AC-2025-LON-000811

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

B E T W E E N :

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

Claimant

- and -

THE SECRETARY OF STATE FOR WORK AND PENSIONS

Defendant

- and -

PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN AND OTHERS

Interested Parties

SUMMARY GROUNDS OF RESISTANCE

References below:

- *to the Statement of Facts and Grounds are in the form* ***[SFG §x]***
- *to the Core Permission Bundle are in the form* ***[Core p.]***
- *to the Supplementary Permission Bundle are in the form* ***[Supp p.]***

I INTRODUCTION

1. This claim concerns the Defendant's ("**the SSWP's**") response ("**the Response**") to the investigation and consequent reports of the Parliamentary and Health Service Ombudsman ("**the PHSO**") into complaints regarding the SSWP's communication of changes to women's State Pension age (**"SPA"**). This is not a challenge to the substance of those changes – which was the subject of unsuccessful challenge in *R (Delve) v Secretary of State for Work and Pensions* [2020] EWCA Civ 1199 – nor even directly to how they were communicated to women born in the 1950s. Rather, it is a challenge to how

and on what terms the SSWP responded to an investigation by the PHSO into complaints about the communication of the changes.

2. By its Claim Form **[Core 8]** Women Against State Pension Inequality Ltd ("**WASPI**") seeks permission to apply for judicial review in relation to what it describes as: "*The Defendant's decision on 17 December 2024 responding to the Parliamentary and Health Service Ombudsman's reports on women's state pension age and associated issues, 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 injustice*" (emphasis added).

3. That is not an accurate characterisation either of the Response or of the PHSO's report. In her Response, the SSWP accepted the PHSO's finding of maladministration. She did not accept the PHSO's "*thinking*" on the appropriate remedy (which is not properly characterised as a "recommendation")[1]. But as to whether there had been any injustice resulting from maladministration, the SSWP did not conclude that none of the affected women had suffered an injustice. Rather, and for good reason (as explained below), she did not accept the PHSO's approach to injustice.

4. The SSWP – rationally, and indeed rightly - considered that the PHSO had failed to take any proper account of research evidence before him on the effectiveness of unsolicited letters, which was to the effect that only around a quarter of people who were sent unsolicited letters remembered receiving them and reading them in whole or part.

5. The question whether an earlier letter would have had any effect on complainants' state of knowledge was clearly material to the extent of any injustice they had suffered as a result of maladministration, when the identified maladministration was, precisely, the failure to send letters earlier. At the very least, the SSWP was certainly entitled so to conclude. The SSWP consequently rejected the approach taken by the PHSO, which she considered assessed injustice on a false premise.

[1] The PHSO specifically stated that she did not make any "recommendations" as to remedy, but only stated what her "*thinking about remedy*" was, in order to assist Parliament in considering the matter i.e. what she would have recommended, had she decided to make any recommendations. See her Stage 2 and 3 report, §§484-485.

6. The Response runs to some 33 pages (62 including annexes). It contains the SSWP's response to each of the PHSO's findings on maladministration and injustice (relating not only to communication about SPA, but also communication about National Insurance qualifying years for a full state pension, as well as to the Department for Work and Pensions' ("**DWP's**") complaint-handling processes). It also contains the SSWP's response to the PHSO's "thinking" on remedy. The overwhelming majority of the Response is not challenged by WASPI. Rather, when properly considered, the claim boils down to a challenge to the approach taken by the SSWP to two particular surveys in formulating her Response – contained in two grounds of challenge (despite their various sub-grounds):

   6.1. the survey in 2014 that concerned the effectiveness of the DWP sending unsolicited letters to individuals ("**the 2014 Survey**") **[Core 690]**; and

   6.2. the 2006 'Attitudes to Pensions Survey', which concerned – amongst other things – awareness of upcoming changes to the SPA ("**the 2006 Survey**") **[Core 458]**.

7. In circumstances where the claim is, on a proper assessment, a methodological disagreement with the SSWP as to how she has approached two surveys and the weight she has afforded to them, the claim is not properly arguable. In summary:

   7.1. On **Ground 1**, it is common ground that the SSWP is entitled to depart from any finding or conclusion of the PHSO, so long as she has "*cogent reasons*" to do so. Here, as above, the SSWP reasonably concluded that the findings from the 2014 Survey as to whether an unsolicited letter was likely to impact a person's state of knowledge were relevant and important evidence, to which the PHSO should have had regard when reaching his conclusions on injustice. Plainly, the PHSO did not have regard (or proper regard) to them. That was, at the very least, a 'cogent' basis on which the SSWP was entitled to depart from the PHSO's approach to injustice.

   7.2. On **Ground 2**, WASPI seeks to challenge the SSWP's response to the PHSO on remedy. That is necessarily a rationality challenge (as explained further below). To that end, beyond their suggestion that the SSWP's conclusions on remedy must fall away because of her approach to the question of injustice under

Ground 1 (which fails for the reasons summarised above), WASPI's contention is (*inter alia*) that the SSWP's approach to remedy was based on a misreading of the 2006 Survey. WASPI contends that the SSWP understood the 2006 Survey to show that by 2006 90% of 1950s-born women knew that there were upcoming changes to their SPA. However, that is plainly wrong. The SSWP rightly and explicitly recognised that the survey concerned the proportions of 1950s-born women who knew that there were upcoming changes to the (not necessarily their own) SPA. The SSWP took no further finding from the 2006 Survey, itself, but – as part of her consideration on remedy – went on to conclude that it was reasonable to expect individuals who were (in general terms) aware that SPA would change to find out whether they would be personally impacted as a matter of personal responsibility, regardless of whether they had in fact done so. That was plainly not an irrational approach to take – and Ground 2 must necessarily fail as a consequence.

II LEGAL PRINCIPLES

8. S. 5(1) of the Parliamentary Commissioner Act 1967 ("**the 1967 Act**"), in the version in force at the material time[2], stated that:

> "*Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where —*
>
> *(a) 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*
>
> *(b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.*"

9. By section 10 of the 1967 Act (again, as in force at the relevant time):[3]

[2] The version of section 5 at **[Supp 1395]** is that in force now (since 29 January 2025), rather than that in force when the PHSO conducted her investigation and issued her reports and when the Government issued its Response (i.e. the decision under challenge).

[3] Again, the version of s. 10 at **[Supp 1399]** is that in force now (since 29 January 2025) rather than that in force at the relevant or material time to the proposed claim.

