

THE EX-GRATIA PAYMENT SCHEME FOR  
FORMER FAR EAST PRISONERS OF WAR  
AND CIVILIAN INTERNEES

---

INVESTIGATION INTO  
CIVILIAN ELIGIBILITY CRITERIA

---

David Watkins

Final Report July 2006



# **REPORT TO THE MINISTRY OF DEFENCE ON INVESTIGATION INTO CIVILIAN ELIGIBILITY CRITERIA FOR EX-GRATIA PAYMENTS TO FORMER FAR EAST PRISONERS OF WAR**

## Introduction

1. On 7 November 2000 the then Under-Secretary of State for Defence and Minister for Veterans announced a scheme for 'a single ex-gratia payment of £10,000 to each of the surviving members of British groups who were held prisoner by the Japanese during the second world war, in recognition of the unique circumstances of their captivity'. These groups included, as well as service and other personnel, 'British civilians who were interned'.

2. This announcement was widely welcomed at the time, as was the performance of the then War Pensions Agency<sup>1</sup> in making 14,000 payments within the following three months.

3. Since then, however, the scheme has attracted a good deal of criticism, including in Parliament, by lobby groups and by means of several judicial reviews, much of it focussed on the way the scheme has played out in relation to civilian internees. This criticism culminated in a report by the Ombudsman, 'A Debt of Honour' published on 12 July 2005, which was severely critical of the Ministry of Defence (MoD); a like-named report from the Public Administration Select Committee (PASC), published on 18 January 2006, was similarly critical. In essence, these criticisms focussed on the eligibility criteria for civilian applicants which were imported into the scheme in March 2001, several weeks after its initial implementation, and resulting in differential treatment of applicants depending on date of application. These criteria were known as the 'birthlink' or 'bloodlink'.

4. Shortly after the PASC report the then Veterans Minister appointed me to conduct an investigation with the following terms of reference:

to address

a. how the original inconsistencies arose, identifying any specific shortcomings in the development and implementation of policy

b. how subsequently the departments involved failed to identify that there had been inconsistencies, despite the need to explain the Government's position in Parliament, in the courts and to the Parliamentary Ombudsman, and

---

<sup>1</sup> Some explanation of nomenclature is necessary. Until June 2001 the WPA was an agency of the DSS. In the files that I examined references to it from external sources such as the Cabinet Office were normally simply to the 'DSS' and I have followed that when quoting from the papers. Save in those quotations, references to the 'DSS' mean the central core of the Department as distinct from the Agency. As to the Agency, its main part was in Blackpool, but from 1999 it also incorporated a policy unit based in London. Where that distinction is relevant, I refer respectively to 'Blackpool' and 'the policy unit'; where it is not relevant I refer simply to the 'WPA' or 'Agency'. This point, which is of material importance, is more fully explored in paragraphs 65ff of Annex B. The WPA transferred to MoD in June 2001 and became the Veterans Agency in April 2002.

c. whether there are any lessons to be learnt for the future from such shortcomings as are identified in the development of the scheme and in its administration.

5. I was asked to submit a progress report to the Veterans Minister before the end of March (delivered on 16 March) and a full report before the summer recess. This is the full report.

### Approach

6. As required by my terms of reference, I have reviewed the relevant papers held by the MoD, including those of the former War Pensions Agency and its policy unit, and also those in the Cabinet Office.

7. I have also interviewed a range of people interested in the scheme:

- Andrew Dismore MP, chair of the Commons All-Party Group on former Far East prisoners of war
- the Ombudsman and her staff
- Mr Ron Bridge, the chair of the Association of British Civilian Internees – Far Eastern Region (ABCIFER)
- Professor Jack Hayward, the applicant whose rejection was the subject-matter of the Ombudsman's report
- lawyers representing applicants in the ABCIFER and Elias judicial reviews
- Lord Moonie, in 2000 the Minister who announced the scheme
- serving and retired officials in the Cabinet Office and MoD, including the Veterans Agency.

8. I am very grateful to all those I met for generosity with their time and the openness with which I believe all sought to contribute to the discussions.

9. I am also very grateful to the staff in MoD, including the Veterans Agency, who provided me with logistical support for this review. I was appointed as an independent person who, as a former Northern Ireland civil servant, has never worked for any of the departments concerned: this report would have been impossible without that support, but I am entirely satisfied that my findings have been reached independently.

### Some overall remarks

10. The scheme announced in November 2000 was by any standard unusual: it aimed at dealing with an historical question of a most sensitive kind likely to arouse very deep emotions particularly amongst potential applicants many of whom felt strongly that their exceptional suffering at the hands of the Japanese had never been properly acknowledged. The 1950s scheme for payments to be made to former prisoners of war, financed from the liquidation of Japanese assets and

amounting to £76.50 for military personnel and £48.50 for civilian internees must have seemed, by comparison with the experience endured, almost as ungenerous then as it does now. On 9 March 2000 Martin Bell, the then Member for Tatton, had said in the House of Commons in relation to Far East prisoners of war: '...every now and then, a cause comes along that is so just, so right, so compelling and irresistible that it has to be adopted. Such is the case that I speak of today – the case for a one-off British Government gratuity to our heroes...'. Hence the 2000 scheme sought to deal with, in the words of Ministers and titles of both the Ombudsman's and PASC's reports, a debt of honour. That is essential backcloth to any assessment of the scheme.

11. This report is inevitably about shortcomings in aspects of the scheme. But I am anxious to make two preliminary points based on my investigation. The first is that, whatever subsequently transpired, the then War Pensions Agency in Blackpool (WPA) as well as others involved performed admirable feats in managing to put in place, completely from scratch and within less than three months, arrangements enabling 14,000 payments to be made on 1 February 2001 alone and to date an overall total of some 25,000 payments. My conversations with Agency staff in Blackpool revealed the scale, and success, of the initial effort: additional staff recruited and trained, office space identified, IT, telephone and security systems to be installed, banking processes established, forms and processes designed, safekeeping of some 70,000 important personal documents arranged and much else besides. ABCIFER and others were generous in their praise for that, and it is very unfortunate that that aspect has tended to be overlooked subsequently. Reading some of the many gracious letters of thanks from recipients further underlined for me the importance of this point, just as reading about and listening to expressions of the hurt and offence felt by those turned down brought home to me the impact of the shortcomings of the scheme.

12. The second is that, as I hope this report will demonstrate, I have found no evidence of culpable behaviour amongst the officials involved: shortcomings and inadequacies certainly and things which, with hindsight, should have been done better, and these resulted in maladministration and distress to a group of people who had already suffered as a result of their internment. I seek to expose those failings frankly and fairly in this report. But I have developed the clear view, based on my discussions with those involved and on reading the original papers, that there is no 'worm in the apple' or individual official who could reasonably be said at any time to have acted negligently, maliciously or incompetently either as an individual or as part of a wider team. I assess that about 30 officials drawn from six departments were involved regularly in the design phase alone (October 2000 – May 2001): the shortcomings and inadequacies represent collective and systems failures rather than egregious failures at individual level. (An example of this distinction can be taken from the failure to consider, in November 2000 or March 2001, if the provisions of the Race Relations Act 1976 might be engaged, as already acknowledged by the Government in relation to the military side of the scheme. More than a dozen officials attended these meetings, but none with specific responsibility for this particular issue. I judge that to attribute this failure to any one official or even a small group would be wholly unjust.) In fairness, therefore, I have sought to avoid naming officials save where their names are already in the public domain through witness statements etc (and where individual names are mentioned on that account, no particular culpability is implied). There

may be some readers of this report who will disagree with this approach, but I believe it is the right one to adopt in the face of the facts as I have found them.

### Structure

13. Attached to this report are two annexes. The first is a selection of dates in the development and implementation of the scheme which seem to me to have a particular bearing both on its outcome and also on an understanding of what happened. I hope it will also serve as an account of the essential development of the scheme and so put in perspective specific observations in the body of this report without having to provide an extended description of the development of the scheme as a whole, though it has not removed the necessity to provide a detailed account of particularly critical stages.

14. That is contained in the second annex which seeks to meet the first two items of my terms of reference. This analyses the detailed steps in the process at various crucial stages and is in essence the evidence underlying my conclusions and recommendations.

15. Accordingly, I come now to the third item in my terms of reference, and in effect my conclusions and recommendations.

### Lessons to be learnt for the future from shortcomings identified in the development of the scheme and in its administration

16. Based on the analysis in Annex B, my conclusions and recommendations are as follows:

a. haste made an important contribution to the failings in the scheme. (See particularly Annex B, paragraphs 2-17.) There was a range of reasons for urgency in this case, and it would be naïve to think that urgency can be eliminated from government business despite the best-planned approach to its conduct. But paradoxically that puts a premium on high standards of administration, rather than permitting something less

b. there was insufficient administrative thoroughness, including research, at several points. (See for example Annex B, paragraphs 10, 32, 37, 41-2.) This may be an unglamorous and unexciting point, but my analysis has shown in several places that failure to observe sufficiently high standards of administration – ensuring that complexity and intricacy were both recognised and bottomed out, establishing a work programme setting out issues to be covered, checking that those issues had in fact been covered, undertaking fundamental analysis and research (a point of particular importance when the issue in question has important historical dimensions), adequately minuting meetings, precision in the use of terms – made a material contribution to the problems that arose subsequently. In relation to this scheme many of these failings doubtless flowed from the haste with which the work was undertaken, but it is paradoxically in just those circumstance that the old-fashioned virtues of ‘very good and careful work’ are the more important

c. for what it is worth, I endorse the Ombudsman's recommendations (paragraphs 224 and 225 of her report) that all issues relevant to ex-gratia schemes should be examined before announcement and any subsequent variations announced and explained to those affected. I would add two riders: first, if a scheme must be announced before all the issues have been examined, that should be clear in the announcement and a further one made when they have been fully bottomed-out. Second, variations to schemes, however immaterial they may seem, need to be examined to establish the extent to which they might impact on the handling of applications decided to that point and so to check for fairness and consistency. (See particularly Annex B, paragraph 11.)

d. consideration of whether any new scheme should be put on a statutory footing should include the argument that the very process of legislation can both increase confidence in the scheme and provide protection, in this case through potentially bottoming out definitional issues. (See Annex B, paragraph 12.)

e. there was insufficient consultation of a structured kind with ABCIFER in particular. (See Annex B, paragraph 13.) Whether legislation is favoured or not, there is a very strong case in devising schemes (or in making material variations to existing ones) for considering structured consultation with external stakeholders. This is strongly advocated in the 2004 Cabinet Office Code of Practice on Consultation, which allows for proportionate application according to circumstance, but consideration should be given to consultation, on pragmatic as well as principled grounds, even if time pressures or other factors seem to militate against it. This case amply illustrates the potential penalties in both time and substance in not consulting in a structured way – had ABCIFER been consulted in a consistent, formal and detailed way between 7 November 2000 and the New Year 2001, which would in my judgement have been possible, much subsequent heartache could have been avoided for both sides. Nor does the process have to involve written consultation such as by means of a green paper or other publication, or become the enemy of good government by unnecessarily prolonging or even paralysing decision-making. It should be proportionately tailored, and managed, to fit requirements. (I note in passing the wisdom of Don Touhig's political instinct in co-opting Andrew Dismore and ABCIFER on to the group newly set up to thrash out future eligibility criteria for the scheme.)

