IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No: AC-2025-LON-000811

BETWEEN:

THE KING on the application of
WOMEN AGAINST STATE PENSION INEQUALITY LIMITED

Claimant

-and-

SECRETARY OF STATE FOR WORK AND PENSIONS

Defendant

-and-

PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN AND OTHERS

Interested Parties

STATEMENT OF FACTS AND GROUNDS

- *References to the Core and Supplementary Claim Bundle are in the form **[CB/x]** or **[SB/x]***
- *A list of essential documents for advance reading by the Court is at **Appendix 1**.*
- *References to the First Witness Statement of Angela Madden are in the form: Madden 1 §[para].*

A. INTRODUCTION

1. On 21 March 2024, the Parliamentary and Health Service Ombudsman ("**PHSO**") published its final, combined report, *Women's State Pension age: our findings on injustice and associated issues* (the "**Stage 2 and 3 Report**") **[CB/94]**. This addressed Stages 2 (injustice) and 3 (remedy) of its investigation into multiple complaints against the Department for Work and Pensions ("**DWP**") relating to its maladministration in delaying in sending women letters informing them of the changed date on which they would receive their State Pension, which was five or six years later than it had previously been ("**SPa**"). The PHSO had published its findings of maladministration on 19 July 2021 (the "**Stage 1 Report**") **[CB/55]**.

2. On 17 December 2024, the Defendant published the Government's response to the PHSO's Stage 1 and Stage 2 and 3 Reports, accepting the PHSO's findings of maladministration but rejecting its findings that the affected women had suffered injustice and rejecting its recommendation as to remedy and compensation (the "**Decision**") **[CB/194]**.

3. In summary, the Decision's rejection of the finding of injustice is unlawful for the following reasons:

   (1) In order to be lawful, the rejection of findings by the PHSO must be based on *"cogent reasons"*. The Defendant stated that a survey entitled, *New State Pension direct mail trial evaluation – summary of survey research evaluating a direct mail trial in 2014/15* (March 2017) (the "**2014 Survey**") **[CB/690]**, *"tells us that if a person is sent a letter, it is unlikely to make any difference to what they know"*. However, the 2014 Survey concerned a particular letter of a generic nature concerned with changes to the transparency of the State Pension **[CB/698]**. The conclusions of that survey do not translate to the wholly different letter which the PHSO found (and the Defendant accepted) should have been sent to women affected by changes to their State Pension age sooner, nor does it provide any evidence in support of the sweeping assertion that letters are unlikely to make any difference to what people know (**Ground 1A**).

   (2) The conclusion that the Defendant (erroneously) draws from the 2014 Survey, that most people do not read, recall at a later date, or act upon, letters they receive from the DWP, does not in any event provide any cogent or rational answer to the nature of the injustice that the PHSO found to have been suffered in this case, namely, that affected women "*lost the chance to receive, read and act on a letter earlier*" and "*lost opportunities to make informed decisions*" (Stage 2 & 3 Report §340 and §12) **[CB/158;101]**. Whether people chose to read the letters, could recall them, or chose to act upon them does not affect the fact that they lost the opportunity to do so and suffered a diminished *"sense of personal autonomy and financial control"* **[CB/101/§12]** (**Ground 1B**).

(3) The 2014 Survey is not a sound evidential foundation for a rejection of the PHSO's findings for other reasons, once changes in the use of postal communications over time are taken into account (**Ground 1C**); and the Defendant's assertion that the 2014 Survey was not taken into account by the PHSO is incorrect: the PHSO was well aware of the 2014 Survey and considered it (**Ground 1D**).

4. The Defendant's rejection of the recommendations as to remedy are also flawed and unlawful:

(1) The principal reason for the Defendant rejecting the PHSO's position on remedy was the rejection of its findings of injustice. The rejection of these findings of injustice is unlawful for the reasons set out in Ground 1 (**Ground 2A**).

