

Report by the
Comptroller and Auditor General

Department of Social Security

**State Earnings-
Related Pension
Scheme: The
failure to inform
the public of
reduced pension
rights for widows
and widowers**

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Executive summary

1 Citizens should be able to rely on the accuracy and completeness of information provided by Government departments. This is particularly true in the case of pensions, where citizens need to plan ahead, and where, without reliable information, they may make personal decisions that are not in their best interests. Providing misleading information may also have very serious financial consequences for the Government. This report examines how the Department of Social Security's failure to provide correct and timely information about a single provision in the Social Security Act 1986 will result in the loss to the National Insurance Fund of billions of pounds of anticipated savings over the coming years. The key events are summarised in Figure 1.

2 This is an extraordinary case, the resolution of which has required the diversion of much ministerial and senior management time. On its own, it is a very worrying lapse of normal administrative standards, and underlines the importance of the Government's commitments in the Modernising Government White Paper to deliver public services that are high quality and efficient. It also raises a number of wider questions about important aspects of the way in which the Department of Social Security deal with the citizen.

What went wrong?

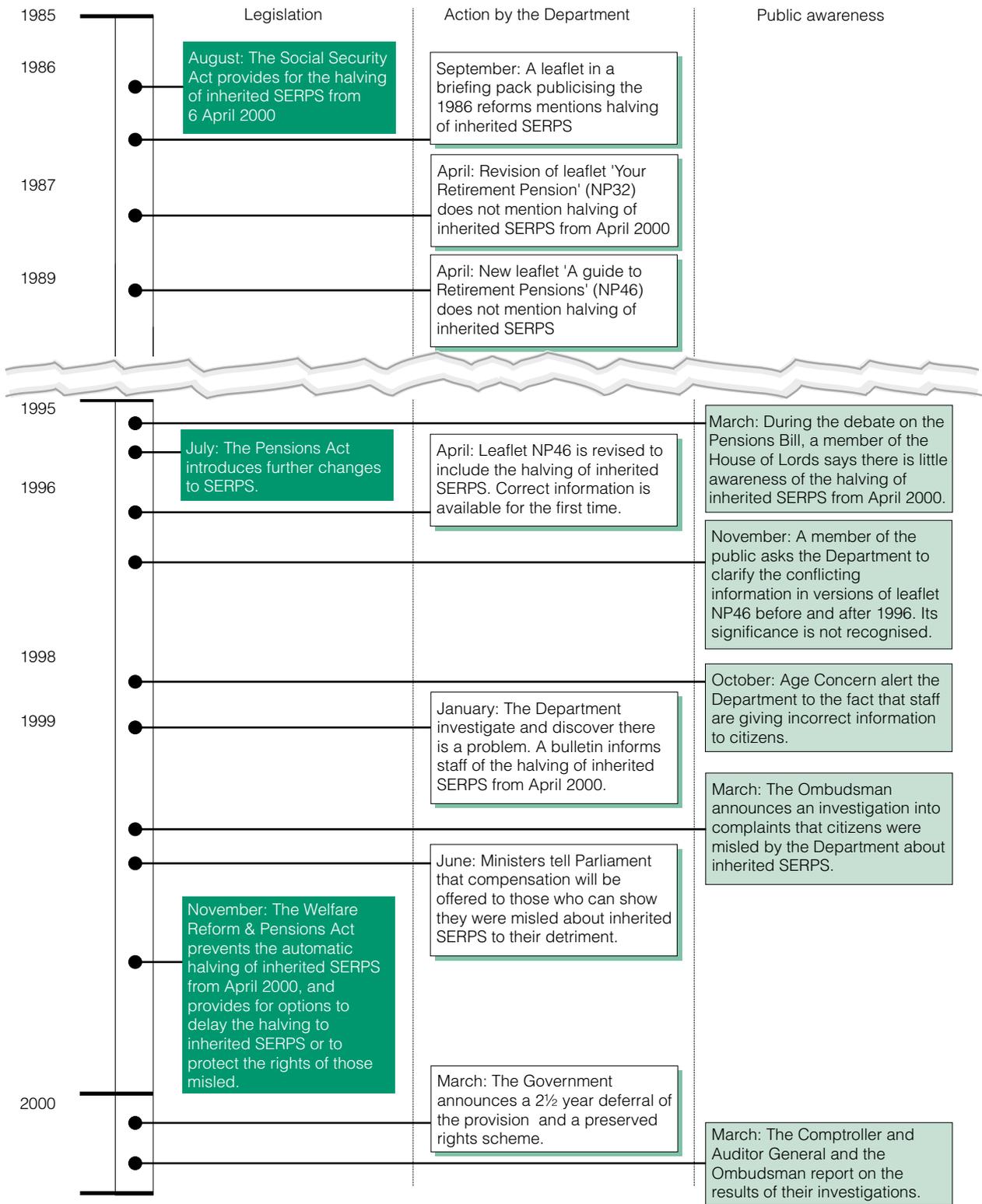
The Department failed to publicise a change in the law and gave misleading information to the public for more than a decade