f. there were striking instances where failure to translate policy decisions into working guidance for staff in the WPA led to excessive risk and to inconsistent outcomes. (See particularly Annex B, paragraph 37.) The implications of those decisions were not worked through into tests and criteria to be applied (in other words, not just the absence of a standard operating manual – on which see the next sub-paragraph). It is important that departments go through this process as a necessary precursor to developing detailed guidance for staff in order to ensure that policies are fully bottomed out and capable of being operationalised. In this case speed seems to have initially militated against that, but it might well have uncovered the weaknesses which caused the inconsistencies in criteria

g. in administering schemes of this kind involving many staff assessing applications and particularly where judgment is required, it is important that standard operating procedures should be available. In this case again speed militated against the preparation of detailed guidance: a standard checklist was followed instead (and detailed staff guidance would not in any case have exposed the underlying problem of inconsistency in criteria), but it was not until January 2003 that formal written guidance was issued within the Agency. (See Annex B, paragraph 37.) It is unacceptably risky to proceed without such guidance for more than very short periods. (That relatively few mistakes seem to have been made and no evidence of material fraud – and in mentioning this point I am in no sense impugning the applicants or any other particular grouping involved – seems to have arisen is a tribute to the staff and their direct management.)

h. there was no empirical testing of the criteria for the scheme to assess their likely impact, either initially or in March 2001 when the birthlink was adopted. (See Annex B, paragraph 14.) Time undoubtedly militated against this. But, as a principle, there is much to be said for applying the principle of empirically-based policy-making including road-testing of new schemes wherever possible. This is widely recognised but is very easily overlooked, especially when policy is being made at speed. Those managing the process ought to ask the unwelcome questions of ‘why not?’ even in such circumstances

i. the same goes for reviewing the impact and outcome of schemes and policies, perhaps particularly when there has been little or no chance to ground them empirically beforehand. Had a review or audit of this kind been insisted upon (though I acknowledge the question of resources would have arisen), many problems might have been headed off (and resources saved in the longer term). (See Annex B, paragraphs 77-81 and 86-87.)

j. the facts that no such review or audit of the scheme was undertaken and that the MoD’s monitoring of the Agency did not prompt one suggest that there may be a case for reviewing the governance arrangements between the Veterans Agency and the MoD. It is the case that structural arrangements between the two have changed since the events under review, but I recommend nonetheless that MoD satisfy itself that the sponsorship and monitoring arrangements, including informal exchanges as well as formal mechanisms, are effective

k. there was insufficient clarity surrounding respective roles and responsibilities both between and within departments, particularly at the start, and this materially contributed to the problems at issue. The uncertainty of the relationship between the Agency’s policy unit in London and the operation in Blackpool I found particularly worrying. (See Annex B, paragraphs 56-66.) Respective roles and responsibilities both within and between departments must be clear at the outset of work, and any uncertainties that may later arise resolved. That should extend to clarity about the respective roles and responsibilities of the Cabinet Office and functional departments when, as in this case, the Cabinet Office is charged

with providing co-ordinated advice for Ministers and then remains involved, even if only in an overseeing role, in execution of the resulting policies. Finally, the case for identifying a project manager with overall responsibility and authority for the scheme should always be considered; if one is not appointed, the reasons and alternative arrangements must be clear. There also needs to be clarity, and effectiveness, in working relations between the core department and agencies, which in this case did not seem up to the task at either the formal or informal level – another factor behind the preceding recommendation

l. I was struck that the MoD has no tailored departmental guidance for dealing with the Ombudsman's office and inquiries from it, and recommend that this be rectified. Such dealings should not feature extensively in the experience of most officials. The Ombudsman concluded a total of 17 investigations in relation to the MoD in 2004-05, a fairly small number when the scale of the department is taken into account. (Perhaps unsurprisingly since the MoD does not have extensive contact with citizens other than veterans or serving armed forces personnel, I understand that the bulk of complaints relate to the Veterans Agency.) But that makes such guidance the more important, setting out the powers and role of the Ombudsman and the Department respectively, the internal process for handling complaints which should be based on best-practice principles for complaints-handling, procedures in relation to the Ombudsman's office at working level etc. I am conscious that this touches on currently sensitive issues of application wider than the MoD (and which are clearly outside my terms of reference, even though some arose directly out of this scheme); no doubt the resolution of those wider issues should be reflected in such departmental guidance

m. many of my findings were of omission and inadequate work rather than sins of commission or significant incompetence – imprecision, failure to consult sufficiently, to recognise and master intricacy and to review etc. But one theme is also the absence at important points of sufficient, and at several points, any input from senior management. Doubtless their eyes were on other priorities which will certainly have seemed more pressing at the time, and it is at least some defence that at various points the impugned scheme seemed to be successfully upheld by the courts. (The distinction between the unlawful and the maladministrative to which the Ombudsman so forcefully drew attention was a further point that escaped attention, and could usefully be drawn to attention at management levels in MoD and more widely.) Although it is not possible, I think, to draw up a single, simple prescription to enable senior management in any organisation to avoid such pitfalls, nonetheless being satisfied that work has the right level of management attention and direction, and testing that by intervention from time to time, including posing unwelcome questions, are an indispensable part of senior management responsibility. Having made that point in relation to the ex-gratia scheme, I freely acknowledge that I do so with the benefit of hindsight and without knowledge of the pressures at play at the time or experience of working in a department as big as MoD: those qualifications should be borne in mind.

17. My terms of reference required me unavoidably to seek out weaknesses in the development and administration of the scheme. There certainly were many of those, as my analysis has brought out. But it would be most regrettable if, in the necessary consideration of those failings, sight were lost of the many positive features involved – I have drawn attention to the achievement of the WPA in particular in getting the scheme off the ground in a very short space of time. Sadly, the debt of honour owed by my and later generations to those whose sacrifices and contributions enabled us to lead infinitely more tranquil and comfortable lives than they was not in the event discharged as fully and competently as it ought. That has caused both sadness and anger (in the restrained and dignified words of Prof Hayward) and certainly hurt too. It is sincerely to be hoped that the developments in the scheme announced by Don Touhig on 28 March 2006 can go some way to remedying that.

D J Watkins  
7 July 2006

## FEPOW EX-GRATIA PAYMENT SCHEME

### A chronology of key-points in policy development

- [1] 1998-2000: DSS/WPA policy unit consider redefining the test of 'belonging to the UK' applied to civilian internees in relation to eligibility for war pensions. This flows from a specific case & exchanges with ABCIFER
- [2] 10.04.00: MoD Minister meets Royal British Legion to discuss claim for payments to FEPOWs. PM joins for part of meeting
- [3] 30.06.00: in follow-up to RBL meeting MoD write to No 10 recommending against the RBL proposals
- [4] 13.09.00: WPA policy unit submission to DSS Minister recommending adoption of broader definition of 'belonging to the UK' for war pensions purposes to include one of claimant's parents born in UK or claimant ordinarily resident in UK immediately prior to internment, & after release (re-)established & maintained a substantial connection with the UK. ABCIFER to be consulted on the proposed revisions
- [5] 25.10.00: No 10 commissions Cabinet Office to co-ordinate departments and provide advice & recommendations by 1.11.00
- [6] 2.11.00: on behalf of the Cabinet Office-chaired inter-departmental working group (referred to from now on simply as 'the Cabinet Office group') Cabinet Office makes recommendations to No 10 for a FEPOW scheme to include 'surviving civilians, who are UK nationals, & who were interned by the Japanese in the Far East during the second world War', & surviving spouses
- [7] 6.11.00: No 10 notify approval to proposals
- [8] 7.11.00: scheme announced in House of Commons by MoD Minister referring to 'British groups', & by PM to RBL, ABCIFER etc
- [9] Nov 00-Jan 01: various meetings of Cabinet Office group to monitor urgent implementation & to thrash out a range of questions thrown up by implementation (eg Gurkhas, dependants, merchant seamen), with WPA seeking definition of 'British'
- [10] 15.01.01: WPA policy unit meet ABCIFER to discuss redefinition of 'belonging to the UK' for war pensions (following from [4] above) & in particular ABCIFER's proposal to extend the criteria to include a paternal

grandparent born in the UK & other pointers to being 'closely associated with the UK'

- [11] 1.02.01: 14000 payments made by WPA on basis of Japanese Asset Register identification
- [12] 20.02.01: WPA recommend to Cabinet Office group adoption of birthlink, embracing both parent & grandparent (proposed on basis of analogy with ABCIFER's proposal on war pensions)
- [13] 21.02.01: Cabinet Office reply seeking analysis of options & risks, on basis of a definition of nationality that is legally defensible & within the tight parameters of the scheme
- [14] 8.03.01: letter from ABCIFER to WPA expressing concern at delay in some payments while nationality questions resolved
- [15] 15.03.01: responding to Cabinet Office letter of 21.02.01 ([13] above) & drawing on advice from TSol, WPA policy unit recommend adoption of birthlink (claimant or parent, but extended to grandparent by analogy with war pensions proposal)
- [16] 21.03.01: Cabinet Office agree WPA proposals, subject to the latter's legal adviser being content. WPA start applying birthlink criteria about this time
- [17] 10.04.01: WPA write to Cabinet Office expressing concern that deserving cases still not admitted by birthlink, suggesting an extension of eligibility & seeking a meeting of the Cabinet Office group to take stock & consider way forward. Cabinet Office invites proposals from WPA
- [18] 19.04.01: WPA policy unit submission to Minister recommending redefinition of 'belonging to the UK' for war pensions, following meeting with ABCIFER on 15.01.01, as a British subject when an internee; a parent or grandparent a British subject born in the UK or ordinarily resident in the UK immediately prior to the applicant's internment; & after release claimant to have (re-)established & maintained a substantial commitment to the UK
- [19] 4.05.01: following up [17], further note from WPA to Cabinet Office putting forward suggestions for extension of eligibility
- [20] 21.05.01: Cabinet Office letter recording inter-departmental group meeting on 18.05.01 confirms adherence to birthlink, not least as 'there had never been any intention on the part of Ministers to open up the scheme to anyone without a direct link to the UK'
- [21] 11.06 01: WPA switches from DSS to MoD
- [22] 12/14.06.01: MoD advise Minister of adoption of birthlink

- [23] 2001-02: judicial reviews initiated by a group of Gurkha applicants & ABCIFER respectively
- [24] 22.03.02: on behalf of the Cabinet Office group, Cabinet Office provides advice to No 10 on the ABCIFER case, recommending maintenance of eligibility criteria
- [25] 5.06.02: witness statement by chairman of Cabinet Office group in ABCIFER case
- [26] 05.02: witness statement by Acting Chief Executive VA in ABCIFER case
- [27] 1.10.02: witness statement by chairman of Cabinet Office group in Gurkha case
- [28] 18.10.02: MoD win ABCIFER judicial review on all points
- [29] 27.11.02: judgment in Gurkha case in favour of applicants
- [30] 25.06.03: initiation of Ombudsman investigation
- [31] 14.07.03: ABCIFER appeal dismissed & denied right of further appeal
- [32] 14.07.03: MoD recommend in principle to No 10 an extension of the scheme to include Gurkhas on a defined basis in the wake of the Gurkha review judgement
- [33] 5.11.03: revision of scheme to include Gurkhas announced
- [34] 7.09.04: adjournment debate in House of Commons (following large number of earlier exchanges in Parliament, PQs, letters from MPs, ABCIFER etc since Nov 00)
- [35] 25.11.04: Elias judicial review initiated
- [36] 7.07.05: Elias judgment, partly against both sides (appeals continue)
- [37] 12.07.05: Ombudsman's report published
- [38] 1.12.05: PASC hearing
- [39] 18.01.06: PASC report published
- [40] 28.03.06: terms of revised scheme announced in House of Commons



ANALYSIS OF ITEMS A AND B OF TERMS OF REFERENCE

A: How the original inconsistencies arose, and shortcomings in the development and implementation of policy

1. There are a number of strands to this, inevitably intertwined.
2. First, and amongst the most important influences on the outcome, is the great haste with which the scheme was prepared. As the campaign for recognition of the suffering of Far East prisoners and internees gained momentum, the then Under-Secretary of State for Defence, joined for part of the meeting by the Prime Minister, met with the Royal British Legion in No 10 on 10 April 2000. The Legion advanced their claim for a one-off ex-gratia payment for compensation in recognition of suffering at the hands of the Japanese, inter alia arguing that HMG had in 1955 failed to reopen the 1951 Treaty of San Francisco with Japan and the distribution of shares of Japanese assets based upon it. The Minister concluded by undertaking to consider the issue further in consultation with the Prime Minister. From the numbers mentioned at the meeting it is clear that service personnel rather than civilians were the focus of discussion.
3. After discussion within the MoD, whose long-standing policy under successive governments has been that it does not compensate service personnel for the fact of detention or hardships endured during captivity, the Defence Secretary's office wrote to No 10 on 30 June recommending that the call for an ex-gratia award be rejected, referring to the 1950s settlement, existing pension and healthcare provisions, the potential knock-on effect for other groups like POWs in Europe and cost.
4. Work on this and related matters continued in MoD and in a working party on veterans matters established by the Prime Minister and chaired by Lord Falconer. On 25 October the Prime Minister's office wrote to Tom McKane<sup>2</sup> in the Defence and Overseas Secretariat of the Cabinet Office referring to the Prime Minister being pressed again in the House that day and being committed to bringing the review [of 'compensation' for FEPOWs] to a conclusion in the pre-budget report process, tasking him to bring together an inter-departmental group and to provide advice by 1 November for the Prime Minister and Chancellor to decide the issue with all the details thoroughly worked through. This was a tall order for the Defence and Overseas Secretariat (which had not previously been involved) and the departments on the inter-departmental working group it now convened (referred to from now on simply as 'the Cabinet Office group'), but nonetheless on 2 November, after two meetings of the group supported by a great deal of rapid work within and between the functional departments concerned, the Cabinet Office submitted the group's report to No 10 (with copies to Private Offices in the Treasury, FCO, MoD and DSS).

