House of Commons
Public Administration
Select Committee

A Debt of Honour

First Report of Session 2005–06

Report, together with formal minutes, oral and written evidence

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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Summary

On 18 January 2005 the Parliamentary Commissioner for Administration (the Ombudsman) sent a draft report, ‘A Debt of Honour’ to the Permanent Secretary of the Ministry of Defence (the MoD). The report dealt with the ex gratia scheme for British groups interned by the Japanese during the Second World War and, in particular, to civilian internees. They are, by definition, elderly, and their number grows smaller.

Professor Hayward, a British citizen who had been interned as a boy, had been refused payment on the ground that neither he, his parents or grandparents had been born in the United Kingdom. He complained to the Ombudsman through his MP, Austin Mitchell. The Ombudsman’s investigation found that the Government had introduced the scheme before it had worked out eligibility criteria; it had developed new criteria after the scheme had been introduced without establishing whether they were compatible with those used for earlier payments; and it could not demonstrate that the scheme had been administered correctly. The Ombudsman recommended that the Government should apologise to those affected, review the operation of the scheme, and, if the review showed it appropriate, reconsider the position of Professor Hayward and others in his position. Rather than accept these recommendations in full the MoD refused to conduct a review, or to reconsider.

It was only when we called the Minister for Veterans to give evidence that the MoD discovered that it had not used consistent criteria for granting awards, and belatedly began a review. The MoD still refuses to accept the recommendation that it should reconsider the cases of Professor Hayward and others in a similar position. The Minister has promised to return to the House in early February to make a statement. We hope that in that statement he will recognise that a debt of honour is owed to the British civilians interned by the Japanese, and announce that the rules on eligibility have been changed so that this debt can at last be paid.
1 Introduction

1. This Report deals with the compensation scheme for former civilian internees in the Far East. What the Government intended as a generous gesture has become a source of outrage. The Government’s actions have led to former internees feeling that their experience has been discounted, and to some people who have spent their adult lives working in and for the United Kingdom feeling that their Britishness has been questioned. Mr Don Touhig MP, the Minister for Veterans, has told us that he was not shutting his eyes to the distress, worry and concern this has caused and the sense of injustice felt by many “that they were not British enough to qualify and be recognised by their country for the suffering they went through”.1 We welcome this.

2. In preparing this Report, we have largely drawn on the Parliamentary Commissioner for Administration’s report on the ex gratia scheme.2 We also received material from Ron Bridge, Chairman of the Association of British Internees – Far East Region (ABCIFER), from John Halford of Bindman and Partners and from former internees both resident in the UK and elsewhere. The Ombudsman’s report did not rely on material supplied by Mr Bridge. Our Report draws on it occasionally, and where it does so this is clearly indicated. Our conclusions would be the same, even without this material. We took evidence from Ann Abraham, the Parliamentary Commissioner for Administration (hereafter referred to as the Ombudsman), and Mr Iain Ogilvie of the Parliamentary Commissioner’s Office; Professor Jack Hayward, the subject of the Ombudsman’s Report, Mr Ron Bridge and Mrs Ann Moxley, all former internees; and Mr Don Touhig MP, Parliamentary Under Secretary of State, Minister for Veterans and Mr Jonathan Iremonger, Director of the Veterans Policy Unit, at the Ministry of Defence. We are grateful to all our witnesses.
A Debt of Honour

The Ombudsman’s Report

3. On 12 July 2005 the Ombudsman published a report on ‘A Debt of Honour: the ex gratia scheme for British Groups interned by the Japanese during the Second World War. The report was presented to Parliament under section 10 (3) of the Parliamentary Commissioner Act 1967 which provides:

(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.

It is only the third time a Parliamentary Commissioner has used this power.³

4. Full details will be found in the Ombudsman’s report. In summary, the case arose from a complaint of maladministration from Professor Jack Hayward who, as a boy, had been a British civilian internee in the Far East during the Second World War. On 7 November 2000, the Government had announced the introduction of an ex gratia scheme for former Prisoners of War (PoWs) and civilian internees in the Far East. Although, in general, policy was not to offer compensation to those who had been imprisoned during hostilities, an exception was made “in recognition of the unique circumstances of their captivity”. As the Minister said:

if we look back at the histories, we come across a simple, stark fact that makes clear to everyone the enormity of what happened: of the 50,016 British service personnel who were reported captured by the Japanese, 12,433 died or were killed in captivity. In other words, conditions were so bad that one in four did not survive.⁴

5. The ex gratia scheme was to extend to “British civilians”. Professor Hayward and others duly made claims. What they did not and could not know was that at the time of the announcement the Government had still to work out the details of eligibility: the meaning of “British” was to become one of these.

6. As Mr Touhig said, “at the time of the conflict of course a great deal of the world, in quotes, was British, it was part of the Empire”.⁵ Many people held British passports even though their parents and grandparents had not been born in the United Kingdom. The Ombudsman’s report notes:

65. The circumstances of the interned British civilians also differed widely. Some had been born in the UK and had gone out to the Far East on colonial service or business with a view to retiring back in this country. Others belonged to old colonial families

³ Q 1
⁴ HC Deb, 7 November 2000, col. 159
⁵ Q 45
who had given generations of service to the British Empire overseas. Often, successive generations were born in British colonies, were educated in the UK, and later retired here. There were also those who were then British subjects by virtue of the fact that they had been born in a British colony, who had had no close link with the UK itself or who had never visited this country, but who had since become nationals of other countries. …

66. There was a change in the definition of British with the passing of the British Nationality Act 1948, and many former British internees at that time or thereafter became citizens of independent countries such as Australia, Canada and Pakistan.6

7. In the years immediately after the war, many former colonies became independent, and their citizens ceased to be “British”. A peace treaty was signed at San Francisco in 1951. The British Government used money from the sale of Japanese assets to pay compensation to some former PoWs and civilian internees. Compensation for civilians was restricted to those who had been normally resident in the UK before the war, had returned to take up residence in the UK, and who were over the age of 21.7 The compensation scheme did not require any “blood link” to the United Kingdom (such a blood link was not essential to British nationality until the passage of the British Nationality Act 1981). Some 8,500 civilians received payments under the scheme.

8. The 2000 scheme was intended both for PoWs and civilian internees. The former PoWs were eligible if they were:

- a surviving former member of HM Armed Forces who was held as a Japanese prisoner of war in the Far East during the Second World War;
- a surviving former service personnel who received payments under Article 16 of the 1951 Treaty of Peace with Japan under the auspices of the British Government. These were certain members of the then colonial forces, Indian Army and Burmese Armed Forces;
- a surviving former member of the Merchant Navy who was imprisoned by the Japanese in the Far East during the Second World War. For the purposes of this scheme, a member of the Merchant Navy is a person who has been employed, or engaged as, or for service as, a mariner in a British ship.8

9. In contrast, there was no reference to any qualification of the term “British civilian”. Payments could not be made until Social Security regulations had been put in place to ensure the payments did not affect entitlement to benefits, but claims were accepted and processed, and the first tranche of payments was made on 1 February 2001, the day the regulations were approved. The first payments to civilians were made to those who had benefited from the compensation scheme operated in the 1950s, or whose parents had so benefited.

