



WASPI

Guide to DWP maladministration



INTRODUCTION

This Guide is for women born in the 1950s who have been affected by the changes to State Pension Age ('SPA'). Some of those changes were made two decades ago, others are more recent, but none were properly communicated to affected women. Many women were therefore left unaware of the changes until it was too late to allow them to make changes to their plans to cover the money they would no longer receive.

This Guide explains the various aspects of maladministration that have occurred in respect of the communication of the changes to SPA to affected women. It is intended to complement the Guide to pursuing complaints to the DWP.

There are other changes that were potentially unfair for some women, including to the rules surrounding National Insurance contributions; Pension Credit; contracting out; and transitional arrangements to the new State Pension (post-2014 Act). If you were affected by these, you may want to include them in your complaint, but their details are outside the scope of this Guide.

For more information you can also refer to the following:

- DWP Service Standards (which includes the Complaints Process);
- the DWP's internal policy on Financial Redress for Maladministration from April 2012;
- The House of Commons Work and Pensions Committee's report on the 'Communication of state pension age changes' dated 14 March 2016; and
- WASPI's evidence to the Work and Pensions Committee.

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1

What is maladministration and the relevant standard set by the DWP

1.1 | There is no formal legal definition for maladministration, but it is defined by the DWP as “*situations in which we have not acted properly or provided a poor service. For example: wrong advice, discourtesy, mistakes and delays.*”¹

1.2 | The intention to equalise SPA was announced in a White Paper published in December 1993.² In the foreword to that paper, then Secretary of State for Social Security, the Rt Hon Peter Lilley MP, recognised the importance of giving sufficient notice of the changes to allow people to adjust their plans accordingly: “*To give women and employers ample time to prepare for this, it will not even start until 2010.*” This is similarly recognised in the White Paper itself:

“ 2.1 *In developing its proposals for implementing the change the Government has paid particular attention to the need to give people enough time to plan ahead and to phase the change in gradually...*

2.2 *The change will not be implemented until 2010. This lead-in period of over 16 years allows plenty of time for people to adjust their plans. ...*”

1.3 | In October 2002, in evidence to a Select Committee, the DWP suggested that the “*role of the state*” was “*to provide clear and accurate information about what pensions will provide so that people will understand how much they can expect at retirement before it is too late to do something about it.*”³

1.4 | From March 2002, the DWP’s “*Public Information Policy statement*”⁴ required that information which the DWP issued must be “*appropriate, relevant, correct, up-to-date, clear, concise and to the point, helpful and targeted*”. Most importantly, the Statement stated:

“ *It is widely accepted that the Department has a duty to give information or advice [to] inform the public about any new policies and developments that may affect them and, crucially, keep them informed on a continuing basis of their rights and responsibilities. It would be unreasonable for the Department not to do this and it is clearly a necessary part of our business. ...*

The Department must take care to achieve the necessary balance of resource and effort between announcing changes and new policies and our duty to provide routine information. The common law duty of care means that any information we provide must be timely, complete and correct. The Department may be held responsible if we give advice and someone relies on this to their detriment.”

1.5 | On 29 June 2004, the DWP launched a new pensions information pack for employers and employees. At the launch event, the then Financial Secretary of the Treasury said: “*Informed choice is an essential part of the Government’s strategy, reaffirming the essential partnership in pensions between employers, employees, providers and the Government.*”⁵

What is maladministration and the relevant standard set by the DWP

- 1.6** | The Turner Commission recommended in its second report published on 30 November 2005, that the Government give *“an assurance that changes in pensionable age for the flat-rate pension will be announced at least 15 years in advance.”* This proposal was essentially accepted by the Government's response in the White Paper, *“Security in retirement: towards a new pensions system”* published in May 2006, which proposed no further increases until April 2024, some 18 years later.
- 1.7** | The Parliamentary and Health Service Ombudsman has also previously concluded in respect of the period between 1993 and 2006 that:
- “ pensions were complex and often not a topic that was generally understood and that, consequently, there was a need for greater financial education, for improved awareness of pensions and for clearer information about the various savings options...*
- the Government saw itself as having a key role in promoting such better education, awareness and information about pensions and saving for retirement – and told others that it would do so...*
- the Government accepted at the relevant time that it had certain obligations in relation to accuracy, completeness, clarity and consistency of its publications...*
- They had a responsibility to ensure that there were no significant omissions from any information they chose to publish. ”*⁶
- 1.8** | The summary of responses to the Government consultation on pensions confirmed that a majority of respondents considered 10 years' notice to be appropriate for changes to the State Pension age.⁷ This was accepted by the DWP in *“The single-tier pension: a simple foundation for saving”*.⁸
- 1.9** | Previous Pensions Minister, Steve Webb, acknowledged in 2013 that not all women were aware of the changes made by the 1995 Act:
- “ The Pensions Act 1995 began the process of equalising the pension ages of men and women at 65 over the decade from 2010 to 2020. The increase in pension age beyond 60 for these women was therefore legislated for in 1995. It was not a short-notice change, although I accept that some women did not know about it, and not everybody heard about it at the time. Although it was all over the papers at the time, these women were a long way from pension age and probably turned the page when they saw the word “pension”, so I accept that some women did not know about this...”*⁹
- 1.10** | Baroness Altmann, then Minister of State for Pensions committed to the Work and Pensions Committee in early 2016 that the Government intends to give at least ten years' notice of any further changes to State Pension age.¹⁰
- 1.11** | The DWP Service Standards now say that: *“We aim to give you accurate information and the right advice to help you: ... understand the conditions of receiving your pensions benefit...”*