---

<sup>2</sup> See paragraph 12 of main report for explanation of reason for naming this official and the limited interpretation to be put on that.

5. This report attracted comments in letters from the Foreign, Defence and Social Security Secretaries which were generally supportive. Importantly, the MoD letter, arguing for inclusion of civilians, merchant seamen and spouses, noted that 'there is good sense in maintaining consistency of approach by including all categories of individuals eligible under the 1950s compensation scheme'. No 10 responded to the Cabinet Office note on 6 November in a letter to the Defence Secretary's office. This recorded that the Prime Minister agreed that 'the Government should now go ahead with an ex-gratia payment of £10,000 to Far East Prisoners of War, Far East civilian internees, merchant seamen and widows/widowers of these groups... His understanding is that the payment will thus cover all those who were eligible for compensation payments in 1951... If there is any way of starting to make payments sooner [than end-January] that would be good; but the bottom line is that the end-January deadline should not slip further'. The scheme was then announced the following day. On 1 February 2001, immediately the DSS had amended certain social security regulations which otherwise would have reduced the net value of the payments, the WPA issued 14,000 payments.

6. This was by any standard high-pressure work involving long hours in several departments on intricate and complex issues (I comment later on whether their full intricacy and complexity were recognised). There were a number of reasons for urgency:

- the political need to respond to pressure in Parliament and elsewhere
- the need to have decisions on the scheme taken before the pre-budget report on 8 November
- the entirely laudable aim to make payments to applicants while they were still alive. This is strikingly expressed in a letter from ABCIFER to the then DSS Minister, Hugh Bayley, two days after the announcement in which Ron Bridge pointed out: 'Time is of an essence in actioning this. I have had notification of two deaths since the announcement was made'.

7. For these reasons speed was indeed necessary, and in overall terms the system responded well – in the main report I have pointed out the achievements of the WPA in particular, supported by the Cabinet Office group as a whole and its constituent departments. But my assessment is that haste undoubtedly made a material contribution to the problems that subsequently unfolded. The following is some of the evidence for that finding.

8. The Cabinet Office note of 2 November had the following critically important section headed 'Criteria for receiving ex-gratia payments':

*'It will be important that the criteria for the scheme are carefully defined.* Assuming a scheme along the lines of option 6(d) above [ie to encompass Service personnel, civilian internees, merchant seamen and surviving spouses], officials concluded that payments should be made to those satisfying one of the following criteria on 8 November 2000:

- Surviving former members of HM Armed Forces who were held as POWs in the Far East during the Second World War ....
- Surviving former members of the merchant navy who were imprisoned by the Japanese in the Far East during the Second World War.
- Surviving civilians, who are UK nationals and were interned by the Japanese in the Far East during the Second World War.
- Surviving spouses of the above...’ (my italics in first sentence).

9. The italicised sentence is undoubtedly ambiguous but important: did it mean the following list was that careful definition, or that it was an outline which would require further detailed work? The MoD seems to have taken it as the former, whereas others, including Tom McKane, construe it as the latter. In fact both may well be right, in that definition of service personnel was clearly important to the MoD (out of concern at the potential knock-on effect amongst various service groups taken prisoner), and other parts of the report had provided definitions of qualifying service groups. But for others, eg the WPA, there remained issues of definition for qualifying civilians in particular.

10. If, as I believe, further definitional work was to be undertaken, I would have expected either the Cabinet Office to identify and timetable work on that further definition or for the departments concerned - principally the WPA on behalf of the DSS - to do so, but there is no evidence that this was done. The main focus of the Cabinet Office group’s work in the weeks after the announcement was to monitor the effective implementation of the scheme in order to ensure payments were made on schedule (they were) and to resolve a wide range of emerging questions. These included issues of civilian definition entirely properly raised by the WPA (see paragraphs 27 & 38), but this work seems not to have been done in a programmed way with the Cabinet Office following up the italicised sentence to ensure a systematic completion of that aspect of the work. Had that happened, it seems to me likely that issues of definition which came to dog the scheme might well have been identified early enough to resolve them. This seems to me to have been mainly a casualty of speed.

11. Likewise, the announcement on 7 November, whose terms have been criticised by both the Ombudsman and the Court of Appeal, was inevitably prepared in similar haste. Immediately the Cabinet Office submitted its report to No 10, officials’ attention turned to preparation of the announcement, with the MoD playing a prominent role. On 1 November, in a note to the Cabinet Office group commenting on a draft of the paper for Ministers, the WPA policy unit had observed that ‘we strongly advise that, if the PM decides to pay, the initial announcement be couched in deliberately general terms so that his words do not prove a hostage to fortune for whoever is charged with responsibility for policy in this area’. Accordingly (and, I infer, with a view to retaining discretion in order to allow time to tie down the criteria more clearly), when drafts of an announcement were circulated among departments in early November, the term ‘UK nationals’ in the report to Ministers was amended, on the recommendation of the WPA policy unit, to the looser formulation of ‘British’ in the announcement (which was not then cleared with Ministers collectively). But the importance of reflecting in the

announcement an explicit recognition of that need for further work seems to have been overlooked by all concerned. The imprecision of the announcement in not making clear that further definitional work remained to be done, found maladministrative by the Ombudsman, was in part another casualty of speed, although insufficient attention to detail seems also to have had a bearing.

12. Urgency also caused other potentially important points to be overlooked – viz, impact of legislation, structured consultation and road-testing. Thought seems to have been given to putting the scheme on a statutory footing, but this was ruled out in order to confine its ambit. (I note that the Australian Government had put its scheme on a statutory footing in 2001, and it must be at least possible that in the course of legislation definitional issues which subsequently caused the Government much difficulty would have been identified and resolved.) On the other hand consideration seems not to have been given to whether the criteria for the scheme, either the November set or the March variations, might engage the provisions of the Race Relations Act 1976. Given the nature of the criteria, this is very surprising. This was very likely the result of the speed with which the scheme was devised.

13. Of more practical import is the point that no consideration seems to have been given to the idea of structured co-operation with the likes of RBL (for service issues) and ABCIFER (for civilians) to thrash out the definitional questions alluded to in the Cabinet Office report and in subsequent WPA minuting. Again speed seems to have prevented this. It was, then as now, standard practice for departments to consult external stakeholders on policy developments. That approach was doubtless less developed in 2000 than it is now, but some form of structured consultation was in my experience already widespread: it did not necessarily mean formal written consultation but some form of planned discussion with stakeholders as policies developed. Pragmatic considerations alone would often point to that sort of engagement. In this case there were meetings between the WPA and ABCIFER (on 15 November 2000 and 24 April the following year), but these exchanges do not seem to have been sufficiently structured to meet the need. For example, disagreements have arisen between the Agency and ABCIFER as to what had transpired at the latter meeting, which might have been avoided had this been a properly constituted working party. The question of establishing some formal and recognised mechanism for discussing issues with ABCIFER and others seems not to have received serious consideration. (There is a letter of 9 April 2001 from the WPA to ABCIFER suggesting that RBL convene 'the consultative group', but, as I understand it, the RBL was unable to convene a meeting to discuss civilian matters; and various assurances were given of consultation on 'areas of contention', difficult cases and matters relating to internment, but not systematically followed up.) Had the question of structured consultation been systematically considered I can well imagine that one of the key counter-arguments would have been time. But had such consultation actually taken place, then that would have increased the chances of identifying and resolving questions of eligibility criteria at that stage, so avoiding most if not all the subsequent problems in Parliament, the courts and with the Ombudsman. At the very least, even if structured consultation had not resolved differences between the Government and ABCIFER, Ministers would have been much more clearly conscious of the risks in subsequently adopting the birthlink criterion.

14. Nor were the criteria, whether the initial use of the Japanese Asset Register or the birthlink, at any stage road-tested to ensure the policy was empirically based. Although I understand this was a standard DSS approach in adopting a new payment scheme, it seems that no thought was given to the possibility in either case. Undoubtedly again time might have made this problematic, although the three months between the end of November and the beginning of February might well have provided sufficient opportunity. On its own it would not have avoided all the problems: without a clear definition of 'British', for example, it would not have identified difficult cases. But had time permitted and road-testing combined with other research been done, subsequent problems would in all likelihood have been avoided.

15. Another example of haste was the decision on adoption of the birthlink itself. This was finally proposed by the WPA policy unit on 15 March 2001, seeking a response the following day. It was in the event agreed on 21 March. Paragraphs 44ff examine this crucial point of the process in greater depth.

16. I also consider at greater length in paragraphs 77ff the question of why the WPA/VA did not review the practical outworking of the criteria in practice until late 2005. But the urgency of implementing the scheme was part of the reason, and contributed very significantly to the delay of several years in identifying the inconsistencies flowing from the introduction of the birthlink (and then only under external pressures) and in seeking a broader solution.

17. On this basis I conclude that the marked urgency with which the scheme was devised and implemented had a major bearing on the outcome. It is of course futile to believe that the process of government can avoid urgent decision-making: public life and the nature of politics make that impossible. And in this case, as explained above, there were in some respects the best possible reasons for haste. But those points do not mean that the need is removed for thorough attention to the standards of good order and administration of the kind whose omission in this case I have mentioned. Indeed it could be argued that when business is being conducted at high pressure is precisely the time for attention to administrative thoroughness by those managing the process. Some critics of the scheme may find these tedious and unimportant points, but in my assessment failure to observe them made a material contribution to the ensuing problems at issue.

18. The second important strand, and one of the most critical, relates to the scheme's underlying requirement that beneficiaries have some form of close link to the UK. In my judgement it is this requirement, not always clearly articulated, that forms the central fault line dividing the Government from the critics of the scheme, who assert that this was not required before the adoption of the birthlink. It certainly underlay the adoption of the birthlink and the Government's continued adherence to it, and so played a major role in the problems at issue.

19. The notion of a close link to the UK was present in both the 1950s scheme and in civilian eligibility for war pensions, a scheme separate from the ex-gratia scheme but with some similarities. One of the key principles of eligibility of civilian internees for the 1950s scheme was that the applicant was entitled to a share of Japanese assets in the UK if (s)he was of British nationality and normally lived in the UK before being captured by the Japanese and had returned to the UK after

the war. I have been unable to identify any precise definition of these points, including 'British nationality', and nor did the internal VA review of February 2006, although a note from the 1950s does say that requirements were to be 'interpreted as widely as possible'. But a close link to the UK, in the form mainly of a residential test, was certainly required under the 1950s scheme.