3 A key objective of the Social Security Act 1986 was to reduce the future burden of the State Earnings-Related Pension Scheme (SERPS) - the current state second pension - on the National Insurance Fund. This was to be done by providing greater flexibility for people to contract out of the Scheme. The benefits obtained from SERPS were to be gradually reduced to what were considered more affordable proportions through a series of measures taking effect from towards the end of the twentieth century. Latest estimates (at 2000 prices) show the cost of SERPS reducing from £48 billion to £21.9 billion in 2030-31 as a result of the Social Security Act 1986. Provisions contained in the Pensions Act 1995 further reduce it to £14.1 billion in that year.

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Figure 1

Key events 1985-2000



4 As part of the 1986 changes, the Government legislated to bring SERPS into line with requirements for contracted-out occupational pension schemes to pay a 50 per cent survivors' pension, rather than the more generous state arrangements whereby survivors could inherit 100 per cent of their partner's SERPS pension. This change was deferred for fourteen years so that it would not take effect until April 2000. The delay was to give those affected the opportunity to make alternative financial provision to compensate for the effect of the reduction. If implemented, this change would have had the effect of reducing by an average of £20 a week the amount of pension a surviving spouse could inherit should their partner die after 5 April 2000, rather than before.

5 Government departments do not have a duty to provide information on changes in the law, but where they do issue such material, they have a legal responsibility to ensure that it is accurate and complete. However, for nearly ten years from 1986, the change in the arrangements for the inheritance of SERPS was not publicised adequately and, in particular, information was not included in relevant leaflets until 1996. In addition, an unknown number of people were given incorrect information about the provision by the Department in letters from, and conversations with, staff between 1986 and April 1999. As a result, several thousand people who have already retired, or are due to do so soon, believe that they made decisions about their future pension provision based on incorrect information about the statutory position after 5 April 2000.

How did it happen?

Details of a change in the law were not incorporated into a leaflet in 1987 and the omission was not noticed until 1995

6 The problem described in this report arose from a series of omissions and misunderstandings about the nature of the change in the arrangements for inherited SERPS. In particular:

- details of the change to the arrangements for the inheritance of SERPS after April 2000 were omitted from a departmental leaflet when it was published in 1987, even though the absence was noted when a draft was circulated within the then Department of Health and Social Security. The only explanations offered to us for the omission are that the provision was overlooked altogether, or that staff finalising the leaflet considered it more appropriate to place it in publicity material about widow's benefits. Ultimately, it appeared in neither at this time;