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6 ‘A Debt of Honour’, paras 65-66
7 Ibid., para 68
8 Application form for the scheme, not printed.
10. Meanwhile, officials were trying to resolve how “British” should be defined for the purposes of the ex-gratia scheme. It appears that by late March 2001 officials agreed that only those with a parent or grandparent born in the United Kingdom would qualify. Former civilian internees whose claims were still being considered were sent a questionnaire asking details of the claimant’s parents and grandparents, including place of birth.

11. Initially the scheme was administered by the War Pensions Agency (WPA), which was part of the Department for Work and Pensions. On 8 June 2001, responsibility for the WPA passed to the Ministry of Defence (MoD), and it was renamed the Veterans Agency. On 12 June 2001, officials prepared a submission to Dr Lewis Moone MP, then the Parliamentary Under-Secretary of State for Defence, inviting him to note the definition of British used for the ex gratia scheme. After asking for further information, he approved it on 19 June 2001, and on 25 June 2001 the Veterans Agency wrote to a number of former civilian internees to reject their claims to compensation.

12. Professor Hayward’s complaint was referred to the Ombudsman by Austin Mitchell MP on 12 December 2001. The consideration of his complaint was delayed because the Association of British Internees Far Eastern Region (ABCIFER) challenged the legality of the MoD’s eligibility criterion for civilians through the courts.9 These proceedings were concluded in April 2003. Once they were concluded, the Ombudsman’s first task was to consider whether she was precluded from investigating by section 5(2)(b) of the Parliamentary Commissioner Act 1967, which provides that the Commissioner shall not investigate “any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law” unless she is “satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it”.10 We shall return to this later in the report.

13. The Ombudsman decided to investigate, and so informed the MoD in June 2003. No objections were raised. The Ombudsman’s investigations revealed that:

- despite the fact that successive Governments had been under pressure to introduce a compensation scheme for many years, and the Prime Minister had undertaken to look again at such a scheme on 10 April 2000, it was not until 25 October 2000 that the Prime Minister’s Office asked the Cabinet Office to convene a meeting of interested departments to provide advice to Ministers for a review which was to be brought to a conclusion by 8 November 2000;

- the precise details of eligibility were, as we have seen, worked out after the initial announcement, and indeed the initial payments, had been made;

- the announcement of the scheme, both in the House and in written material, failed to make it clear that some details remained to be worked out;

- the MoD was unable to demonstrate that the blood link criterion was compatible

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9 The Association of British Civilian Internees – Far East Region and the Secretary of State for Defence 2003 EWCA Civ C1/2002

10 Parliamentary Commissioner Act 1967 (1967 c13) s5(2), proviso
with earlier eligibility criteria for payment; indeed no one appears to have fully appreciated that those eligible for payment under the 1951 scheme did not necessarily have a blood link to the United Kingdom.

14. The Ombudsman found maladministration on four counts:

(i) the way in which the scheme was devised constituted maladministration in that it was done overly quickly and in such a manner as to lead to a lack of clarity about eligibility for payments under the scheme;

(ii) the way in which the scheme was announced constituted maladministration in that the Ministerial statement was so unclear and imprecise as to give rise to confusion and misunderstanding;

(iii) at the time when the blood link criterion was introduced, the failure to review the impact of that introduction to ensure that it did not lead to unequal treatment constituted maladministration; and

(iv) the failure to inform applicants that the criteria had been clarified when they were sent a questionnaire to establish their eligibility constituted maladministration.11

15. In addition, the Ombudsman was concerned that the MoD had been unable to provide evidence that the introduction of the blood link had not led to a change in eligibility, and that the scheme had not been reviewed, despite criticism from the courts, Parliament and elsewhere. The Ombudsman made four recommendations:

212. First, I consider that the MOD should review the operation of the ex gratia scheme…

213. Secondly, I consider that the MOD should fully reconsider the position of Professor Hayward and those in a similar position to him…

214. My third recommendation is that the MOD should apologise to Professor Hayward and to others in a similar position to him for the distress which the maladministration identified in this report has caused them…

215. Finally, I recommend that the MOD should consider whether they should express that regret tangibly.12

The MoD’s Response

16. The MoD responded to the Ombudsman’s report by accepting that the scheme had been announced before the eligibility criteria had been completely thought through, and that once the terms of the scheme had been clarified they should have been disclosed to those who were applying. It apologised to Professor Hayward and others in his position, and offered them £500 as an expression of regret. Although the £500 was felt by many of

11 ‘A Debt of Honour’, para 199
12 Ibid., p.31
the recipients to be insulting, and was described by the Ombudsman as “not a large sum of money for distress” the apologies were personally signed by the Minister and some recipients at least felt this recognised their former suffering.13

17. However, the response went on to challenge the Ombudsman’s decision to undertake an investigation into the blood link criterion, on the grounds that the matters investigated had been dealt with in legal proceedings, and Professor Hayward could have resorted to legal remedy.14 It rejected the recommendations to review the operation of the scheme and to reconsider the position of Professor Hayward and those in a similar position.

The Ombudsman and Judicial Review

18. We reject the MoD’s contention that the Ombudsman should not investigate complaints if Judicial Review is a possible remedy, and that she should not consider matters which have been subject to Judicial Review. The 1967 Act gives the Ombudsman power to:

   conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.15

19. Judicial Review is a relatively recent remedy. It requires considerable means to use it. As Professor Hayward said

   Why I went through the Ombudsman and not through the courts—which the Ministry of Defence go on about—is, happening to be a political scientist, I know that the Ombudsman has access to papers and people. She and her staff were able to get at some of the information which a court, I suspect, would not have done. Therefore when she, as she has done, reported to you and to the Department, she is putting you in a position to see how this mess was arrived at. There are smoking guns, and more than smoking guns—if I may put it like that. It seems to me that the result, therefore, is that the process of going through to look at maladministration gets at the injustice, in a curious way, that a court of law finds difficult to get at justice.16

20. In our view, the Ombudsman acted appropriately in investigating this case. The entire basis of the 1967 Parliamentary Commissioner for Administration Act is that it is possible for a measure to be legal, and yet to be maladministered. The fact that legality has been established through Judicial Review may be irrelevant to maladministration. There may even be circumstances where the Ombudsman feels it is appropriate to conduct an investigation while Judicial Review proceedings are taking place, so that she can subsequently report without delay. We would, in principle, support this.