"*(1) In any case where the Commissioner conducts an investigation under this Act or decides not to conduct such an investigation, he shall send to the member of the House of Commons by whom the request for investigation was made (or if he is no longer a member of that House, to such member of that House as the Commissioner thinks appropriate) a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.*

(2) In any case where the Commissioner conducts an investigation under section 5(1) of this Act, he shall also send a report of the results of the investigation to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

…

(3) If, after conducting an investigation under section 5(1) of this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case."

10. It is common ground (see **[SFG §15]**) that the PHSO's reports and recommendations are not binding on the SSWP. The question, rather, is the basis on which the SSWP is entitled to reach her own views on such matters and/or depart from the PHSO's findings and/or recommendations.

11. As to that, the SSWP is entitled to disagree with the PHSO's findings on maladministration and injustice where she has "*cogent reasons*" to do so: *R (Bradley) v Secretary of State for Work and Pensions* [2009] QB 114 ("*Bradley*") at [72] **[Supp 1463]**, *R (Equitable Members Action Group) v HM Treasury* [2009] EWHC 2495 (Admin) ("***EMAG***") at [63] **[Supp 1511]**. In assessing whether the SSWP has "*cogent reasons*", the focus rests "*upon the decision to reject the findings of the Ombudsman, rather than the Ombudsman's findings themselves*": *EMAG* at [66] **[Supp 1511]**.

12. However, and contrary to **[SFG §18],** while "*cogent reasons*" are required to depart from the PHSO's findings on maladministration and injustice, the SSWP need only show that her own approach in respect of remedy is not irrational. That is for obvious good reason, since among other matters the PHSO's approach to remedy may require very substantial expenditure (here, setting up a remedial scheme at a cost of between £3.5 and £10.5 billion); and the PHSO will not be aware of the multifarious factors that go into such a decision. There is clear and consistent authority to that effect:

12.1. The Court in *EMAG* stated at [68] **[Supp 1512]** that: "*As for (ii), the Government's rejection of the Ombudsman's* recommendation *for a compensation scheme, it was not and could not have been submitted that the recommendation was binding on the Government. There was no serious dispute that in this context the legal test is the conventional one of irrationality or Wednesbury unreasonableness*" (latter emphasis added). The Court set a contrasting approach in respect of 'recommendations' as opposed to the PHSO's "*actual* findings" (emphasis original) at [66], where the "*cogent reasons*" test was applicable.

12.2. That position echoes the concession made by the claimants in *Bradley* that recommendations were not binding on the SSWP: which concession was viewed as 'right' by the Court at first instance: [43] **[Supp 1418]**, and recorded again (without disagreement) by the Court of Appeal at [10] **[Supp 1438]**.

12.3. Kenneth Parker J in *R (Gallagher & anor) v Basildon District Council* [2010] EWHC 2824 (Admin) at [26]-[28] (in relation to the local government ombudsman) further observed that the "cogent reasons" test did not apply in the context of recommendations, where a local authority was free to adopt its own approach on rational grounds, taking into account matters such as resources.[4]

13. Further, if the SSWP does have cogent reasons to diverge from the PHSO's findings, to the extent that she puts forward any alternative finding (for example, where there is a gap in the PHSO's own analysis), that finding is itself, as a matter of logic, challengeable only on rationality grounds.

[4] WASPI's reliance on *R (AT) v Barnet London Borough Council* [2019] EWHC 3404 (Admin) at [13] **[SFG §17; Supp 1536]** does not detract from this analysis. *AT* concerned a very different issue (the extent to which recommendations of a specialist tribunal, the First-Tier Tribunal, are binding). The paragraph on which WASPI relies ([13]) is thus entirely obiter. Also, at [13], the Court in *AT* did not grapple with or address the distinction between 'findings' and 'recommendations' made in *Bradley*, *EMAG* and *Gallagher*. Indeed, the judgment in *AT* directly refers to [33] of *Gallagher*, in which the Court applied a rationality (rather than a 'cogent reasons') approach to the lawfulness of the response to recommendations: "*if the local authority does provide reasons for rejecting the recommendation, the Court is entitled to examine carefully whether the Council has, first, taken into account relevant considerations and, secondly, has weighed those relevant considerations in a way that a reasonable council should have done*" (emphasis added) – consistent with the remainder of the *Gallagher* decision.

14. The 'cogent reasons' test means that the SSWP has to have a reason to depart from the PHSO's conclusions, other than simply preferring her own view. As to the *quality* of that reason or reasons, however, the actual standard is again rationality. See the passage at [91] of *Bradley* **[Supp 1471]** to which WASPI refers at **[SFG §16]**:

> *"I am not persuaded that the Secretary of State was entitled to reject the ombudsman's finding merely because he preferred another view which could not be characterised as irrational. As I have said, earlier in this judgment, it is not enough that the Secretary of State has reached his own view on rational grounds: it is necessary that his decision to reject the ombudsman's findings in favour of his own view is, itself,* ***not irrational*** *having regard to the legislative intention which underlies the 1967 Act: he must have a reason (other than simply a preference for his own view) for rejecting a finding which the ombudsman has made after an investigation under the powers conferred by the Act"* (emphasis, included double emphasis, added).

III RELEVANT FACTUAL BACKGROUND

1) The Reports

15. In 2018 the PHSO commenced an investigation into complaints from women born in the 1950s related to SPA. ("**the Investigation**"). The Investigation concerned allegations of maladministration in respect of the following matters:

> **Complaint 1**: The DWP's communications regarding changes to SPA.
> **Complaint 2**: The DWP's communications regarding the number of National Insurance qualifying years needed for a full State Pension.
> **Complaint 3**: The handling of complaints by the DWP.
> **Complaint 4**: The handling of complaints by the Independent Case Examiner.

16. As noted above, these complaints were about the communication of changes to SPA, rather than the changes themselves, which were the subject of unsuccessful judicial review challenge in *Delve*.

17. The method by which the PHSO sought to pursue the Investigation was through the selection of six sample complainants, through whose circumstances she addressed the issues under consideration.

18. The Investigation was carried out in stages. The first stage considered communications regarding changes to SPA- i.e. the substance of Complaint 1. The changes to SPA to which this related were:

    18.1. the process of equalising SPA for men and women under the Pensions Act 1995, which increased women's SPA from 60 to 65 over the 10-year period beginning in April 2010;

    18.2. the phased increase in SPA for both men and women from 2024-2026 as enacted by the Pensions Act 2007; and

    18.3. the bringing forward of both the equalisation of SPA and the increase in SPA for both men and women by virtue of the Pensions Act 2011.

