

**Memorandum to the Public Administration Select Committee  
By the Parliamentary and Health Service Ombudsman**

TRUSTING IN THE PENSIONS PROMISE: GOVERNMENT BODIES AND  
THE SECURITY OF FINAL SALARY OCCUPATIONAL PENSIONS  
(HC984: 14 March 2006)

Introduction

1. The purpose of this Memorandum is to assist the Committee in its inquiry in relation to the Government's response to the above report.

2. The Memorandum is in three parts:

(i) This main section sets out my concerns about the wider implications of the Government's response to my report: first in relation to the constitutional position of the Ombudsman's office, and the role that Parliament has determined the Ombudsman should play in investigating complaints about the administrative actions of public bodies; and secondly in relation to what citizens can reasonably expect of official information.

(ii) Annex A sets out my detailed observations on the Government's response to my report which was published on 6 June 2006. In summary my observations are that the Government's response:

- \* fails to address the basis on which I found that maladministration had occurred;

- \* makes selective use of the comprehensive and detailed evidence set out in my report;

- \* provides an unbalanced view of the role of Government in the system of final salary occupational pension provision; and

\* misrepresents what my report says about the causes of financial loss.

(iii) Annex B provides information about cases in the past which have been the subject of a section 10(3) report; and about cases which, although not laid before Parliament under section 10(3), raised similar issues. In some cases Government initially rejected findings but remedied the injustice; in others it accepted findings but did not, at first, provide an appropriate remedy.

However, in no case did Government both reject findings of maladministration and refuse to consider righting the injustice that had been sustained in consequence of that maladministration. Nor has an injustice remained unremedied in any previous case. There is, therefore, no precedent for the Government's response to my report.

Constitutional issues

3. In my Memorandum to the Committee of 26 April 2006, I said that I was concerned about the implications of the Government's initial response to my report. The Government's subsequently published full response has done nothing to allay my concerns, which have been compounded by what I now perceive to be an emerging attitude amongst Government officials and Ministers that has serious implications for the Ombudsman's office.

Precedent

4. The Government suggests that there is precedent for its actions. Paragraph 64 of the Government's response says that: 'While the Government has rejected reports in the past (for instance in relation to the Barlow Clowes investigation in 1989) no Government does so lightly'.

5. As Annex B shows, there is no precedent for a Government both rejecting findings of maladministration and refusing to compensate those people who had suffered injustice. A refusal even to consider doing so is entirely unprecedented.

6. In the Barlow Clowes case, whilst the Government said that it did not accept the Ombudsman's 'assertions', compensation was paid to the complainants and others in a similar position to them, 'out of respect for the Office of the Parliamentary Commissioner'.

#### Maladministration and injustice

7. In its response, the Department for Work and Pensions (DWP) continues to assert that it can be the final arbiter of complaints about its own actions. As the Committee will understand, this position goes to the heart of the system of independent scrutiny of executive action that Parliament has established; and to the confidence that citizens can have that they will receive an effective scrutiny of and outcome to their complaints.

8. The Government's own rule book, Government Accounting, says (in paragraph 5 of Annex 18.1):

'In the light of the investigation of a case, the Parliamentary Ombudsman will decide whether complainants have suffered injustice because of maladministration; and whether any injustice has been, or will be, remedied. The Parliamentary Ombudsman's findings on maladministration are final; there is no established avenue of appeal.'

#### Recommendations for redress

9. Implementation of any recommendations I might make to remedy injustice is another matter. As I explained in my

Memorandum to the Committee of 26 April 2006, the Government may:

'...reject recommendations that I may make, after proper consideration of the public interest, and other calls on the public purse, and any other relevant matters. That is a decision that it is entitled to take, was one envisaged by Parliament when it decided that I would not have powers to make binding recommendations, and would be one for which the relevant Department would have to account to Parliament.'

10. The Government appears to draw no distinction between a rejection of the Ombudsman's findings of maladministration and injustice and a rejection of the Ombudsman's recommendations for redress.