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13 Qq 14, 80
14 ‘A Debt of Honour’, Annex, paras 10-24. See also Q 3
15 Parliamentary Commissioner Act, 1967, s5(2), proviso
16 Q 20
3 The Rejected Recommendations

Review of the Administration of the Scheme

21. The Ombudsman recommended a review of the administration of the scheme because she was concerned that the MoD could not demonstrate that the early applications were decided in accordance with the blood link criterion. She noted:

    I would expect a system designed in accordance with principles of good administration to be transparent, to produce consistent outcomes and not to be designed in such a way as to produce inconsistent outcomes. That this is the case should also be demonstrable.17

22. The MoD rejected that recommendation on the grounds that the first payments processed met criteria more stringent than the blood link criterion, and that the blood link criterion represented “a widening of the existing basis for payment”.18 The MoD’s response to the Ombudsman notes:

    You have included in your report statements made by the Chairman of ABCIFER on inconsistencies in payments made under the scheme of which apparently he gave you examples. We however have not had the opportunity to identify and comment on these cases, or on the other evidence which he apparently supplied to you. This puts me at a disadvantage in responding to your findings on this point, although insofar as we can guess which cases he may be referring to, we do not believe that they necessarily support your findings.19

23. In evidence, the Ombudsman told us that she had given the MoD examples of payments made to those who did not meet the birth link criterion. She had felt it appropriate to anonymise these examples, as those concerned feared they would have payment withdrawn, but the MoD would have been able to investigate if it wished to do so.20

24. The MoD told us that it was keen to investigate the cases, if they were put forward, and that “we thought, on the basis of what we know, that those were cases we understood which were not in breach of the birth link criteria, but the cases were not put forward, therefore we could not look at them”.21 But the Ombudsman had clearly stated that there was evidence of inconsistency; the onus was on the MoD to satisfy itself (and her) that she was wrong. We consider its assumption that it “understood” those cases were not in breach of the birth link criterion was both lazy and arrogant.

25. We are disturbed that the MoD refused to conduct a review of the administration of the scheme, even though the Ombudsman provided evidence of inconsistent decision making.
making and that the Department sought to avoid such a review on the grounds that it had not had the opportunity to identify and comment on such cases, when it was custodian of the files which contained them.

Our Inquiry

26. The MoD’s intransigence led to the Ombudsman’s finding that she had “found injustice caused by maladministration which the Government does not intend to remedy”.22 We invited the Ombudsman, Professor Hayward, Mrs Moxley, and Mr Bridge, and the Minister to appear on 1 December 2005.

27. On 29 November 2005, the beginning of the week of the evidence session, the Minister telephoned the Chairman of the Committee, suggesting that new matter had come to light, and in consequence, he would not be able to give full answers to all the questions that the Committee might wish to ask. The Chairman considered that the meeting should continue, and the Minister wrote to explain that:

while preparing evidence for the session, my officials have brought to my attention certain matters previously unknown to me, and which may be central to the issue under scrutiny. I am of the view that these matters are sufficiently important to require further investigation but because of the amount of documentation which will need to be examined, this cannot be completed before the session on Thursday.23

At that session, he told the Committee:

While preparing evidence for this session, a provisional analysis of the eligibility rules applied before and after the introduction of the birth link criteria has suggested that the two may not have been entirely consistent. If that is the case, it conflicts with my understanding of the situation that we have been discussing. As a result, I have set in train an urgent investigation. … I believe that this exercise can be completed over the coming two to three weeks, at least to the point of allowing us to give, with reasonable confidence, some initial conclusions. I would therefore expect a statement to be made to Parliament before Parliament rises for the Christmas recess.24

28. The statement was made on 12 December. The Minister confirmed that the introduction of the birth link criterion had meant that “some 240 claims that were paid in the first period which, on the evidence available when the claim was decided, could not be identified as meeting the birth link criterion” and that “there may be some claimants who would have qualified before the birth link criterion was introduced… but who were rejected because they applied after March 2001”.25

29. Subsequent events have shown the Ombudsman was right to recommend a review. The MoD should have accepted that recommendation at the outset.

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22 ‘A Debt of Honour’, para 8
23 Letter from Don Touhig MP to Tony Wright MP, Ev 26
24 Q 38
25 HC Deb, 12 December 2005, col. 1119-1120
The Scope of the Scheme

30. The MoD’s difficulties appear to have been caused by the failure to consider how the scheme should be applied to former civilian internees from the outset. It was clear that at least some ex PoWs would have their eligibility determined by whether they were compensated in 1951 (see paragraph 8 above); there is no such clarity about civilian internees.

31. In his statement on 12 December, Mr Touhig said:

The scheme was intended for those British civilian internees who had a close link to the United Kingdom at the time and for whom the UK might therefore be regarded as being responsible.26

The MoD’s response to the Ombudsman refers to the birth link criterion as “widening the scheme” and claims that the first criterion was to be whether internees were born in the UK, or, in the case of children, those whose parents were born here.27 The implication must be that the 1950s scheme was used as a first validation of eligibility because it conformed to these rules. We are puzzled by this claim, and can find no documentary evidence to support the suggestion that clear eligibility rules for civilians had been established at the outset, before being “widened” by the introduction of the birth link criterion. In essence, the Ombudsman’s report suggests that the reason the first claims paid were to those who had been compensated in the 1950s and their descendants was because such claims were easiest to process.28

32. Mr Bridge of ABCIFER told us:

A meeting was called on 15 November 2000 to discuss the detailed implementation of the scheme.

I asked what the Government meant by the term “British”. The answer was not immediately forthcoming but the meeting was told that an answer would be obtained. The DSS Policy Branch communicated with the then ABCIFER chairman ten days later that British meant “British” by the regulations in force at the time, and that it did not matter where they now lived or what their nationality now was.

A month later it became evident that HMG had little if any records of British Civilians who had been interned. The WPA advised that they were going to use the list of beneficiaries of those who had received the £48.10s.0d Japanese Assets payment in the 1950s as authority.29

In answer to a written question from Mr Peter Bradley MP, Dr Moonie said: “While there is no specific record of contact with the Association of British Civilian Internees Far East Region on 24 November 2000, the advice being given at that time was that to be eligible for the ex-gratia payment civilian claimants must have been British at the time of

26 Ibid., col. 1122
27 ‘A Debt of Honour’, Annex, paras 18-19
28 Ibid., para 96
29 DH 02, Ev 22
internment”.30

33. There is further documentary evidence to support the contention that the 1950s scheme was used for convenience rather than as a matter of principle. On 15 November the Chief Executive of the WPA wrote to Mr Bridge as follows:

I am very grateful for your offer of assistance and I welcome any help which would enable claims to be finalised as quickly as possible. We are keen to pursue all avenues to establish eligibility and we do not currently have the civilian lists prepared in some camps in 1944 which you mention. I would be grateful if we could arrange to have copies of any records you have which may help to establish eligibility.31

34. As the Ombudsman’s report notes, the paper submitted to Ministers referred to “surviving civilians who are UK nationals (my emphasis) and who were interned by the Japanese in the Far East during the Second World War”.32 The 1950s scheme could never have been the sole basis for payment to civilians, since Dr Moonie made it clear on 7 November that those who had been interned as children would be compensated, and the scheme applied only to those over 21, and those who had been habitually resident in the United Kingdom before the war.

