance to the PACAC in its scrutiny of “matters in connection” with the Ombudsman's reports.

3. WASPI's judicial review challenging the Ombudsman's decision on injustice

On 19 July 2021 the Ombudsman published the Stage 1 report of his investigation into the complaints that the DWP had failed to provide accurate, adequate and timely information about changes to State Pension age for women. The Stage 1 report rightly concluded that the DWP committed maladministration in not writing to affected women sooner.

At the time, we welcomed this recognition that our concerns were well-founded. We felt for perhaps the first time that we were being listened to.

The PACAC will also know that in December 2022 the Ombudsman completed Stage 2 of his investigation which focused on what injustice had been caused by the DWP's maladministration. His Stage 2 report was issued to complainants on 8 December 2022, but not published.

We were very concerned about the findings in the Stage 2 report and had submitted comments on the provisional draft, but these were rejected.

After taking legal advice, a pre-action letter was sent on 8 February 2022 to the Ombudsman about the legal errors that had been identified and asking him to withdraw the Stage 2 report. The Ombudsman decided to defend the claim and the alternative dispute resolution offer we made in our pre-action letter was not accepted. We were told the Ombudsman would seek his legal costs from us.

We decided that we had no choice but to issue legal proceedings because the Ombudsman's flawed approach to the injustices women suffered meant that he could not proceed to recommend a just remedy for them.

As a result of WASPI issuing judicial review proceedings, the Ombudsman quickly agreed to withdraw the Stage 2 Report because it was legally flawed. In May this year, our judicial review case was settled when the Court approved an order agreed by the Ombudsman that the Stage 2 report would be quashed and the Ombudsman would reconsider those aspects that we had identified – and he agreed - were not legally sound.

The Ombudsman describes his own performance as regards the investigation into the communication of women's State Pension age in his Annual Report and Accounts 2022 to 2023 ("Annual Report") in the following way:

Investigation into women's State Pension age changes

The investigation into the Department of Work and Pensions' (DWP) communication of women's State Pension age changes continued this year, with Stage 2 looking at

National Qualifying years, complaint handling by DWP and the Independent Case Examiner, and Injustice. The final stage, Stage 3, considers remedy. With a legal challenge brought against us, we have agreed to look again at part of the Stage 2 report, subject to the Court's approval. The final publication of all three stages will be delayed while this takes place.

We are confident that we have completed a fair and impartial investigation, and we hope this cooperative approach will provide the quickest route to remedy for those affected and reduce the delay to the final report.

Paragraph 1 although true, is incomplete. After WASPI issued legal proceedings, the Ombudsman recognised that parts of the Stage 2 Report were legally flawed and must be quashed and reconsidered. That is clear from the Court settlement which the Ombudsman's lawyer signed.

This does not seem to us to have been the "fair and impartial" investigation that the Ombudsman describes in his Annual Report. It was derailed.

In our view, the Ombudsman could have taken a "cooperative approach" much sooner, at the feedback stage following the provisional Stage 2 report. It is our contention that the Ombudsman was not cooperative with WASPI until we forced reconsideration through the courts, even though we made every attempt to cooperate before we took that step.

4. The Ombudsman's Performance against Key Performance Indicators (KPIs)

The Ombudsman's Service Charter explains the service that can be expected by complainants. Performance against the commitments in the Service Charter form the Ombudsman's Key Performance Indicators (KPIs) which are included in the Annual Report at pages 40-41.

Below we consider the Ombudsman's performance against some of these KPIs in respect of the investigation into DWP's communication of State Pension age changes.

Commitment: "Giving you the information you need", including "We will keep you regularly updated on our progress with your complaint"

The Ombudsman communicates directly only with a small fraction of the number of women affected by the investigation into DWP communication of women's State Pension age changes.

All others must rely on limited information posted intermittently on his website, or factual reports from our campaign, or conjecture and speculation on social media. Many women born in the 1950s would say that they are not receiving the information they need.

There are conspicuous gaps and a great deal of opacity. For example, it is completely unclear when the ombudsman will issue the next draft stage two report for comment or why progress has been so slow. Affected women find this intensely frustrating.