11. Moreover, the nature of the Government's response to this report appears to represent a new and significant departure from historical precedent and constitutional practice.

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[A wider pattern](#)

12. It is not only in relation to this report that I have concerns. There appears to be an emerging attitude amongst Government departments that they can properly, and with impunity, reject my independent assessment of their actions, and my findings of maladministration.

13. As the Committee knows, the Chairman of Her Majesty's Revenue and Customs told another Parliamentary Committee that he did not accept my judgement that maladministration had

occurred in relation to the administration of tax credits.

14. The Permanent Secretary of the Home Office has recently informed me that he does not accept my findings of maladministration in relation to a number of immigration cases.

15. It would appear that DWP's response to this report has given permission for a wider pattern of behaviour to develop. If this becomes a general pattern, or a culture, I am sure the Committee will agree that this can only undermine the confidence and credibility that is necessary to ensure that the Ombudsman's office can fulfil its role and purpose.

A future loss of confidence

16. Whilst I remain concerned that everything possible is done to secure whatever Parliament considers to be appropriate redress for the people who have lost their pensions, I am also concerned about the implications of the Government's response for the constituents of Members who might wish to complain to me in the future.

17. Since publication of my report, I have received many letters from people with complaints about the loss of their pension, and also from other members of the public.

18. One such correspondent asked me: '...what was the point of me coming with my complaint to you if, whatever you say, the Government can still refuse to accept that my complaint was justified? Can the Government ignore the courts, too?'

19. Another said: 'I thought you were an independent investigator who could decide on the facts whether my complaint was well

founded. If the Government refuses to accept the verdict of Parliament's own Ombudsman, what hope is there for other people who have suffered injustice because of Government action?'

20. Such a loss of confidence is inevitable if Government creates the impression that it is prepared to pick and choose which of my findings it is willing to accept.

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[Official information](#)

21. I am aware that the Committee has a long-standing interest in official information and the role it plays in good administration and the delivery of public services.

22. The Government's response to my report appears to suggest that, unless a public body is wholly responsible for the structure and administration of the subject matter of any of its publications, citizens would be acting unreasonably if they were to rely on the information provided by Government about that matter – or if they were to expect such information to be correct and complete.

23. My report shows that DWP's own standards required that information it provided to the public had to be accurate and complete. Those standards did not apply only in respect of leaflets about social security benefits but related – as they still do – to all the information and advice (both general and specific) provided by DWP.

24. These issues are not new. It has long been a concern of good

administration that the information provided by public bodies should not be factually inaccurate or materially incomplete. One of my predecessors noted in his Annual Report for 1985 that 'it is obviously important that the public should be able to rely on the correctness of the information' contained in the leaflets issued by DWP's predecessor department.

25. Complaints about official information and advice have formed a constant theme in the work of my Office since then. Indeed, incorrect and incomplete information given by officials and set out in summary leaflets was at the heart of the inherited SERPS case, which led to the development of the DWP standards and processes which aimed to ensure that the information and advice it provided was accurate and complete.

26. If the Government's response indicates that it is now the view of DWP and/or other parts of Government that official information cannot be expected to meet the standards previously set by public bodies or to conform to standards of good administration, then this would clearly have significant ramifications for public administration generally and for the degree of trust that citizens are likely to have in official information.

27. I am sure that these wider issues relating to the extent that citizens can rely on official information will be of interest to the Committee.

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Conclusion

28. I am deeply disappointed that the Government's response to

my report has rejected my findings and misrepresented my recommendations. My report does not suggest that the redress for the undoubted injustice suffered by many thousands of pension scheme members should be paid for wholly by the taxpayer. However, for the reasons given in my report, I do believe that only the Government can organise a proper remedy for the losses sustained by those who complained to me. I remain concerned that everything possible is done to secure whatever Parliament considers to be appropriate redress for the people who have lost their pensions.