35. There is, on the other hand, a wealth of evidence to suggest that the Government simply had not thought through the potential problems that would arise from the diverse origins of the civilian internees:

- when he announced the scheme to Parliament, Dr Moonie said, without qualification, those eligible would be “British civilians who were interned”;33
- while there is considerable qualification about the position of former PoWs, the application form simply notes that “you may be eligible for an ex gratia award if you are a surviving British civilian who was interned by the Japanese in the Far East during the Second World War”; it does not ask about place of birth;34
- as the Ombudsman’s Report notes, a meeting of officials on 22 November 2000 “decided that UK nationals should be defined as ‘those civilian internees who were British at the time of their incarceration, those who became British citizens only subsequently would not be eligible for payment’”.35 There was no reference to the 1950s scheme, or to any requirement for a “close link” with the UK;
- a minute of the meeting between officials and survivors’ associations of 15 November 2000, supplied by Mr Bridge, notes “nationality—what constitutes ‘British’ and what is the impact of any change in nationality since imprisonment” as one of a number of issues concerning entitlement raised: if officials were aware that eligibility was to be
determined by a “close link” as defined in the 1951 scheme it is surprising they did not make this clear, either at the meeting or when they later contacted the Chairman of ABCIFER.36

36. It is also clear that once the blood link criterion had been decided, the War Pensions Agency, which was responsible for administering the scheme, had doubts about its value. On 10 April 2001 Alan Burnham, the then Acting Chief Executive, wrote to the Cabinet Office. He noted:

… the expectation was that the proposed definition of eligibility would allow the bulk of outstanding cases to be paid. It now appears that if we apply the eligibility criteria we will be left with some 800 which do not qualify.

Not only will this result in a much larger number of rejections than expected but the individual circumstances of many of these cases will be hard to defend. Many of the individuals, now “fully naturalised British citizens” have lived in the UK for over 50 years and would be deemed by the general public to be wholly “British”. Most importantly for presentational purposes, they were interned solely because the Japanese deemed them to be British.

Despite previous concerns at expansion of the eligibility we are now firmly of the belief that the evidence of individual cases suggests that the present stance will be impossible to defend on grounds of fairness and logic. It does not seem that the rejection of these cases will be in keeping with the original intent and spirit of the scheme.37

We particularly note the warning that “It does not seem that the rejection of these cases will be in keeping with the original intent and spirit of the scheme”. Mr Burnham wrote to the Cabinet Office again on 4 May 2001, stating “The concerns I expressed [in the note of 10 April] are continually confirmed by the receipt of further information submitted in support of applications for the ex gratia payment”.38 The Minister told us that “this will figure in part of my better understanding in the work I have commissioned as to why, in this particular case, the matter was raised and no action taken”.39

37. There is ample evidence to support the Ombudsman’s finding of maladministration. If it had always been intended to make a payment only to those civilians with close links to the United Kingdom at the time of internment, regardless of their subsequent history, there appears to be no clear indication of it in any contemporary papers, and no Minister was asked to decide the matter until long after the first payment had been made.

38. In evidence, Mr Iremonger suggested that extending the criteria for civilian internees would necessarily mean extending it for former PoWs and “hundreds of
millions of pounds is at stake”.\footnote{Q 97. See also Qq 101-103} We do not see why there would be automatic correlation between the criteria for former PoWs and for former civilian internees. If the MoD contends that is so, we expect it to explain the case far more fully than it has either in its response to the Ombudsman or to us.

**Reconsideration of the Position of Professor Hayward**

39. In December the Minister told the House:

It is … too early to say what effect our findings might have on the scheme’s eligibility criteria. I can, however, again confirm that there is no question of seeking to recover payments already made to claimants who would not have met the birth-link criterion. I can also assure the House that no claimant will be disadvantaged if he or she would have qualified under the criteria based on the Japanese asset scheme but failed because the claim was considered under the birth-link criterion.\footnote{HC Deb., 12 December 2005, col. 1120}

40. This undertaking does not meet the case. Professor Hayward and others will still be excluded. The MoD’s response to the Ombudsman says:

22. … the scheme is not designed to recognise links or contributions to the UK made since the War; it is the link at the time of internment which counts and to include people because of a link now would be to change the basis of the scheme and destroy its coherence, which change could effect (sic) many more than a few hundred people.\footnote{‘A Debt of Honour’, Annex, para 22}

41. The link at the time of internment was simple: civilians were interned because they were British, regardless of the nature of their links with the United Kingdom. But by the time of the Peace Treaty in 1951 many former British subjects were citizens of other countries.

42. As Mrs Moxley, a former internee, told us:

… the British consul in Shanghai gave the Japanese the lists of people who were Britons. They were interned as enemy nationals. To turn round now and say, “Well, actually they weren’t really enemy nationals”, because something happened subsequently—I do not know what—that took their British nationality away—if it did—what the heck has that got to do with whether they should be reimbursed or not? I am lucky: I was reimbursed. I can show my grandparents’ birth certificates back to about 1500, because I happen to be interested in genealogy. Does that make me more valuable therefore as a Brit?\footnote{Q 21}

43. The Government’s refusal to acknowledge this has outraged those who returned here after the war, and, until the introduction of this unfortunate scheme, considered themselves (as they are) fully British. As Professor Hayward said:
I have felt anger and outrage at the central question that it seems to me has come up in this matter and which is of cardinal importance. It is the question of what it means to be British and what it means to have an identity as someone who is British. I happen to regard it as having inestimable value for me personally. People who apparently do not have that view have decided that they can discriminate between different categories of the British…. I do not want to go round, showing wounds and bruises. That, to me, is not the central question. The central question is why the British Government is repudiating and casting a slur on some of its fellow citizens who were at the time British; who are now British; who feel British; may not be biologically British. The Japanese, as has been repeated on a number of occasions in this affair, did not enquire of my family, myself, and others like me what our blood links were with the United Kingdom.44

It is clear that the Government has come to an eventual definition of “Britishness” which, rightly, causes grave offence to former internees, whether or not they received the ex gratia payment.
4 Conclusion

44. The Ombudsman made three further general recommendations:

- that ex gratia schemes should be devised in a way that ensures that all the relevant issues are considered before the scheme is announced or advertised;

- that changes to the eligibility criteria after a scheme has been announced should be publicised and explained to those who might be affected;

- that where a scheme has been subject to a large number of complaints or criticisms from Courts or Parliament, it should be reviewed.45

45. These might seem self evident: this case has shown they are not. Despite two Judicial Reviews and the Ombudsman’s investigation it apparently took our inquiry to bring the officials concerned together and reveal that the MoD had been mistaken. On 1 December, the Minister told us:

… this new information came to light on Monday, lunchtime-ish, as my officials were preparing papers to come in to brief me for this session, and it was having the whole team at a session and discussing what they were going to advise me and tell me that this apparent discrepancy was fully exposed.46

The Minister told the House that this failure should be the subject of a separate investigation, and that he had asked the Permanent Secretary to identify a retired senior official or other comparable official to lead it.47

46. We have already written to the Minister requesting that the investigation should deal with the following questions:

- What precisely was the information discovered in the course of preparation for the hearing on 1 December which made the MoD change its stance?