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- pensions leaflets were updated in the late 1980s and early 1990s, but the overall accuracy and completeness of the whole documents do not appear to have been considered, or the absence of the provision was not considered significant. As a result, the inherited SERPS provision was not publicised in official leaflets between 1987 and 1996, and the omission gave a misleading impression of the size of the pension that a surviving spouse would inherit, if their partner died after 5 April 2000;
- the Department (and later the Benefits Agency) did not appreciate the implications of not informing the public about the change from the time it became law, even though it was not due to come into effect until 2000. For more than a decade, many of the local office staff provided incorrect information to the public because they were unaware of the position after April 2000. Several thousand people believe they would have made different choices about their pension provision had they known about the halving of inherited SERPS;
- the absence of publicity for the inherited SERPS provision was raised in the House of Lords in 1995, during consideration of the Pensions Bill. Although the Benefits Agency updated their pensions leaflets as a result of this, they do not appear to have appreciated the implications of the change for citizens' forward financial planning, and thus the necessity for staff to explain the position after April 2000 as well as the current arrangements. As a result, the Agency did not check that staff were aware of the provision or consider whether the omission in the leaflet might have consequences in the future; and
- warnings in correspondence to the Department from two members of the public (forwarded by their Members of Parliament) about the absence of publicity prior to 1996 and the misleading effect of the information provided by local offices, were not picked up by the Department, even though these letters received ministerial replies in 1997 and 1998. Only after the charity, Age Concern, wrote to the Department in October 1998 was action taken to assess the scale of the problem and rectify the situation.

What action have the Government taken since discovering the error?

The Department took powers to prevent the provision taking effect and have announced a redress package

7 The Department's initial investigations confirmed that there was a problem, and in January 1999 the Benefits Agency issued a bulletin to staff, informing them of the correct position after 5 April 2000. Subsequently, the Agency have issued seven further bulletins, designed to help staff handle enquiries from the public. In addition, staff from the Department's headquarters and the Agency reviewed all current benefits leaflets for accuracy and completeness, and in August 1999, advised ministers that, as far as could be identified, all leaflets were up to date and contained no incorrect or misleading information.

8 During much of 1999 and early 2000 officials from the Department and the Treasury examined options for a suitable redress package. In November 1999, an amendment to the Welfare Reform and Pensions Bill, provided for the Secretary of State for Social Security to postpone, modify, or dis-apply in certain cases, the provision to halve the inheritance of SERPS. It also enabled the Secretary of State to set up a scheme to determine who had been misled by incorrect or incomplete information about the 50 per cent reduction, so as to ensure that the reduction will not be applied in their, or their widow(er)'s case.

9 In March 2000, the Government stated that the provision would now be delayed for a further 2½ years and come into effect in October 2002. In addition, they announced that they would set up a preserved rights scheme (to be known as the Inherited SERPS Scheme) in 2001 to exempt for life those people able to satisfy the Department that they have been misled about the rules for the inheritance of SERPS, and took inappropriate action on the basis of wrong information. The scheme will involve a national publicity campaign designed to draw attention to the problem, and will invite applications from those who consider they may be eligible. It will be operated by a private sector contractor.

Who has been affected?

Several thousand contributors to SERPS and their families have suffered distress since finding out about the problem

10 The exact number of people given incorrect information will never be known, but is likely to be many thousands. During 1999, members of both Houses of Parliament raised their concerns about the distress caused to citizens as a result

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of finding out about the problem (because of the uncertainty as to whether they could prove they had been misled, given the absence of any written record of contact with the Department in many cases), and at the delay in resolving the matter. Figure 2 summarises various ways in which people claim to have acted or not acted as a result of the incorrect information that was provided.

**Many thousands of people
may have been affected**



Source: Department of
Social Security

Figure 2

These include those:

- who purchased an annuity with no or reduced survivor's benefits on the understanding that their spouse would inherit 100 per cent of their SERPS pension;
- whose wife would have made their own additional pension arrangements, such as taking out a personal pension, but decided this was not necessary;
- who would have contracted out of SERPS, but chose to stay in because they believed, on the basis of mis-advice after 1986, that it had more generous survivor's benefits than other arrangements;
- retired people who have taken financial decisions based on the assumption of full survivor's benefits;
- who would have otherwise taken out additional life assurance and who are no longer able to because of health and cost; and
- who would have saved more as a 'nest egg' for their surviving spouse had they known about the provision, but are now retired.

How much will it cost to put right?

The full cost of resolving this problem will be at least £2.5 billion and probably considerably more

11 The decision to defer the provision and establish a preserved rights scheme comes after much consideration throughout 1999 and early 2000 by the Department of Social Security, in consultation with the Treasury and other interested parties. The aim was to design a means of redress best suited to meeting the needs of those genuinely affected and one which avoided disproportionate cost.