19. The PHSO published his findings in respect of this first stage on 19 July 2021 ("**the Stage 1 Report**") **[Core 57]**. In the Stage 1 Report the PHSO found that between 1995 and 2004, "*adequate and accurate information about changes to State Pension age was available through DWP's campaigns, in leaflets, through DWP's agencies and on its website*": §141 **[Core 84]**. However, he concluded that the DWP subsequently failed to 'get it right' in two respects, amounting to maladministration **[Core 60]**:

    19.1. in not giving due weight to the need for appropriately targeted and individually tailored information when taking decisions about next steps in August 2005; and

    19.2. in failing to act promptly on its 2006 proposal to write directly to affected women or give due weight to how much time had already been lost since the Pensions Act 1995.

20. The PHSO found that had this maladministration not taken place, the DWP would have begun writing directly to affected women by December 2006, 28 months earlier than it in fact did (i.e. April 2009). The maladministration accordingly had led to a 28-month delay in beginning to send correspondence - meaning that the DWP would likely have

decided to send direct communications earlier, despite there being no requirement to communicate changes by that means in all instances: §§168, 172 **[Core 89, 90]**.

21. The PHSO found no maladministration in respect of the communications surrounding the changes brought about by the Pensions Act 2007 or the Pensions Act 2011.

22. Stage 2 of the Investigation concerned whether maladministration led to injustice; and stage three considered the question of remedy (as well as the substance of the remaining complaints i.e. Complaints 2-4 above).

23. Following Judicial Review proceedings in relation to a proposed Stage 2 report and provisional Stage 3 report in December 2022, the PHSO published her final combined report into Stages 2 and 3 on 21 March 2024 ("**the Stage 2 and 3 Report**") **[Core 94]**.

24. A significant part of the Stage 2 and 3 Report concerned the substance of Complaints 2-4, as well as questions of injustice in relation to those complaints (rather than in respect of the maladministration found in the Stage 1 Report). There is no challenge to the SSWP's approach in respect of those matters.

25. In the Stage 2 and 3 Report the PHSO found that the maladministration identified in the Stage 1 Report resulted in injustice, in that complainants "*were denied opportunities to make informed decisions about some things, and to do some things differently, because of maladministration in DWP's communication about State Pension age*": §12 **[Core 101]**; §459 **[Core 176]**. She did not find that the maladministration caused any direct financial loss: §§345-358 **[Core 158]**.

26. At §§337-338 of the Stage 2 and 3 Report, the PHSO stated as follows

> "*337. The 2006 options appraisal document says DWP considered a "personalised mail-out" was the "most appropriate" option for providing information to women about equalising State Pension age. The sample complainants who told us they did receive letters remember them. There is no reason to doubt they would have remembered one sent earlier. Accordingly, we have concluded that the letters were a very important mechanism for providing information to women about State Pension age and so, as a generic point, letters sent earlier would have affected what women knew about their State Pension age.*

338. Whether the sample complainants would have received a letter earlier will affect whether direct mail begun in December 2006 would have changed what they knew about their State Pension age."

27. The clear implication of the above reasoning is that a complainant who received an earlier letter would (not might) have remembered it and read it, so that their state of knowledge would have been different. That was also the basis on which the PHSO approached the nature of the injustice suffered by each of the sample complainants, whether or not they remembered receiving a later letter: see §§373-374, 381-382, 391-392, 404-405, 418, 427-428 **[Core 163-173**].

28. The PHSO concluded that for each of the six sample complaints, the level of injustice sat within level 4 on her severity of injustice scale (albeit at the lower end for Ms W given that her primary injustice was emotional in nature only): §462 **[Core 176]**; §465 **[Core 177]**; §475 **[Core 178]**.

29. As to remedy, the PHSO observed that where she has concluded that maladministration led to injustice, he "*usually make[s] recommendations to 'put things right'*": §480 **[Core 179]**.

30. However, the PHSO stated that in light of concerns he had as to whether the DWP would remedy the identified injustice, he would lay the report before Parliament under s. 10(3) of the 1967 Act. He recognised that Parliament would come to its own views as to remedy, but said the report would be laid to "*shar[e] our thinking about remedy, and the standards that influence our thinking, to help guide Parliament in its considerations*": §485 **[Core 180]**. In other words, the PHSO did not in fact make recommendations: he set out what he would have recommended, had he not decided to hand the matter over to Parliament.

31. In that regard, the PHSO explained that he would have recommended:

    31.1. that DWP acknowledge the maladministration identified and apologise for the impact it had on the complainants and others affected: §487 **[Core 180]**;

    31.2. financial compensation at level 4 (£1,000 to £2,950) for all six sample complainants (five at the higher end; and one at the lower end of the scale) (§489 **[Core 181]**) - as

well as a remedy for others who suffered equivalent injustice: §494 **[Core 182]**.[5] The PHSO recognised that while redress should, as a matter of principle, reflect individual circumstances, given the numbers of potentially affected persons, a more standardised approach might be appropriate. He assessed the cost of a flat-rate payment at level 4 across the cohort as being between £3.5 and £10.5bn.

2) The Response

32. The Government responded to the Investigation (i.e. the Stage 1 Report and Stage 2 and 3 Reports (collectively, "**the Reports**")) on 17 December 2024, by means of a statement made to Parliament by the SSWP, as well as the published Response.

33. In the Response, the SSWP's position on Complaint 1 (being that aspect of the Response which is now subject to challenge by WASPI), was as follows.

34. She accepted the PHSO's findings on maladministration, on the basis 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 changes in State Pension age. Once we had decided to send individual letters, we agree that we could have done more to send those letters earlier*": §36 **[Core 207]**.

35. She did not accept the PHSO's approach to injustice (as explained above) on the basis of the PHSO's failure to properly address the evidence before him that most people who are sent an unsolicited letter will not read it, which led him to assume that if the complainants had been sent a letter earlier, they would have received, read and remembered it. That reasoning is set out at §§40-44 of the Response **[Core 207]**.

36. That did not equate to the SSWP finding that no women had suffered injustice. Indeed, the SSWP specifically recognised that women whose state of knowledge would have

[5] The PHSO was not quite so formally prescriptive as to what that remedy would need to be, recognising at §504 **[Core 183]** that: (a) Compensating all women born in the 1950s at the level 4 range would involve spending between around £3.5 billion and £10.5 billion of public funds; and (b) not everyone in that cohort will have suffered injustice. The PHSO recognised that there needs to be a balance between "*responding appropriately to people's complaints and acting proportionately within available resources*".

been changed by a letter had suffered injustice[6], although it would be wholly impracticable to set up a compensation scheme which could assess who they were, given the potentially very high numbers of claims involved, and the need to assess the individual evidence in each claim: §§93-94, **[Core 219]**.