- Why is it only now becoming apparent to the MoD that the introduction of the blood link criterion led to inconsistencies in the scheme, when this was clear to ABCIFER and the Ombudsman years ago?

- Why was the MoD convinced that the scheme for civilian internees would affect that for former PoWs?

- Before November 2005, were Ministers ever given information which would have enabled them to identify the fact that the criteria for eligibility before March 2001 were not consistent with those applied thereafter?

- What is the documentary evidence for the contention that the initial criteria for eligibility were simply receipt of compensation under the earlier scheme, or that a

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45 ‘A Debt of Honour’, paras 223-2226
46 Q 39
47 HC Deb, 12 December 2005, col. 1119-1120
former internee was descended from someone who had received such compensation?

These questions must be fully addressed.

47. Mr Touhig made it clear to us, and to the House, that mistakes had been made because the scheme had been drawn up in haste. Understandably, he does not wish to repeat those errors. But the reasons for haste remain: those who were interned are elderly, and their numbers are rapidly diminishing. It is a source of regret, and shame, that the MoD received the Ombudsman’s report a year ago, on 18 January 2005, and did nothing until our hearing meant that it had to address the report properly. It has been forced into conducting the review the Ombudsman recommended; the MoD should now accept the recommendation to reconsider the position of Professor Hayward and others in a similar position, and should do so with the urgency and generosity of the scheme’s original intention.
Conclusions and recommendations

1. In our view, the Ombudsman acted appropriately in investigating this case. The entire basis of the 1967 Parliamentary Commissioner for Administration Act is that it is possible for a measure to be legal, and yet to be maladministered. The fact that legality has been established through Judicial Review may be irrelevant to maladministration. There may even be circumstances where the Ombudsman feels it is appropriate to conduct an investigation while Judicial Review proceedings are taking place, so that she can subsequently report without delay. We would, in principle, support this. (Paragraph 20)

2. We are disturbed that the MoD refused to conduct a review of the administration of the scheme, even though the Ombudsman provided evidence of inconsistent decision making and that the Department sought to avoid such a review on the grounds that it had not had the opportunity to identify and comment on such cases, when it was custodian of the files which contained them. (Paragraph 25)

3. Subsequent events have shown the Ombudsman was right to recommend a review. The MoD should have accepted that recommendation at the outset. (Paragraph 29)

4. There is ample evidence to support the Ombudsman’s finding of maladministration. If it had always been intended to make a payment only to those civilians with close links to the United Kingdom at the time of internment, regardless of their subsequent history, there appears to be no clear indication of it in any contemporary papers, and no Minister was asked to decide the matter until long after the first payment had been made. (Paragraph 37)

5. In evidence, Mr Iremonger suggested that extending the criteria for civilian internees would necessarily mean extending it for former PoWs and “hundreds of millions of pounds is at stake”. We do not see why there would be automatic correlation between the criteria for former PoWs and for former civilian internees. If the MoD contends that is so, we expect it to explain the case far more fully than it has either in its response to the Ombudsman or to us. (Paragraph 38)

6. Mr Touhig made it clear to us, and to the House, that mistakes had been made because the scheme had been drawn up in haste. Understandably, he does not wish to repeat those errors. But the reasons for haste remain: those who were interned are elderly, and their numbers are rapidly diminishing. It is a source of regret, and shame, that the MoD received the Ombudsman’s report a year ago, on 18 January 2005, and did nothing until our hearing meant that it had to address the report properly. It has been forced into conducting the review the Ombudsman recommended; the MoD should now accept the recommendation to reconsider the position of Professor Hayward and others in a similar position, and should do so with the urgency and generosity of the scheme’s original intention. (Paragraph 47)
Formal minutes

Thursday 12 January 2006

Members present:

Dr Tony Wright, in the Chair

David Heyes
Kelvin Hopkins
Julia Goldsworthy

Julie Morgan
Gordon Prentice

Draft Report [A debt of honour], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 47 read and agreed to.

Summary agreed to.

Resolved, that the Report be the First Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Ordered, that the following Papers be appended to the Report:

Minute from Alan Burnham, Acting Chief Executive, War Pensions Agency to Nick Gibbons, Cabinet Office, dated 10 April 2001;


Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Several papers were ordered to be reported to the House.

[Adjourned till Thursday 19 January at 9.45 a.m.]
Witnesses

Thursday 1 December

Ann Abraham, Parliamentary and Health Service Ombudsman, Ian Ogilvie, Investigation Manager, Parliamentary and Health Service Ombudsman

Professor Jack Hayward, Mr Ron Bridge, Chairman, Association of British Internees – Far East Region, Mrs Ann Moxley

Mr Don Touhig MP, Minister for Veterans, Mr Jonathan Iremonger, Director of the Veterans Policy Unit
# List of written evidence

1. Professor Jack Hayward (DH01)  
2. Mr Ron Bridge (DH 02)  
3. Parliamentary Commissioner for Administration (DH 03)  
4. Letter from Mrs Hils Hamson to the Chairman  
5. Letter from Mrs Ann Moxley to the Prime Minister  
6. Letter from Mr Don Touhig MP to the Chairman, Minister for Veterans  
7. Letter from Professor Jack Hayward (DH 04)  
8. Mr John Halford, Bindman and Partners (DH 05)  
9. Mr John Halford, Bindman and Partners (DH 06)  
10. Letter to Mr Ron Bridge from the War Pensions Agency dated 15 November 2000  
11. Letter to Mr Ron Bridge from the War Pensions Agency dated December 2000 

# List of unprinted written evidence

The following documents have been reported to the House, but they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Record Office, House of Lords, and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (telephone 020 7219 3074). Hours of inspection are from 9.30 a.m. to 5.00 p.m. on Monday to Fridays.

1. Note of a meeting held 15 November 2000 to discuss issues regarding the payment of the special ‘FEPOW’ gratuity  
2. Note of FEPOW Advisory Group Meeting held 15 January 2001  
3. Letter from Mr Jeremy Williams, Private Secretary to the Minister for Veterans, to the Clerk of the Committee dated 10 January 2006  
4. Letter from Dr Mark Erooga to the Chairman of the Committee dated 22 September 2005  
5. Letter from Mrs Rebecca Neufeld to the Chairman of the Committee dated 13 September 2005  
6. Letter from Mariam and Y J Bekhore to the Chairman of the Committee dated 30 October 2005
# Reports from the Public Administration Select Committee since 2005

**Session 2005–06**

| Special Report | The Attendance of the Prime Minister’s Strategy Adviser before the Public Administration Select Committee | HC 690 |
Appendix 1

Minute from Alan Burnham, Acting Chief Executive, War Pensions Agency to Nick Gibbons, Cabinet Office, dated 10 April 2001

EX-GRATIA PAYMENT TO CIVILIAN INTERNEES - ELIGIBILITY

Issue: Eligibility of civilian internees born outside of the UK

Timing: A response by Wednesday 11 April given increasing ABCIFER pressure and media interest.

