



DDI: +44(0)20 7014 2071

E: [redacted]

The Rt Hon Liz Kendall MP
Secretary of State for Work and Pensions
Government Legal Department

Our Ref: 263651/6. JHAL.CARR

Date: 23 February 2025

By email only: [redacted]

cc. [redacted]

cc. the PHSO: [redacted]

Dear Secretary of State,

Proposed claim for judicial review against the Secretary of State for Work and Pensions by Women Against State Pension Inequality

A. Introduction

1. We write on behalf of our client, Women Against State Pension Inequality Ltd (“**WASPI**”), with regard to the Government’s response to Parliamentary and Health Service Ombudsman’s (“**PHSO**”) investigation into Women’s State Pension age. The Government’s response was announced in a statement you made to Parliament on 17 December 2024 and is set out fully in a document published the same day by the Department for Work and Pensions (“**DWP**”) (the “**Decision**”).
2. The Decision is unlawful and, unless it is withdrawn by you with an appropriate recognition of its illegality, WASPI will ask the Administrative Court to quash the Decision and/or grant appropriate declaratory relief.

B. Information required by the Pre-action protocol

(a) Details of the matter being challenged

3. The Government’s response to the PHSO’s investigation into Women’s State Pension age, contained in a document published by the DWP on 17 December 2024.

(b) The intended Claimant

4. The intended Claimant is WASPI, a private limited company that operates as a membership organisation for millions of women affected by the changes to the State Pension age. WASPI represents two of the six sample complainants considered by the

PHSO in its Decision (Ms W and Ms E). The intended Defendant is familiar with WASPI and the significant role it has had in representing the interests of women during the investigation and subsequently.

5. WASPI is the appropriate claimant in this judicial review. It is a body composed of the very women affected by your decision not to establish a scheme of financial compensation. WASPI was created for the express purpose of representing their interests and those of 1950s-born women generally.
6. Given the nature of the legal grounds that we set out below, we consider that these are wholly appropriately advanced by WASPI as a suitable representative claimant. We trust you will confirm in your response that you accept WASPI is the appropriate claimant for the issues it intends to advance and that you accept it has sufficient interest to do so.

(c) The details of the Claimant's legal advisers, if any, dealing with this claim

7. This matter is being handled by John Halford, Caroline Robinson and Kaya Saccheri at Bindmans. Our address for service and reference are above.
8. Counsel are Tom Hickman KC and Tom Leary of Blackstone Chambers.

(d) The Defendant's reference details

9. The intended Defendant is the Secretary of State for Work and Pensions. Please notify us of the identities of the Government Legal Department lawyers who will be handling this matter and their reference details.

(e) Interested Parties

10. The PHSO, Millbank Tower, 21-24 Millbank, London SW1P 4QP is an interested party and will be copied into correspondence by email via [redacted] (the PHSO's private secretary), [redacted] (Mr Banister is Deputy Ombudsman and Director of Operations, Legal and Clinical) and [redacted] (Ms Easton is Head of Legal).
11. As you will know, the PHSO has in the past fully participated in proceedings such as those contemplated in this correspondence (see *R (Bradley) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36, [2009] QB 114) and in any event is directly concerned with the matters raised in this letter.
12. Women directly affected by the Decision are also interested parties. WASPI does not intend to seek to identify and serve them for logistical and costs reasons and because it would be impossible to do so in relation to most affected women whose identities are unknown. We consider this letter should be sent to the six sample complainants now and published by WASPI (with the personal emails of addressees redacted), as others may wish to take legal advice on their positions.
13. Further, bearing in mind CPR 54.7(b) and the importance of open justice, WASPI intends to publish the Claim Form and Grounds in the event the Decision is not withdrawn and the claim is issued (though it would seek a direction from the Court relieving it of the requirement to serve interested parties other than the PHSO). It would also like to publish the Acknowledgement of Service and Summary Grounds of Resistance. Please let us have your comments in your reply.

14. If you consider there are other interested parties or have other proposals as to how their interests should be protected, please let us know.