20. The picture in relation to civilian eligibility for war pensions is a good deal more complex. These have for many decades been payable where ex-service personnel have suffered injury or death as a result of service (the complex details are unnecessary here). But in 1939 civilians also became eligible for war pensions under the Personal Injuries (Civilians) Scheme 1939 (amended 1983 and subsequently) for injuries suffered in World War II. (Again a detailed account is unnecessary.) Within the civilian category the government of the day decided just after the war that British civilians interned abroad and suffering qualifying disablement (differently defined than for service personnel) should also be eligible, provided they were born or ordinarily resident in the UK at the time of injury and resided in the UK at the point of claim. But, beyond that, extra-statutory provision was authorised by HM Treasury just after the war to bring into that scheme interned British civilians not born in the UK or ordinarily resident here when interned but whose parents had, for example, left the UK to work in UK territories overseas. A condition for entitlement was that the Secretary of State for Social Security (in 2000 terminology) should have good grounds for believing that the claimant could be regarded as 'belonging to the UK'.

21. For many years the standard applied to test this 'belonging' required a claimant not born in the UK nonetheless to have at least been in the UK before the war and to have returned to live here afterwards. But a specific case and lobbying by ABCIFER in the 1990s caused this test to be reconsidered with a view to widening the interpretation of 'belonging to the UK'. So in September 2000 (that is, less than two months before the Cabinet Office group was convened in relation to the separate ex-gratia payments scheme) WPA policy unit officials responsible for war pensions policy as well as subsequent input to the ex-gratia scheme submitted advice to their Minister on a wider definition.

22. Their advice was that 'those former internees (usually those interned as children) brought within the definition would be *those Britons who had a parent who was a British subject either born in the UK or ordinarily resident here at the time their child's internment began, provided that after release the former internee establishes and maintains a substantial connection with the UK*' (my emphasis). The submission, interestingly, went on to recommend that 'ABCIFER be invited to comment on the proposed revised policy', and the Minister wrote to them for that purpose on 21 September 2000. ABCIFER replied on 27 September, arguing the case for the definitions for civilian war pensions to embrace those who were children at the start of hostilities, whom they numbered at 1200 still alive in the UK, and that 'requiring that one parent was born in the UK will eliminate a considerable number of claimants'. Their proposal was that the WPA suggestion of at least one of the claimant's parents being a British subject born in the UK or ordinarily resident there before internment should be supplemented by 'their paternal grandfather'; but they also argued, in vain, for the claimant to have significant period(s) of time 'in *or closely associated with* the UK' (ABCIFER's emphasis).

23. WPA officials met with ABCIFER on 15 January 2001 following the Minister's letter. Although not reflected in the WPA's manuscript note of the meeting, a chronology given to me by Ron Bridge notes 'Meeting with DSS re PICS proposals. Agreed that this matter was quite separate from the 'Ex-gratia' scheme, and that eligibility rules would differ'. On 19 April 2001 the officials returned to the DSS Minister to advise that

'after a constructive discussion with Mr Bridge, details of a proposed policy change for determining whether a former Far East civilian internee "belongs to the UK" for the purpose of determining entitlement to a war pension are set out in Annex A... The proposed revision of policy is designed to address concerns that Britons who were born abroad, and had spent no time in the UK before internment by the Japanese in the Second World War, are not eligible for war pensions for disablement or death resulting from a war injury or the conditions in which they were detained in the camps, as they are not regarded as "belonging to the UK". Such people are usually former child internees born of British parents working abroad'.

It went on to explain that the war pensions criteria for civilians were for good reason distinct from and more demanding than for the ex-gratia scheme – presumably an allusion to (c) in the following paragraph.

24. Annex A to the submission set out the revised definition of 'belonging to the UK' as follows:

'An applicant for a war pension may be regarded as "belonging to the UK" if:

(a) they were a British subject when an internee;

and

(b) at least one of the applicant's parents or grandparents was a British subject:

(i) born in the UK; or

(ii) ordinarily resident in the UK immediately prior to the applicant's internment;

and

(c) after release from internment, the applicant established or re-established, and has maintained, a substantial connection with the UK.'

25. So on the one hand the policy unit's proposal to the Minister was at the same time more generous than ABCIFER had sought through the addition of maternal grandparents; but on the other it did not meet ABCIFER's suggestion of a broad allusion to close association with the UK. The Minister sent this new

definition to both Ron Bridge and Mark Oaten MP, then chair of the Commons all-party group. (I come to how similar criteria were imported into the ex-gratia scheme below in paragraphs 44ff.) It is ironic that on this basis it should have been at the impulse of ABCIFER that the birthlink was first adopted as Government policy. Some may already espy in this an attempt on my part to pin that on ABCIFER in relation to the ex-gratia scheme. But those later paragraphs also explain why war pensions were a 'faux ami' distinct from the ex-gratia scheme and therefore any borrowing of policy between them was risky, and also why ABCIFER can be said to have acted rationally in distinguishing between them.

26. So both the 1950s scheme and current war pensions policy had a clear underlying notion of requiring a close link to the UK in relation to civilian beneficiaries, and this thinking seems to have been applied to the preparation of the ex-gratia scheme, although not explicitly articulated in the work of the Cabinet Office group in October/November 2000 as a principle underlying the ex-gratia scheme. Indeed it is not until the Cabinet Office group meeting in May 2001 which decided not to go beyond the birthlink criterion despite the counter-arguments of the WPA's Acting Chief Executive that it becomes explicit. The question naturally arises as to whether this notion did really underlie the preparation of the scheme or was later adopted as ex post facto rationalisation in upholding the birthlink. I have concluded that the evidence supports the contention that the notion of requiring a close link to the UK was originally present, albeit not explicitly:

- a note of 1 November from the WPA policy unit to the Cabinet Office offering comments on an early draft of the report to Ministers argued for tighter use of the term 'British' in relation to service personnel, seamen and civilians in order to reflect 'what seems to us to be the importance of tying entitlement to British taxpayer's money to those with service in **British**-based Forces or ships, or, in the case of civilian internees, to **British** nationality and residence' (original emphasis)
- the Cabinet Office note of 2 November to No 10 describing the proposed scheme that Ministers approved refers to 'surviving civilians, who are UK nationals'. (I do not myself believe that the subsequent change from 'are' to 'were' invalidates the narrow inference I am drawing.)
- much of that note and subsequent exchanges between officials is aimed at limiting the eligibility of groups like members of the old Indian Army, suggesting a concern to distinguish those with a clear claim to UK taxpayers money from a wider group whose claim was weaker or non-existent
- the references to the 1950s scheme in the responses of both the Defence Secretary and No 10 quoted in paragraph 5 above imply that Ministers had a similar close link to the UK in mind; indeed, given the claims on finite public expenditure, I would fully expect that Ministers, not least but not only in the Treasury, would have made it very plain, and indeed argued the point, if no such link had been in mind. (It is the case, however, that the announcement in Parliament on 7 November did no more than refer to 'the British groups that were held prisoner...and British civilians who were interned')
- in a letter of 8 December to the Prime Minister seeking agreement to inclusion of the Gurkhas, the Defence Secretary argued that 'in effect the

Gurkhas' *subsequent close connection to the UK* makes it reasonable to add them to the groups for whom the UK has already taken responsibility as a consequence of their status at the time of their captivity' (my emphasis)

- an internal email of 12 December from a WPA official heavily involved in preparing the scheme notes that '[policy unit official] needs to explain what the equivalent position is in terms of eligibility for the FEPOW exercise (if only we knew). There can be no variance in this respect. Although we say that the FEPOW exercise is not the WP [war pensions] scheme, that will not wash in public. The issues are about defining either tightly or loosely *what constitutes a sufficient relationship with the UK*' (my emphasis)
- in a note of 15 December to the Cabinet Office group WPA policy unit officials, explaining that they intended to make payments to children born abroad to parents born in the UK, say of this group 'some of these people, although 'British subjects', would not have been born in the UK but would reasonably consider themselves *to have very strong links with this country* as their parents for example had been born here ...' (my emphasis). The Cabinet Office endorsed this in a letter of 29 December
- in his witness statement of 5 June 2002, paragraphs 4.7-5.4, in the ABCIFER judicial review Tom McKane asserts both that the intention was that eligibility should require a close link to the UK and that Lord Moonie had deliberately not referred to 'British subjects' in accordance with the nationality laws prevailing in 1941-45 (ie as opposed to 'British civilians') in making his announcement. The evidence I have both seen and heard, including from Lord Moonie directly, supports that.

27. There was much discussion between November 2000 and January 2001, both at meetings of the Cabinet Office group and in correspondence, of questions as to whether certain categories met the eligibility criterion of 'British' (some flowing from the WPA's meeting with ABCIFER on 15 November). These focused, for example, on members of colonial forces, seamen who were foreign nationals, children born abroad to parents born in the UK, British citizens resident abroad, applications from the Indian sub-continent, whether the 1941 or current definition was applicable, etc. At the same time the WPA was intensively engaged in preparing to make payments from 1 February using the 1950s Japanese Asset Register as their source of evidence of eligibility (on which see paragraphs 32ff below). As this source became exhausted, the Agency clearly did not consider there to be some wider basis for accepting claims already in existence (notably that it was enough to be British) and so began seeking other sources of evidence of both internment and Britishness and guidance on more precise definitions of eligibility from departments in Whitehall. This culminated in the proposal from the WPA on 20 February 2001 and in a more developed form on 15 March that the birthlink be adopted.

28. The WPA in proposing the birthlink were certainly acting in the belief that it was consistent with the criterion of a close link to the UK, an approach very familiar to them from war pensions policy as explained above. It was reasonable for departments and Ministers to choose to be guided by such a principle. But it would in my view have been much preferable for that to have been articulated in in-house discussion (that it was not, I suggest, is an example of not recognising and

bottoming-out complexity with sufficient rigour) and also in the announcement of 7 November. (This is not a new criticism but another angle to the Ombudsman's criticism of the announcement amounting to maladministration).

29. But, paradoxical as it may seem, if it was reasonable for the Government to be guided by this principle, so ABCIFER can be said to have acted rationally in accepting that principle in relation to war pensions but not in relation to the ex-gratia scheme. That is because there is a distinction between the bases for the Government's open-ended commitment to recurring pension payments until death (including ones like war pensions which compensate for disability) on the one hand and for a one-off payment, seen by recipients as compensation for a past event (even though the Government explicitly declined to classify it as compensation), on the other. In pensions arrangements a series of prior contributions by way of investment is commonplace; in compensation it is not.

30. That distinction, however tenuous, was not articulated by either side, and I have neither seen nor heard any evidence that it was recognised in departments – WPA warned that the two schemes (war pensions and ex-gratia) were not directly analogous but did not detail the distinctions. Nor does it seem to have been appreciated that, whereas a close link to the UK was acceptable to ABCIFER for war pensions, it was not for the ex-gratia scheme. ABCIFER's position was most clearly articulated in a paper of 21 June 2001 which explained that 'bona fide claims must fulfil two conditions:

- i) That the claimant was interned in a Camp with Japanese guards
- ii) that the claimant was British under the rules pertaining at the time.'

(This is the first such definition of ABCIFER's position on either MoD or DSS/WPA files. ABCIFER recall that it was articulated at their meeting with the WPA on 24 April 2001, and certainly their note of 18 April 2001 discussed with the WPA at that meeting was couched in approximately similar terms.) In separate conversations with me Ron Bridge and Prof. Hayward (not a member of ABCIFER) repeated the second point, acknowledging that some arrangements would need to be made to avoid double payments (eg by HMG and the Canadian Government). They clearly reject the requirement for a close link to the UK as understood by officials at the time, in effect arguing that that link was sufficiently present by the very fact of internment (when ABCIFER point out that the indigenous civilian population, although British subjects under the British Nationality and Status of Aliens Acts 1914 to 1943, was not as a rule interned).