2

The Pensions Act 1995

- 2.1** | The Pensions Act 1995 ('the 1995 Act') increased the State Pension Age ('SPA') for women born on or after 6 April 1950, in order to equalise the SPA with that applicable to men. At that time (and up until the coming into force of the 1995 Act in July 1995), the SPA for women was 60 and for men it was 65.
- 2.2** | The first indications that the Government was intending to equalise SPA were given in the December 1991 Green Paper, 'Options for Equality in State Pension Age'. The Green Paper set out three alternative common SPAs for consultation: 60, 63 and 65. In the Autumn Budget Statement on 30 November 1993, the Chancellor of the Exchequer, Kenneth Clarke announced that the Government had decided to equalise SPA for men and women at 65. In his statement he confirmed that the change would be gradually phased in and that it would not affect anyone who was, at that time, aged 44 or older (i.e. those who were born on or before 30 November 1949, which later changed to 5 April 1950). In December 1993, the Government's intention was formalised in a White Paper, 'Equality in State Pension Age'.¹¹The White Paper explicitly acknowledged the need for sufficient notice of changes to SPA to be given, in order to allow people to adjust their plans and noted that 16 years was a sufficient lead-in period to allow individuals time to plan ahead.
- 2.3** | In July 1995, the Pensions Bill was first introduced to Parliament. It provided that:
- the SPA for men would remain at 65;
 - for women born before 6 April 1950, the SPA would remain at 60;
 - for women born between 6 April 1950 and 5 April 1955 (inclusive), the SPA would depend on when within that time period the woman was born, and would range from 60 years and one month, to 64 years and 11 months; and
 - for women born after 5 April 1955, the SPA would be 65.
- 2.4** | The increases to SPA were originally scheduled to be phased in between April 2010 and 2020.
- 2.5** | If you would like to see examples of the press coverage at the time, the House of Commons Work and Pensions Committee was provided with such examples of press cuttings from the time of the Pension Bill in 1995.¹²

3

Government leaflets (1995)

- 3.1** | This section relates to leaflets called 'EQP1A "Equality in State Pension age – A summary of the changes' produced by the Government in 1993 (see above) and re-issued in 1995 to reflect the changes introduced by the 1995 Act.¹³ The leaflets were apparently distributed to local Benefits Agency branches, but there is limited information on exactly how they were distributed and how many were distributed.
- 3.2** | In its supplementary evidence to the House of Commons Work and Pensions Committee in February 2016, the Government explained that the (then) Benefits Agency had published a revised version of its December 1993 leaflet, 'EQP1A "Equality in State Pension age – A summary of the changes" in July 1995. The Government stated that *"leaflets were sent to the Benefits Agency and would have been available for our stakeholders to order"*, and that the leaflets were also enclosed with responses to all voluntary requests for State Pension Statements from July 1995 onwards. A Bulletin was also issued to Benefits Agency Staff setting out the changes in the 1995 Act, which referred to the availability of the leaflets.
- 3.3** | A DWP-commissioned research report in 2004 found that only 2% of respondents mentioned that they had been notified of changes to SPA by the DWP/via a leaflet.

4

Pensions education campaign (2001 - 2004)

4.1 In the DWP's evidence to the Work and Pensions Select Committee in early 2016, the Government highlighted its 'pensions education campaign' as one of the ways it informed the public of changes to SPA introduced by the 1995 Act.