(f) Steps the Defendant is asked to take and proposed reply date

15. The Defendant is required to withdraw the Decision for the reasons set out below, accept that the DWP's maladministration caused injustice and reconsider the issue of remedy.
16. We require a response within 14 days of this letter, in accordance with the pre-action protocol.

(g) Alternative Dispute Resolution ('ADR') offer

17. Provided the parties can reach an agreement to ensure WASPI's position in the proposed litigation is not compromised (e.g. agreement to the claim should be issued protectively and stayed for a short period), WASPI is willing to attempt ADR, initially in the form of a 'round table' discussion involving solicitors and Counsel representing you, our clients and the PHSO. The possibility of a settlement and alternative forms of ADR, such as mediation, could be explored at that meeting. Please let us have your comments keeping in mind the Dispute Resolution Commitment and the position the courts have taken on the importance of responding constructively to ADR offers and the consequences of not doing so (see e.g. *Churchill v Merthyr Tydfil County Council* [2023] EWCA Civ 1416).

C. Facts and grounds of judicial review

(a) The Reports

18. In July 2018 the PHSO commenced an investigation into complaints from 1950s-born women whose State Pension age had been changed by statute as to the inadequate notice and information that they claimed to have received of the changes from the DWP, and as to the handling by the DWP of their subsequent complaints. The investigation was divided into three stages. Stage 1 addressed whether maladministration had occurred. Stage 2 addressed whether maladministration had caused injustice and Stage 3 addressed possible remedies.
19. In a report published on 19 July 2021, entitled *Women's State Pension age: our findings on the Department for Work and Pensions' communication of changes*, the PHSO identified failings in the way the DWP communicated changes to women's State Pension age ("**Stage 1 Report**"). The PHSO found that if the DWP had made a reasonable decision in August 2005 and acted promptly, it would have written to affected women to tell them about the change to their State Pension age by, at the latest, December 2006. This means that women should have had at least 28 more months' individual notice of the changes than they had and the opportunity that additional notice would have given them to adjust their retirement plans was lost. The PHSO therefore found that the DWP had been guilty of maladministration.
20. On 8 December 2022, the PHSO issued a Stage 2 Report and a separate provisional report on Stage 3. Following judicial review proceedings brought by WASPI, the PHSO accepted that the reports had to be quashed due to a flaw in the PHSO's reasoning concerning the timing and sequencing of letters and the effect on women in the affected group. The reports were quashed and the PHSO had to reconsider the position.

21. We note your predecessor was an interested party to that judicial review, was legally represented and fully aware of the draft Order and statement of reasons setting out the narrow basis on which the parties agreed the Stage 2 Report and provisional Stage 3 should be quashed. He did not argue the reports were unlawful on any other bases, less still that this should happen for the reasons given for rejecting the final Stage 2 Report. The Court made the Order sought after a hearing listed so the parties could explain their positions.
22. On 21 March 2024, the PHSO published its final, combined report, *Women's State Pension age: our findings on injustice and associated issues*. This addressed Stages 2 and 3 together (the "**Stage 2 and 3 Report**"). The PHSO decided that maladministration in the communication of changes to State Pension age did not lead to the sample complainants suffering direct financial loss. This was because the PHSO considered there were intervening events between the maladministration happening and the financial losses the sample complainants experienced and because the PHSO took the view that direct financial loss was a concept linked to loss of an entitlement rather than loss shown to be more likely than not caused by maladministration.
23. The PHSO did however decide that complainants had suffered injustice. The PHSO decided that the "*primary injustice*" was the denial of "*opportunities to make informed decisions about some things and to do some things differently*", and the diminishment of the "*sense of personal autonomy and financial control*" that women who should have been sent letters sooner experienced (Stage 2 and 3 Report §12). The PHSO had examined the position of six sample complainants and determined that five of the six had suffered such injustice.
24. The PHSO assessed the severity of the injustice suffered by each sample complainant by assessing the "*significance*" of any opportunities lost to do things differently, including by taking account of the "*likely financial consequences of the lost opportunities*" and the likely impact on a person's life. The PHSO concluded that all six of the sample complainants' cases fell within Level 4 on the Severity of Injustice scale (i.e. "*a significant and/or lasting injustice that has, to some extent, affected someone's ability to live a relatively normal life.*") and that five of the six (Ms U, Ms I, Ms R, Ms L and Ms E) had suffered injustice at the higher end of Level 4 (the range being between £1,000 and £2,950). For one of the sample complainants (Ms W), the PHSO concluded that the primary injustice she had experienced was "*emotional*". There was also a "*compounding emotional injustice arising from maladministration in DWP's complaint handling*" suffered by all six complainants. The PHSO recognised that injustice will have been suffered by the group of affected women who were not sent letters when they should have been.
25. In respect of remedy, the PHSO noted that what the DWP had said during the investigation led her to strongly doubt the Government would provide a remedy for the identified injustices: see paragraph 21 of the Stage 2 and 3 Report. The report was therefore laid before Parliament on 21 March 2024 under s.10(3) Parliamentary Commissioner Act 1967 ("**PCA 1967**") and the PHSO asked Parliament to identify a mechanism for providing an appropriate remedy for the sample complainants and "*others similarly affected*". To help "*guide Parliament in its considerations*", the PHSO set out what he "*would have*" recommended as an appropriate remedy.
26. The Stage 2 and 3 Report noted that the PHSO would have recommended that the sample complainants be paid compensation at Level 4. It added the PHSO would also have recommended that the DWP provide a remedy for others who have suffered injustice because of the identified maladministration.