Recommendation: That there is an urgent meeting to reconsider the eligibility criteria for ‘British’ civilian internees born outside of the UK

1. Following Sandy Adams submission to you dated 15 March we have been seeking to resolve outstanding claims from former civilian internees. We have issued over 1600 enquiries seeking further information to determine if the claimant has a parent/grandparent who was born in the UK.

2. When Sandy Adams made his submission the expectation was that the proposed definition of eligibility would allow the bulk of outstanding cases to be paid. It now appears that if we apply the agreed criteria we will still be left with up to 800 cases which do not qualify.

3. Not only will this result in a much larger number of rejections than expected but the individual circumstances of many of these cases will be very hard to defend. Many of the individuals involved, now ‘fully naturalised British citizens’, have lived in the UK for over 50 years and would be deemed by the general public to be wholly ‘British’. Most importantly, for presentational purposes, it appears that they were interned solely because the Japanese deemed them to be ‘British’.

4. We expect that rejection of these cases will be strongly opposed by ABCIFER and we have already been advised by solicitors acting on behalf of individual claimants that they will legally contest any rejection based upon an assertion that they are not ‘British’. One individual with a particularly compelling case (she has lived in the UK since 1947) has involved the Sun newspaper. They have contacted this Agency regarding the case and whilst accepting for the moment that the claim is still being processed they seem likely to run the story if it is rejected. I am now receiving an ever-increasing number of enquiries from MP’s who are pressing for a resolution of claims for constituents who fall into the disputed category.

5. Despite previous concerns at expansion of the eligibility we are now firmly of the belief that the evidence of individual cases suggests that the present stance will be impossible to defend on grounds of fairness and logic. It does not seem that rejection of these cases will be in keeping with the original intent and spirit of the scheme. I have a real concern that rejecting claims on the current ‘nationality’ criteria could very quickly put the whole scheme into prominence as a ‘bad news’ story.
6. The claims which have the most compelling case for payment are those where the individual subsequently moved to the UK and acquired full British citizenship. However, the combination of circumstances applying is infinitely variable and it may prove very difficult to identify a ‘cut-off’ point if we extend eligibility. Some people stayed in the far east, others emigrated to Commonwealth countries such as Australia and Canada.

7. Having seen some of the detail of individual cases I think there is a case for considering an extension of eligibility. This will need to be carefully considered to ensure that we do not ‘open the floodgates’ to significant numbers of claims from groups which the Government did not intend to benefit. However, if we maintain the current policy we need to look at the handling problems. We will face a large number of disgruntled individuals, many of whom suffered considerably at the hands of the Japanese, a fate they were subjected to fundamentally because their captors considered them to be ‘British’.

Proposal

9. I think there is a need for an urgent meeting of the inter-departmental steering group. We need to take stock of the possible consequences of the current policy and consider whether to issue rejection notices to those cases which fail the ‘nationality test’ or to extend eligibility.

10. Arrangements for the meeting can be made via Alan Mayers (FEPOW Operations Manager).
Appendix 2

Minute from Alan Burnham, Acting Chief Executive, War Pensions Agency, to Tom McKane, Cabinet Office, dated 4 May 2001

Issue: Civilian Internees—British Nationality

Timing: By 9th May

Action: To consider need for extension of criteria

1. My note to Nick Gibbons dated 10 April refers.

2. The concerns I expressed in that note are continually confirmed by the receipt of further information submitted in support of applications for the ex-gratia payment. We do not seem to have a sustainable definition of ‘British’ and I have seen a large number of cases where a rejection based upon our present position would draw an immediate and potentially difficult challenge both in legal and publicity terms.

3. I acknowledge that WPA has both a policy and Operational interest in this exercise but we are primarily the operational wing and I do not wish to be drawn into the sole position of creating policy. I say this particularly as we have little expertise in the issues in dispute, i.e. definition of nationality and historical context of Japanese internment. I think that any policy line must be considered, understood and supported by each of those Departments who have a stake in this with a clear awareness of the potential consequences of chosen options. My purpose, therefore, in this submission is primarily to alert ‘stakeholders’ to a growing problem, to point to alternatives and to put forward possible solutions. I think that decision needs to be taken - quickly - by the cross-Departmental group.

Current Position

4. The current nationality eligibility requirement for civilian internees is that they were born in the UK, or that either one of their parents or grandparents were born in the UK. The practical effect of this is to leave us with civilian cases falling into four major categories:

Cat. 1 Applicant/parent/grandparent born in the UK and evidence is available to confirm this.

Cat. 2 Applicant/parent/grandparent stated to have been born in the UK but no acceptable evidence is currently available to confirm this.

Cat. 3 Neither applicant nor parent/grandparent born in the UK but applicant is now a British citizen (which we assume is defined as holding/entitled to a British passport) and is ‘permanently’ resident in the UK.

Cat. 4 Neither applicant nor parent/grandparent born in the UK and applicant is not currently resident in the UK (some in this group may claim to hold/have held a British
5. It is currently not possible to provide any meaningful statistics about how many claims fall into each group as the majority of enquiries regarding place of birth remain outstanding. However the total of all categories remains around 1600. Civilian cases are not a primary cause of the increase in claims from original forecast levels.

6. Categories 1 and 2 are currently agreed as eligible for payment. Category 2 is merely a problem of administration and we are currently considering whether we can establish administrative links with the Records Office at Southport regarding the pro-active tracing of birth certification.

7. On present policy both categories 3 and 4 are currently ineligible for payment. However, as I set out in my previous note, the exclusion of category 3 could be extremely problematic and would present a distinct risk of legal challenge and bad publicity. There are people within this category who underwent considerable suffering and whom ‘the man in the street’ would consider to be wholly British. It may therefore be deemed appropriate to introduce a further criteria of eligibility that would allow payment to this group.

Wider Eligibility Criteria

8. The problem in establishing wider eligibility criteria is determining a clear set of criteria which would cover all circumstances. However, it seems that we might consider the following as being factors which weigh the argument in favour of making a payment:

- that the person was interned by the Japanese because they were considered by their captors at the time to be ‘British’ (this covers a wide variety of differing categories);
- that they have lived in the UK for a considerable time (just how long this might be is open to debate)
- that they hold/entitled to a British passport.

9. This would leave a group of people whose applications would be rejected on the basis that whilst they too were interned by the Japanese in exactly the same circumstances as para 8 above, they have not subsequently moved to live in the UK and do not currently hold ‘British citizenship’. Whilst it could be argued that there is less of a case for payment of these groups many within their ranks will feel that they should be paid solely because the reason they were interned by the Japanese was because they were ‘British’. We can also be certain that many of these will have personal tales of considerable suffering and privation at the hands of the Japanese.

10. It may be that cases within this group throw up special circumstances which might merit discretion being exercised in favour of payment.