4.2 In its supplementary written evidence to the House of Commons Work and Pensions Committee in February 2016, the Government elaborated upon the education campaigns it ran between 2001 and 2004, stating that *"one of the press adverts in 2004 was specifically about the equalisation of State Pension age and was featured in women's magazines and national newspaper supplements."*¹⁴ It went on to say:

“ DWP ran a pensions education campaign, which included informing people of the future equalisation of SPA. The campaign included:

- Advertising features in the press and women's magazines
- "Women's Pensions Pack" containing leaflets for women about changes in SPA, made available through the Pensions Service
- Sending State Pension forecast letters and accompanying leaflet showing the person's SPA and explaining who is affected by the changes to women's SPA (issued to those who requested them)
- Developing an interactive State Pension date/age calculator facility on the Pensions Service website. ”¹⁵

4.3 In August 2015, in response to a request under the Freedom of Information Act 2000 for information about the Government's attempts to promote awareness of increases to SPA, the DWP stated:

“ The pensions education campaign ran in waves from January 2001 until February 2004. The objectives were to make people aware of the importance of planning for their retirement and to inform them of the information available to help them plan their options. The campaign used TV and press advertising, and direct marketing. One of the press adverts was specifically about the equalisation of State Pension age and was featured in women's magazines and national newspaper supplements.

Other awareness raising activity included advertorials in women's and TV listings magazines in March 2000.

Information was also available on The Pension Service website, including a State Pension age calculator. ”¹⁶

4.4 However, in a further Freedom of Information Act request on 8 September 2015, the DWP were asked for more specific information about which aspects of the awareness campaigns related to equalisation of SPA. The DWP responded, stating that their broad campaigns ('Future Pensioners/ Informed Choice', 'Pensioners' Guide', 'Pension Credit' and 'The Pension Service') did not focus on SPA equalisation in particular.¹⁷ However, they noted that:

“ equalisation was the topic of specific adverts/advertorials targeted at women. The television adverts that formed part of the broader campaigns advised people to phone to request a booklet providing more detail. In addition to a general pensions advice booklet, another was produced specifically for women, which picked up on a range of relevant issues including equalisation.”¹⁸

4.5 There was clearly some concern at the time that the message was not reaching sufficient numbers of women. Research carried out in March 2000 showed that only 30 per cent of women aged 18-55 were aware that changes to SPA had been made¹⁹.

4.6 In a House of Lords debate on 6 November 2002, Baroness Greengross asked the Government:

“ Baroness Greengross asked Her Majesty's Government:

What steps they have taken to inform women affected by the increase in the state pension age for women from 2010; what percentage of women they estimate to be already aware of the increase; and whether they have taken steps to discover what such women have done in response. [HL6158]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Hollis of Heigham):

I refer the noble Baroness to the Answer I gave her on 31 January 2002 (WA 57).

Changes to the state pension age for women are publicised as part of the current marketing campaign on pensions education for people of working age. This is a multi-million pound campaign which encourages people to plan for retirement and consider the full range of pension options and issues.

The campaign includes a press advert specifically about the change to state pension age for women and we have undertaken direct marketing activity, which includes press inserts and direct mailings targeted specifically at women. These materials all highlight the fact that the state pension age for women is changing.

This activity has taken place since research undertaken in March 2000 which showed that 30 per cent of women aged 18-55 were aware that changes to the state pension age had been made. Since then, as outlined above, there has been considerable further activity to publicise these changes and we have distributed more than 2 million pensions information guides.

The effectiveness of the pensions education campaign is measured on an ongoing basis.”

4.7 | In 2004, the DWP published a research report '*Public awareness of state pension age equalisation*'²⁰. The research was intended to contribute to the design of the DWP's marketing campaign about the future equalisation of SPA and to improve the DWP's understanding of when people engage with issues regarding state pensions²¹. It found that only 43% of all women who would be affected by the increase in SPA were able to identify their SPA²². This fell even lower for women who were out of work (46% v 36%) and for those in routine or manual work, as opposed to those in managerial/professional occupations (46% and 38% respectively). The Report noted that this low level of awareness was:

*“a cause for concern and showed that information about the increase in SPA is not reaching the group of individuals who need to be informed the most.”*²³

4.8 | This clearly indicates that the Government's education campaign strategy was ineffective.