(b) The Law

27. The Stage 1 Report and the Stage 2 and 3 Reports were made following an investigation under s.3 of the PCA 1967 which empowers the PHSO to “investigate any action taken by or on behalf of a government department or other authority to which this act applies...”. Such an investigation can be pursued following a written complaint to a member of the House of Commons from a member of the public “who claims to have sustained injustice in consequence of maladministration”.
28. The PHSO has “the primary task of assessing the nature of the maladministration and its consequences”. The Secretary of State is “entitled to disagree with her assessment for cogent reasons, but not to disregard it.”: *R (Equitable Members Action Group) v HM Treasury* [2009] EWHC 2495 (Admin) at §63 (Carnwath LJ and Gross J).

(c) Grounds for Judicial Review

Ground 1: The rejection of the PHSO’s finding that the delay in informing women by letter of the change to their State Pension age, which constituted (and is accepted as constituting) maladministration, has caused injustice, was not based on cogent (or even rational) reasons.

29. The Decision:
- Accepted the PHSO’s findings on maladministration in its Stage 1 Report, that decision making between August 2005 and December 2007 resulted in a 28 month delay in beginning to send individual letters to 1950s born women about the change in State Pension age.
 - Rejected the PHSO’s conclusion that the maladministration caused injustice.
 - Decided not to make any financial remedy, in part because the DWP does not accept that any injustice had been caused.
30. By the first ground of judicial review, WASPI challenge the Decision’s rejection of the PHSO’s finding of injustice and the decision not to provide a remedy which was premised on this conclusion.
31. At paragraph 52 of Stage 2 and 3 Report, the PHSO stated:
- “We think if the maladministration in August 2005 had not happened, DWP would have decided then to write directly to affected women about the 1995 Pensions Act. Its 2006 options appraisal document says ‘a targeted, personalised mail-out’ was the ‘most appropriate’ option for getting information to women who needed it. We noted during stage one of our investigation that it is reasonable to infer DWP would have made a similar decision about direct mail, and begun exploring how to write directly to women, if it had made a reasonable decision in August 2005.”*
32. At paragraph 474, she further explained:
- “because of maladministration in DWP’s communication about the 1995 Pensions Act, women did not know they had cause to take action to establish their circumstances. We know from stage one of our investigation that women did not seek information about their State Pension age because they felt they had no reason to question it.”*

33. The PHSO's overall finding of injustice was summarised in paragraph 12:

"We find that maladministration in DWP's communication about the 1995 Pensions Act resulted in complainants losing opportunities to make informed decisions about some things and to do some things differently, and diminished their sense of personal autonomy and financial control. We do not find that it resulted in them suffering direct financial loss".