37. On remedy, having accepted the maladministration finding, the SSWP made a public apology in the House of Commons, which she considered to be the most proportionate and timely means of communicating an apology to the affected women: §§78-79 **[Core 216]**. Further, she decided not to introduce a financial compensation scheme. That was a decision which took into consideration "*a large number of complex issues*", in particular "*the PHSO's two reports focusing on their comments on remedy, Parliament's views (notably the views of the Work and Pensions Select Committee), the views of the affected women, plus broader factors such as the evidence from relevant research, macro-economic issues, and managing public money principles of regularity, propriety, value for money and feasibility*": §80 **[Core 216]**.

38. The SSWP's decision in respect of the PHSO's "thinking" that she should establish a financial compensation scheme included the following considerations:

38.1. The purpose of a remedy scheme is to address an injustice, but the Government had concluded that the PHSO had made a logical flaw in his approach to injustice. While the PHSO 'recommended' payment of compensation for not sending letters earlier, he did so without taking appropriate account of the evidence, based on the 2014 Survey, that "*sending personal letters is often not an effective way to change levels of awareness*": §82 **[Core 217]**.

38.2. As explained at Response §83 **[Core 217]** – although this was expressly (§84) not the only factor on which the Government's approach in respect of financial remedy was based:

> "*The low chance of a letter making a difference to awareness in any given case is clearly relevant to the compensation that should be awarded. We do not think it is right for*

[6] See e.g. Response §90, **[Core 218].** It might also be said that women had potentially lost a chance to read and remember a letter, but the SSWP pointed out that the PHSO had not evaluated what that chance might be, and the relatively low chance of a letter making a difference in any particular case was clearly relevant to compensation see Response §83, **[Core 217**].

compensation to be paid where sending a letter would have made no difference. This may happen where the individual concerned would not have read and recalled the letter or already knew their new State Pension age. And if it is not realistically possible to assess whether any given individual would have read and recalled a letter, the level of any compensation ought to reflect the relatively low chance that sending a letter would have made any difference to their state of knowledge.".

38.3. The 2006 Survey showed that by that stage 90% of women aged 45-54 were aware that SPA for women was due to increase (awareness in the 45-54 age group was 73% in 2004) **[Core 540]**. The substantial majority of 1950s-born women thus were aware that SPA was increasing. Those women could go on to check how the increase would affect them - it was reasonable to expect them to do so; and it would not be right for taxpayers' money to be paid to those who did know that their own SPA was changing: §§88-89 **[Core 218]**.

38.4. The fairest way to compensate individuals who suffered injustice would be a scheme that assessed individual claims - to ensure that awards reflected the extent of any injustice suffered, whilst also preventing payments to those who did not, in fact, suffer any injustice. Given the potentially very high numbers involved, however, any such scheme would be wholly impractical: §§93-95 **[Core 219]**.

38.5. Further, in light of the numbers involved - up to 3.5 million claimants - any blanket scheme or one based on self-certification would present particular challenges for the prudent and efficient expenditure of public money, not least because such schemes would either entail paying money to those who did not suffer injustice or would lack any means of verifying self-certification: §§101-103 **[Core 221]**.

38.6. In addition it would not be affordable, and fair for future generations, to meet the very high cost (£3.5-£10.5bn plus £0.5bn in administration costs) of compensating the relevant cohort in the circumstances, given that payments would add to a significant national debt burden. The public finances remained extremely challenging, and the government had to take tough decisions in order to be fiscally responsible. The compensatory payments alone would likely exceed the annual cost of running the DWP: §§105-107 **[Core 221]**.

IV GROUNDS OF CHALLENGE

1) Ground 1:

39. Ground 1 – in substance – is a challenge to the SSWP's treatment of the 2014 Survey. That aspect of the Response is set out at §§40-44 **[Core 207]**, where the SSWP (as explained) rejected the PHSO's approach to injustice, because he did not properly take into account the findings of the 2014 Survey.

40. There are two relevant questions which arise on a proper analysis here:

    i. did the PHSO properly take into account the 2014 Survey when considering injustice?

    ii. if not, is that a 'cogent reason' on which basis the SSWP was entitled to reject the PHSO's approach to injustice?

41. The SSWP submits that both questions are easy for the Court to answer. As to (i), the PHSO clearly did not substantively engage with the 2014 Survey. As to (ii), in circumstances where the SSWP rationally took the view that the 2014 Survey was relevant and important evidence on the likelihood of recipients reading and remembering an unsolicited letter, that was a 'cogent reason' entitling the SSWP to reject the PHSO's approach to injustice. That is the short answer on Ground 1.

42. However, much of Ground 1 as WASPI presents it is an attempt to put to the Court an entirely different question, which is immaterial to the proper analysis: that is, whether the SSWP's own interpretation of the meaning or impact of the 2014 Survey is correct.

43. It is not for the Court to come to its own views on the 'correct' approach to methodology, but instead to look at the SSWP's reasons and ask if they are legitimate ones for not accepting the PHSO's approach. They plainly are, and the test for 'cogency' is accordingly met.

44. The PHSO's own stated approach to the question of injustice (Stage 2 and 3 Report, §259 **[Core 145]**) was to ask whether someone would have been in a different position had the maladministration not occurred. Given that the PHSO's conclusion on

maladministration concerned delay - i.e. the 28-month delay in individual letters being sent - the question whether that led to injustice necessarily entailed asking what would have happened if the letters had been sent earlier, including how the complainants/recipients would have responded to receipt of them. The PHSO implicitly adopted that approach by considering in detail what the sequencing of direct mail would have looked like (§268ff **[Core 146]**), whether it would have been paused (§306ff **[Core 152]**), etc.

45. On the basis of his analysis, the PHSO went as far as to reach conclusions as to when each of the sample complainants would have been sent the relevant letter in the 'no maladministration world': §324 **[Core 155]**. What the PHSO did not address, however, was the next logical question in that counterfactual analysis: would they have read it and acted upon it?

46. It is right that the PHSO mentioned, essentially in passing, at §336 **[Core 157]** that:

> "*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 of 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.*"

47. However, there is simply no engagement in the Stage 2 and 3 Report with that contention by the SSWP, or with the underlying evidence (which was before the PHSO) in the form of the 2014 Survey. Instead, the PHSO wholly sidestepped that critical question whether the women would have read the letter and acted upon it. He did so in two (mutually inconsistent) ways. First of all, he asserted that "*as a generic point*" letters sent earlier would have affected what women knew about their SPA (i.e. simply ignoring whether a letter would have been opened and read): §§337-338 **[Core 157]**. Secondly, at §340, in the context of a discussion about the failure rate of direct mail exercises (e.g. because of database or postal errors), he concluded that there would still be an injustice "*at the very least, because…the sample complainants lost the chance to receive, read and act on a letter earlier*" **[Core 157]**.