White Russians

11. ABCIFER have raised with us the special circumstances which they feel apply to people of Russian origin who were employed by British Administration in China. These individuals were displaced by the 1917 revolution and ended up in the Far East as ‘stateless persons’. In the 1920’s the British Government deemed it necessary, particularly in China,
to have a cadre in the local British Administration and/or Colonial Police Forces that were not of oriental ethnic origin. Accordingly such former ‘Russians’ were employed and were able to apply for and were granted British Nationality after five years service. The Japanese considered that these people were British and were treated as enemy aliens and interned. Their children were deemed British.

12. It could be considered harsh to reject applications from these people who were people who were employed by the British Government and who were granted British citizenship. It may therefore be appropriate to include a further qualifying criteria that allows for payment of any person or their qualifying relatives because they were, prior to their internment, employed by or on behalf of the British Government.

Australia and New Zealand Announcement

13. You will be aware of the recent announcement by these Governments of their intention to make similar payments. Such announcements raise an issue

14. We have previously agreed that in the case of the Isle of Man we would seek to avoid duplicate payment (albeit that such cases have not yet been rejected pending clarification of arrangements between UK and IOM Governments regarding reimbursement and clarification that we can proceed with rejection would be helpful). Similarly duplicate payments with the Canadian scheme will be avoided on the basis of mutually exclusive qualification criteria. These schemes were however in place prior to the UK announcement on 7 November 2000.

15. MoD is currently seeking clarification of the scope of and arrangements for payment under both schemes. However should it arise that the schemes are not mutually exclusive and we have a claim from a person otherwise eligible under both schemes, the issue of the order of application will need to be addressed.

Rosary Hill

16. ABCIFER have expressed the view to us, informally, that payments should not be made to those people who were ‘interned’ at Rosary Hill in Hong Kong. Their view is based on the fact that this was a ‘refuge’ run by a religious order rather than the Japanese, and does not therefore ‘qualify’ as an internment camp. Rosary Hill was used to hold people who were unsuitable for normal internment camps e.g. suffering from contagious disease, mental instability. In some cases where other family members had been interned and all the assets of the family seized people elected to go to Rosary Hill although in reality they had little or no other option. ABCIFER’s view is that people resident in Rosary Hill did not suffer the same level of deprivation as at internment camps generally.

17. War Pensions Agency does not have the historical information to confirm or deny ABCIFER’s account. We do not have a set definition of just what constitutes ‘internment’ and have in no other cases sought to take into account the relative level of suffering as an eligibility factor. We have cases where some members of a family were in Rosary Hill and some in other internment camps. Rejection could thus be problematic.

18. Without further information we do not believe that we have a case for rejection and, on the basis that only about 30 applications are involved we would intend to make
payment unless you and other interested Departments disagree.

Summary

19. The issues on which views are now sought are:

- the possible extension of the definition of ‘British’ to cover those persons now resident in the UK.
- the possible extension of the definition of British to cover those persons employed by or on behalf of the British Government prior to internment.
- the impact of the recently announced Australian and New Zealand scheme.
- to confirm that we can proceed with ‘rejection’ letters to those people who received payment under the Isle of Man scheme.
- the position of people who were held in Rosary Hill, Hong Kong.

20. I would suggest that an urgent meeting of the inter-Departmental group would be the best vehicle to progress these issues. We really do need to come to an early conclusion as the pressure from various areas, most noticeable MPs, is increasing daily.

Copied to:

N Gibbons Cab Office
M Tonnison MoD
A Ward MoD
M Mitchell FCO
S Gallagher HMT
A Walker HMT
S Adams DSS
J Wareing WPA
A Mayers WPA
Oral evidence

Taken before the Public Administration Select Committee

on Thursday 1 December 2005

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes
Paul Flynn
David Heyes

Kelvin Hopkins
Mr Ian Liddell-Grainger
Julie Morgan

Witnesses: Ms Ann Abraham, the Parliamentary and Health Service Ombudsman, and Mr Iain Ogilvie, Investigation Manager, Parliamentary and Health Service Ombudsman, gave evidence.

Q1 Chairman: Could I welcome Ann Abraham and Iain Ogilvie from the Ombudsman’s Office? We are spending this morning looking at issues arising out of the Debt of Honour report, Ann, which you produced earlier this year around the ex gratia payments scheme for Japanese prisoners of war and the civilian internees. We want to spend a few minutes to start with, if we may, talking to you about this report that you have made and then we shall move on to talk to others about it. Could I kick off by noting the fact that this is. I think, only the third report in the history of your Office which you have brought under those particular provisions in your founding statute, in cases where there is an unremedied injustice that you have discovered? Would you like to tell us how serious you think it is, that it has made you bring a report of this kind under that provision?

Ms Abraham: I think the fact that it is only the third report that a Parliamentary Ombudsman has made to Parliament using powers under section 10(3) of the legislation. Whereas there are powers to make a variety of reports to Parliament, this is a specific power in relation to situations where the Ombudsman has found maladministration leading to injustice which has not been remedied. The two other cases were, I believe, in 1995 when Sir William Reid reported to Parliament on issues to do with the Channel Tunnel rail link and planning blight. Before that, you have to go back to 1978, when Sir Idwal Pugh reported on issues, again in Kent, to do with a bypass scheme and compensation payments under the Land Compensation Act. So it is a rarely used power and I deduce from that that it is a rare situation.

Q2 Chairman: Do you think that over the years there has been a falling-off in the way that governments have seen your recommendations? I am thinking back to the 1980s, to the Barlow Clowes case where, although you did not report under this particular provision, the fact was that the government of the day did not accept the rationale on which the Ombudsman had come to the view, but nevertheless said, “We shall pay up”—I think that it was about £150 million—“... out of respect for the Ombudsman’s Office”. We have reached a point now where we are talking about a much smaller sum—it may be as small as £10 million—and you have produced this compelling report. Is there something shocking about a government that says, despite that, “We don’t have sufficient respect for the Ombudsman’s Office to do the decent thing”?

Ms Abraham: I suppose that I see it slightly differently, and maybe that is an optimistic tendency of mine. I do not see in this a determined attempt by government to resist the Ombudsman or to show disrespect for the Office. I would say in all seriousness that in all the work we do we see huge respect for the Office across government and in Parliament. I think that this situation is extraordinary. I do not entirely understand it, and I have talked directly with the now-retired permanent secretary about it. I suppose in some respects I almost feel that it is possible that the Government does not understand the seriousness of it either, or maybe they now understand the seriousness of it; but, at the time when we were having our discussions with the Department from February onwards—there are busy times, there are lots of things on people’s desks—I do not quite understand why we have got into this situation over something that seems to me to have no repercussions beyond the individual issue, where the sums involved obviously are large but they are not extraordinarily large. So I still find myself not fully understanding the Government’s position—but the Committee may well want to ask questions on it later.

Q3 Chairman: Let us just go to the MoD’s response to your report. What they were saying was, “We accept what you say about the way in which the scheme was introduced”—problems with that—but then they go on to say, in effect, “but you have no right to go on to say that there are problems with the scheme itself. This is outside your remit. You should never have gone there”. You, in response, try to make an argument about the difference between what is lawful and what is maladministrative. This is a rather important point for your whole work. Do you want to say something about that?