34. The Decision summarises the Government's objections to the PHSO's finding of injustice at paragraph 82. It states that it does not accept the PHSO's finding on injustice because it contains a "logical flaw" and that the PHSO "failed to take into account" the fact that the sending of letters is "often not an effective way to change levels of awareness". Specifically, the Decision refers to a survey conducted on behalf of the DWP in 2014 that, it says, shows that "there was only a 25% chance of people reading and recalling unsolicited letters sent by DWP". (*New State Pension direct mail trial evaluation – summary of survey research evaluating a direct mail trial in 2014/15* (March 2017) (the "2014 survey")

35. The Decision provides further reasons at §40-§41:

"40. The report finds that we should have written earlier, and the resulting period of lost opportunity has caused injustice. However, we know from research that we provided to the PHSO that the effectiveness of unsolicited letters has some major limitations. In particular, research from 2014 showed that just under half of those who had received an unsolicited letter recalled doing so once prompted. Of those who recalled receiving the letter, just over half said they read all or some of it, with a further 33% having 'just glanced at it' and 8% noting they did not look at it at all.

...

*41. The evidence provided by this research is that only around a quarter of people remembered receiving the letter and reading it in whole or part. Therefore, while letters offer one communication option, they are very far from a perfect solution. In fact, **the research tells us that if a person is sent a letter, it is unlikely to make any difference to what they know. And if sending a letter would likely have made no difference to what they know, any conclusion that they have suffered injustice from not sending a letter earlier is, at best, highly speculative.**" (emphasis supplied)*

36. The Decision also states:

"42. The PHSO's report does not properly address the evidence provided by the research that most people who are sent an unsolicited letter will not read it. The PHSO were aware of the evidence. They mention it in their consideration of maladministration on State Pension age in their stage 1 report and in their consideration of maladministration on communication about NI qualifying years in their final report. On State Pension age communications, the evidence is mainly relevant to the question of injustice, not maladministration. The PHSO only mention the evidence in the context of injustice in one sentence of paragraph 336 of their final report.

43. When considering whether the maladministration in not sending letters earlier would have caused any injustice, the PHSO do not explain whether they accept

the findings of the evidence on the effectiveness of letters (and if not, why not). That oversight flows through to the consideration of the individual complaints.”

37. The reasoning in the Decision, set out above, is irrational and does not represent the “*cogent reasons*” required for such a decision to be lawful.
38. The DWP is wrong to draw the conclusion from the 2014 survey that if a person is sent a letter by the DWP it is unlikely to make any difference to what they know, such that any conclusion about the causation of injustice in the circumstances of this case is highly speculative and that it is accordingly unlikely that women, had they been sent individualised letters when they should have been, would not have suffered the injustice the Ombudsman identified.

Ground 1A: The 2014 survey provides no reliable evidence as to what would have happened if women had been sent letters informing them of a change to their State Pension age sooner, because the letter tested in the 2014 survey was not analogous

39. The 2014 survey concerned a generic letter that was quite dissimilar to the letters that the PHSO found should have been sent much earlier to women informing them of changes to their State Pension age.
40. The letter used in the 2014 survey did not address an individual’s entitlement to State Pension. It referred to changes to the method of calculation of State Pension being introduced in 2016 which would simplify the system (without prejudice to anyone’s pension entitlement). The letter used in the 2014 survey was thus not an individualised letter specific to an individual concerning their pension. As recorded in the survey report at page 3, “*The letter outlined that the changes would make it easier for people to know how much they will receive, and encouraged them to find out more and request a State pension statement...*”. Such a generic letter is entirely dissimilar to the letters that were sent to people about the change to their State Pension age, which the PHSO concluded should have been sent far sooner to the affected transitional group.
41. These were letters specific to each individual that explained how a change to the State Pension age would negatively affect their personal situation; they specified the date on which they would now receive their State pension. As the PHSO recorded, such letters were “*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.*” (Stage 1 Report §89) Recipients were therefore told, clearly and prominently, that the letter provided “*important information*” about changes to the State Pension age and that it, “*explains how these changes affect you*”. It asked recipients to “*read it carefully*”. Such a letter is entirely dissimilar to a generic letter about changes to how pensions information can be obtained. Such an individualised message would have been particularly impactful in respect of the transitional group affected by the DWP’s maladministration since many in the group were approaching their expected State Pension age of 60.
42. Moreover, that such letters would have been important mechanisms to inform such people of the change is reflected in the DWP’s own analysis and assessment at the time. As recorded by the PHSO, in December 2006, the DWP prepared an Options Appraisal document, which concluded that a “*targeted, personalised*” letter was the “*best way*” to communicate to women in the transitional age group. This would include the “*exact date*” each woman would reach State Pension age on the basis that it was questionable whether a communication containing only generic information would be effective (Stage 1 Report, 444, §112-113; Stage 2 and 3 Report, §638 §261-262). The DWP thus