31. This is where the failure to engage in structured consultation (or, in theory, to legislate) really struck home: if there had been such, then the underlying antithesis would almost certainly have been spotted and misunderstandings avoided, allowing either a solution to be found or at least for a better informed set of decisions by Ministers. As it was, there seems to have been incomplete understanding of ABCIFER's position among departments.

32. The third strand concerns the WPA's initial reliance on the Japanese Assets Register (JAR). The Prime Minister and Defence Secretary had already specified that the ex-gratia scheme should embrace those who had benefited under the 1950s scheme, as the quotes in paragraph 5 from their letters of early November

2000 agreeing to the new scheme demonstrate. Both are open to interpretation as to whether the JAR was to be seen as a limiting definition or as defining the minimum field of beneficiaries, a question that was never resolved. A note from a WPA policy unit official to colleagues in Blackpool on 16 November saw the JAR as defining the boundaries: 'we favour tying entitlement to those who received a share of the UK's distribution of monies (colloquially known as 'Japanese assets' in the 1950s). This would have the advantage of being a clear and (hopefully) verifiable criterion.' Clearly, however, the WPA in Blackpool saw the JAR primarily as a source of evidence of eligibility and not as a strict boundary, as the following paragraphs show. There is, however, no evidence of a detailed analysis of the extent to which the eligibility for JAR payment fitted the eligibility for the new scheme, although an email of 27 November from the WPA policy unit to Blackpool colleagues recognised that 'the new scheme is not on all fours with the 1950 scheme in all respects' (probably a reference to the 1950s payments being made to family units and not to children). Nor was there any analysis of the precise value of the JARs as sources of evidence of either nationality or internment. In these ambiguities lay the seeds of much future difficulty.

33. I have already described in the main report the efforts of the Agency to gear itself up to making thousands of payments by 1 February 2001. Understandably, it quickly adopted the JAR as the key source of evidence to verify claims. Records of meetings of the Cabinet Office group do not show the use of JAR records as having been explicitly authorised as the basis for payment, although references of an indirect kind make it plain that this is what the group envisaged: in the note of the Cabinet Office group meeting of 22 November reference is made to 'the general principle of mirroring the 1950s scheme'; in a note of 24 November to No 10 the Cabinet Office referred to having 'resolved the various eligibility issues raised by the WPA, for the most part using the arrangements for the administering the 1950s compensation scheme as a guiding principle'; and, apart from the quotations in paragraph 5 taken from the letters from No 10 and the Defence Secretary, letters of 6 November 2000 from the Social Security Secretary's office to No 10 and of 9 January 2001 from the Chief Secretary to the Prime Minister (in response to the Defence Secretary's proposal to include the Gurkhas) also make clear that they saw the JAR as the basis for payments under the new scheme. At working level the then Chief Executive of the Agency reported in a note of 7 November 2000 to the DSS Permanent Secretary that 'We expect the majority of claims to be resolved fairly quickly by checking ... entitlement against the records that WPA holds of Japanese Assets and from additional records held by MoD'; and on 20 November he reported to DSS Ministers that 'The Japanese Assets registers have been secured which have a key role in establishing eligibility. ... The Japanese Assets are the prime source of eligibility'. WPA officials recall that the Cabinet Office group was aware of the use of the JARs from the beginning; and JARs were also used to check military claims, which represented the majority of applications.

34. Claim forms for the 1950s scheme, which I have seen, required applicants to state their nationality, place of birth, address before the war, date and place of capture, date of return to the UK and present address. They therefore provided a basis for a judgement of the key eligibility criteria for that scheme – British nationality, residence and internment. If the WPA could then verify that an applicant for the new scheme had received payment under the old, by checking

against the 1950s payments records, they took this as verification that the current applicant was British and had been interned, and so qualified for an ex-gratia payment. (The MoD's Army Historical Branch, having inspected the records, endorsed them for the purpose of service claimants. That branch was notable for its grasp of British military historical detail.)

35. Although there were neither testing of processes nor written standard operating instructions for staff dealing with applications until January 2003, there was a standard checklist of steps to be followed by staff from the start, and these steps were then double-checked by line management in each case. I tracked the main steps of this process through on the basis of several individual cases and am satisfied that the steps in the preceding paragraph were followed.

36. As for dependants, the 1950s form asked for family members also interned. For surviving spouses applying under the ex-gratia scheme who had not themselves been interned, the WPA sought a marriage certificate as verification, though the status of interned spouses and children was not verified, nor initially was the fact of their internment. If siblings were mentioned, they could have applied separately for the ex-gratia scheme and so would have been dealt with separately.

37. In other words, the Agency, for the sake of simplicity and speed (and so very much in the interests of the potential beneficiaries), made a proxy judgement based on 1950s qualification and so were able to process payments quickly. 1,841 civilian payments were dealt with in this way. This seems to me to have been a sensible pragmatic arrangement, with in-built checking mechanisms, to ensure rapid execution of Ministers' wishes. On the other hand, the absence of standard operating instructions until as late as January 2003 was distinctly risky, nor was there systematic translation of Cabinet Office group decisions into practical guidance for use in the Agency. (Nor, incidentally, is there evidence that such revised guidance was issued in the wake of the Gurung (Gurkha) judicial review.)

38. Allowing for that, the JAR's undoubted utility still did not solve all problems. Early on it threw up problem cases which were referred to the WPA policy unit and from them to the Cabinet Office group as deemed appropriate. Increasing numbers of applications were being received for which there was no JAR: persons eligible for the new scheme might for a variety of reasons simply not have applied to the old, but their applications had now to be assessed. There were also growing concerns over the definition of Britishness as already described. While the priority effort was devoted to clearing payments on the basis of the JAR, problem cases were stockpiled while policy advice was sought or other sources of evidence of eligibility explored. (The Agency had promised that claims would not be rejected for lack of documentary evidence until every possible avenue had been explored.)

39. One such source to validate internment, suggested by ABCIFER, was the Imperial War Museum's holdings of camp records. Others included Cambridge University, the Red Cross in Switzerland and the Netherlands and the National Archives at Kew. These sources were used to validate internment for 94 cases out of 1186 civilian cases paid on a basis other than the JAR, but it seems that 11 payments were made where the applicants had not fulfilled the definition of internment finally agreed upon. Some 7-14 claims seem to have been met on the

basis of erroneous interpretations of the reliability of these sources to validate British nationality. These were undoubtedly honest errors, though they could in principle be argued to count in the discussion of inconsistent criteria (see paragraphs 74ff below). The use of supplementary sources like the Imperial War Museum was not cleared with the Cabinet Office group, although they may have been aware of their use, but it is persuasive evidence of the Agency's inventiveness in finding ways to validate claims as quickly and simply as possible rather than in any way seeking to retrench.

40. Overall, the approach of relying on the JARs for speedy payments, while laudable in intent and effective for the bulk of initial cases, led to subsequent problems because not enough was understood of the detail of the basis for payments in the 1950s. The intention was entirely commendable, the thoroughness of fundamental research inadequate.

41. The fourth important strand is closely linked to the second and third – the understanding of the term 'British' in the Departments concerned. On this the evidence, written and in discussion, suggests that initially at least little concern was expressed about the need for definition of this specific point as distinct from the related but wider question of civilian eligibility. On the service side a distinction was seen early on between UK-based units and others (eg the bulk of the Indian Army), although of course this subsequently became the source of other difficulties outside the scope of this investigation. And other nuances in the term 'British' were recognised, such as when the WPA policy unit argued successfully that an early draft of the Cabinet Office report should be changed to remove 'UK nationals' as that would rule out Irish members of British regiments. But generally, as one official candidly admitted, not a great deal of thought was initially given to a definition of British as it had been assumed to be a fairly straightforward concept.

42. The papers suggest that the issue was largely approached by reference to ways to resolve specific questions, as described in paragraph 27. A note of 20 November from the then Chief Executive of the Agency to DSS Ministers reports that, at the discussion with the Royal British Legion and ABCIFER on 15 November, concern had been expressed 'that the issue of 'British nationality' was, in the 1940s, not as clear a concept as it was today, and that they wished to see clearer definitions of just who is entitled'. But it is clear that at this stage there was neither a systematic analysis of the definitional issue (doubtless not helped by the curious and unexplained omission of a Home Office representative on the group, although lawyers from various departments regularly attended) nor, therefore, a shared understanding of the issue among those involved in setting policy or in implementing it. This is consistent with the point made in paragraph 6.3 of Tom McKane's witness statement of 5 June 2002. It was not until the time of the consideration of the birthlink in February/March 2001 that legal definitions and their changes over time were considered systematically.

43. The omission of the Home Office from the Cabinet Office group may well have been costly: someone from IND could have been expected to inject a degree of caution and complexity, thus raising the likelihood of a systematic analysis. As it is, it is hard to resist the broad conclusion that the current generation, including of officials (none of those dealing with the issue can have been born much before 1940, after all), has a much narrower and often less rich and complex appreciation

of the notion of Britishness than the generation which experienced empire (and suffered at the hands of the Japanese on that account). It is clear that the complexity of the notion of Britishness, and therefore its potential to damage the workings of the scheme, was not recognised or bottomed-out with the necessary rigour.

**44. The fifth strand is in many respects the heart of the matter – the adoption of the birthlink. The WPA in Blackpool had sought from its policy unit in London a definition of Britishness as early as 11 November 2000. As already mentioned, the WPA policy unit wrote to the Cabinet Office group on 15 December**

**‘to place on record our intentions regarding the interpretation of ‘British’ in relation to civilian internees.... Claims are being received from people who were children or young adults when captured by the Japanese. Some of these people, although ‘British subjects’, would not have been born in the UK but would reasonably consider themselves to have very strong links with this country in view of the birthplace of, for example, their parents (and many of these children/young people came to the UK very soon after release from captivity). ... ABCIFER campaigns vociferously on their behalf. ... We intend making ex-gratia payments in these circumstances’ (original emphasis).**

**A reply of 29 December from the Cabinet Office records its and MoD’s endorsement.**

**45. Throughout December 2000 and January 2001 there continued an exchange of correspondence between the WPA, the Cabinet Office and MoD on various definitional questions, including Britishness, mainly in relation to seamen on British ships and to claimants from India and Pakistan. (It is worth noting here that over 10,000 such applications had been received by 25 January, and in all some 45,000 were to be received, almost exclusively from ex-service personnel, as a measure of the pressures on those managing and operating the scheme in the Agency). On 31 January the WPA wrote to the Cabinet Office group seeking ‘a clear and unambiguous statement about what constitutes ‘British’.... and .... about what exceptions there are to this rule, ie when can someone not fitting the criteria of ‘British’ still qualify. These statements in order to be unambiguous and usable in operational terms must NOT rely on ‘payment under the 1950s scheme’ (original emphasis).**

**46. There then followed a series of exchanges between the WPA in Blackpool and its policy unit where, in seeking to respond to Blackpool’s request for definition, the policy unit suggested the use of the definitions for civilian war pension entitlement - a point first mooted in the same quarters in**

mid-December. These exchanges are worth reproducing in extenso. On 2 February the policy unit emailed Blackpool attaching a copy of their most recent submission on war pensions entitlement (reporting ABCIFER's advocacy of including a paternal grandparent as a means of demonstrating link to the UK). It goes on: 'there is another submission – incomplete – in draft at the moment as we have now met with Mr Bridge, but essentially it will be recommending to Minister that we adopt ABCIFER's proposals... I understand this copy may be wanted in connection with the question of 'Britishness' under the ex-gratia...scheme. Can I add a large dose of caution at attempts to draw an analogy between the entitlement provisions of the War Pensions Scheme (and its closely allied extra-statutory provisions) and the ex-gratia scheme. They are very much distinct, and there are significant dangers in attempting to combine or parallel provisions between the two.'