12 At this stage it is not possible to establish how much the package of measures will cost, but it will be made up of three main elements (see Figure 3). The first relates to the cost of providing 100 per cent inheritance for those who become eligible (through the death of their spouse) during the two and a half year deferral period. The subsequent cost of the scheme will depend on the number of successful applicants. And the cost of administering the scheme may also vary a little depending on the number of applicants.

The full cost of resolving the matter will be made up of the following elements and will depend on the number of successful applicants to the scheme

Figure 3

- The direct cost in terms of anticipated savings not realised due to the deferral of the legislation until October 2002 (estimated at a gross figure of £2,500 million⁽¹⁾ between 2000 and 2050). This is based on assumptions of how many people will become eligible before the end of the deferral period.
- The cost of payments to those eligible for preserved rights. This will vary depending on the number of successful applicants. On one set of assumptions it is estimated at £5,700 million⁽¹⁾⁽²⁾ over 50 years, although it could be significantly more or less than this.
- The costs of administering a preserved rights scheme (estimated at £60 million over two years)

Notes: 1. Discounted present value of all costs
2. This assumes successful claims covering 30 per cent of potential total expenditure. The actual figure will depend on how many people are successful in their application to the preserved rights scheme.

Source: Department of
Social Security

Have the Department taken the necessary steps to avoid such mistakes in the future?

13 We examined whether the Department have arrangements in place now to ensure that a similar problem can not occur again. On the basis of our work we consider:

- the Department are now more aware of the risks associated with provisions that do not come into effect for a number of years, and in the case of another recent piece of legislation, have taken measures to ensure that staff are aware of the legislation and publicity is given to the time lag;
- there are systems in place for disseminating information throughout the organisation, but there remain practical obstacles to clear communications, in particular, as a result of the limited availability of IT, and the archaic nature of much of what exists;
- the new arrangements for ensuring that leaflets are accurate and complete should help to clarify roles and responsibilities, and enhance accountabilities, but have not yet been tested;
- developments are taking place within the Department to extend the use of systematic approaches to the project management for the development and implementation of policy, which promise greater clarity of purpose in planning and execution of legislation, and greater transparency in accountability. These should help to ensure that everything that must be done is identified and carried out; and

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- the use of risk management and assessment techniques in policy areas has been inconsistent, although there are examples of effective use. This area is also currently being developed by the Department, but more needs to be done.

What have we looked at ?

We have examined the details of this case and the wider lessons for the Department

- 14** Against this background, this report examines:
- the events leading up to the decision to defer the legislation and to establish a preserved rights scheme (Part 1);
 - what action the Department of Social Security have taken since October 1998 to deal with the problem (Part 2); and
 - whether the Department now have effective arrangements in place to prevent a repetition of these events (Part 3).

Full details of our research, which took place mainly between October and December 1999, are at Appendix 1.

15 In undertaking the examination, we worked closely with the Office of the Parliamentary Commissioner for Administration (the Ombudsman). The Ombudsman has received 344 complaints on this matter and has investigated four sample cases of alleged maladministration. The Ombudsman reported his findings to Parliament in March 2000. We worked together in preparing the agreed chronology of events in Appendix 2, and in doing so, have undertaken the most extensive liaison between our two organisations to date. This is in line with the recent statement of the Public Audit Forum that there should be greater co-ordination between public auditors and other inspectorates. Our reports have been published together to provide Parliament with a complete picture across the range of issues arising from this case. A summary of the main conclusions in the Ombudsman's report is at Appendix 3.

16 In addition, at the request of the Permanent Secretary of the Department of Social Security, we have extended our work to look in more detail at the processes and procedures in place within the Department to avoid a repetition of the problems described in this report. In doing this, we have worked closely with the Department's Internal Audit Service.

In undertaking our examination we have taken account of Modernising Government principles

17 In undertaking our examination and making recommendations, we have borne in mind the thinking set out in the Government's White Paper 'Modernising Government' (Cm 4310). Of relevance to this examination are the chapters on 'Responsive public services' and 'Quality public services'. In particular, we note the Government's intention that:

- central government should provide clear and straightforward information about its services and those of related providers;
- public services should be responsive to citizens' needs and sensitive to specific groups, of which an important one is older people; and
- administrative barriers and rules and regulations should not prevent departments providing services, or get in the way of sensible co-operation.