appreciated the different impact of a generic letter and an individualised, personalised, letter providing information about an individual's own entitlement and for this reason concluded that the latter form of letter had to be sent. It is thus irrational for the DWP now to point to the limited impact of generic letters as supporting a conclusion that a personalised letter would have had no effect.

43. The DWP's reasoning in the Decision that, "*research tells us that if a person is sent a letter, it is unlikely to make any difference to what they know*", is thus unsupported, irrational and does not represent a cogent basis for rejecting the PHSO's conclusion on injustice. The 2014 survey provides no reliable evidence as to the likelihood of persons recalling a letter **of the type that the PHSO found** (and the Government accepts) should have been sent earlier to affected women.

Ground 1B: The 2014 survey does not undermine or contradict the injustice which the PHSO found.

44. Secondly, the 2014 survey was directed at individuals' recall of a letter a number of weeks after they had received the letter. It records that a significant number of people could not recollect the general letter they had been sent and a portion of other persons said they had not read it through but had glanced at it. Even if these results provide reliable evidence as to what women would have done had they received the letters which the PHSO concluded should have been sent to them sooner (which it does not for the reasons given in Ground 1A above) the findings do not in any event contradict or undermine the PHSO's finding of maladministration, which was that individuals "*lost the chance to receive, read and act on a letter earlier*" and they therefore "*lost opportunities to make informed decisions*" (Stage 2 & 3 Report §340 and §12). This injustice arose irrespective of the level of recall of letters several weeks after receipt or whether individuals chose to read them in full or act upon them at the time they received them.
45. Therefore, for this reason also, the Government's reliance on the 2014 survey does not represent a cogent basis for rejecting the PHSO's finding that the maladministration caused injustice.

Ground 1C: The 2014 report is not a sound evidential foundation for rejection of the PHSO's findings

46. Thirdly, there are also a number of other reasons why the conclusions of the 2014 survey do not support the Government's position and why it provides a wholly unreliable and inadequate evidential basis on which to reject the PHSO's findings.
47. A survey conducted in 2014 of the impact of letters communicating information about the state pension is not a reliable indicator of the impact that would have been achieved by letters sent in 2006. The period between 2006 and 2014 had witnessed a significant change in society's reliance on postal communications as a form of communication, as well as changes in the use of the internet and websites as a forum for providing information.
48. WASPI is confident these commonsense points would be confirmed by publicly accessible information, academic and other research as to the reliability of survey data. In the questions below, you are asked to confirm what information of that kind you considered, if any, before you decided to rely on the 2014 survey.

Ground 1D: The DWP's assertion that the 2014 research was not taken into account by the PHSO is incorrect

49. Fourthly, the reasoning in the Decision to the effect that the 2014 survey was not taken into account by the PHSO is also wrong:
- a. The DWP in its submissions on Stage 1 provided the PHSO with a copy of its evidence in the *Delve* litigation,¹ which included a DWP witness statement that referred to and set out the findings of the 2014 survey. This evidence was also directly referenced by the DWP in its response to the PHSO's provisional view at Stage 1. The DWP's position, at this time, was that that the 2014 survey showed that *"individualised letters are not the most effective way of communicating information about changes to State Pension age to the public"* (8 February 2021, DWP response to Stage 1 provisional views, §§36-38). The DWP's representations therefore (i) drew attention to the 2014 survey, and (ii) notably did not draw the same (erroneous) conclusions from it that it has done in the Decision.
 - b. In its Stage 1 Report, the PHSO expressly referred to the DWP's argument concerning the 2014 survey and the findings of that survey at §167 of the report. The PHSO explained that she was not saying, in her findings of maladministration, that the DWP must always send individualised letters, but pointed out that the DWP's own *"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."*
 - c. On 10 February 2023, the DWP raised the argument in relation to the Stage 2 Report that the 2014 survey showed that *"people usually do not read and take in the content of unsolicited letters"*. On 21 November 2023, the PHSO issued a revised Provisional Stage 2 and 3 Report and a final Report was published on 23 March 2024. WASPI does not have a copy of any submissions made by the DWP on the provisional report, but this provided a yet further opportunity for the DWP to raise any issues it wished about the 2014 survey.
 - d. In the PHSO's Stage 2 and 3 Report at §336 the PHSO directly addressed the argument now advanced by the DWP. It stated:

"336. DWP has also told us that letters sent earlier would have made no difference to the recipients' 'state of knowledge' about their State Pension age. It highlighted that research has shown people do not usually read and 'take in' the content of unsolicited letters. It told us that half our sample complainants saying they did not receive letters, despite them having been sent through an automated process to the correct address, supports its view that people do not recall the content of letters, or receiving a letter. It said if a letter had been sent earlier, the likelihood was it would have made no difference."
 - e. The PHSO expressly addressed and rejected the DWP's position on the 2014 survey, pointing out at §337, that:

¹ *R (Delve) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199, [2021] 3 All ER 115; [2019] EWHC 2552 (Admin), [2020] 1 CMLR 35.

- The DWP's own 2006 Options Appraisal identified personalised letters as the most appropriate option for providing information to women about the changes to the State Pension age.
 - The sample complainants who told the PHSO that they did receive letters plainly remembered them and *"there was no reason to doubt they would have remembered one sent earlier"*.
 - Therefore, the PHSO concluded that *"the letters were a very important mechanism for providing information to women about the State Pension age and so, as a generic point, letters sent earlier would have affected what women knew about their State Pension age."*
- f. Turning to the sample complainants, the PHSO pointed out that there was an accepted "failure rate" of around 15% of letters not being delivered to the intended recipient, due to errors in the database or errors in the postal service and, in any event, the failure to commence direct mail in 2006 meant that these women, *"lost the chance to receive, read and act on a letter earlier."* (§340) The PHSO therefore did not accept that the sample complainants that had stated they did not receive a letter must have forgotten that they had done so.
50. It is therefore clear that the DWP was given a full opportunity to make the argument set out in the Decision to the PHSO, that the DWP squarely presented the 2014 survey to the PHSO and relied upon it at both Stage 1 of the process and at Stages 2 and 3. It is also clear that the PHSO took the DWP's submissions and the 2014 survey fully into account. The fact that the PHSO did not accept the full extent of the DWP's submissions on the 2014 survey does not provide a cogent and therefore lawful basis for the DWP to reject those findings.

Conclusion on Ground 1

51. The flaws in the Decision reflected in Ground 1 not only vitiates the rejection of the finding of injustice but also the DWP's refusal to afford any remedy. The Decision states that since the *"purpose of a remedy scheme is to address the injustice which the PHSO found"* there is no justification for any remedy to be provided since *"sending a letter would have made no difference"* (§83). The Decision should therefore be quashed in whole or in relation to the parts addressing injustice and remedy.

Ground 2: The DWP's conclusion that there was no injustice and no justification for the provision of a remedy because women knew their State Pension age was changing is also not based on cogent or rational reasons.

52. The Decision states at §89 that it would *"not be right to pay taxpayers' money to those that did know their own State Pension age was changing, as they cannot have suffered injustice."* (emphasis supplied). The Decision goes on at §91 to state that *"the substantial majority"* of the group of women who were not informed of the change to their State Pension age *"cannot have suffered injustice because they were aware of their State Pension age..."*.

This reasoning is premised on a survey conducted in 2006 called the *Attitudes to Pensions Survey*. The Decision states that this survey showed that among women aged 45-54, 90% of women knew that the State Pension age was changing.

53. Again, however, this survey does not provide a sound or rational evidential basis for the rejection of the Ombudsman's findings.