(2) Secondly, the Defendant's conclusion that there was no justification for the provision of a remedy because women knew their State Pension age was changing rests on the purported findings of a survey conducted in 2006 called the *Attitudes to Pensions Survey* (the "**2006 Attitudes Survey**") **[CB/458]**. However, the 2006 Attitudes Survey did not provide any evidence about women's knowledge that their own State Pension age would change, which was the relevant element of the PHSO's reasoning (**Ground 2B**); and the 2006 Attitudes Survey in any event provided unreliable data as to women's awareness that the State Pension age was subject to change in the future (**Ground 2C**).

5. The Claimant sent a pre-action protocol letter to the Defendant on 23 February 2025, identifying the errors in the Decision and explaining the consequences (the "**PAP Letter**") **[CB/421]**. ADR was offered. By a response dated 10 March 2025, the Defendant rejected each of the proposed grounds for judicial review and refused to reconsider the Decision ("**PAP Response**")**[CB/440]**.

B. CLAIMANT'S STANDING

6. By its PAP Response, the Defendant appears to accept WASPI's standing as a claimant in these proceedings.

7. Section 31(3) of the Senior Courts Act 1981 requires a person or body applying for judicial review to have a "*sufficient interest in the matter to which the application relates*". The Claimant clearly has a sufficient interest.

8. The Claimant, WASPI, is a private limited company that operates as a membership organisation for women affected by the changes to the State Pension age. Its function is to educate women in pensions rights and to take appropriate action to achieve those rights, by advocating for millions of women affected by the changes to the State Pension age. It is a body composed exclusively of the women affected by the DWP's maladministration and by the PSHO's investigation and reports.

9. WASPI has long represented and campaigned for millions of affected women (including but not limited to its members), it has produced information leaflets about the changes to pension age, about DWP's maladministration and the complaints process. It has been recognised by the PSHO in the course of its investigation as a properly interested stakeholder and has been sent copies of the PSHO's reports in draft and pre-publication form. The PHSO has invited it to comment on each of those reports and it has done so.

10. WASPI brings this claim on behalf of its members as well as other affected women. It is a well-placed group able to represent elderly and vulnerable women who may not be well placed to bring the action themselves. WASPI therefore has "*associational"*, "*surrogate"*, and "*public interest"* standing for the purposes of the categorisation given in *R (Good Law Project & Runnymede Trust) v Prime Minister* [2022] EWHC 298 (Admin) at §20.

C. LEGAL AND POLICY FRAMEWORK

11. The Stage 1 and the Stage 2 and 3 Reports were made following an investigation commenced in July 2018 under s.5 of the Parliamentary Commissioner Act 1967 (the "**1967 Act**"), 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, . . . "* **[SB/1395]**. That task has been entrusted to the PHSO. Section 5(1) of the 1967 Act permits the PHSO to investigate where "*a written complaint is duly made to a member of the House of Commons by a member of the public, who claims to have sustained injustice in consequence of maladministration in connection with the action so taken . . . and . . . the*

complaint is referred to the Commissioner, with, consent of the person who made it, by a member of that House with a request to conduct an investigation thereon" **[SB/1395]**.

12. In the White Paper leading to the 1967 Act, to which the Court of Appeal had regard in *R (Bradley) v SSWP* [2009] QB 114, it was acknowledged that the purpose of the 1967 Act was to "*give Members of Parliament a better instrument which they can use to protect the citizen, namely, the services of a Parliamentary Commissioner for Administration*". The PHSO therefore has *"the primary task of assessing the nature of the maladministration and its consequences"*: *R (Equitable Members Action Group) v HM Treasury* [2009] EWHC 2495 (Admin) at §63 (Carnwath LJ and Gross J) **[SB/1511]**.

13. The obstruction of the PHSO's functions and investigations is treated seriously, in the same manner as contempt of Court, as though the investigation were a proceeding in the Court (section 9 of the 1967 Act).

14. Section 10(4) of the 1967 Act provides that: "*The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit"* **[SB/1400]**.

15. Whilst the PHSO's reports and recommendations are not binding on the Defendant, she is only *"entitled to disagree with [the PHSO's] assessment for cogent reasons"* and *"not to disregard it."*: *R (Equitable Members Action Group) v HM Treasury* [2009] EWHC 2495 (Admin) at §63 (Carnwath LJ and Gross J) **[SB/1511/§63]**.