48. The SSWP was fully entitled not to accept the approach of the PHSO on this issue, where the PHSO either: (a) simply assumed that letters "*would have*" affected what women

knew (as per §§337-338 **[Core 157]**); or alternatively (b) on a "loss of chance" approach (as per §340 **[Core 157]**), failed to interrogate by reference to the available evidence how that chance should be quantified or evaluated. Both points are obviously highly material to the question, and extent, of any injustice.

49. On those issues, the SSWP was also entitled to consider that the 2014 Survey provided important evidence that the PHSO should have taken into account. The 2014 Survey was specifically designed to assess whether recipients recalled receiving and reading an unsolicited letter, containing important information about their State Pension entitlement. The survey's timing was close to the point when the PHSO found that letters should first have been sent out. The subject-matter of the unsolicited letter sent out as part of the survey was sufficiently analogous to enable comparisons to be drawn. The survey was substantial in size and its conclusions were clear.

***Ground 1A**: The utility of the 2014 Survey as evidence as to what would have happened if women had been sent letters informing them of a change to their SPA sooner*

50. On Ground 1A, WASPI invites the Court to step into the SSWP's shoes and consider detailed questions of methodology and factual assessment. This sub-ground proceeds on the basis that the letters which were used as part of the 2014 Survey differed from those that would have been sent earlier in the absence of maladministration, so as to render the findings of that research inapplicable. The SSWP has four responses.

51. First, the SSWP's 'cogent reason' for not accepting the PHSO's approach to injustice was his wholesale failure to take into account the evidence of the 2014 Survey. The relevant question for the Court is whether the SSWP was rationally entitled to conclude that there had been such a failure, because the 2014 Survey was sufficiently significant to require addressing by the PHSO. The relevant question is not whether a direct analogy can be drawn between the 'test' letters and SPA letters.

52. Secondly, **SFG §40** does not fully or fairly characterise the letters that were sent as part of the 2014 Survey. The letter, itself, is at **[Core 698]**. **SFG §40** suggests that the letter used referred recipients to changes to the State Pension "*which might have affected them*" (emphasis added). The template letter, however, is more emphatic than that: not only

does the large heading state: "*Your State Pension is changing - how will it affect you*?", but the wording underneath expressly states that: "*The State Pension is changing from 6 April 2016. As you will be affected, we wanted to tell you more about it*" (emphasis added). The language makes clear that the recipient will be impacted by the upcoming changes. In addition, like the letters concerning changes in SPA, it addressed important changes to the recipients' State Pension entitlements. The points of textual difference identified at **SFG §41-43** do not undermine the fundamental point of similarity justifying, or at the very least entitling, parallels to be drawn.

53. Thirdly, and relatedly, WASPI overlooks the fact that the 2014 Survey was specifically designed as a research exercise to address the effectiveness of sending direct letters, undertaken by randomised control. It may not have entailed the use of individually tailored letters, but the subject area and form of the letters was sufficiently analogous for comparisons to be made. At the very least, it was certainly rational for the SSWP to take that view.

54. Fourthly, the SSWP did not suggest that there were no material differences at all between the letters sent as part of the 2014 exercise and those considered by the PHSO. Rather, she was entitled to approach matters on the basis that (i) the PHSO had failed to take into account relevant evidence that an unsolicited letter is unlikely to make a difference to an individual's knowledge (although it may do); and (ii) the low chance of a letter making a difference in any given case (either because the individual concerned would not have read and recalled it, or because the individual already knew their SPA) was clearly material to remedy: see §83 of the Response [**Core/217**]. In circumstances where the evidence was very clear that (in the circumstances of the trial) a letter containing important state pension information made remarkably little difference to what people knew, and where fewer than half of the people sent the letter actually remembered it at all, that was a wholly rational approach.

Ground 1B: The impact of the 2014 Survey on the PHSO's findings on injustice

55. This sub-ground proceeds on the basis that the ultimate injustice found by the PHSO was the 'loss of a chance' to receive, read and act on a letter at an earlier stage, suggested by §340 of the Stage 2 and 3 Report. The suggestion at **SFG §46** is that "*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".

56. Even if the PHSO did take the 'loss of a chance' approach to injustice (which is not accepted, as addressed immediately below), it was plainly open to the SSWP to depart from that approach, where the PHSO failed to properly quantify or assess what that chance would have been, and factor that into the analysis. While **SFG §47** contends that the PHSO did take into account that a proportion of letters are not received or read (by reference to **SFG §57(7)** and, in turn, Stage 2 and 3 Report §340 **[Core 157]**): (a) that analysis by the PHSO is glib in nature and deals with the failure rate concerning database or postal errors, not the issue raised by the 2014 Survey; (b) the relevant percentage impact in that analysis (15%) is substantially lower than that with which the 2014 Survey was concerned; and (c) that analysis considered only whether the sample complainants would have received their letters, rather than any considerations of injustice across the wider cohort.

57. Further, the SSWP was right to contend in her pre-action response **[Core 447]** that the 'loss of a chance' approach was not that which the PHSO in fact applied. Rather, the PHSO approached the issue on the presumption that the same complainants would have read and acted upon the letters. As the SSWP put it in the pre-action response at §44b:

> "*The PHSO stated at §337 that: "The sample complainants who told us they did receive letters remember them. There is no reason to doubt they would have remembered one sent earlier". She then assumed that same reasoning applied to all six sample complainants – even though three did not recall receiving any letter about State Pension age from the DWP. At §338 she said: "Whether the sample complainants would have received a letter earlier will affect whether direct mail begun in December 2006 would have changed what they knew about their State Pension age". That was not a 'loss of a chance' approach, but an erroneous counterfactual assumption that each complainant would have read the letter, had it been sent earlier.*"

58. WASPI's response (at **SFG §48**) is that the PHSO made fact-specific findings of injustice, giving the example of Ms U who received and read her letter from the DWP in October 2013 and would have done the same had it been sent earlier. WASPI contends that was "*not simply an assumption by the PHSO, it was an inferential finding of fact…*". However, that cherry-picks one example and misses the point. While the PHSO may have been entitled to reach an inferential factual finding that a particular complainant who in fact read a later letter would have read that same letter had it been sent earlier, it was

impermissible to assume that all complainants would accordingly have received, read and acted on the letters. As noted in the Response at §43 **[Core 208]**) three of the six sample complainants did not recall receiving any letter. There is no proper basis – inferential or otherwise - on which to conclude that those individuals would have received, read and acted on an earlier letter. On the contrary, a consistent approach would demand a finding that they would equally not have recalled receiving any letter at all.