Ground 2A: The Attitudes to Pensions Survey 2006 did not provide any evidence about women's knowledge that their own State Pension age would change, which is the relevant element of the PHSO's reasoning

54. The survey did not provide evidence that women who professed to know that the State Pension age was changing understood that the changes to State Pension age would affect the date on which they received their State Pension.

55. The method is recorded in an associated Technical Report. This states that participants were provided with two "test statements" relevant to the matters relied upon in the Decision (page 15). The first test statement was:

"At the moment, women can receive the State Pension when they are 60"

56. The second test statement was:

"The age women can receive the State Pension is going to increase in the future."

57. Participants were asked to say in response to each statement whether it was:

1. *Definitely/probably true*
2. *Definitely/probably false*

58. If answers were given as either definitely or probably true, this was recorded as a positive response; the level of certainty appears not to have been sought or recorded. The answer "*don't know*" was not, it appears, set out as an equally valid and available alternative response. Interviewers were, according to the Technical Report, asked to say that if the participant did not know the answer, that was "*fine*" and they could "*skip to the next question*", suggesting such a response would not be an answer to the question and would be an inferior response. Whether interviewers did in fact convey this message is not recorded.

59. The fundamental problem with DWP's reliance on evidence acquired in this way is that it does not provide any evidence of an individual's knowledge about their own State Pension age. Participants who answer definitely/probably true to the second of the test statements were answering a highly generalised question entirely unrelated to their own circumstances. The survey thus does not provide an evidential basis for the statements in the Decision that people knew "*their own State Pension age was changing*" and people "*were aware of their State Pension age...*" (above [52]).

60. Indeed, the survey was conducted around four years before the State Pension age for women even began gradually to rise from age 60 (and it predated by five years the Pensions Act 2011 which accelerated the increase in the pension age from 2016). There is no reason to think that women had appreciated that the changes, which were several years from even starting, would affect their personal position.

61. This distinction between a general appreciation that changes will be made in the future and appreciating that this will impact a person's own pension, and how, is critical, and was central to the finding of maladministration. It was acknowledged by the PHSO and not in issue that many women appreciated that the State Pension age was changing but, critical to the finding of maladministration, the PHSO explained that they did not appreciate that this would affect their own circumstances. Indeed, the PHSO's findings were themselves based on the assessments of DWP at the time.
62. The DWP in 2006 recognised that a large percentage of women affected by the increase in the State Pension age did not know that their State Pension age had increased and recognised that the DWP needed to target the group with individualised information (e.g. First Report §107-§113). It was the failure to act on that understanding that was at the heart of the maladministration found. The PHSO noted that in 2007 the DWP wrote a Ministerial Submission which, "*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.*" (First Report §117).
63. As recorded in the PHSO's Stage 1 Report, the DWP recognised that writing individualised letters to women would "*give [DWP] the opportunity to provide the clarity needed by including each individual's actual State Pension age...*" (First Report §121). The PHSO pointed out that generalised information about changes to state pensions available from leaflets (etc) "*would not necessarily have alerted women that they could be personally affected*" (at §130). The PHSO reports are thus clear that many women were aware in general terms that the State Pension age for women was changing but a substantial proportion had not appreciated this would affect themselves.
64. We observe that a more accurate reference to the *Attitude to Pensions Survey 2006* is made in paragraph 88 of the Decision, where it is acknowledged that "*we do not know ...what those women understood their own State Pension age to be.*" It is said that women who had a general awareness that the State Pension age was changing "*could*" have undertaken their own research, it is said that it was "*reasonable to expect*" people to "*take personal responsibility and check expert advice*". Reference is made to leaflets and the DWP website as potential sources of information (a website which, at times, incorrectly said women's state pensions age was 60). These comments are, however, (i) inconsistent with the reasons for refusing to acknowledge that injustice was suffered, namely that women knew their Pension age was changing; and (ii) they are inconsistent with the DWP's acceptance that maladministration was suffered, which was, as explained above, premised on a recognition by the DWP in 2006/7 that sources of general information were not a sufficient source of information for women whose State Pension age was changing and that individualised letters were necessary.
65. The *Attitudes to Pensions Survey 2006* therefore does not support the reasons given in the Decision for refusing to provide any remedy, and the DWP's position is essentially inconsistent with its acceptance that maladministration occurred, given the reasons on which the finding of maladministration was based.