47. Then on 8 February an internal WPA email from Blackpool to the policy unit recorded: 'We do still have an issue with regard to the definition of British as it relates to Civilian Internees who are living abroad. Those who did not qualify via Jap Assets we are tracing through records at the Imp War Museum. Although these records confirm their imprisonment they are (a) hit and miss whether they record nationality and (b) record many varied people as 'British' based on the view at that time. I will be writing to Steering Group over next couple of days seeking clarity re. what definition we go with for these people. Whatever definition we use is imperfect. For example British Passport wont do because this would include people who we dont intend to include who held British Passports at that time. Born in Britain wont do because it excludes children born abroad but who we would think of as British. I think I tend to favour British meaning;

- born in Britain OR
- born of ONE or MORE parents who were born in Britain.

The only, as I see it, problematic group that this excludes is anyone born of to [sic] parents who were born in say Singapore but whose grandparents were born in Britain and the family had been there since the grandparents' (original emphasis).

48. A manuscript noting on this by a policy unit official on the following day observes: 'need to make the first hurdle that the claimant is a British subject. Then go on to place of birth. We probably need to extend criteria to place of grandparents' birth in view of the line taken on War Pensions for FE civilian internees and ABCIFER's expectations. Need to be cautious about those born in what were British colonies but if they didn't get a 1950s share then we would be on safer ground' (original emphasis).

49. On 20 February WPA wrote to the Cabinet Office group on the nationality criterion: 'We need to establish that the internee was 'British' at the time of their internment and consequently need a definition to apply. We

are mindful of the representations made by organisations such as ABCIFER who are keen to ensure that child internees are accommodated.... We would propose that for the purposes of this scheme the definition of 'Britishness' is defined as either being born in the British Isles or being born of one or more parents who were themselves born in the British Isles. This will accommodate the payment of a child internee who, although himself/herself was born outside Britain, is 'reasonably' classified as being British due to their parentage'.

50. This note attracted immediate emailed comment, confined within the policy unit, from a colleague in the following terms: 'I feel that the proposal ... to restrict the definition of 'British' to those who were themselves born in the UK or who had a parent who was born here, will lead WPA into many contentious rejection cases and incur much correspondence to Ministers from ABCIFER. It will rule out many members and officials of ABCIFER, many of whom are in positions of influence. Whilst I accept that these ex-gratia payments should not be represented as an extension of the War Pensions Scheme, I think it is relevant to consider what we are doing in relation to defining 'belonging to the UK' for 'war pensions for civilian internees' purposes. In that field we are on the point of recommending to Minister that the definition be extended to British subjects who, although not themselves born in the UK, had a parent or grandparent born here. That recommendation takes account of comments by Mr Bridge, the Vice-Chairman of ABCIFER that 'requiring that one parent was born in the UK will eliminate a considerable number of possible claimants. Stripping them of justice.... is the very factor that has occasioned the myriad of correspondence over the past 5 to 8 years''. As paragraph 23 notes, however, this was not necessarily Ron Bridge's position.

51. The Cabinet Office replied to the WPA's proposal on 21 February saying that 'there is clearly a need to come up with an operationally workable solution. But, equally, it is important that the definition of nationality is legally defensible and is within the tight parameters of the scheme.... I would be grateful if DSS, MoD and CO legal advisers could get their heads together and work through a number of possible options and determine the relative risks...You could then prepare a short paper for circulation to the Group'.

52. It was at that point that lawyers were specifically engaged on the definitional question. Their advice was brought forward to the Cabinet Office by the WPA in a note of 15 March, which sought a reply by the following day because 'we are under considerable pressure from ABCIFER to progress civilian claims'. The legal advisers' proposal was to base eligibility as to nationality on the British Nationality Act 1981, requiring a claimant to be born either in the UK or in a Commonwealth country or a parent born in the UK. The WPA and MoD were concerned at the inclusion of a Commonwealth country as an extension of the scheme beyond what was intended, and the MoD were also anxious that that could be construed as 'putting civilians in a preferential position to ex-servicemen with the possibility of the reopening of

issues such as the entitlement of Gurkhas to the ex-gratia payment'. The WPA feared pressure 'to extend War Pensions provisions recently agreed with ABCIFER for civilian internees.... I think an analogy should be drawn here between the War Pensions scheme and the ex-gratia arrangements and propose that the grandparent link also be included in the definition of Britishness for the latter scheme. Otherwise this would again be an inconsistency quickly seized on by ABCIFER'. On 21 March the Cabinet Office replied that 'subject to your legal adviser being content, we have no difficulty with the proposition...'

53. At this point in my account it is worth making some observations on what this debate, conducted largely within the WPA, reveals:

- first, the debate stems from the pleas from Blackpool for definition as the JAR was running out of utility as a source of evidence of eligibility (and both indirectly provides further evidence of the use to which the Register was initially put and underlines the problems flowing from absence of analysis of the basis of the 1950s scheme and its value for the implementation of the new one)
- second, there is a gradual approximation in thinking in relation to the two schemes (war pensions and ex-gratia) even in those quarters which had warned of the risks in doing so. But the criteria for both schemes did remain distinct – in particular war pensions still required a residence test or, as a WPA note of 26 March put it, 'a more physical tie of the claimant with the UK'. I am inclined to think this approximation was imposed mainly by the pressure to find a definitional answer or, as the same note terms it, an approach adopted on 'political, rather than ... policy-driven' grounds so as not to 'spoil a 'good news' story by angering many ex-pats through excluding them by imposing a 'residence test''
- third, the debate is exclusively about trying to find a definitional solution. There is nothing about seeking ways to retrench on the scheme for policy, financial or other reasons – indeed, quite the reverse. Ironically, a good deal of the thinking is directed to meeting what were believed to be ABCIFER's concerns: that the solutions advanced did not do so again undoubtedly reflects the absence of structured engagement (despite references to meetings with them)
- fourth, there continued to be imprecision in the use of terms about Britishness, eg confusing 'British Isles' with Britain and equating British with the UK (ie not the 1941 definition). Overall, these exchanges continue in places to show insufficient rigour in approach, particularly in the absence of a systematic analysis of 'British' until late in the process (and then with the birthlink as the outcome)
- last, the process continued to be the slave of urgency, including, with serious consequences, the decision to adopt the birthlink. The constructive reasons for speed remained, but necessary care was sacrificed to urgency.

54. Within three weeks of the adoption of the birthlink criterion, on 10 April and again on 4 May the WPA's then Acting Chief Executive wrote to the Cabinet Office group casting doubt on the birthlink criteria (and raising various other matters), much of the latter reflecting ABCIFER's paper of 18 April and the WPA meeting with them on 24 April. His own account in conversation with me was that he and others in the Agency were becoming concerned that, contrary to his and colleagues' expectation, the birthlink was not having the effect of extending the ambit of the scheme, and so of resolving the stockpiled cases, to the extent previously anticipated. They had come to the realisation that more generations of people of UK origins had lived in the Far East than had previously been appreciated. He had felt it his duty to draw this to wider attention as soon as possible in order to minimise embarrassment to Ministers and to increase the WPA's accuracy rates in terms of handling applications. As his notes had said, he feared a good news story being reversed. It seems to me that, although these notes did not offer a detailed policy prescription, nonetheless the Acting Chief Executive's reasons for raising storm warnings, described by others as a smoking gun, are unexceptionable. But here the confusion over roles and responsibilities raised its head: the Agency's own policy unit, in a manuscript note, thought the 10 April memorandum could open the scheme to Australian, New Zealand and South African internees whom they clearly regarded as outwith its scope (on the close link to the UK basis). The notes of 10 April and 4 May also caused some puzzlement, not to say exasperation, in the Cabinet Office as the same department that had proposed the birthlink in mid-March was seeking its replacement three weeks later. Nonetheless a meeting of the Cabinet Office group discussed the notes at a meeting on 18 May, recording the outcome on 21 May and rejecting the WPA's proposals as not meeting the requirement of a close link to the UK, as described already.

55. The question arises as to whether the consideration given to these notes by the Cabinet Office group at its meeting on 18 May was sufficiently thorough. My assessment is that by that stage the damage had already been done in that the necessary structured consultation and rigorous research of the 1950s scheme and of the notion of Britishness, which would pretty certainly already have pointed to problems with the birthlink, had not been undertaken, and so by May the group was not in a position to recognise the dangers pointed out in those notes.

56. The sixth strand relates to the clarity of respective roles and responsibilities both in and between Departments. This is much more than a point for bureaucratic anoraks: if, as a member of a team, I am not clear as to where my responsibilities begin and end, I am likely to get things wrong, or likely not to follow up points that I otherwise might, as they appear not to fall to me – and so they fall between everyone. There was unresolved uncertainty in this respect which in my judgement had a damaging effect on the scheme.

57. It is clear that the lead role in responding to pressure to recognise the suffering of Far East prisoners had indeed been a matter of dispute for some time

before the ex-gratia scheme, with the MoD agreeing to take on overall leadership in the absence of others, and that in late 2000 no Department wanted to take on the scheme. When specific steps were considered following the April 2000 meeting with the Royal British Legion, MoD were opposed to a change of policy on principle, as revealed in its letter of 30 June 2000 to No 10. They were also, I was told, reluctant to take on responsibility for the scheme in late October because they did not have budgetary cover and were concerned that assuming responsibility would bring financial liability with it. There is some evidence for that on the files; and it is entirely reasonable to show such reluctance until financial concerns of this kind are met, as they were.

58. The WPA, as articulated by their policy unit, were similarly reluctant to take it on lest it widen the scope of war pensions themselves, and had argued that the request for compensation should be considered 'in the wider context of ex-service issues and not as a disability related matter'.

59. The Cabinet Office note of 2 November 2000 to No 10 addressed the question of departmental responsibility in terms of a fundamental choice of body to make payments between tasking the WPA or establishing an independent trust fund, coming down in favour of the WPA (not least on grounds of speed). It went on to say that the MoD were co-ordinating a media plan for the announcement, while DSS would handle detailed follow-up questions on the administration of the scheme'.

60. Officials in both WPA and MoD offered specific advice to their Ministers on respective responsibilities before they responded to No 10. In the clearest exposition that I have seen MoD advised that 'after any announcement, MOD would take the lead as regards immediate follow-up, including requests for interviews by Ministers and letters to MPs, etc. DSS and FCO will support in respect of issues on which they have been advising, particularly in respect of non-Service groups.... It has been agreed that, if the announcement goes ahead, then as soon as the new ex-gratia scheme has been established, DSS will take over the HMG lead on this subject and we will fall back into a supporting role, concentrating on any issues that arise which relate specifically to former Service personnel'.

61. WPA advised their Ministers that officials had resisted taking the full lead as that would involve distinguishing between potential service groups, an area of no DSS/WPA expertise. The lead should fall to the MoD. But if the WPA were to administer the scheme, DSS/WPA should 'have the policy responsibility on the immediate issue. That would include policy on eligibility under the scheme, the level of evidence required, the claim form, any time limits, methods of payment, etc'. But clearly the then Social Security Secretary thought this was to take on too much: his memorandum of 3 November to the Prime Minister said 'I am content for the War Pensions Agency...to administer the payments subject to appropriate funding. Policy responsibility on this matter should continue to rest with MoD'. This did not in practice resolve the issue, however: on 20 November WPA officials wrote to the Social Security Secretary's Private Secretary that '... the position re who should now lead for the Government is ... far from clear'. The Private Secretary to a junior DSS Minister replied that, having consulted the Secretary of State's office, 'the steer from DSS Ministers is unchanged from that outlined in Alistair Darling's letter to the PM on 3/11/00 – ie that MoD retain the policy lead on

all aspects of the scheme except those relating to the administration of the payments by the WPA’.

62. The Cabinet Office group considered this issue at its meeting on 22 November, agreeing that ‘DSS should assume the lead in dealing with issues relating to the administration of the payment scheme (including detailed questions about eligibility), whilst MOD would continue to handle enquiries about wider policy issues (including on the overall scope of the scheme)’.