16. The Defendant is similarly not entitled to depart from the findings or recommendations of the PHSO merely because she *"preferred another view which could not be characterised as irrational"*. Rather, cogent reasons are required demonstrating that the *"decision to reject. . . is, itself, not irrational having regard to the legislative intention which underlies the 1967 Act"*, and the fact that what is being rejected is a finding or recommendation *"which the ombudsman has made after an investigation under the powers conferred by the Act*": see *R (Bradley) v SSWP* [2009] QB 114 at §91 **[SB/1471/§91]**. The Defendant cannot simply form her own view for rational (or even cogent reasons); she needs to demonstrate cogent reasons for rejecting and departing

from the findings or recommendations of the PHSO – having regard to its role and reasoning.

17. In *R (AT) v Barnet London Borough Council* [2019] EWHC 3404 (Admin), the First-tier Tribunal recommended 12½ hours per week of social care support at home or in the community during term-time and one night per week's respite for a seven-year-old with special educational needs related to autism. The local authority did not implement the recommendations but carried out its own further care assessments and made more limited provision. The parents claimed judicial review, in the course of which the local authority conceded that the 12.5 hours support should be provided so that the only remaining issue before the court concerned the overnight respite. Phillip Mott QC, sitting as a deputy High Court judge, reviewed the case law on the analogous circumstances in which a public authority could depart from non-binding recommendations of ombudsmen, tribunals or other advisory bodies and concluded at §13 **[SB/1536/§13]**:

> "*I was referred to various authorities on the extent and cogency of reasons required for not following a recommendation from the Local Government Ombudsman (Gallagher v Basildon DC [2011] LGR 227 , at [33]), the Parliamentary Commissioner (Bradley v Sec of State for Work and Pensions [2009] QB 114 , at [91]), and other advisory bodies (AT v Newham LBC [2009] 1 FLR 311 , at [71]; R v Avon CC, ex.p. M [1994] 2 FLR 1006 , at p.1019; R v LB Islington, ex.p. Rixon (1996) 32 BMLR 136 , at p.142). Although such* ***recommendations*** *can be rejected, or not followed,* ***cogent reasons*** *will be required for doing so. Such reasons will need to be even more cogent when the recommendation comes from a specialist Tribunal which has heard evidence and argument*".

18. The Claimant rejects the Defendant's suggestion in the PAP Response that

. The requirement for cogent reasons applies equally to findings and recommendations.

19. The Claimant also reserves the right to argue, on any future appeal, that even the requirement for "*cogent reasons*" sets the bar too low in relation to the findings and

recommendations of the PHSO, and that (by reference to *Danaei* [1997] EWCA Civ 2704 and *Powergen* (1997) 96 LGR 617), the Defendant should be precluded from departing from the PHSO's findings and recommendations unless they can be shown to be flawed or irrational, peripheral, or if new evidence comes to light that calls them into question.

D. SUMMARY OF FACTS

20. 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.

21. The PHSO's investigation lasted several years and considered a substantial volume of detailed evidence and submissions. This included evidence from the complainants, evidence and submissions from the DWP, underlying documents evidence, the DWP's responses to FOIA requests, DWP briefing packs, relevant research papers, House of Commons briefing papers and reports, relevant court judgments, and comments from all parties on the PHSO's provisional views.

Stage 1 Report

22. In its Stage 1 Report published on 19 July 2021, the PHSO identified failings in the way the DWP communicated changes to women's State Pension age. 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 changes to their State Pension age by 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. In so finding, the PHSO took into account (*inter alia*) the following:

(1) DWP's research in 2003/2004 had shown that 62% of working age women knew the State Pension age was going to rise generally but only 43% of those affected by the changes knew what their State Pension age would be – suggesting that information about the increasing State Pension age was not reaching those with the greatest need to be informed (Stage 1 Report §§99-100) **[CB/77]**.

