GUY OPPERMAN MP
Minister for Pensions

Rt Hon Frank Field MP
Chair, Work and Pensions Select Committee
House of Commons

February 2019

Dear Frank,

Thank you for your letter dated 24th January 2019 in which you ask a number of questions about the suspension of complaints relating to the State Pension age and the forthcoming judicial review.

As you may be aware, the judicial review has now been listed to be heard in the Divisional Court on 5th and 6th June 2019. It would be inappropriate to comment on live litigation and I remain constrained – as any government Minister is when the government is being challenged in court – from answering your questions. I have enclosed a copy of the Department’s summary grounds of resistance as requested. I note your request to be provided with a copy of the Claimants’ grounds of claim and would suggest that you contact the Claimants directly on this. The government has a copy but I am advised it is normal practice for the individual claimants to decide whether they disclose their grounds to the Select Committee given that it is their litigation. More details of the claim can be obtained from the High Court. The department does not hold a transcript of the permission hearing judgment. However, should the Select Committee want a transcript, they can apply to the High Court for one.

In relation to your question on the suspension of complaints about State Pension age matters, it might be helpful if I provide an overview of the complaints processes of the DWP, Independent Case Examiner and Parliamentary and Health Services Ombudsman, to put these changes into context.
The DWP complaints process

The DWP have a well-established process to address complaints relating to State Pension age changes. As outlined on the gov.uk website, the DWP complaints process encourages claimants to raise their issues with the office they are dealing with in the first instance, so that we can try to put things right.

If the claimant remains unhappy after the response, they can escalate their concerns, which will be dealt with by the Complaints Resolution Team (Tier 1) as part of the formal DWP complaints process. DWP’s complaint definition is: ‘any expression of dissatisfaction about the service provided which is not resolved by operational staff as normal business’

At the Tier 1 stage, the complaint is investigated and we aim to resolve a complaint in 15 working days. Where cases cannot be resolved to the claimant’s satisfaction at the Tier 1 stage, they can escalate their complaint to the Director General as part of the Tier 2 complaint process.

Escalated complaints represent the final business review and response to the complaint. The aim again is to respond in 15 working days.

As you are aware, DWP has decided to temporarily suspend action on current and future complaints on State Pension age matters until the final court decision in the judicial review. It would be inappropriate to attempt to anticipate what the High Court might decide in this case and it is not appropriate for the DWP to continue to investigate matters that are currently before the Court.

In light of this decision, the Department had then to take advice and consider how it should handle State Pension age complaints and then how best to communicate the decision to suspend them to our customers in a timely manner.

You raised the provision of information of this change to complainants. As I am sure you will appreciate, a review of such a large number of complaints in any public facing system needed careful consideration. These suspensions in particular affected complaints in the two tiers of the DWP complaints process and involved creating new communications and liaising with colleagues across a range of departmental functions. Our priority was to update those who had already engaged with the complaints process before focusing on wider communications. Once the suspensions had been agreed, new letter templates were confirmed on
21st December 2018 and thereafter letters were sent to complainants who already had complaints in the system to notify them of the suspensions. To mitigate dissatisfaction as far as possible, we have also undertaken to follow up with these complainants, and provide them with information on the next steps following a final decision being reached on this matter by the courts. Information has also been added to the gov.uk website. The information can be found via this link: https://www.gov.uk/government/organisations/department-for-work-pensions/about/complaints-procedure.

We will continue to investigate complaints that are not related to State Pension age changes under the normal DWP complaints procedure. We will of course consider new complaints on a case by case basis to determine whether we can investigate them or not at this time. The Department takes complaints very seriously and has worked extensively to engage with a significant amount of correspondence from women who have contacted us on this issue: to date we have received over 9000 complaints on this topic. However, in light of the judicial review it is appropriate to suspend these cases. In the event that the judicial review does not result in a ruling on the complaints, the Department will review its position and consider lifting the suspension.

For the avoidance of any doubt the department has suspended its consideration of maladministration complaints on State Pension age, given the very wide nature of the Judicial Review. The department’s position on communications of State Pension age changes is clear from our summary grounds of resistance in the High Court.

