

Written evidence submitted by the Deputy Parliamentary and Health Service Ombudsman,
Karl Banister (PPCM0054)

I was grateful for the opportunity to give evidence to the Committee on 22 January as part of your inquiry into Pensioner Poverty. At the end of the evidence session, I agreed that I would write to the Committee to share some further thoughts on the design of a compensation scheme for the women affected.

As the Committee will be aware, our report did not attempt to design a proposed compensation scheme in detail. As I explained at the evidence session, it is our view that DWP is far better placed to do this given the expertise and understanding of its own capacity.

However, given the limitations of the Government response to our investigation report, in my evidence I set out some outline principles that I hope will help to focus the Committee's consideration of the issue. These principles were informed by learning and reflections from our investigations and wider work, including, for example, from complaints relating to the Windrush Compensation Scheme and by recent work by the National Audit Office on compensations schemes. I am grateful for the opportunity to further expand our thinking.

As I set out to the Committee, it is important that any compensation scheme that is established is proportionate. During the session, I indicated that we would support a scheme that would require applications from individuals, rather than require DWP to make efforts to seek to find potential applicants. Our thinking here is informed by the publicity that the issue has had and the need for a proportionate response. For context, as I explained, our view on what is proportionate and the steps that would be needed is driven by context. For example, in the [Employment Support Allowance case](#) which we laid before Parliament in 2022 (and was referenced briefly in the evidence session), we believe that the circumstances justify DWP proactively seeking out those affected. We would welcome the opportunity to provide the Committee with further evidence about this case, as the broader injustice remains substantially unremedied.

Schemes should also be focussed on the users of the service. It is important that organisations recognise that schemes seek to remedy injustices suffered by individuals often over many years, many of whom have very low levels of trust in public institutions. Consultation with WASPI and other key stakeholders to assess what individuals need and expect from a scheme would be a sensible first step for DWP to take. As with any consultation, DWP would need to consider how to balance responses with other considerations.

In our view, proportionality should underpin the level of investigation undertaken by DWP so that it is not overly burdensome in terms of administration. The level of investigation undertaken should take account of the number of potential claimants, amongst other factors. Our view here is supported by HM Treasury's 'Managing Public Money' which requires compensation schemes to be efficient, effective and deliver value for money. It also says the administrative costs associated with compensation schemes should not be excessive. This is important for the organisation administering the scheme who should be seeking to minimise the operating costs and the burden on the applicant.

Guidance, eligibility criteria and the process to be completed should be set out clearly from the outset. From our investigation we know that:

- some women were aware their State Pension age had changed before DWP should have begun direct mail
- some women would have been closer to 60 than others when DWP should have written to them about the 1995 Pensions Act changes and so had a smaller window of opportunity to do things differently
- some women would not have had opportunities to do things differently even if they had wanted to. Employment status, caring responsibilities, health and domestic life will also play a large role in the extent to which women had opportunities to do things differently.

It would be for DWP to determine how to reflect information such as this in the eligibility criteria and set conditions, for example that applicants are required to evidence that they did not know about the specific changes during the relevant period taking into account the difficulties with proving a negative. It would also be for DWP to decide whether the scheme would operate, as our report has, on the basis of compensation for loss of opportunity to make different decisions, and if so what evidence it may require to recognise this. The section in our report analysing the 6 sample complainants' circumstances may be useful in working this through. In my evidence I suggested that any scheme could require evidence to

be in the form of a self-certification process such as a written statement with accompanying evidence in a form specified by DWP. This statement would need to demonstrate lack of knowledge and why an applicant thought that meant they met the scheme criteria for payment of compensation. DWP could then additionally assess potential claims via a telephone conversation between an assessor and the claimant to allow for clarification of the circumstances and provide a further opportunity for evidence to be gathered to support a claim. However the scheme is set up, we recommend that claims should be evaluated against transparent criteria with a proportionate review process.

DWP would also need to consider its proposed compensation model for remedy. In our report, we set out what we considered an appropriate remedy and the factors that influenced our thinking but, as above, it is for DWP to consider the merits of different models.

As explained to the Committee, we proposed that complainants were paid compensation at level 4 of our severity of injustice scale (£1,000 to £2,950). Our Principles for Remedy state that each case should be considered on its own merits so that redress reflects individual claims of injustice and impact. Similarly, DWP's "Financial redress for maladministration: staff guide" states that the injustice resulting from maladministration should be addressed on a case-by-case basis and considered on its own merits taking account of the circumstances of the individual and the impact the maladministration had on them.

However, a more standardised approach towards compensation could be justified given there may be large numbers of women who apply on the basis that they did not know about the changes to their state pension and believe they suffered injustice. A standardised approach minimises delay in making payments and should ensure that the cost and administrative burden of assessing individual circumstances are managed and predictable. In these circumstances a flat-rate payment would be more efficient to deliver, but it would likely mean that some women would be paid compensation where they might not have been had there been a more detailed individual assessment model. There the possibility that others would be paid less, although given our findings on the likelihood of direct loss, we think this less likely.

Ultimately, DWP are best placed to develop proposals on a costed redress scheme. DWP has expressed the view that schemes are unaffordable. In their response, DWP stated that 'making awards to up to 3.5 million people, many of whom will not have suffered injustice, is neither fair nor affordable, particularly during a period of great pressure for the public finances'. As I set out in my evidence, we suggest the Committee consider asking DWP for the

details of the schemes it considered ahead of issuing its response and why particular schemes were not felt to be feasible or appropriate.

We remain open to discussions with DWP and, as ever, are available to advise the Committee and Parliament as appropriate. We look forward to hearing from DWP on proposals for the future.

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