Conclusions and recommendations

18 In the light of the events described in this report, we have identified a number of areas where action should be taken, or where existing developments within the Department should be completed as soon as possible. Making effective improvements in these areas should help to ensure that similar events do not occur again.

On overall organisational issues

19 This case raises a number of questions about important aspects of the way in which the Department of Social Security is administered. The handling of state pensions requires the co-ordination of Benefits Agency staff in Leeds, Newcastle, and within local offices, as well as staff in the departmental headquarters in London. The problem that arose with inherited SERPS was able to happen because of the absence of end-to-end responsibility and shortcomings in accountability for

the management of pensions work. The case illustrates the potential for misunderstanding and delay that can arise when a variety of different parts of the organisation need to work together.

20 Against this background, we consider that:

- a) the Department should examine whether the current arrangements, in which responsibility for pensions is spread between the departmental headquarters and several parts of the Benefits Agency, are the most suitable, and whether the handling of state pensions work is not so significantly different to the administration of other benefits as to require more unified management;
- b) the Department should recognise the risks associated with administering complex pensions legislation, into which have been incorporated many changes in the last fifty years. This should be taken into account when considering the administration and resourcing of a system which impacts on the lives of many millions of people; and
- c) the Department must ensure that there is clear accountability for all their operations, and that everyone involved is clear who has end-to-end responsibility. This is particularly important where projects require co-ordination between a number of parts of the Department, or with other organisations. The Department should develop further the use of 'Senior Accountable Officers', who are given responsibility for specific initiatives and projects.

On providing the citizen with clear and accurate written information

21 The problem described in this report arose because the Department's leaflets were incorrect between 1986 and 1996. The Department estimate that around 3 million misleading leaflets were issued during this period and were available to the public in Benefits Agency offices, post offices and other public places. There is no way of telling how many people read the leaflets, although it should be noted that the misleading information would not have been relevant to all readers. Following discovery of the problem, the Department reviewed all their benefits leaflets in 1999, and have developed new procedures for ensuring that they remain up to date.

22 Where the Department provide publicity about legislative changes, they have a responsibility to ensure that the information is correct and not misleading. We consider, therefore, that:

- a) the Department's new procedures for ensuring the contents of leaflets are complete and accurate should in the future be applied systematically to all publicity material, including electronic sources. Although the Department are responsible for the quality of their publicity, they should also consider how they can engage pressure groups and other interested parties more in consultation on the text of new leaflets and other publicity material. They should also ensure that the new arrangements allow for the handling of ad hoc corrections notified to the Department outside the regular review process (paragraphs 3.13-3.15);
- b) particular attention should be paid to ensuring that information about changes to legislation that do not come into effect for some years is included in publicity material (paragraph 3.4);
- c) given the potential consequences of incorrect and incomplete leaflets, this area remains high risk, and we suggest that the Department's Internal Audit Service undertake a regular review to ensure that the new arrangements for ensuring complete and accurate leaflets are being implemented effectively (paragraph 3.14); and
- d) the current work to develop the information provided in state pension forecasts (the means by which citizens are able to obtain a projection of what pension they will receive at state retirement age, based on a series of assumptions), and the amount of explanatory material accompanying it, should be progressed as soon as possible as part of the wider improvements to the information about pensions available to citizens (paragraph 3.37).

On ensuring staff are kept up to date with changes in legislation

23 As well as the absence of information on inherited SERPS in departmental leaflets, many Benefits Agency staff were unaware of the change to the law after April 2000. Most service organisations now take it for granted that staff will be able to rely on IT systems as the basis for providing the public with information. The Department's responsibility to provide accurate and complete information to their customers underlines the importance of staff having access to up to date information about benefits which are, by their nature, complex. However, the limited IT systems within the Agency's local office network present considerable obstacles to meeting the growing expectations of citizens.