**The Independent Case Examiner**

If complainants remain unsatisfied with the DWP’s final response, they are advised how to escalate their concerns to DWP’s independent complaints reviewer, the Independent Case Examiner (ICE).

The ICE is an independent office holder who reviews complaints about the DWP. The ICE does not consider policy or legislative issues, but examines whether the DWP has appropriately administered stated policies or procedures.

When the ICE Office accept a complaint for investigation, the complainant (or their representative) is given an indication of when the investigation is
likely to commence and how long it is likely to take to complete. The ICE Office will initially attempt to broker a solution between the complainant and the department without requesting evidence.

If it’s not possible to resolve the complaint, then evidence will be requested and the case will be allocated to an Investigation Case Manager. Cases are dealt with by dedicated teams and are usually brought into investigation in strict date order.

Following a review of the evidence, it may be possible for the Investigation Case Manager to “settle” the complaint, if agreement can be reached on actions that satisfy the complainant. If the complaint cannot be settled, the ICE will issue a report detailing findings and any recommendations for redress. The majority of the complaints that are referred to the ICE are subject to a full investigation.

If the complainant is dissatisfied with the ICE’s investigation, they can ask an MP to escalate their complaint to the Parliamentary and Health Service Ombudsman.

The ICE Office received the first complaint concerning communications associated with changes to State Pension age in October 2016. In January 2017, the ICE office took the decision to bring a lead case on this matter into investigation in order to familiarise itself with the issues. This investigation concluded in June 2017 – the ICE did not uphold the complaint.

ICE aim to complete Investigations within 20 weeks of the case being allocated to an Investigation Case Manager. The 192 complaint investigations concluded to date were completed in an average of 9 weeks, none of which were upheld on the main element of complaint.

The ICE Office received a total of 4,356 complaints on this matter between October 2016 and December 2018 and attempted to take a timely and proportionate response to the overwhelming volume of complaints it received, which saw the investigation of the lead case concluded by June 2017.

The ICE closed all live complaints concerning changes to women’s State Pension age when they became subject to legal proceedings, as is required under its governance contract.
In the event the legal proceedings fell away or there was no determination in the court proceedings on the matters which form the basis of the State Pension age complaints, the ICE could consider reopening the cases at the request of the Department.

**The Parliamentary and Health Service Ombudsman (PHSO)**

The PHSO was set up by Parliament to provide an independent complaint handling service for complaints that have not been resolved by UK government departments (or for Health Service matters, the NHS in England). They will usually only investigate a complaint once the ICE process has been exhausted.

There are a number of preliminary steps taken by the PHSO’s office when investigating cases referred to it. Firstly, the PHSO conducts initial checks to see if the complaint is within remit. If it is within their remit, the office will then decide whether to launch an investigation based on a number of factors such as the timing of the complaint, whether it is/was reasonable for the person to take legal action to resolve their complaint and how the complaint has been dealt with to date. The organisation, in this case DWP, are also given an opportunity to comment on the proposed scope of the investigation.

If the PHSO decide to investigate, they will confirm this with the Department, specifying the scope of the investigation, and request evidence. The PHSO will then refer to their Principles of Good Complaint Handling, Administration and Remedy to form a provisional view. If they identify maladministration, they also consider the impact this had and whether the organisation has put things right.

Once an investigation is completed the PHSO share a ‘provisional view’ and recommendations for any proposed remedy and the Department is given two weeks to respond. Following this, final reports will be issued to all parties and the complainants’ MP. There are three possibilities; the complaint is fully upheld (finding of maladministration), partly upheld (only parts of the complaint upheld) or not upheld (no mistakes made or mistakes have been rectified).

There are no set timelines for investigations which can range from 3-6 months in straightforward cases to years in complex ones.
The PHSO has also decided to suspend action on current and future complaints on changes to State Pension age until the conclusion of the court proceedings. This is consistent with the Department’s approach.

I hope this provides greater clarity. The DWP is taking all steps it possibly can to keep customers informed, whilst ensuring that we act responsibly and appropriately in light of the ongoing legal proceedings, and the consequences that flow from such litigation.

Yours faithfully, Guy Opperman

GUY OPPERMAN MP
MINISTER FOR PENSIONS AND FINANCIAL INCLUSION