(2) DWP discussed internally how best to communicate changes to the State Pension to those affected and concluded in an internal memo dated November 2006 that "*50% of women whose State Pension age was between 60 and 65 thought it was 60*" and that a direct mail campaign to this group "*was the most appropriate way of minimising the risk of future criticism that the Department has not been sufficiently proactive in communicating to those women affected by this change [in State Pension age]*" (Stage 1 Report §§106-107) **[CB/78]**. This memo specifically proposed "*a targeted, personalised mail-out*" to address the poor awareness amongst affected women (Stage 1 Report §110) **[CB/79]**.

(3) Unpublished DWP research from 2007 also "*found 85% of women aged 48 to 59 knew State Pension age was going to be equalised, but many women did not know when it would happen. The research also found that 50% of women whose State Pension age had risen to between 60 and 65, and 36% of women whose State Pension age had risen to 65, still thought that it was 60*" (Stage 1 Report §115) **[CB/79]**. Although DWP submitted to the PHSO that this suggested that "*if people are aware of the changes, they can find out their own State Pension age*", the PHSO found that "*an internal DWP memo from April 2007 described the 2007 research findings as 'depressing reading'*" – referring to "*ignorance levels*" of 50% (Stage 1 Report §§115-116) **[CB/79-80]**.

(4) "*A ministerial submission from December 2007 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" (Stage 1 Report §117) **[CB/80]**.

23. Accordingly, it was DWP's own assessment at the time that a targeted, personal mailing campaign was required to inform affected women about their State Pension age, i.e. to inform them that they were affected by changes to the State Pension age.

Stage 2 Report and Provisional Stage 3 Report

24. On 8 December 2022, the PHSO issued a Stage 2 Report and a separate provisional report on Stage 3 **[SB/1010];[SB/1069]**. 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 the affected women. The reports were quashed and the PHSO had to reconsider the position.

Final Stage 2 and 3 Report

25. On 21 March 2024, the PHSO published its final, combined Stage 2 and 3 Report **[CB/94]**.

26. The PHSO decided that the 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) **[CB/101]**. This injustice included the loss of a chance to "*receive, read and act on a letter earlier*" (Stage 2 and 3 Report §340) **[CB/157-158]**.

27. 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: Stage 2 and 3 Report, §471 **[CB/178]**. 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): Stage 2 and 3 Report, §475 **[CB/178]**. For one of the sample complainants (Ms W), the PHSO concluded that the primary injustice she had experienced was "*emotional*": Stage 2 and 3 Report, §462 **[CB/176]**. There was also a *"compounding emotional injustice arising from maladministration in DWP's complaint handling"* suffered by all six complainants: Stage 2 and 3 Report, §475 **[CB/178]**. 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.

28. In respect of remedy, the PHSO noted that what the DWP had said during her investigation led her to strongly doubt the Government would provide a remedy for the identified injustices: Stage 2 and 3 Report, §21 **[CB/102]**. She therefore laid the final report before Parliament on 21 March 2024 under s.10(3) of the 1967 Act and asked Parliament to identify a mechanism for providing an appropriate remedy for the sample complainants and *"others similarly affected"*: Stage 2 and 3 Report, §483 **[CB/180]**. To help *"guide Parliament in its considerations"*, the PHSO set out what she *"would have*" otherwise recommended to the DWP as an appropriate remedy: Stage 2 and 3 Report, §485 **[CB/180]**.

29. The PHSO noted that she would have recommended that the sample complainants be paid compensation at Level 4. She said she would also have recommended that the DWP provide a remedy for others who have suffered injustice because of the identified maladministration.

The Decision

30. On 17 December 2024, the Defendant published its Decision in response to the Stage 1 Report and the Stage 2 and 3 Report, accepting the PHSO's findings of maladministration but rejecting its finding in the Stage 2 and 3 Report that the affected women had suffered an injustice and rejecting its recommendations as to remedy and compensation **[CB/194]**.

31. The reasoning in the Decision, set in further detail below, is narrowly and erroneously focussed on the 2014 Survey and the 2006 Attitudes Survey – without regard to the voluminous evidence considered by the PHSO over the nearly six years it took to carefully investigate the DWP's maladministration and its consequences.