5

Automatic state pensions forecasts (May 2003 - November 2006)

5.1 In response to a Freedom of Information Act request, the DWP confirmed that between May 2003 and November 2006, it issued 17.8 million 'Automatic state pensions forecasts' ('ASPFs') to those who, according to its records, had not received any pensions forecast in the preceding 12 months.²⁴ The DWP stated that ASPFs were sent out to the following groups:

- a. between May 2003 and May 2004, to 1.5 million self employed individuals of working age;
- b. between December 2004 and November 2006, to:
- c. Women over 50;
- d. Men over 50;
- e. Women under 50; and
- f. Men under 50.

5.2 The letter itself ²⁵ did not contain any information about SPA. It simply set out a forecast of the projected basic and additional pension that an individual might expect to receive if they retired at their SPA. Enclosed with the letter was a 'Quick Guide to State Pensions' which gave a very brief and generic description of SPA as follows:

“ **What is State Pension age?**

State Pension age is:

- 65 for men
- 60 for women born on or before 5 April 1950
- Between 60 and 65 for women born between 6 April 1950 and 5 April 1955 (depending on your date of birth); and
- 65 for women born on or after 6 April 1955.

To find out more about the State Pension age for women, please see Pensions for women – your guide (PM6) See page 10 for details about how you can get a copy of this guide. ”

5.3 In 2006, the DWP produced a research report, 'Evaluation of Automatic State Pension Forecasts for the over-50s'.²⁶ The Report found that only around half of those surveyed had read some or all of the ASPF letters and only 21 percent read some or all of the enclosed 'Quick Guide'. Further, 47% said they did not recall the Quick Guide at all.²⁷ This suggests that ASPFs and the enclosed leaflets failed properly to draw recipients' attention to the information that most affected them.

5.4 The research report purported to reach conclusions about 'awareness of State Pension age'. Surprisingly, it found that:

“The majority of respondents (95 per cent) were spontaneously aware of the correct earliest age at which the State Pension may be drawn. Almost all (96 per cent) of those who felt they had at least a basic knowledge of pension issues were aware of the correct age at which State Pension could be drawn, compared to nine in ten (90 per cent) of those with no knowledge.”

And that:

“Women were very slightly more likely than men to be aware of the correct age at which State Pension can be drawn (97 per cent versus 93 per cent).”

5.5 However, upon closer inspection of the research methodology it is clear that this statistic is unreliable. The researchers state, in a footnote, that:

“Responses accepted as correct for women were 60 – 65 as well as ‘The age is changing for women’ and ‘From 65 but can delay taking it’. For men, accepted responses were 65 and ‘From 65 but can delay taking it.’”

5.6 This is clearly not the same as an individual correctly identifying their own SPA. In fact, evidence from the English Longitudinal Study of Aging by the National Centre for Social Research, University College London (UCL) and the Institute for Fiscal Studies (IFS), in 2011 (which did take into account actual SPA when assessing the accuracy of respondents' answers identifying, found that: *“[by 2008] only 43% of women affected by the change in SPA from 60 to 65 were aware of the change”*.²⁸

6

Government letters (April 2009 - 2013)

- 6.1 | The Government has been keen to emphasise in respect of complaints about the communications of SPA that those affected by the changes in the 1995 Act were notified directly by the DWP by direct mailing between April 2009 and 2013.
- 6.2 | The first batch of direct mailing between April 2009 and March 2011 was aimed at women due to reach SPA under the old rules between April 2010 and 5 April 2013. A second set of letters was sent in 2012 and 2013 to those women born after 5 April 1953, and addressed both the changes made by the 1995 Act and the subsequent 2011 Act.
- 6.3 | Such personalised letters were not therefore initiated until 14 years after the 1995 Act came into force. An example of the letters sent between April 2009 and March 2011 are annexed to the Select Committee's Report on the Communication of State Pension Ages.²⁹
- 6.4 | Moreover, rather than continue to tell affected women about the 1995 changes while the 2011 Act went through Parliament there was a further year during which no letters were sent. That mailing resumed in January 2012 and continued until November 2013. An example of the letter is attached to the select committee report at pages 34-37.³⁰ Further information on the 2011 Act is in the next section.
- 6.5 | In response to a Freedom of Information Act request, the DWP explained that:
*“ Between April 2009 and March 2011, the Department mailed all women born between 6th April 1950 and 5th April 1953, informing them of their State Pension age under the 1995 Pensions Act [these are women who were due – under the old rules - to reach state pension age between April 2010 and 5 April 2013]. Letters were sent to approximately 1.2m women. The cost associated with these letters was approximately £160,000. This covers product development, printing and distribution.”*³¹
- 6.6 | In its supplementary evidence to the Pensions Select Committee, the DWP confirmed that the last batch of letters about the 1995 Act was issued in March 2011 to people born between 6th October 1952 and 5th April 1953.³² According to Paul Lewis, the BBC Broadcaster and author of the Paul Lewis Money blog, the mailing gave this cohort of women an average of just one year and five months' notice before they reached their expected state pension age of 60.
- 6.7 | The 2012 -13 mailing was directed to those who were due to reach SPA between 2016 and 2026, a total of around 5 million people.³³ The DWP has confirmed that the purpose of the mailing was to *“inform them of the change to their State Pension age, indicating both the change in date for equalisation of women's State Pension age to be completed and the extension of State Pension age.”*³⁴