24 In particular, we consider that:

- a) any piece of legislation with long lead times for the implementation of specific provisions should be treated with caution and suitable planning undertaken to ensure that the implications are understood. This may include a communications strategy for the period prior to implementation, and arrangements for bringing the matter to the attention of staff in a timely manner (paragraph 3.4);
- b) the Benefits Agency should review the adequacy of guidance about all benefits available to their local office network to ensure that they are meeting the needs of staff. As part of this, they should consider whether, in the current climate of considerable change, they are overloading staff with too many individual bulletins, and whether key manuals, on which staff rely, are updated frequently enough. They should also examine whether the legitimate needs of the end-users of guidance are taken into account sufficiently when considering the content and form of communication (paragraph 3.8);
- c) the Agency should examine whether arrangements for producing and disseminating bulletins are sufficiently responsive to the needs of staff and the demands placed on them by customers, particularly where the issues involved are sensitive (paragraphs 3.8-3.9);
- d) the very limited availability of IT within the Agency's local office network (discussed in more detail in the Comptroller and Auditor General's report on 'Government on the Web'), and the archaic nature of much of what exists, ensure that much of their work remains paper based, and that staff do not have direct access to information in electronic form, including basic material such as procedural guidance. The Agency should consider urgently how they can develop their on-line information systems to ensure that information available to staff is easy to access and up to date. One element of future arrangements should be an intranet, which would provide, for example, the opportunity for fast and consistent dissemination of information, and for discussion groups for particular benefits, through which offices could exchange experiences and warn of problems. This is currently being developed, but full roll-out will take a number of years (paragraph 3.8);
- e) the Agency should ensure that appropriate arrangements exist within local offices so that when staff return to work after a period of absence, or from other duties, they are updated on all key developments in their area of work. Where necessary, this may require appropriate training to ensure that staff have the skills and knowledge to pass on accurate and complete information to the public (paragraphs 3.8-3.9); and

- f) the Agency must have ways of monitoring the technical accuracy of information provided to the public, and should re-examine the adequacy of their quality assurance work, including for example, whether benefit could be derived from well focused 'mystery shopping' arrangements or the taping of a sample of calls, both of which are used by many other organisations to monitor the adequacy of information given to the public (paragraphs 3.10-3.11).

On responding to the needs of the public

25 The Department of Social Security receive more than 11 million letters a year from the public. In dealing with them, the Department must reconcile the expectations of customers for a personalised service, with their organisational capacity to do this. In the case of inherited SERPS, the Department have received more than 3,500 letters during 1999, often from customers who were distressed and concerned about the adequacy of the provision they have made for their partner. Although these people received a standard holding reply, they have not been advised subsequently of developments. This is despite the fact that in November 1999 the Government took powers in the Welfare Reform and Pensions Act 1999 to ensure the halving of inherited SERPS provision did not come into force in April 2000. The Department advised us that a follow-up letter was considered in November, but the decision was taken to wait for the ministerial announcement on the redress package, which at that time was expected before Christmas.

26 We consider improvements could be made to the handling of contact with customers, especially in cases where people believe they have been misled by the Department. In particular, we consider that:

- a) where large numbers of complainants contact the Department, and the matter cannot be resolved quickly, the Department should provide them with updated information where significant developments have occurred towards resolving the matter. While there may be issues around not pre-empting final decisions, there should be a presumption in favour of satisfying legitimate concerns within a specified timescale (paragraph 2.16);
- b) practices for dealing with letters from the public vary greatly within the Department, and many letters require co-ordination between several different parts of the organisation. The way in which correspondence at all levels is handled, and the procedures for ensuring the quality and accuracy of responses, should be reviewed with a view to streamlining arrangements (paragraphs 1.24-1.26);

- c) the Department should give serious consideration to the implications for resources, training and public expectations of any shifts towards an advisory, rather than purely information providing, role. Where the Department consider they have a more limited role, they should ensure that this is made explicit. This issue is particularly important as the Department are being encouraged now, as part of the Modernising Government initiative, to be more proactive in their dealings with the public, and, in some aspects of their work, have appointed personal advisers (paragraphs 2.13-2.16, 3.10-3.11);
- d) the Department should continue to develop the ways in which they provide information about their services, ensuring that they take account of reasonable expectations and needs of the public in the ways that they design and issue information products, whether paper-based or electronic (paragraphs 3.16-3.17); and
- e) the Agency should make full use of new complaints handling software, to be introduced nationally in April 2000, which will enable local offices to record complaints in a standard format, and allow them to be analysed in predetermined categories and client groups (paragraph 3.18).