E. GROUNDS FOR JUDICIAL REVIEW

Ground 1: the rejection of the PHSO's findings about injustice was not based on cogent (or even rational) reasons

32. The Decision summarises the Government's objections to the PHSO's finding of injustice at §82 **[CB/217]**. It states that the DWP does not accept the PHSO's "*finding of injustice*" because it contains a *"logical flaw"* and that the PHSO *"failed to take into account"* the fact that sending letters is *"often not an effective way to change levels of awareness"*. Specifically, the Decision relies on a 2014 Survey conducted on behalf of the DWP that, it says, shows that *"there was only a 25% chance of people reading and recalling unsolicited letters sent by DWP"*.

33. The Decision reasoned at §40-§41 **[CB/207-208]**:

> *"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)*

34. The Decision further states **[CB/208]**:

> *"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."

35. This reasoning does not represent a cogent or even rational basis for departing from the PHSO's findings of injustice (or for criticising the PHSO's approach).

36. The Defendant is wrong to draw the conclusion from the 2014 Survey that if affected women had been sent a letter by the DWP sooner it would have been unlikely to make any difference to what they knew, and wrong to reason that it is unlikely that women, had they been sent individualised letters when they should have been, would not have suffered the injustice the Ombudsman identified. This is for the reasons set out in the four sub-grounds (whether taken individually or cumulatively).

37. In its PAP Response, the Defendant seeks to suggest that

. That is not a tenable reading of the Decision.

38. In concluding that <u>any</u> finding of injustice would have been "*at best, highly speculative*" (Decision at §41)**[CB/208]**, the Defendant was rejecting not only that the PHSO's *approach* to the question of injustice but also its *finding* that injustice had been caused. This is made clear in the reasoning at §89 of the Decision as to remedy, where the Defendant concludes 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 any injustice*" **[CB/218]**. The Defendant rejected the PHSO's findings as to the position

affected women (or a significant number of them) would have been in if the maladministration had not occurred, and the injustice suffered as a result.

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 far removed from 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 referred recipients to changes to the State Pension which might have affected them and provided them with information as to how they could "find out more". It did not provide any information about the recipient's State Pension, let alone something as fundamental as the date on which they would be entitled to it.

41. Precisely what changes to the State Pension the 2014 Survey was referring to is opaque. But it appears to have been referring to changes that would simplify or make more transparent the calculation of State Pension, intended to enable people to know from a younger age how much they could expect to receive, but not making any changes to their pension entitlement. The letter itself was very short, simply directing people to a website of phone number where they could "fund out more". The attached sheet contained generic information on national insurance contributions.

42. The 2014 Survey letter was therefore an entirely different letter in its nature and content to the letter that the PHSO found should have been sent to affected women. It did not provide any specific information about individuals' pensions, had nothing whatsoever to do with the date on which State Pension would be paid; nor did it inform people of any change to the amount of their own pension. It simply informed people that they would be able to obtain more information about their pension and, on an accompanying sheet, provided some generic information about national insurance contributions.

43. By contrast, the letters that the PHSO found, and the Defendant has agreed, should have been sent to affected women were, *"headed, in bold text, 'Important information about*

your State Pension age'." The date that the recipient could claim their State Pension was *"clearly stated on the first page"* (Stage 1 Report §89) **[CB/75]**. It asked recipients to *"read it carefully"*. 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. This is hardly surprising. Wider research has shown that personalisation of messaging is an effective way to increase response rates to letters.[1]

44. 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, HC 444, §112-113 **[CB/79]**; Stage 2 and 3 Report, HC 638 §261-262 **[CB/145-146]**). 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 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.

45. 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 therefore unsupportable. The 2014 Survey provides no evidential basis for such a sweeping generalisation or for concluding that the response of affected women to receiving the letters which the PHSO found should have been sent to them earlier would have been the same as the response of people receiving the 2014 Survey letter.

[1] For example, World Health Organization. (2024). *Better letters–evidence and considerations from the behavioural sciences: Behavioural and Cultural Insights policy brief series*.