Ground 1C: The soundness of the 2014 Survey as an evidential foundation

59. This sub-ground is, again, an attempt to put to the Court the wrong question i.e. whether the SSWP's view of the 2014 Survey was in fact correct.

60. In that regard, the SFG chiefly seeks to rely (impermissibly) on factual findings – or rather comments – in other litigation to which neither WASPI nor the SSWP was a party. These are of no real relevance, nor do they properly form the basis for a realistic rationality challenge:

    60.1. First, the 'relevant period' is not from 2006 to 2014. While the survey was carried out in 2014, with parallels drawn to an exercise that would have commenced in December 2006, the PHSO found that the individual sample complainants would have been sent their letters from June 2009-October 2011: Stage 2 and 3 Report §324 **[Core 155]**. Those dates are obviously substantially closer to 2014.

    60.2. Secondly, WASPI makes no attempt to example *why* the purported decline in letter volumes is said to affect the relevance or utility of the 2014 Survey. At their highest, the materials to which WASPI refers appear to speak to how many letters were *sent*, but not to attitudes to *receipt* of letters.

    60.3. Thirdly, the points now raised by WASPI as a purported basis for disregarding the 2014 Survey were not raised by the PHSO – who did not reject the 2014 Survey on either methodological or utility grounds. In any event, it does not lie in WASPI's mouth to contend that the SSWP *irrationally* failed to consider the

Hooper Report in responding to the Stage 2 and 3 Report, in circumstances in which the PHSO did not rely upon it either.

<u>Ground 1D</u>: Whether the PHSO in fact took the 2014 Survey into consideration

61. Under this sub-ground, WASPI's principal contention appears to be that the PHSO must be assumed to have taken the 2014 Survey into account, because the SSWP drew the PHSO's attention to it, and had a full opportunity to make arguments and present evidence on it. That is a *non-sequitur*. The proper question is whether the SSWP was entitled to take the view that the PHSO had not adequately considered and grappled with the 2014 Survey. She was.

62. As such, the majority of **SFG §57** is nothing to the point. **SFG §57(2)** observes that §167 of the Stage 2 and 3 Report **[Core 89]** refers to the SSWP's argument as to the relevance of the 2014 Survey; but §167 does not explain whether the PHSO accepted the SSWP's argument (and if not, why not). The suggestion at **SFG §57(5)** that at §336 of the Stage 2 and 3 Report **[Core 157]** the PHSO "*directly addressed the argument now advanced by the DWP*" does not fairly characterise the content of §336. §336 sets out the DWP's position in relation to the 2014 Survey ("*DWP told us…It highlighted that…It told us…It said…*"), but there was no analysis or discussion of those matters by the PHSO. The PHSO did not factor those points into any conclusion, or explain why he rejected them (if he did).

63. Further, WASPI is wrong to suggest at **SFG §57(6**) that at §337 the PHSO "*expressly addressed and rejected the DWP's position on the 2014 survey*". That paragraph says nothing about the 2014 Survey at all: see **[Core 157]** (and §26 above). It represented a failure to grapple with the evidence of the 2014 Survey, not a "rejection" of the DWP's position on the Survey (and the SSWP was certainly entitled so to conclude).

64. For completeness, WASPI's contentions at **SFG §59** (in relation to 'loss of a chance' and the findings made by the PHSO in relation to the individual sample complainants) are addressed at paragraphs 56-58 above.

<u>2) Ground 2:</u>

<u>Ground 2A</u>: whether the Decision on remedy was premised on the erroneous rejection of the PHSO's findings on injustice

65. Needless to say, if Ground 1 fails, then Ground 2A must also fail.

66. Further, and in any event, the only relevance of the 2014 Survey for the purposes of remedy is that, in combination with the 2006 Survey, it was treated as a basis for the broad conclusion at Response §83 **[Core 217]** that: "*the low chance of a letter making a difference to awareness in any given case is clearly relevant to the compensation that should be awarded. We do not think it is right for compensation to be paid where sending a letter would have made no difference. This may happen where the individual concerned would not have read and recalled the letter or already knew their new State Pension Age*". That was a wholly rational conclusion for the SSWP to have reached, even if (*quod non*) any of the detailed criticisms of her approach to the 2014 Survey under Ground 1 had any substance.

67. Still further, it is obviously wrong for WASPI to characterise the SSWP's approach on remedy as driven "*principal[ly]*" by her conclusion on injustice: **SFG §64**. The SSWP's multifactorial consideration of remedy is addressed at §§78-112 of the Response **[Core 216]**. Within that lengthy section, the PHSO's flawed approach to injustice is addressed in four paragraphs at §§81-84 – which also explain in terms that this was a decision based on a number of factors (which are then set out at §85ff). There is no basis for WASPI to assert that the 'injustice flaw' was the "*principal*" reason behind the SSWP's approach to remedy.

<u>Ground 2B</u>: Whether the 2006 Survey provided evidence about women's knowledge that their own SPA would change

68. This sub-ground proceeds on an entirely misconceived basis. It advances an argument **[SFG §65]** that "*contrary to the Defendant's misreading in the Decision*" the 2006 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 <u>their</u> State Pension*". The SSWP accepts that. Indeed, the Response at §88 expressly states **[Core 218]**: "*We do not know from those 73% and 90% awareness figures what those women understood their own State Pension age to be. But we do*

know that they were aware that State Pension age was going to increase." The SSWP's point at §§86-88 of the Response is not that the 2006 Survey showed that 90% of women were aware of changes to the age at which they, personally, would be eligible for the State Pension: but merely that they were aware - generically - that there were upcoming changes to SPA for women.

69. Tellingly, WASPI does not anywhere explain where the SSWP's alleged 'misreading' is to be found in the Response. The only reference in this section of the SFG to the Response is to §88, where the precise limits of the 2006 Survey to which WASPI points are <u>accepted</u> by the SSWP.