29. In addition, I am concerned that the Government's response to my report, together with what appears to me to be an emerging attitude amongst Government officials and Ministers in relation to my findings of maladministration, has serious implications for the constitutional position of my Office.

30. Finally, I believe the Government's response to my report raises wider issues in relation to official information, which are likely to be of interest to the Committee.

Ann Abraham  
Parliamentary and Health Service Ombudsman  
26 June 2006

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Annex A

Observations on the government's response to my report  
[http://www.ombudsman.org.uk/news/hot\\_topics/pasc\\_memo\\_0606\\_aa.html](http://www.ombudsman.org.uk/news/hot_topics/pasc_memo_0606_aa.html)

31. This annex sets out some detailed observations on the Government's published response to my report. I will deal only with what I consider to be the four key points.

#### Maladministration and the basis for my findings

32. My first observation is that the Government's response wholly fails to address the basis on which I found that maladministration had occurred.

33. In relation to the misleading content of official information about the security of final salary occupational pension schemes, the response makes no mention of what Government said at the time was the status and purpose of the information that it would provide; nor does it refer anywhere to its own contemporaneous standards concerning such information. In consequence, the Government's response does not properly address this finding of maladministration.

34. In relation to the failure to review official information when DWP was warned by the actuarial profession in 2000 that scheme members and trustees were being misled as to the security of final salary pensions, the Government's response misrepresents or misunderstands the basis on which I came to this finding of maladministration.

35. In relation to the lack of evidence in official files to explain why DWP took an apparently inconsistent approach to decisions about the funding level of pension schemes when considering recommendations to alter the basis underpinning the Minimum Funding Requirement (MFR) level, the Government's response does

not explain that lack of evidence nor does it provide any explanation for the inconsistency with which those decisions were taken.

36. As I explained in paragraph 5.224 of my report, only those findings which relate to the deficiencies in official information had any bearing on my recommendations. What follows is similarly limited to consideration of the response to those findings.

#### Official information

37. The Government's response makes no mention of the commitments it made in the 1998 Pensions Green Paper 'to educate people about pensions and provide better, more secure pension schemes which give them confidence and restore trust' and to promote 'awareness of the benefits and risks associated with different kinds of investment and providing appropriate information and advice'.

38. Nor does it refer to the description of official leaflets in the same Paper as being 'concise, accessible and [relating] information directly to decisions individuals need to take at various life stages' (see paragraphs 4.130 to 4.150 of my report).

39. There is also no reference in the response to DWP's own rules and guidance concerning the information that it would publish for the public, which provided that such information would be 'accurate and up-to-date, with no significant omissions' – absent also is any reference to the legal advice given to DWP at the time, which stated that 'where we choose to give information it is incumbent on us to ensure it is accurate, complete, and can be relied on' (see paragraphs 4.448 and 4.449 of my report).

40. The Government does not dispute the fact that none of its public information leaflets set out the potential risks that scheme members might lose a significant proportion of their pensions on scheme wind-up even if their scheme were funded to the level required by the law.

41. Instead, the response states:

(i) that the Government 'believes that the purpose of those statements needs to be set in a wider context, including the other information that would have been available to individuals';

(ii) that official leaflets 'normally concentrate on what might be called "mainstream" circumstances... [which in this context] means that they offer[ed] broad explanations that apply to the majority of members of pension schemes'; and

(iii) that readers of official information had been 'expressly warned not to assume that the broad information given can be applied without question to their own situation' and that the leaflets all 'contained explicit warnings that they were not complete explanations... [which] should have been sufficient to alert the reader that they were not being given the full detail of the issues'.

42. However, these contentions on the part of DWP do not address the basis on which I found the relevant information to be so deficient that this constituted maladministration.

43. First, as noted above, the standards which DWP had at the time devised for itself provided that information aimed at the public had to be accurate and contain no significant omissions. The official information considered in my report did not meet these standards.