Ground 2B: the Attitudes to Pensions Survey 2006 in any event provided unreliable data as to women's awareness that the State Pension age was subject to change in the future

66. Whilst that is sufficient to render the Decision flawed and unlawful, it is also of significance that the testing methodology under in the *Attitudes to Pensions Survey 2006*

renders the data unreliable in any event. This is because the nature and structure of the questions (set out above) operated in the following manner:

- (1) Participants were prompted to consider a field of inquiry they might never have considered or recalled any information about independently of the statements made to them, i.e. the changing nature of State Pension age.
 - (2) Participants were led to the correct answer—that the State Pension age for women was going to change—because (i) the first test question stated what the State Pension age for women was “at the moment” --which clearly suggested that the age would be changing and planted this message in participants’ minds- and (ii) the second question itself was framed in terms that Pension Age was “going to increase in the future” and thus suggested this fact.
 - (3) These flaws were compounded by the fact that participants were asked for a true or false response to the statement that State Pension age for women was going to change, without allowing for don’t know or unsure or as an equally valid answer; this encouraged participants to opt for the most likely answer of either probably yes or probably no (even if their level of confidence was very low or they had no prior knowledge of any change to women’s pensions).
67. In these circumstances, it is hardly surprising that approximately 90% of participants stated that the second test statement was at least probably true. It is however an entirely unreliable indication that such a percentage of women who were not prompted and asked non-leading questions would have appreciated that the State Pension age for women would be changing.
68. WASPI is confident that, had the 2006 survey been considered in the light of publicly accessible information, academic and other research on the reliability of survey data, you would have appreciated it could not support the reasoning in the Decision.

Conclusion on Ground 2

69. For all of these reasons, the DWP’s reliance on the 2006 survey as a basis for rejecting the PHSO’s findings on maladministration and remedy do not bear scrutiny. The Decision does not contain the cogent reasons required for the DWP lawfully to reject the PHSO’s report. For these reasons also, the Decision should be quashed in whole or part.

E. Details of information and documents sought

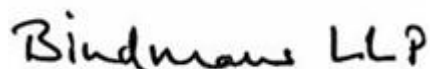
70. With your duty of candour firmly in mind, we ask that you address the following requests in your substantive response to this letter using the enumeration below. If you are unable or unwilling to do so, please state why, giving full reasons.
71. Please provide:
- (1) all ministerial submissions relevant to the Decision;
 - (2) all documents appended and referred to in those submissions or otherwise taken into account when you made the Decision including any advice on or analysis of:

- a. publicly accessible information, academic and other research on the reliability of survey data;
 - b. any DWP or other government department research on the reliability of survey data (including external research commissioned by such departments);
- (3) copies of all of officials' representations to and other correspondence with the PHSO that are relevant to the Decision;
 - (4) any further information you hold relating to the 2014 survey and the Attitudes to Pensions Surveys 2006, 2009 and 2012 including any technical reports and the raw data gathered;
 - (5) copies of all iterations of the individual letters sent to 1950s-born women between 2009 and 2013 (for information, we understand that the earliest version of this letter was exhibited to the DWP official's witness statement in the *De/ve* litigation as Exhibit WF/498-500); and
 - (6) an explanation for why the concerns about the Stage 2 and 3 Report were not raised by those representing your predecessor in the judicial review of the Stage 2 report and provisional Stage 3 report.
72. We confirm that these requests are made solely for the purposes of the litigation, specifically to:
- (1) enable Counsel and ourselves to advise WASPI whether it should proceed with the claim on a sufficiently informed basis if you do not agree to withdraw the Decision;
 - (2) ensure the Grounds of the claim is pleaded in a proper, focussed way; and
 - (3) in turn enable the permission stage Judge can then reach a sufficiently informed view of its arguability.

F. Conclusion

73. Please confirm receipt of this letter by return and let us have your substantive response by the reply date given above, 10 March 2025.
74. We look forward to hearing from you.

Yours faithfully,



Bindmans LLP