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

46. Even if the 2014 Survey provided reliable evidence as to what women would have done had they received the letters sooner (which it does not, for the reasons given in Ground 1A above) that would not contradict or undermine the PHSO's finding of injustice, 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) **[CB/158;101]**. This injustice, which the Defendant appears to have either overlooked or misunderstood, 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.

47. It is no answer for the Defendant to say, as she does in the PAP Response, that

. No such point is relied upon in the Decision itself. In any event, the PHSO took into account the evidence that a proportion of letters are not received or read (see paragraph 56(7) below).

48. The Defendant's further suggestion in the PAP Response that

, which discusses in detail the evidence in relation to each of them and makes fact-specific findings of injustice. For example, Ms U received and read her letter from the DWP in October 2013 (Stage 2 & 3 Report at §372) **[CB/162-163]**. Had it been sent earlier, in September 2009, there is no basis for doubting that it too would have been received and read (as found by the PHSO in the Stage 2 & 3 Report at §374) **[CB/163]**. This was not simply an assumption by the PHSO, it was an inferential finding of fact based (*inter alia*) on the PHSO's cogent reasoning in the Stage 2 & 3 Report at §§338-340 **[CB/157]**.

49. 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 Survey is not a sound evidential foundation for rejection of the PHSO's findings

50. There are further 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.

51. A significant issue is the timing of the 2014 Survey. A survey conducted in 2014 about the impact of letters is simply not a reliable indicator of the impact that would have been achieved by letters sent in 2006.

52. In the PAP Response, the Defendant suggests that

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53. The period between 2006 and 2014 witnessed a seismic change in society's reliance on, and attention to, postal communications, as well as changes in the use of the internet and websites as a forum for providing information. As the Competition Appeal Tribunal noted in *Royal Mail Plc v Office of Communications* [2020] 4 CMLR 6 at §28: "*From 2005 onwards, letter volumes started to decline, as e-substitution became more prevalent*". That judgment refers to the Hooper Report from December 2008, which the Government itself commissioned to review the decline of the UK postal services sector.

54. The Hooper Report[2] found that the volume of letters sent in the UK reached their "*highest point around 2005*" but "*the explosion of digital media . . . prompted an unprecedented decline in the letters market*" by 2008. The Hooper Report had predicted a rapid decline in the volume of letters sent in the UK by "*as much as 5-7% per year*". On this basis, the volume of letters being sent in the UK would have declined approximately 40-56% between 2006 (when letters in this case should have been sent) and 2014 (when the 2014 Survey commenced). In fact, the Competition Appeal Tribunal found in *Royal Mail Plc v Office of Communications* [2020] 4 CMLR 6 at §§183-184 that letter volumes declined

2 https://www.gov.uk/government/publications/saving-the-royal-mails-universal-postal-service-in-the-digital-age-an-update-of-the-2008-independent-review

6.3% per annum between 2008 and 2013 but between 2012/13 and 2013/14 the decline had slowed to 3.2% (compared to a decline of 8% the previous year).

55. It is irrational for the Defendant to rely on data from the 2014 Survey (which marks the end point in this period of rapid decline in letter volumes) as any kind of reliable indication as to the effectiveness of letters sent and received from 2006 (which would have been around the historic high-water mark for UK postal communications). It is irrational for the Defendant to have overlooked the Hooper Report and the available data about letter volumes in the UK when assessing the purported relevance of the 2014 Survey to the effectiveness of letters from 2006 onwards and when assessing the likely effectiveness of such letters generally.

56. Further, the 2014 Survey suffered from a further serious defect going to its internal validity, namely the low response rate (where 10,100 individuals were issued letters as part of the trial but there were only 2,288 completed interviews).

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

57. The reasoning in the Decision that the 2014 Survey was not taken into account by the PHSO is wrong and was not a cogent or rational reason for departing from the PHSO's findings:

    (1) The DWP in its submissions on Stage 1 provided the PHSO with a copy of its evidence in the *Delve* litigation,[3] which included a DWP witness statement that referred to and set out the findings of the 2014 Survey. This evidence was 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 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) **[SB/781-782]**. The DWP's representations

[3] *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.

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.

(2) 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 **[CB/89]**. 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 n 2006 that direct mail was necessary and would target information at the people who needed it."*

(3) 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"* **[SB/1110/§9]**.