70. To the extent that this sub-ground relies upon the reference at §89 of the Response to the suggestion 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*" **[Core 218]**, that observation is not made in reference to the 90%. Rather, it builds on the point made in §88 that once individuals were aware that State Pension age would be changing (which is evidenced by the 2006 Survey), "*We consider that such knowledge meant those women could go on to check how the increase in State Pension age affected them. Retirement is a significant step in life. It is reasonable to expect people to plan for it, to take personal responsibility and check expert advice. This is particularly the case if they are aware that State Pension age is increasing*". The SSWP was entitled – on the issue of remedy – to take the view that those who were generally aware of changes either would, or ought to, have taken steps to ascertain how those changes might impact them personally, especially in light of the various sources of information available to them. It is reasonable to infer that many of the 90% would in fact have gone on to find out how the changes impacted them personally; and, even if they did not, it is reasonable to conclude that the fact that they ought to have done so is one basis (among others) for not compensating them.

<u>Ground 2C</u>: Whether the 2006 Survey provided reliable data as to women's awareness that SPA was subject to change in the future

71. Sub-ground 2C is a rationality challenge to the SSWP's entitlement to rely in any way on the 2006 Survey in support of her findings that 90% of female participants aged 45-54 were aware that SPA was due to increase in the future.

72. The criticisms levelled at the 2006 Survey methodology are unwarranted:

72.1. That participants were prompted to consider a field of inquiry that they might never have considered or independently recalled does not render the survey unreliable. The 2006 Survey was designed to test whether participants had knowledge on particular subjects and the extent of that knowledge - which is a common feature of research studies. The fact that participants were not selected on the basis of pre-existing pensions knowledge renders them more representative of the general population.

72.2. It is not right that the participants were 'led' to the correct answer. First, the use of the phrase "at the moment" does not indicate an imminent change or plant any thoughts in a participant's mind. Indeed, such a clarificatory gloss was necessary to ask the question in a clear manner to those who were aware of forthcoming changes. Secondly, in order to test knowledge on a true/false/don't know basis, it is necessary to put statements to participants. That is not 'leading': it is an appropriate part of widely-used research methodologies.

73. In any event, the approach taken to these matters by WASPI is misguided:

73.1. Reliance on what is said in *Lidl Great Britain Ltd v Tesco Stores Ltd* [2022] EWHC 1434 (Ch) at [122] is wholly inapposite in the present context. The *Lidl* case concerned trademark infringement proceedings in the Chancery Division, in a context where the Court was dealing with the principles to be applied when survey evidence is deployed at trial to assist the Court in making factual findings. The standards of evidence to be applied in that context manifestly do not determine how the SSWP should approach survey evidence in the context of a policy decision; let alone, establish irrationality for the purposes of a JR claim.

73.2. Whatever critique WASPI seeks to make of the 2006 Survey, as a question of rationality, the SSWP was plainly entitled to have regard, as she did, to the findings of a detailed, 200-page report, carried out by academics at the National

Centre for Social Research and the School of Social Sciences, University of Birmingham at **[Core 458, 471]**; it was obviously not *irrational* for her to do so.

3) Highly likely that the outcome would not have been substantially different

74. Further, it is highly likely that the outcome (for WASPI) would not have been substantially different, had the SSWP not taken the approach about which WASPI complains. As such, pursuant to s. 31(3D) of the Senior Courts Act 1981, permission to apply for judicial review must be refused.

75. That submission applies equally in respect of each of Ground 1 and Ground 2:

75.1. As to **Ground 1:** the core and primary question is whether the SSWP was entitled to conclude that the PHSO should have taken into account the findings of the 2014 Survey, and did not do so. It is, on the SSWP's submission, almost beyond argument that the PHSO did not take the 2014 Survey's findings into account, and that the findings were sufficiently important and analogical that the PHSO should have done so (or at the very least, the SSWP was entitled so to conclude). In such circumstances the SSWP was properly entitled not to accept the PHSO's approach to injustice. Therefore, even if (*quod non*) the SSWP's own view of the meaning and significance of the 2014 Survey was legally erroneous, that ultimately does not matter. Once it is accepted that the SSWP was entitled not to accept the PHSO's approach on injustice – then that aspect of the decision will be lawful, or at the very least would not have led to an outcome that was substantially different.

75.2. As to **Ground 2**:

(1) The relevance of both the 2006 and the 2014 Survey for the purposes of remedy is that they were in combination treated as bases for the broad conclusion at Response §83 **[Core 217]** that: "*the low chance of a letter making a difference to awareness in any given case is clearly relevant to the compensation that should be awarded. We do not think it is right for compensation to be paid where sending a letter would have made no difference. This may happen where the individual concerned would not have read and recalled the letter or already knew*

their new State Pension Age". Even if (*quod non*) the SSWP had made some error of approach to either Survey, amounting to a material error of law, that broad conclusion would remain a wholly rational one for her to have drawn from the evidence.

(2) Further, it is plain from the Response at §§80-112 **[Core 216]**, that the SSWP took into consideration a wide range of factors in her decision not to recommend a financial remedy. She did not do so simply because of her reliance on either the 'injustice flaw' at §§81-83 or any factor that derived from the awareness figures set out in the 2006 Survey at §88. Those aspects do not touch at all on the entirely distinct, and very important considerations relating *inter alia* to the practical impossibility of setting up a compensation scheme which assessed the individual circumstances of claimants (§§93-98); the wholly unacceptable risks of fraud and/or poor value for money entailed in any scheme that relied upon blanket payments or claimants' self-certification of their own circumstances (§§99-104); and last but not least affordability, in circumstances where no money has been set aside for compensation, the public finances are under great pressure, and the burden of such a significant financial commitment would fall on current and future taxpayers (§§105-107).

(3) In the circumstances, even were the Court to disregard those limited aspects of the SSWP's decision on remedy that WASPI seeks to impugn, it would remain highly likely (indeed, virtually inevitable) that the ultimate outcome – the decision not to pay financial compensation – would have remained the same.

V COSTS CAPPING ORDER

76. The SSWP opposes WASPI's application for a costs capping order ("**CCO**") pursuant to section 88 of the Criminal Justice and Courts Act 2015 ("**CJCA**") and CPR 46.17, should permission be granted. The precise form of order sought by WASPI is at **[Core 25]**. It proposes that WASPI's liability for the SSWP's costs be capped at £37,200 (incl. VAT) with a reciprocal cap (as required by s. 89(2) CJCA) of £130,200 (incl. VAT) (with liberty

to apply to vary those terms should WASPI raise more than £180,000 towards the costs of the claim).[7] That is a cap in the ratio of 1:3.5 in WASPI's favour.