6.8 | The addresses used for this mailing were those held by HMRC at the time of the mailing and it has been accepted that the success of the exercise was *"subject to the accuracy of the address details with HMRC"*. Surprisingly, the DWP failed to keep records of how many letters were returned by the Royal Mail undelivered and no further action was taken to trace those women who had not received the letters.

6.9 | Paul Lewis received the following information from the DWP in response to his request under the Freedom of Information Act 2000:

“ QUESTION: What information does the DWP hold on how many of those letters in any or all of those batches were returned by Royal Mail?

REPLY: DWP no longer has access to this information. To support the principles of the Data Protection Act 1998, DWP has a Records Management Policy. This confirms the retention periods for DWP products and, in line with this Policy, there was no specific reason to retain these letters.”

“ QUESTION: When letters were returned as above what further steps were taken to try to find the people concerned?

*REPLY: The letters were issued to the customers' latest address held on HMRC records. No followup action was taken on any letters that were returned undelivered as DWP had no further information on the customers' whereabouts.”*³⁵

6.10 | The DWP has indicated that the mailing process was 'paused' once there was a *"risk that the same people might also be affected by the 2011 change"*.³⁶

7

Pensions Act 2011

- 7.1** | The Pensions Act 2011 (the '2011 Act') made provision to bring forward the equalisation of SPA at 65 to November 2018 and the rise to age 66 to October 2020. The effect of the changes was to bring about faster equalisation of men's and women's SPAs and to accelerate the timetable for the rise of SPA to 66. The Bill received Royal Assent on 3 November 2011.
- 7.2** | The 2011 Act was designed to bring forward the increase in SPA so that SPA for both men and women would begin rising from 65 in December 2018 to reach 66 by October 2020. As a result of bringing forward the increase to 66, the timetable contained in the 1995 Act for equalising women's SPA with men's at 65 by April 2020 was accelerated, so that women's SPA reaches 65 by November 2018.
- 7.3** | The changes were preceded by a 'call for evidence' between 24 June and 6 August 2010, following which a Government White Paper "*A sustainable State Pension when the State Pension age will increase to 66*"³⁷ was published on 3 November 2010.
- 7.4** | The new regime under the 2011 Act, is as follows:
- a. any man born before 6 December 1953 would reach the SPA at 65;
 - b. women born before 6 April 1950 would still reach the SPA at 60;
 - c. any woman born between 6 April 1950 and 5 December 1953 (inclusive) would reach the SPA between the ages of 60 years and one month, and 64 years and 11 months (ie the window for this age-range was decreased by the 2011 Act);
 - d. any person born between 6 December 1953 and 5 October 1954 (inclusive) would reach the SPA between 65 years and three months, and 65 years and 11 months;
 - e. any person born after 5 October 1954 but before 6 April 1968 would reach the SPA at 66;
 - f. any person born between 6 April 1968 and 5 April 1969 (inclusive) would reach the SPA between the ages of 66 and one month, and 66 years and 11 months;
 - g. any person born after 5 April 1969 but before 6 April 1977 would reach the SPA at 67;
 - h. any person born between 6 April 1977 and 5 April 1978 (inclusive) would reach the SPA between 67 years and one month, and 66 years and 11 months; and
 - i. any person born after 5 April 1978 would attain the SPA at 68.

8

Optional state pension forecasts

8.1 | In defending its position, the DWP has repeatedly referred to the fact that women could request optional state pension forecasts that would have informed them of any changes to their SPA.

8.2 | By way of example of a reference to such matters, the DWP informed the House of Commons Work and Pensions Committee in 2016 that:

“ Until 2009, direct communication with people affected by increases in state pension age was very limited. Leaflets explaining the changes were available from the Benefits Agency from 1995 and accompanied any state pension forecasts that were requested. The Department told us that 11.5 million state pension statements have been issued on request since April 2000. These included the date (but until recently not the age) at which the individual was due to reach state pension age under the legislation at that point. ”

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