Commitment: “Following an open and fair process”

We question whether the process is fair in circumstances where the Ombudsman has not adhered to his own published policies.

For example, during an evidence session to the PACAC on 29 November 2022, the Ombudsman’s then Deputy and CEO Amanda Amroliwala was asked about the process for recommending compensation for the maladministration it had found in the DWP’s communication of state pension age changes.

Ms Amroliwala told the PACAC that compensation for maladministration “generally goes up to level 4 [of the Ombudsman’s “severity of injustice scale]”, that “...when you go into level 5, you go into more serious harms” and “...Level 6...is generally for issues such as death or serious harm.”

This does not reflect the descriptions of the severity of injustice scale contained in the Ombudsman’s published guidance. It appears to us as though the process of assessing appropriate compensation for those affected by the lack of communication of the changes to the State Pension age had been pre-determined regardless of what evidence may be provided by individual complainants about the loss and harm suffered.

Similarly, the Ombudsman said that he would consider financial losses under his injustices policy. In fact, he has a separate and different approach to determining how to compensate for direct financial loss as described in his Principles for Remedy on the website (One of the appropriate range of remedies includes: “financial compensation for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these”).

Commitment: “Giving you a good service”

As complainants and recipients of the Ombudsman’s service, we would not class it as ‘good’. We are told that some of the sample complainants have found the process time consuming, stressful and frustrating.

Meanwhile, those who have experienced this maladministration but are not complainants have received no service or information from the Ombudsman since July 2021 even though it is clear that the determinations he makes on the sample complainants’ cases will inform any remedies others can expect.

WASPI feels we have no choice but speak up and advocate for all the victims of the proven maladministration by the DWP because they had absolutely no voice in the process.

The Ombudsman’s commitment to “Giving you a good service” also includes a commitment that “We will give you a final decision on your complaint as soon as we can”.

‘Soon’ has become a very elastic concept in relation to this particular investigation. We are very concerned about the delays in its completion while 1950s women are dying by the day.

We calculate that over 250,000 of us have already died since WASPI was founded in 2016. In 2023 one WASPI woman will die every 13 minutes while waiting for the Ombudsman to complete his report.

The Ombudsman first received complaints from our members and others in July 2018 meaning that our complaints and those of our members have been with the Ombudsman for more than 5 years.

Maladministration was found and reported publicly in July 2021. The investigation had, up to then, taken two years and nine months from when the first complaints reached the Ombudsman (including a pause when judicial review proceedings challenging pensions legislation were brought by a separate group of 1950s women, Backto60).

To give some context it is worth noting that WASPI women had already spent a great deal of time going through the four stages of the DWP complaints process, and some had their complaints investigated by the ICE. In December 2018 the ICE summarily closed all complaints outstanding, most of which had been accepted but not considered by ICE for a year or more.

The Ombudsman failed to give WASPI women a good service by avoiding undue delay. Nor have complainants or others been informed about progress and the reasons for any delay.

These delays continue. The revised Stage 2 investigation should have started, at the latest, when the Court Order requiring its reconsideration was sealed on 12 May 2023. The Ombudsman's staff are unable to say when provisional views might be circulated to complainants, or how long it will be before the investigation is completed. WASPI have asked for a broad-brush indication and they were unable to give us one.

5. Value for Money

The PACAC are scrutinising "Value for Money" as well as casework and performance against KPIs.

Legal costs could have been avoided if the Ombudsman had taken proper account of the feedback provided by WASPI and the complainants on the provisional Stage 2 report, or taken stock when he received our pre-action letter.

Most significantly, we are told that the investigation is taking up a huge amount of the Ombudsman's resource and yet there is so far very little to show for that.

6. What would a fair and impartial report look like

WASPI's claim for judicial review was settled on the basis of the agreed Statement of Reasons, which is an intrinsic part of the agreed Court Order published on 12 May by the High Court of Justice. You can apply to have a copy of the Court Order from the High Court of Justice or view it [here](#).