63. Unsurprisingly perhaps (for what did ‘the immediate issue’ mean in the WPA advice, and what did ‘detailed questions about eligibility’ as opposed to ‘the overall scope of the scheme’ mean in the Cabinet Office note?) that did not in practice settle the matter. In a further effort to do so, WPA wrote to the Cabinet Office on 24 November ‘to put on record my understanding on the division of responsibility between DSS and MoD on future handling issues. DSS will take the lead on all issues relating to the administration of the scheme.... MoD will answer questions on the policy itself’. As a statement of position which presumably aligned with the 22 November discussion, this received no reply from the Cabinet Office. WPA then wrote to MoD setting out its understanding of the position in similar terms so that both departments could decide on which would reply to the ‘mounting’ correspondence. There is no record of a reply.

64. In fact, the practice adopted was for WPA in Blackpool to identify the hard civilian cases, seeking advice from their policy unit in London, and it would as appropriate seek Cabinet Office clearance to proposed definitions, as notes previously quoted demonstrate; while the MoD consistently expressed the view, up until June 2001 when it took responsibility for the WPA and hence (for the first time) for policy on civilian eligibility, that that question was not for it. WPA seem to have accepted that and acted accordingly, making proposals on eligibility (including for the birthlink) to the Cabinet Office group, though a distinction was accepted between definition of eligibility and definitions of internment, again subject to agreement at the Cabinet Office group. But at no point was a ‘project manager’ recognised as such; some seem wrongly to have seen the Cabinet Office in that role, though that seems not to have been explicit and was not the way the Cabinet Office saw it.

65. If inter-departmental arrangements lacked precision, I found those for the development of policy within the WPA even harder to pin down. My reading of the files and conversations with policy unit officials led me to believe for quite a while that that unit was not part of the WPA but of the core DSS. The unit certainly seemed to regard itself in that way, eg notes invariably described officials as ‘DSS’ or ‘WPP’ (War Pensions Policy). Distance between London and Blackpool may have had something to do with that. But I discovered that the policy unit had actually been incorporated within the WPA in 1999. This seems not to have been wholly appreciated within the Agency as a whole. It may also explain several references in papers which do not ascribe to the Agency the full extent of its policy responsibility:

- the WPA note of its meeting with the Legion and ABCIFER on 15 November 2000 recorded that ‘although WPA did not own the policy, they would funnel all issues around eligibility and entitlement through the

cross-departmental group'. This did not acknowledge the Agency's responsibility for and practice of proposing policy

- a letter of 20 July 2001 from the Veterans Minister's office to Ron Bridge, just after the MoD had taken over responsibility for the Agency, says that 'decisions are indeed made by Government Departments, often based in London, with input from the Agency as appropriate. However, the War Pensions Agency has a role in the implementation of agreed policy and in explaining such policies...'. The factual position was more complex
- Alan Burnham's<sup>3</sup> witness statement of May 2002 describes the role of the Agency as 'operational: we did not decide upon the criteria, we simply applied the criteria to the claims received'.

66. The position was indeed more complex. Several departments were part of a Cabinet Office group set up to co-ordinate advice for relevant Ministers. Once Ministers collectively had set the parameters for the scheme, subsequent policy decisions were agreed by that group on behalf of and subject to Ministers collectively. But policy proposals came from the respective departments and remained the responsibility of those departments and their Ministers in the Cabinet. In the DSS case, the WPA advanced policy proposals for discussion in the Cabinet Office group and debated them there. But its role encompassed both operations and policy. Ron Bridge's frequent expressions of exasperation over policy responsibility are very readily understandable.

67. The final strand concerns the influence of finance on adoption of the birthlink criterion. Some critics of the scheme assert that before the birthlink the Agency had been meeting claims from those who were British at time of internment and that the birthlink was introduced to limit uptake and so save public expenditure. It is argued that, whereas the estimates of uptake by civilian internees supplied by ABCIFER proved remarkably accurate, demand from service personnel exceeded estimates, so creating pressures on the budget; in order to save money, therefore, the birthlink criterion was introduced to reduce the field of successful applicants.

68. I have to state categorically that I discovered no trace of evidence for this thesis, either in files or in discussion. Such references as there are to expenditure arose only in the context of planning for the scheme at the outset, as one would expect to find. There were plenty of expressions of concern lest the scheme should be widened out to include substantial new groups not originally envisaged, but these were not directed at civilian groups nor raised at the time of the adoption of the birthlink. Annotations in Cabinet Office files suggest that qualifying numbers were of interest from the point of view of checking that overall figures would not be breached, but not with a view to reducing them. As Tom McKane's witness statement of 5 June 2002 argues in effect, the financial dimension involved considerations at the macro-economic level about the opportunity cost of the scheme, and not about ways of saving money as asserted.

---

<sup>3</sup> See paragraph 12 of main report for explanation of naming this official and the limited interpretation to be put on that.

69. As noted in my observations in paragraph 53, the records neither show nor even suggest any such motivation in the minds of those advocating the birthlink. All officials I interviewed on this point confirmed that the birthlink had been seen as a way of removing a blockage to the payment of more cases, amounting to several hundred. The MoD's own estimates are that, to date, 60% of payments have been by reference to the JAR, 40% to the birthlink. The Government has throughout maintained that the birthlink criterion was introduced to make the scheme more generous by seeking to bring within its scope the stockpiled cases. There is evidence to support this: for example, Alan Burnham's note of 10 April 2001 to the Cabinet Office seeking reconsideration of the birthlink, says 'when [WPA policy unit official] made his submission [ie recommending adoption of the birthlink on 15 March] the expectation was that the proposed definition of eligibility would allow the bulk of outstanding cases to be paid'. This 'generosity' is of course measured from the start-point of a close link to the UK. On the other hand, if the start-point is all those interned and British at that time, as the Government's critics assert that it should be, then clearly it remains insufficient.

70. I also found very persuasive the fact that, as the JAR was becoming exhausted as a source of evidence of eligibility, as described already, WPA staff, far from seeking ways of cutting back, used considerable ingenuity in finding other ways of verifying eligibility. Effort went into increasing the numbers of qualifying cases, not reducing them.

71. Finally, I note that, when at the PASC hearing on 1 December 2005 a member asked the Ombudsman if she would say that it was certainly not any attempt to save money, she replied that 'I have seen no attempt at all to save money. I have not seen any evidence of that' (Q15).

72. There are a number of other issues which, if perhaps of lesser import, deserve comment:

- it seems that the WPA issued questionnaires to applicants seeking information to confirm a birthlink before it was formally adopted, in order to get ahead of the game and maintain the flow of rapid payments. This was certainly a pragmatic and in many ways commendable approach, though it is not clear if risks had been assessed
- once the birthlink was adopted, the WPA no longer took steps to verify that applicants were actually British at the time of internment. It was assumed that, if they met the birthlink criterion, they must be. The numbers involved have not been quantified because the evidence is not readily available. Again, this was a departure from the scheme, fundamentally out of line with the underlying requirement of a close link to the UK, and resulted in payments outwith the intention and announced (11 July 2001) terms of the scheme
- there was a three month gap between adoption of the birthlink criterion on 21 March and the issue of rejection letters on that criterion which started on 25 June, which cannot be wholly satisfactorily explained. There are several possible explanations, but neither the files nor discussions with those involved point to any one of them:

- a good deal of effort went into preparing and agreeing the terms of the rejection letters themselves in the March – June period, particularly in the WPA but also involving the Cabinet Office group. They were not in the event agreed until mid-June
- Ministers were not consulted about the adoption of the birthlink until 12 June when the MoD, having just taken over responsibility for the Agency, did so, with an announcement on 11 July. Again this itself is hard to explain, though unclarity over inter-departmental arrangements seems to have at least contributed, and officials did not see the adoption of the birthlink as a material change at the time. The general election of 2001 would also have delayed transaction of other than urgent business
- the Cabinet Office agreement of 21 March to the birthlink had made its adoption dependent on DSS legal adviser's clearance and WPA may have been awaiting that (though there is no record of it having been sought or given)
- the Acting Chief Executive recalled at interview with me discouraging early issue of the letters as he was not confident that the birthlink would remain in place.

In any event they did not issue until 25 June. This is the same date as that on which the new definition of 'belonging to the UK' began to be implemented, but again there is no record which explains why this was so. This three-month gap was unfair to claimants, as the Ombudsman has demonstrated, and should not have been allowed to arise

- there is evidence that not all meetings were minuted with sufficient detail to serve as a reliable record. This may reflect the speed of business at the time, or the meetings may have seemed to be of only immediate import to those involved. But misunderstandings arose from at least one of the WPA's meetings with ABCIFER arguably recorded with insufficient detail.

B: How subsequently the departments involved failed to identify that there had been inconsistencies, despite the need to explain the Government's position in Parliament, in the courts and to the Parliamentary Ombudsman

73. I turn now to the second limb of my terms of reference. This question is of a distinctly different character, as to an important degree it requires me to prove a negative. The fact is that there is no piece of paper at any stage in the process in which a dispassionate analysis of the different bases of the 1950s scheme and the ex-gratia scheme - residence and lineage respectively - was undertaken and the conclusions set aside after argumentation. I have therefore had to seek rather more circumstantial evidence.

74. In terms of the overall impact of inconsistent criteria (in addition to those referred to in paragraph 39), of the total of 3027 civilian claims met, 245 claimants who were given payments on the basis of having a JAR cannot on the evidence available be shown to have met the birthlink criterion (though some might), while one case would not have met that test; on the other hand some 13 claimants who would have met the JAR test were denied payments because they failed to meet the birthlink criterion.

75. I have already noted the absence of analysis of the basis of the 1950s scheme and its value to the implementation of the ex-gratia scheme. Unsurprisingly, therefore, I have discovered no evidence that, as the new scheme was being developed in 2000-01, anyone involved spotted the fact that the bases of the 1950s scheme and the birthlink criteria were essentially different and that therefore there was a risk that outcomes before and after introduction of the birthlink would also be different, although a couple of WPA officials believed that, perhaps in its operational units, there might have been a perception of the difference, but this was not reported upwards. There were a few occasions when, reading the notes in question with hindsight and my knowledge of the differences, these points might have been spotted:

- the first came in the WPA note of 20 February 2001 to the Cabinet Office group first advancing the birthlink concept, focusing on place of birth. The paragraph directly following that recommendation reads: 'We would not propose to add any further qualifying criteria such as returning to the UK. It is my understanding...that the intention is that a 'British' civilian interned, who following release decided to remain resident abroad, remains within the scope of the scheme'. Though it is a very fine point, the close conjunction in successive paragraphs of the notions of birthplace and residence might conceivably have triggered questions across the inter-departmental team, but it did not
- the second arose in a note of 25 May 2001 from the WPA to the Cabinet Office alone. This addresses questions from the Cabinet Office as to whether anyone paid under the 1950s scheme would now be in category 3 (neither applicant nor parent/grandparent born in the UK but applicant now a British citizen permanently resident in the UK), or category 4 (neither applicant nor parent/grandparent born in the UK and applicant is not currently resident in the UK), ie who would now fail the birthlink test, but who had been paid in the 1950s, and refers to dependants paid in the 1950s but not now eligible. Some such cases had been discussed at the Cabinet Office meeting on 18 May. This opportunity to spot the difference and to compare outcomes across both schemes was not taken
- the third was a note of 18 June 2001 from a WPA official to the internal WPA FEPOW Steering Committee which mentioned 'inappropriate payments', remarking that '...a few cases were paid at the start of February that today would fail the nationality test. I am aware of 3 and although I believe the figure could not be big, I am unable to say if these are the only 3 (this can only affect civilian claims)'. This was not systematically followed up
- perhaps most strikingly, a draft briefing note of mid-November 2001 prepared by MoD set out counter-arguments to the challenge of a change in criteria, saying 'the 1950s criteria ... excluded those interned as children. To include these former children now, many of whom were not born in the UK, the criteria of the 1950s, which required residential qualifications in the UK before internment, were not suitable. Rather the link to birth in the UK of a parent or grandparent was felt to be the clearest and fairest way of including those for whom the present scheme is intended'. This is a clear recognition of the difference in the bases of the 1950s and the ex-gratia schemes (and it is ironic that it should do so

in a section addressing the question of changed criteria). But the version issued to the Minister excised this section, and questions flowing from this recognition as to the risk of a differential outcome were not spotted.