(4) 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. This provided a yet further opportunity for the DWP to raise any issues it wished about the 2014 survey.

(5) 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."* **[CB/157]**.

(6) The PHSO expressly addressed and rejected the DWP's position on the 2014 survey, pointing out at §337 that:

i. 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.

ii. 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"*.

iii. 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."*

(7) 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."* **[CB/157-158/§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.

58. It is therefore clear that the DWP was given a full opportunity to make the argument set out in the Decision to the PHSO, and 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 or lawful basis for the Defendant to reject those findings.

59. Nor is it a sound or cogent criticism of the PHSO to say, as the Defendant seeks to suggest in the PAP Response, that

. First, this

criticism is premised on a misunderstanding of the injustice found by the PHSO – which included loss of a chance to act upon the letters. Second, the PHSO expressly considered the counterfactual position of each of the sample complainants and found as a matter of fact that notwithstanding the 2014 Survey there was "*no reason to doubt*" that those who remembered receiving late letters would have read and remembered ones sent earlier (see Stage 2 and 3 Report at §337) **[CB/157]**. The PHSO also made specific factual findings that each of the sample complainants would have read letters sent to them earlier (assuming that those letters would have been received) (see Stage 2 and 3 Report at §374, §382, §392, §405, §418, §428) **[CB/163;164;168;170;171]**. The possibility of letter not being received was acknowledged by the PHSO by reference to DWP's own failure rate figures (see Stage 2 and 3 Report at §§339-340) **[CB/157-158]**.

Conclusion on Ground 1

60. The flaws in the Decision reflected in Ground 1 not only vitiate the Defendant's rejection of the PHSO's approach to and finding of injustice but also infect and fatally undermine 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) **[CB/217]**. The Decision should therefore be quashed entirely, or in relation to the parts addressing injustice and remedy, on the basis of Ground 1 alone.

Ground 2: the rejection of the PHSO's recommendations as to remedy, on the basis that there was said to be no injustice and no justification for the provision of a remedy, was not based on cogent (or even rational) reasons

61. The Claimant's primary submission is that the Decision not to follow the PHSO's recommendations as to remedy was infected by the errors identified under Ground 1. But in any event, and whether or not Ground 1 is successful, the Claimant's maintain that the Decision falls to be quashed on the basis of Ground 2 in any event.

62. The Decision states at §89 **[CB/218]** 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 the 2006 Attitudes Survey. The Decision states that this showed that 90% of women aged 45-54 knew that the State Pension age was changing.

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

Ground 2A: The Decision on remedy was premised on the erroneous rejection of the PHSO's findings of injustice.

64. The principal reason for the Defendant rejecting the PHSO's position on remedy was the rejection of its findings of injustice, as summarised at paragraph 60 above. The rejection of the PHSO's findings of injustice is unlawful for the reasons set out in Ground 1, which infected the rejection of the PHSOs recommendations as to remedy.

Ground 2B: The 2006 Attitudes Survey 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

65. Contrary to the Defendant's misreading in the Decision, the 2006 Attitudes Survey did not provide any evidence that women who professed to know that the State Pension age was changing actually understood that the changes to the State Pension age would affect the date on which they would receive their State Pension.

66. The methodology applied by those carrying out the 2006 Attitudes Survey is recorded in an associated Technical Report. Participants were provided with two *"test statements"* relevant to the matters relied upon in the Decision **[CB/431]**. The first test statement was: *"At the moment, women can receive the State Pension when they are 60"* The second test statement was: *"The age women can receive the State Pension is going to increase in the future."*

67. Participants were asked to ask to say in response to each statement whether it was "*Definitely/probably true"* or "*Definitely/probably false"*. 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.

68. 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 answered definitely/probably true to the second of the test statements were answering a highly generalised question entirely unrelated to their own circumstances. The survey 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]).

69. 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.

70. 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.

71. The DWP itself recognised in 2006 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 (Stage 1 Report §107-§113) **[CB/78-79]**. 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."* (Stage 1 Report §117) **[CB/80]** . It was the DWP's failure to act on this understanding about the lack of awareness among affected women that was

at the heart of the maladministration finding that the Decision itself accepts and apologises for.