77. The SSWP opposes the CCO application for the following reasons:

77.1. First, it is not accepted that the proposed claim amounts to '*public interest proceedings*' within the meaning of s. 88(6)(a) / (7) CJCA. It involves a narrow question as to the SSWP's entitlement to take into consideration two particular surveys in responding to the PHSO's report, and the manner in which she did so. That issue is not one of general public importance for the purposes of s. 88(7)(a) CJCA. The claim concerns the application of settled legal principles, rather than the determination of any point of law of general public importance for the purposes of s. 88(8)(c) (and in that regard the SSWP notes that Ms Madden does not address that particular criterion despite CPR 46.17(1)(b)(i), so it can be presumed that WASPI accepts this, too).

77.2. Secondly, CPR 46.17(1)(b)(iii) requires WASPI to support its CCO application with evidence setting out (*inter alia*), "*the costs (and disbursements) which the applicant considers the parties are likely to incur in the future conduct of the proceedings*". Ms Madden's evidence does not address that aspect at all. All that she says in that regard is that **(Madden §89)**: "*We also think it is important that our lawyers are paid for their work.*" WASPI's lawyers are not acting free of charge for the purposes of s. 89(1)(d) CJCA **[Core 439]**. She says nothing as to the rates on which they are to be paid, or WASPI's estimated costs and disbursements. The Court does however have some limited insight into that position from what WASPI has said in correspondence:

77.2.1. WASPI's arrangements with its lawyers are (per §9 of Bindmans' letter of 14 March 2025 **[Core 456]**) that if it loses the claim, their lawyers will be paid at discounted rates and will not "*ask our client to pay more than it*

[7] Albeit with no mechanism requiring WASPI to declare to the Secretary of State what additional funds it has raised or requiring WASPI to make any efforts to fundraise further. All that is provided is Ms Madden's comment in her witness statement that "*in the unlikely event that WASPI's financial circumstances change significantly for the better between now and the conclusion of the case, it would only be right for the Defendant and the Court to be updated so that a view could be taken on whether the CCO should be adjusted to accommodate that*": **Madden §94**.

can raise to take the case forward". What those rates are is unknown: only that they average out at £150 per hour for each lawyer, on an unspecified estimate of how many work hours the case will require, spread across an unspecified number of lawyers. More than that, those are the arrangements if WASPI loses. Nothing at all is said about what it is intended that those lawyers be paid should WASPI win – beyond the statement that the standard litigation hourly rates for those involved include £530 for a Partner, £1,100 for leading counsel and £550 for junior counsel (all plus VAT). Those fees would come from a 'pot' totalling the SSWP's proposed costs cap of £130,200 plus whatever WASPI fundraises, which is *assumed* to be £167,400 (once CrowdJustice fees are deducted). So on WASPI's approach, its lawyers stand to be paid at least[8] £103,200 should it lose the case; and (again, at least) £297,600 if they win – on the basis of a heavily weighted 1:3.5 costs cap. Those arrangements should not be supported by limiting the ability of the public purse to recoup its costs of the litigation. It is no answer that the Government's lawyers will be paid "*win or lose*" **(Madden §93)** when public money will not be recouped, and the Government's lawyers will be paid at Government Legal Department ("GLD") rates, which are markedly lower than the commercial rates to which Bindmans' letter refers.

77.2.2. Should permission be granted, this is likely to be a 1 to 2 day judicial review in which the Government's costs are unlikely to leave insufficient funds in WASPI's 'pot' to pay its own lawyers.

77.3. Thirdly, the ability of WASPI to raise further funds is a highly material factor that militates against the CCO being made. It is relevant under both s.89(1)(a) (the financial resources of WASPI as well as those who provide or may provide financial support to it) and s. 88(6)(c) (whether it would be reasonable for WASPI to withdraw its claim if the CCO were not made). On WASPI's own case **(Madden §82)**, when the CrowdJustice campaign was launched on 24 February 2025, the initial target of £75,000 was met within a single day. WASPI plainly

[8] Given the prospect that more funds may be raised.

can raise a lot of money; and do so fast. The 'stretch' target of £180,000 may not have been met as at the date of Ms Madden's statement (mid-March 2025), but it has been now, and the total stands at over £183,000 as of 9th April with a new 'stretch' target of £230,000. Ms Madden states **(Madden §84)** that "*we are realistic that there is likely to be a limit to the amount of funding we are able to raise through CrowdJustice*" – but she does not say what she considers that to be, or what further fundraising efforts WASPI will make. The Court should not grant a CCO that disincentivises WASPI from fundraising, rather than relying on the public purse. There is every reason to believe that WASPI may well be able to raise substantial further funds for the purposes of litigation (whether through CrowdJustice or otherwise), given that Ms Madden identifies that it was able to spend £307,915 on legal costs in the year leading up to the 2024 accounts **(Madden §77)**.

77.4. Fourthly, for the purposes of s. 89(1)(c) (the extent to which WASPI or those who have provided it with financial support are likely to benefit if relief is granted), it is relevant to note that while direct financial relief is not sought *within* the proceedings, the claim forms part of WASPI's wider campaign for compensation and specifically challenges the SSWP's decision not to proceed with a financial compensation scheme. The challenge cannot be divorced from WASPI's aim to achieve financial benefit for those it represents.

77.5. Fifthly, although Ms Madden asserts that WASPI would "*have no choice but to withdraw the claim*" in the absence of a CCO (**Madden §65**), the Court should be very sceptical of that assertion. WASPI is a campaigning organisation whose entire purpose is to challenge the Government on this issue; it has complained and litigated this issue over a period of many years; and it has raised very substantial funds to do so.

78. Finally, the terms on which WASPI seeks a CCO are wholly unfair. The SSWP's primary position is that no CCO should be made at all, but if one is made, it should be on substantially altered terms from WASPI's draft **[Core 25]**. As to that:

78.1 The suggested 1:3.5 ratio is grossly disproportionate; WASPI has not provided a good reason why any caps to be applied should not be equal.

78.2 WASPI's recovery should not only be capped, but capped on terms that recovery be on GLD rates (or the equivalent).

78.3 While WASPI had proposed in correspondence a raising of the cap in line with any further funds raised by it – albeit on the continued 1:3.5 ratio (see Bindmans' letter of 10 March 2025, §6(3) **[Core 438]**), that proposal does not appear in the draft order. It is replaced by a general 'liberty to apply', but without any requirement on WASPI either to undertake any efforts to raise more funds or even to notify the SSWP of additional funds raised. Should a CCO be made it should provide for any additional funds raised by WASPI to be applied to each 'cap' in equal measure.

VI CONCLUSION

79. For all the reasons above, permission to apply for judicial review should be refused and the SSWP should be awarded her reasonable costs of these Summary Grounds in the sum set out in the appended Schedule of Costs.

JULIAN MILFORD KC
DANIEL ISENBERG
11KBW
9 April 2025