Some of it was factually inaccurate; most of it was materially incomplete.

44. Secondly, the relevant rules and guidance adopted by DWP made no mention of the need to consider official information in a 'wider context' or to assess it only in relation to 'mainstream circumstances'. This may be the Government's position now, but it was not one stated at the time.

45. Thirdly, I have reviewed again the leaflets in question and I am puzzled by DWP's assertion that the readers were 'expressly warned' that their circumstances might not be covered by the information contained in the leaflets.

46. While I am aware that such disclaimers are sometimes put on leaflets related to social security benefits, which often provide examples of hypothetical individual situations, I have not been able to find any similar disclaimers on the leaflets covered by my investigation.

47. It may be that the Government's response is referring to short disclaimers that the leaflets were 'not a complete statement of the law' and were 'for general guidance only'. If so, this again does not address the basis on which I found official information to be deficient.

48. No-one has to my knowledge suggested that a full statement of the legal framework has to be included in every information leaflet about every subject. However, any leaflet – even ones which purport only to provide a summary – that contains significant omissions would not be in accordance with the rules and guidance set by DWP for itself. All the leaflets considered in my report that

were issued prior to April 2004 failed to meet those standards.

49. Equally, a disclaimer that a reader should only be 'generally guided' by information does not excuse material inaccuracies and significant omissions in that information. Whether guided generally or specifically, a reader can be misled by the content of deficient information.

50. The inclusion of 'small print' which refers to whether a document is a comprehensive description of relevant laws does not mean that the information that is provided can be incorrect, incomplete or inconsistent. Furthermore, principles of good administration require that information provided is clear and balanced.

51. My report makes clear that the relevant official information was sometimes inaccurate and often incomplete, inconsistent, or unclear. It was also unbalanced, by promoting the benefits of final salary pensions while making no mention of the associated risks.

52. The Government's contentions seem to me to be an attempt to retrospectively excuse the content of its official information – which did not match the objectives set for such information at the time by Government, nor the internal standards which Government had developed and which should have applied to its provision of information and advice to the public.

53. I have seen nothing in the Government's response which persuades me that my findings of maladministration were unreasonable.

## Failure to review leaflets

54. The Government's response says that the report submitted to DWP by the actuarial profession – which was published in September 2000 – should not have triggered a review of the information produced by DWP because:

- (i) none of the leaflets published by DWP were targeted at existing members of pension schemes; and
- (ii) no-one had suggested that DWP was the appropriate body to inform scheme members about 'the position of the MFR in relation to individuals' or that DWP leaflets had created or added to the confusion among scheme members and trustees.

55. However, my finding that a failure to review the information being placed in the public domain by DWP – when it was told that scheme members and trustees were wholly unaware of the risks to their pensions – constituted maladministration was not predicated on the assumptions that the Government's response appears to be addressing.

56. First, my finding was not that a limited review of specific leaflets should have been undertaken but that DWP should have reviewed all the official information that had been provided about pension security – and if appropriate taken action to remedy any material inaccuracies or omissions. The information to be reviewed included the full range of statements, official publications and leaflets referred to in my report.

57. In any event, it is unclear to me why it would not have been appropriate for DWP to have reviewed even those information

leaflets that were aimed only at prospective pension scheme members when it had been told that existing members were being misled as to the security of their pensions. Such a review would, as I suggested in my report, have enabled DWP to rectify past errors, to prevent a repetition of such errors, and to learn lessons for the future.

58. Secondly, the Government's response relies on a further false assumption. My report makes clear (in paragraphs 5.82 to 5.86) that I recognised – contrary to the assertions in the Government's response – that the report from the actuarial profession had not recommended that DWP should inform scheme members individually of the consequences for each of them of pension scheme funding requirements.

59. It is also not necessarily true that the actuarial profession did not point to official information that was misleading in its 2000 report. While DWP leaflets were not among the examples of misleading publications given by the actuarial profession, one published by the Occupational Pensions Regulatory Authority (OPRA) was.