72. As recorded in the Stage 1 Report, the DWP further recognised at the time 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…"* (Stage 1 Report §121) **[CB/80]**. The PHSO pointed out that generalised information about changes to state pensions available from other sources *"would not necessarily have alerted women that they could be personally affected"* (Stage 1 Report §130) **[CB/82]**. The PHSO reports are therefore 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.

73. At §88 of the Decision, it is suggested that women who had a general awareness that the State Pension age was changing *"could"* have undertaken their own research, and the Defendant asserts that it was "*reasonable to expect"* people to *"take personal responsibility and check expert advice"* **[CB/218]**. Reference is made to leaflets and the DWP website as potential sources of information. These comments are, however: (i) inconsistent with the reasons given elsewhere in the Decision for refusing to acknowledge that injustice was suffered, namely that women actually knew that their State Pension age was changing; and (ii) inconsistent with the Defendant's acceptance that maladministration was suffered, 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. Given the acceptance of the maladministration, it is not cogent or rational for the Defendant to contend that affected women were, in effect, at fault and authors of their own misfortune.

74. The 2006 Attitudes Survey therefore does not support the reasons given in the Decision for refusing to provide a remedy, in departure from the findings and recommendations of the PHSO, and the Defendant's position is inconsistent with its acceptance that

maladministration occurred, given the basis for the PHSO's finding of maladministration.

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

75. Whilst Grounds 2A or 2B would be sufficient to render the Decision unlawful, it is also of significance that the testing methodology adopted in the 2006 Attitudes Survey renders the data unreliable in any event: the Defendant ought reasonably to have taken this into account before placing reliance on it in her Decision and/or it renders such reliance irrational.

76. The Courts have set out benchmarks for the reliability of survey evidence, known as the Whitford Principles: *Lidl Great Britain Ltd v Tesco Stores Ltd* [2022] EWHC 1434 (Ch), [2022] ETMR 39 at §122. The Whitford principles for survey validity require amongst other things that "*questions must not be leading, nor should they lead the person answering into a field of speculation he would never have embarked upon had the question not been put*".

77. 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 which they might never have considered or recalled any information about independently had the statements not been made to them, i.e. about 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*", clearly suggesting that the age would be changing and planting this message in the participants' minds, and (ii) the second question was framed in terms that Pension Age was "*going to increase in the future*" and thus suggested this was true.

78. In these circumstances, it is hardly surprising that approximately 90% of the 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 would have appreciated that the State Pension age for women was changing (absent such leading questions and prompts).

Ground 2: conclusions

79. For all of these reasons, the Defendant's reliance on the 2006 Attitudes Survey as a basis for rejecting the PHSO's findings and recommendation as to remedy do not bear scrutiny. The Decision does not contain the cogent (or even rational) reasons required for the Defendant lawfully to reject the PHSO's report.

F. CONCLUSION AND REMEDY

80. In light of the foregoing, the Claimant respectfully requests that the Court:

(1) declares that the Decision is vitiated by irrationality and/or an absence of cogent reasons;

(2) quash the Decision in whole or in part (and if in part in relation to injustice and remedy);

(3) grant such further or other relief as the Court may see fit; and

(4) award the Claimant its costs.

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APPENDIX 1: LIST OF ESSENTIAL DOCUMENTS FOR ADVANCE READING

1. Claim form
2. Statement of Facts and Grounds for Judicial Review
3. Pre-action protocol letter
4. Response to pre-action protocol letter
5. Letter, Claimant to Defendant concerning costs capping
6. Letter, Defendant to Claimant, concerning costs capping
7. PSHO Stage 1 Report
8. PSHO Stages 2 and 3 Report
9. Decision
10. First Witness Statement of Angela Madden dated 14 March 2025
11. Examples of DWP letters sent to 1950s-born women (2009 to 2013)
12. 2014 Survey
13. Direct Mail letter sent to Test Group in the Direct Mail Trial, November 2014
14. 2006 Attitudes Survey