The Statement of Reasons sets out the flaws in the since quashed Stage 2 Report and provides a starting point for how the Ombudsman can take a fair and impartial approach to the re-investigation, and produce a report that will not only be lawful, but helpful to Parliament in prompting rapid, straightforward and meaningful action to address the injustice 1950s women have experienced on a massive scale.

We invite the PACAC to consider the Statement of Reasons in full.

In summary, rather than looking at when the DWP should have started sending letters to the complainants, the PHSO has subtracted *exactly* 28 months from when the complainants actually received their letter. This departs from the principle identified in the Stage 1 report quite significantly. Gone is the “at least” which signifies that some women would have received more than 28 months’ more notice. Because the actual letter writing process started so much later than it could have, the DWP had to pause the mail-out several times to allow further changes affecting the same cohort of women to pass through Parliament. The Ombudsman’s approach takes no account of this, even though starting the mail out 28 months earlier would have avoided some if not all of these “pauses”, meaning the sample complainants would have received notification of the changes enacted in 1995, and notification of further changes subsequently.

We believe that a “fair” approach towards deciding when the women should have received letters would be to understand what would have happened had there been good administration:

- When would the mail out have started, what order would letters be sent (by date of birth? Age relevant to the original 1995 timetable of changes?)
- How long would that have taken without any maladministration or pauses and perhaps acting with some urgency given the intention the Government expressed in the White Paper of 1993 was to give as much notice as possible to the women affected by this change.
- If the mailout had indeed started before the 2007 Act was passed through Parliament, the changes to the 1995 timetable enacted in that act should not be applied to the original 1995 timetable for the purposes of Ombudsman’s calculation of when WASPI women should have received their letters.

We also need to know when the Ombudsman thinks the injustices caused by the maladministration ends.

It is only by making a legally correct decision on the injustice we have experienced that the Ombudsman can decide on what is adequate compensation for that injustice.

The Ombudsman must not underplay the impact of the DWP’s maladministration on those affected. Alongside emotional impacts, the financial impacts on us are extreme as we have either used up our savings, or borrowed money, or sold assets, or relied on support from family or friends to make ends meet.

As well as direct financial losses, 1950s-born women have experienced losses of opportunities to make different choices. This is a free-standing form of injustice recognised

in the Ombudsman's policies. It was not taken into account in the legally flawed Stage 2 report which stated that "there is too much we cannot now know". This must be grappled with in the reinvestigation.

The most consequential "lost opportunity" concerns the decision about when to retire. Women are the carers in our society and often provide free care to their elderly relatives. Many chose to stop working anticipating a State Pension age of 60. Many of those would not have made that decision if they had notification from the DWP at the appropriate time. They cannot always prove a counterfactual or provide evidence that no-one realistically will have in order to prove that they would have made a different decision, but they know they would have – either sharing care with work or continuing in paid work and paying for the care of their relatives. Others had their Divorce Settlements calculated assuming a State Pension age of 60.

Being robbed of the opportunity to plan for or enact the plan we had for our retirements is significant and extreme and for some women aligns with the impact described in level 6 of the Ombudsman's severity of injustice scale.

We have written to the Ombudsman to describe in more detail the ten steps that we would recommend that he takes. The PACAC can also see these ten steps on our CrowdJustice page:

<https://www.crowdjustice.com/case/fair-compensation-for-waspi-women/>

We – and a number of 1950s born women and their MPs – have asked the Ombudsman to publicly commit to taking these steps. That commitment has not been forthcoming. We have simply been assured that our points are being considered.

7. Conclusion

We believe that while the investigation to date has not been to the standard we would have hoped for, these issues can with cooperation and transparency be remedied and that the Ombudsman is capable of identifying the injustices we have suffered and the appropriate remedy for them.

We hope that he does so as soon as possible.

In this submission we have tried to summarise the issues arising from a very long and complex process, without discussing anything that isn't already in the public domain, and by discussing the process rather than the content of the Ombudsman's investigation.

We would very much like to speak directly with PACAC about our experience. We believe that the Ombudsman is capable of recommending a just remedy but needs to move swiftly and courageously to do so. The PACAC should expect no less of the Ombudsman.

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