60. Furthermore, what trustees were required to tell scheme members about their pensions was prescribed by the Disclosure Regulations, developed by Government. DWP had the power to require trustees to inform scheme members of the risks to their pensions, but did not do so. The Government's response makes no reference to this.

61. In any event, it seems to me that, where a public body assigns itself a public education role and where it is told that the public are being misled in relation to the relevant subject, it is good

administrative practice for that body to satisfy itself that the information it is providing to the public is fit for purpose and not misleading.

The tests I applied

62. My report sets out clearly the tests I applied when considering whether the content of official information was deficient to the extent that it constituted maladministration.

63. Those tests were largely based on DWP's own rules and guidance, supplemented by an assessment of whether the actions of Government bodies accorded with principles of good administration. I remain of the view that these tests were neither inappropriate nor unreasonable.

The selective use of evidence

64. My second observation is that the Government's response makes selective use of the considerable amount of evidence set out in my report.

65. Chapter 4 of my report is 99 pages long. It contains hundreds of references to statements made in Parliament by Government Ministers, to official information aimed at the general public, pension scheme members or trustees, and to other publications – including consultation documents and press notices, issued both by government bodies and by other stakeholders in the pension system.

66. The Government's response relies on a few quotations to

support its assertion that all the information and statements issued or made by DWP and other public bodies were 'accurate in their context'.

67. I am wholly satisfied that my report fully sets out the context in which all the relevant official information and statements were published and made. The Government's response, on the other hand, seeks to rely on a very small number of partial quotes which are not given a full and proper context – or indeed any context at all.

68. Indeed, when the quotations set out in the Government's response are considered carefully in their context, it is clear that they only reinforce my findings that official information provided about the security of pensions was inaccurate, incomplete, inconsistent or unclear.

69. To give only three examples:

(i) In paragraph 22.1 of the response, the Government refers to a leaflet issued in January 1996 as being 'only a brief summary of the changes' introduced by the 1995 Act and notes that that leaflet dealt with the MFR 'in just four sentences'.

Yet, as my report shows, that same leaflet began by saying that these changes, including the development of the MFR, had been introduced as 'the Government wanted to remove any worries people had about the safety of their occupational... pension following the Maxwell affair'. It then went on to state (with emphasis added) that 'the minimum funding requirement is intended to make sure that pensions are protected whatever happens to the employer'. That was not true.

This leaflet may well have given only a brief summary of the changes introduced by the 1995 Pensions Act; it also may only have dealt with MFR issues in four sentences. Yet it did both inaccurately. Given the stated aim of the reforms it was describing and the context in which it was published, the leaflet's brevity cannot excuse its material inaccuracy.

(ii) In paragraph 26 of the response, the Government quote from a 1997 OPRA publication aimed at scheme trustees. The excerpt quoted said 'this guide should not be taken as a definitive statement of the law. There is no substitute for obtaining professional advice'.

Yet this publication was precisely the one that the actuarial profession drew to the attention of DWP in its 2000 report as being an example of an official publication that contained misleading statements.

My investigation has shown that the content of this publication misled its readers.

(iii) In paragraph 31 of their response, the Government quotes a Minister in the previous administration as saying in a debate in Parliament on 7 February 1995 that 'it is simply not possible either practically or economically to require ongoing pension schemes to fund at a level that will enable them to buy out all their liabilities with non-profit annuities. For many schemes the cost would have been prohibitive'. This, it is suggested, is an example of a clear statement that non-pensioners might not receive all their accrued pension rights on wind-up.

Yet this is not so. First, it is an incomplete quotation. The words spoken by the Minister immediately prior to making this statement

are omitted from the Government's response. As is noted in paragraph 4.37 of my report, the Minister had said (with emphasis added) that the proposed new funding requirement 'should ensure that, irrespective of what happens to the sponsoring employer, the fund will have enough money to meet the value of members' accrued rights which will therefore be protected'. That was an inaccurate description of the MFR.