On the importance of having a systematic approach to implementing legislation

27 This case underlines the importance of having a systematic approach to implementing Government legislation to ensure that everything that needs to be done is done in a timely and accurate manner. Given the complexity of legislation, the many internal and external stakeholders involved, and the need to ensure proper accountability and end-to-end responsibility, it is important that there is intelligent application of agreed project management approaches and techniques. In particular, we consider that:

- a) existing initiatives within the Department to develop the use of project management approaches and thinking for the development and implementation of policy should be pursued to a conclusion, and extended where currently not in use. This work should be carried forward in a flexible and non-bureaucratic manner, with a view to developing a common and integrated approach to projects throughout the Department (paragraphs 3.20-3.22);
- b) good practice from the past use of project management approaches to policy development and implementation should be collected together and circulated so that others can draw on the experiences of those who have successfully applied particular techniques and practices (paragraphs 3.20-3.25);

- c) the Department's Internal Audit Service should give increased attention to reviewing procedures and practices in the field of policy development and implementation, given the high risks attached to much of this work (paragraphs 3.20-3.25);
- d) the use of project management and risk management approaches for policy development and implementation may be areas suitable for examination under the peer review process being organised by the Cabinet Office, as outlined in the Modernising Government White Paper (paragraph 3.25); and
- e) at the end of the main phase of implementation of any policy initiative, a depository of information on outstanding issues should be drawn up, formally handed over to the relevant branch, and included in their work programme to avoid tasks being forgotten. Responsibility for progressing outstanding work should be assigned to named individuals. A consolidated record of outstanding legislation and action needed should be maintained and reviewed regularly at departmental board level (paragraphs 3.20-3.25).

On identifying and managing risks to the successful implementation of departmental initiatives

28 The example described in this report is an extreme case of what can happen when a Department fails to carry out certain apparently routine actions. This emphasises that risks to successful achievement of objectives can take many forms, and that identifying and managing them is essential throughout the implementation phase of a policy initiative. The Department have been developing their risk assessment work, but need to push it further. In particular:

- a) current initiatives within the Department to develop a rigorous approach to risk management should be pursued and arrangements put in place to ensure that risk assessment and management becomes a routine element of all policy development and implementation (paragraphs 3.27-3.34);
- b) at a project level, risk assessment and management should encompass a range of features, including that (paragraph 3.33):
 - the risks to achievement in the timescale and budget available be clearly identified from the start of the project;
 - risks be treated as the responsibility of the top level board given the potential impact on the project or on the use of resources;

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- the likelihood and impact of risks be analysed separately, and named individuals be made responsible for mitigating them and reviewing mitigation plans on a regular basis; and
 - when mitigation plans are altered, this fact is reported to the Senior Accountable Officer for the project, and recorded on a simple risk/control matrix so that the impact of multiple, apparently minor, changes in different areas can be seen and understood, and their combined impact assessed and dealt with.
- c) the recommendation of the Department's Internal Audit Service that policy option appraisals include a section on risks should be implemented (paragraph 3.29).

On the redress package

29 The Government have decided on a two and a half year deferral of the inherited SERPS provision and the establishment of a preserved rights scheme. We will monitor progress of the scheme in the future as part of our on-going work on the accounts of the Department of Social Security. In designing the scheme, we consider it is essential that the Department carry forward their plans to:

- publicise the existence of the scheme as widely as possible in a range of appropriate ways;
- consult as widely as possible with relevant stakeholders on the details of the scheme and its operation;
- build in suitable checks to offer a strong chance of identifying fraudulent applications;
- monitor thoroughly the risks to the successful implementation of the scheme and manage them rigorously; and
- defer processing applications from the public until they are convinced that the arrangements are ready.

They should also take account of the findings and recommendations contained in the Parliamentary Ombudsman report (see Appendix 3).