76. The fact is that these fleeting opportunities to probe differences were not recognised, though whether because the distinction was too fine to be picked up in the pressurised circumstances of the business or for some other unknown reason there is no way of telling.

77. I have already observed that there was no road-testing of the birthlink criteria before their adoption in March 2001. Nor was there any testing of the impact of the criteria afterwards: the files shed no light on this – it seems not to have been considered in the WPA or elsewhere. Discussions with Agency staff involved at the time and those involved in the reviews of late 2005/early 2006 suggest no more than that the priority throughout remained on making payments as quickly as possible and broader issues such as a review of outturn were not considered because the focus was on that.

78. Nor did the normal monitoring arrangements within the Agency and reporting to the MoD pick up any point triggering review. I saw specific and regular reports to the MoD that monitored a particular aspect of the scheme (not relevant to the civilian component) which was of concern, but nothing focussing specifically on the impact of the birthlink. An MoD official concerned at the time recalled subsequently putting a good deal of faith in the Agency Chief Executive's witness statement of May 2002 in the ABCIFER judicial review, paragraph 11, as well as discussions prior to its drafting, in believing that no more than a few administrative errors had been made and that the birthlink had not had a differential impact. That paragraph reads:

'I understand that the Claimant also seeks to rely upon the fact that some civilian internees who were not born in the UK and who had no parents or grandparents who were born in the UK mistakenly received payments. It is true that a very few people in this situation were mistakenly paid £10,000. I do not believe it is at all surprising or unusual that a few payments were mistakenly made in the course of administering this scheme, particularly given the speed with which we sought to process claims. These payments were not made under eligibility criteria that were subsequently changed: they were simply made erroneously.'

79. The question arises, if the WPA knew that payments had been made erroneously, as to the basis for this knowledge and why that alone did not cause a fuller review to be put in hand. On the first, the Agency's knowledge seems largely to have been based on the note referred to in the third indent of paragraph 75. As noted there, that seems simply to have been lost sight of in the pressure of business: it certainly did not trigger a fuller review of the outworking of the scheme at that stage. Nor did other events, right up to and including the Ombudsman's report, the argument being essentially one of resources since staff would have had to be diverted from other tasks, including making ex-gratia payments, to examine several thousand claim files.

80. By 2002 of course the Government was embroiled in two judicial reviews, and more were to follow in later years as well as the Ombudsman's investigation and continued Parliamentary debates and questions. Surprisingly, none of this succeeded in triggering a review of the outcome of the scheme, and indeed I came across no evidence that the matter was raised either at the Cabinet Office meetings held to discuss the handling of judicial reviews or within the Veterans Agency (as the WPA had become in April 2002, having in June 2001 transferred from the DSS to the MoD) or within the MoD itself.

81. I note however that at a conference with counsel on 31 January 2005 on the Elias judicial review and the response to the Ombudsman's investigation, MoD officials reported that the MoD was aware of only about four cases where a person paid under the scheme would not qualify under the birthlink criterion (in itself an interesting indication of the MoD's state of knowledge at that point). Although not included in the action points to be followed up after the meeting, the note of the conference records that in further discussion counsel observed that 'we need to find out factually how many civilian claims have been paid out and how many of those didn't meet the birthlink criterion'. It is not completely clear whether this point was followed up with the VA, though whether it would have been sufficient on its own to overcome the resources argument likewise must remain uncertain. This is unfortunate: four years had elapsed since the adoption of the birthlink, but it would still have saved a good deal of angst had it triggered a review such as was undertaken later in 2005, as well as changing the course of important aspects of the Ombudsman's investigation.

82. The points made in paragraph 78ff suggest the possibility that links between the Agency and the MoD core were not as strong as they might have been, both in the informal sense as much as in terms of formal liaison and monitoring, despite the steps that the then Permanent Under-Secretary had personally taken to embrace the agency in the MoD on its transfer from DSS.

83. But if there was inadequate recognition of the different bases of the 1950s and new schemes and no review exposing the differential impact of the birthlink from internal impulses, why were questions not asked following Parliamentary probing, several judicial reviews and, in particular, the Ombudsman's inquiries? Again, there is no hard evidence, and what follows is largely inferential, albeit based on reading the files and discussions with those involved and on my own not insubstantial experience of government administration.

84. First, it seems clear to me that a defensive cast of mind developed fairly quickly. There had always been deep anxiety, reflected in the original report to Ministers on 2 November 2000, lest the departure from long-standing policy represented by the ex-gratia scheme could set a precedent to be exploited by other groups, notably members of the former Indian Army and prisoners of the Germans and Italians in the Second World War. There are many references in the files to this fear: for example, a note from the Cabinet Office to No 10 on 22 March 2002 offering advice on the handling of ABCIFER's judicial review and reflecting discussion in an official-level group comprising the MoD, WPA, FCO, Treasury, Cabinet Office and Home Office (and including legal advisers) recommended against an out-of-court settlement on the grounds that:

a. We could not ring fence any settlements to the 700 or so ABCIFER say they want brought into the scheme. It would not be possible to redefine the criteria so that it included only their members, and thus limit the potential liability. Any attempt to relax the criteria (assuming we could find a precise re-definition of British that would satisfy ABCIFER) could cost in the order of an extra £50m ... There would also be a risk that the nationals of India, Pakistan, Hong Kong, etc, who were treated as British subjects in 1945 and who fought against and were held as POW by the Japanese, could mount a successful legal challenge for inclusion in the scheme.

b. It might be possible to amend the criteria slightly so that civilian internees or their surviving spouses without the bloodline link to the UK at or before WWII but who are now resident in the UK would also qualify for payment. The numbers involved would be fewer than ... 5,000-7,000 ... , perhaps between 1,500 and 3,000. But such a change would not capture all of those on whose behalf ABCIFER are acting, many of whom live overseas. There would also be pressure from those in other groups (eg the old Indian Army, including Gurkhas) who are also now resident in the UK to be admitted to the scheme.

c. Any concession, whether full or partial, would encourage other aggrieved groups (Gurkhas and the rest of the old Indian Army, dependants, unmarried or divorced partners, White Russians) to pursue their cause, including mounting legal proceedings, in the knowledge that the government had shifted its position under pressure of a legal challenge. *There is a strong risk that any defence of such challenges would be considerably more difficult if the current case was conceded* (original emphasis).'

85. The question has been raised by both ABCIFER and the PASC report (its paragraph 46) as to whether this anxiety was justified, given that it mainly focussed on the risk of extension to other service rather than civilian groups (and non-British civilians were not generally interned, according to ABCIFER's account (which I do not dispute)). I have not seen any evidence that this specific historical point was considered. But in relation to a related and analogous but distinct matter much later the argument was advanced that, 'in law, it would be hard to treat civilian and military claimants differently where the only distinctions were in the latter's favour – namely that they joined the Imperial forces to fight for the British Empire and were detained in prisoner of war camps where the level of suffering and death was on average very significantly higher than in civilian internment camps'. (I note in parenthesis that ABCIFER dispute the comparison of death-rates, arguing that they were similar when compared on a like-for-like basis.) Others will doubtless judge, but for what it is worth these points combined, and taking account of the requirement of a close link to the UK underlying the Government's thinking about a unitary scheme covering service personnel as well as civilians, seem to me to be persuasive as justification of the anxiety in question.

86. Second on the point of why questions on the outcome of the scheme were not asked, I suggest that largely successful defence of the scheme in the courts and, as it seemed, Parliament may have bred both a defensive-mindedness and a degree of complacency. Had the defence of the scheme not been successful, deeper questions would have forced their way on to the agenda. And I suggest as

a general observation of public administration that, when a policy is assailed, there can be a quite natural tendency to devote effort, eventually exclusively, to the defence, particularly if there are believed to be serious downsides in failure, as in the risk of knock-on effect. But I also suggest that this is where there is a role for senior management to intervene. Apart from the involvement of the then PUS at the MoD in the Ombudsman case, I have seen no evidence of the intervention of MoD staff above Grade 5. In the initial stages of course, once the MoD had taken over the WPA, the policy had already been set and the business was essentially about execution, and so senior management might well have felt little need for active engagement. But I find this surprising for the later period in particular, for example at the time of the adjournment debate on 7 September 2004 when sufficient well-argued points were made to cause real doubt about aspects of the scheme; and also in light of the judicial reviews of the scheme which resulted in criticism even when they were successfully defended. Doubtless these officials were extremely busy on other matters and they may understandably have put confidence in successful outcomes of reviews and the apparently successful defence of the Government's position in Parliament. It remains a notable fact, nonetheless, that no-one seems to have stood back and asked the awkward questions ('why so many challenges ... any basis for them ... can we be sure...?' etc). That is part of the role of senior management: I have seen no evidence that it was done.

87. Third, if I am right about the defensive mindset, then it was well in place by the time exchanges took place with the Ombudsman and her office and doubtless coloured the approach to their inquiries. But at this point an important development occurred when, in response to MoD requests to her to release specific cases of applications which the Ombudsman believed showed the discriminatory impact of the birthlink criterion, she was unable to hand over the cases in question. This was because, entirely rightly, she felt obliged to comply with the request of the applicants that their cases should not be identified. The then PUS of the MoD gave a written undertaking on 22 June 2005 that, as there had been no question of seeking repayment from those paid in error, so now there would be no question of seeking recovery if further cases were discovered where payment should not have been made; but, as I understand it, this did not provide sufficient confidence to the claimants concerned to enable them to agree to identification of their cases. (This was unfortunate and undoubtedly tended to hobble the MoD, but it is not a point in which criticism of any of those concerned is implied.) The Ombudsman's office provided brief descriptions on an anonymised basis of some cases which the MoD and VA sought to identify. Unfortunately cases that were correctly identified and some that were misidentified did not show discriminatory impact, and this seems to have given both the Agency and the MoD false confidence that the Ombudsman's analysis was wide of the mark. It proved not to be, of course. This was an unfortunate combination of circumstances which probably had the effect of postponing the discovery of the inconsistency by several months, though of course an earlier review by the Agency, whether internally generated or at the instance of the MoD or Cabinet Office, would have resolved the matter sooner, to the benefit of disappointed and hurt applicants and avoidance of much difficulty for the Government.

88. PASC specifically asked whether Ministers knew of the inconsistencies in the criteria or their application to claims. It follows from this analysis under the

second limb of my terms of reference that Ministers did not know. In matters as subtle and complex as this it is for officials to do enough analysis to be in a position to inform Ministers. Ministers cannot normally be expected to spot these things themselves. To that extent in this regard the official system did not serve Ministers as well as it should.

89. It was not until very late 2005, in preparing for the PASC hearing on 1 December, that the inconsistencies were uncovered. This seems to have happened because officials in the MoD who had taken over responsibility for the scheme in the summer of 2005 decided to take a hard look at it through fresh eyes, and so identified the differences in the criteria for the 1950s scheme and the birthlink. In preparation for the PASC hearing Alan Burnham, on his own account to me, also decided to test the fundamental assumptions for himself, and in particular the criteria for the 1950s scheme and the birthlink. This aroused doubts, and so resources were directed to an urgent review of the kind that had earlier been judged to be too resource-intensive. This uncovered discrepancies in outcomes in terms of several hundred people who had Japanese Asset records but could not, on the evidence, be shown to have met the birthlink. This finding, which supported MoD's identification of the disparity in criteria, was communicated to the MoD on 28 November at a meeting of officials prior to briefing the then Minister for his appearance before PASC on 1 December 2005.