Secondly, in its response the Government also appears not to understand that what it did quote from is a description of the alternative to the proposed scheme funding framework, an alternative which had been rejected. Buying out non-pensioner liabilities through annuities was not the stated aim of what became the MFR. As my report shows, the aim of that requirement was to enable cash transfers of full accrued rights to non-pensioners to be provided on wind-up. This excerpt from a Ministerial speech quoted in the Government's response therefore did not have any relevance to what scheme members could reasonably expect from their scheme being funded to the MFR level.

## The role of Government

70. My third observation is that the Government's response provides a wholly unbalanced view as to the role of Government in the system of final salary occupational pension provision.

71. The Government deals with this system in fifteen paragraphs of its response (paragraphs 3-17). In those fifteen paragraphs, the role of Government is mentioned only once - in paragraph 8, where it is said that 'the Government does not, in general, guarantee the security of private sector, occupational pension schemes'.

72. Yet, as my report shows:

- (i) Government was responsible for establishing the legal framework governing both the regulation of the occupational pension system and also the funding framework relevant to each individual scheme;
- (ii) Government decided to design a system that would provide non-pensioner scheme members with only a 50% chance of securing their pension contributions if their scheme wound up – and took other policy decisions which directly affected the financial stability of schemes;
- (iii) Government was responsible for approving the actuarial basis of the level at which each scheme had to be funded – and reduced that level twice;
- (iv) Government designed a priority order which over-rode the discretion of trustees to apportion the assets of schemes fairly between all the members of a scheme in wind-up – and gave itself and financial institutions higher priority than pension schemes when the assets of insolvent employers were distributed. Public bodies thus received a proportion of the assets of insolvent companies that was denied to those companies' pension schemes; and
- (v) Government prescribed what trustees had to tell scheme members about their pensions through what were known as the Disclosure Regulations. The Government decided that this should not include issues of risk.

73. In addition, the pensions lost by scheme members on wind-up included the additional pensions they had paid for through National Insurance contributions. These contributions had been rebated by Government bodies to their schemes – and would have been safe had scheme members not contracted out from the State Earnings Related Pension Scheme with the approval of those bodies. This element of their pensions was called a 'Guaranteed Minimum Pension' by Government.

74. None of this is referred to in the Government's response, which appears to continue to maintain an extremely limited – and inaccurate – view of the responsibilities and role of government bodies within the system in which the relevant events occurred.

75. As I told the Committee on 2 May 2006, 'I said very clearly, I thought, in the report that I was not saying that the Government had sole responsibility here. But I could not see how the Government could say it had no responsibility here'.

76. Moreover, while seeking to significantly downplay its own role the Government makes much of the role of trustees.

77. Yet trustees had to act in the way prescribed by the laws developed by Government. Trustees had no powers in law to insist on additional funding above the MFR level from sponsoring employers. The Government had laid down what trustees had to tell scheme members about their pensions and, when a scheme began to wind-up, the law took away any discretion trustees had to act fairly in the interests of all their members.

The causes of financial loss

78. My fourth and final observation is that the Government's response misrepresents what my report says about the causes of financial loss.

79. In paragraph 57 of its response, the Government says that 'the Government does not believe that the information issued by the Government can be regarded as having caused the losses described in the report'.

80. That may be so, but my report did not say that it had; nor did I find that official information caused the wind-up of schemes.

81. In paragraph 5.176 of my report, I said:  
It seems to me that it must be common ground that the trigger for the financial losses incurred by complainants and others in a similar position to them was the winding-up of their scheme with insufficient funds to meet its full liabilities to all its members.

82. Paragraph 5.199 reiterates this view:  
That trigger – the winding-up of schemes – clearly was not caused by deficiencies in official information about pension security.

83. The Government's response appears to be addressing an argument which I did not make – and one that has not to my knowledge been made by those who have lost their pensions.

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