Ms Abraham: Indeed I do, and I deal with this extensively in paragraph 16 onwards in my report. I will not read them to you, but I would refer the
Committee to them. I think that the MoD have simply got it wrong in relation to the "vires" point. Obviously I looked at it very carefully and reflected on what they had to say, but I think that they simply got it wrong. The suggestion seems to be—and this is where it is quite confusing—they say that the first part of the report and the first two recommendations are about maladministration, and therefore there is no legal remedy for those complaints; and it is okay for me to be in, in relation to the introduction and the announcement of the scheme but, when it comes to the operation of the scheme, there is the possibility there of a legal remedy by way of judicial review and therefore I cannot become involved; I cannot do an investigation. That is not at all the legislation as I understand it. First of all, I have discretion to decide whether it is reasonable for the complainant to exercise the alternative legal remedy. What the Government seems to be saying is, “If this is judicially reviewable, you can’t go to the Ombudsman”. That is not what the law says.

Q4 Chairman: Have you taken this up with the Cabinet Office?
Ms Abraham: Not specifically on the point.

Q5 Chairman: This goes to the heart of how you operate, does it not? If this is the proposition being advanced by government now—that you cannot operate in those circumstances, and that cuts across everything we thought your Office was about—surely you should be urgently seeking some clarification about this?

Ms Abraham: I suppose I am so confident that they have got it wrong, and I suppose if the Government really think that I have got this wrong they have the opportunity to challenge me by way of judicial review—but that is not where any of us want to be, I think. I do find it very difficult to understand the suggestion—when all of the enthusiasm and support is for using the courts as a last resort, alternative dispute resolution, and choice for citizens in relation to the way in which they seek remedies—that, because of the possibility of taking a judicial review, the Ombudsman cannot be involved. The other point, and this is very technical stuff, is about whether the fact that there were court proceedings brought—not by Professor Hayward and not on the same point, certainly not a complaint of maladministration—that somehow excludes me. The point made in the report is that there is maladministration short of unlawfulness, and legality and maladministration are not the same thing. Just to give you a quote from the European Ombudsman, who has been visiting us this week, he has this lovely phrase: “There is life beyond legality, and there is space which is maladministration”. We have not for a moment sought to determine the lawfulness of this scheme. I know that is not my job.

Q6 Mr Liddell-Grainger: You said earlier that you were not entirely sure that the Government understood some of this. Can I first ask you what you meant by that? Secondly—let us be crude about this—are the Government going on as long as they can so that as many people will die before they have to pay out the money?
Ms Abraham: I do not believe so.

Q7 Mr Liddell-Grainger: You think it is just that the Government has decided that there is a line in the sand, or is it as naı\-
ve as that they do not understand it?
Ms Abraham: We are talking about the Government here. The MoD’s response was the Government’s response and was said to be so. I therefore have to take it as that. In the course of dialogue with a number of individual government departments on issues around the interpretation of the legislation, maladministration, application of alternative legal remedies, I have found myself over the last couple of years in some quite peculiar discussions, usually with lawyers, around those interpretations. It has occurred to me—and in fact I have talked to Gus O’Donnell about this recently—that my Office could usefully run some sessions for government lawyers on our understanding of the legislation. To be fair to people, they do not come to these issues very often. Quite often, they are grappling with particular circumstances, a piece of legislation that they are not hugely familiar with which we are familiar with and we work with every day of the week. So I think maybe there is work for us to do in helping government at least to understand our interpretation of the legislation. That does not mean that they have to agree with it, but at least they could understand how we seek to apply it.

Q8 Mr Liddell-Grainger: There are column inches about this, going back over quite a lot of years. The Government cannot have known what is going on. Somebody has made a conscious decision that they are not happy with what is going on. It is at Cabinet level; it is at some level. There are quotes in here from Lewis Moone who was Minister for Veterans’ Affairs; there are quotes here from the Member for Hendon. This has gone on for a long time. I am sorry, I do not believe for one minute that the Government are that naïve.
Ms Abraham: I did not say they were naïve.

Q9 Mr Liddell-Grainger: You have implied that they do not know what they are doing, or the lawyers do not know what they are doing.
Ms Abraham: I said that I think they have got it wrong. I think that their interpretation of the law is wrong. I have considered the response from the Government, which is in full in the back of the report, and I dealt with it in my report in paragraph 16 onward, and indeed in various other places in the report. So I have considered very carefully what was said and I have said in the report that I am not persuaded by those arguments.

Q10 Mr Burrows: Do you think that there is proper respect from the Government for the Office of the Parliamentary Commissioner?
Ms Abraham: Most of the time.

Q11 Mr Burrowes: In relation to the statement in July, which was in effect the definitive response from the Government to your detailed report, it was a very opaque, short and indeed, perhaps one would say, terse statement. Does that show proper respect for the Office, on such an exceptional course of action that you followed, reaching what are quite exceptional recommendations?

Ms Abraham: The simple answer to that question has to be no, it does not. However, I would say that the very fact that we are here, for the third time in the Office’s nearly 40-year history, having this discussion about a government’s refusal to accept the findings and the recommendations, is extraordinary. It does concern me. I think I said, when I was before the Committee in October, that if this becomes a frequent occurrence then I clearly will be very concerned. It is exceptional, and that is why I reported to Parliament; that is why I am very pleased that the Committee is here this morning, asking questions about these issues; and I will be as interested as the Committee to hear from the Government and to understand their reasons.

Q12 Mr Burrowes: Obviously this issue has gone on for some time. We are not talking about new issues. Trying to look at it from the Government’s point of view and whether they have any avenue for being able to avoid answering the questions, looking in particular at the recommendations in your report, you say, ”The Government has also not been able to provide me with evidence to assure me now that applications from people in the same situation for the purposes of the scheme’s eligibility criteria were not decided differently”. Throughout your compiling of the report, were the Government fully co-operative in providing all the necessary evidence that you requested?

Ms Abraham: There was a huge amount of evidence, and I think that we got everything we asked for. I am always reluctant to see any kind of deliberate lack of co-operation or any kind of inappropriate behaviour in departments. I honestly do not think that there was any attempt to withhold information from us. It is the nature of our investigations that sometimes we will go back and ask for supplementary information that has not come in the first bundle, and there sometimes will be genuine reasons why things were not included. So I am not concerned about lack of co-operation in relation to this report. The area for me that remains a fundamental difference between my Office and the Ministry of Defence is that we asked them to demonstrate to us that, when the blood link criterion was introduced after the scheme had been announced and claims had been made, the introduction of the new criterion some months into the scheme had been considered in terms of whether it would cause unfairness or inconsistency in its application. We said, “If you were going to do that some months in, good administration says that you should be able to show that you considered the point and you could demonstrate there was no inconsistency or unfairness arising from its introduction”. They could not show us that, and have not been able to show us that.

Q13 Mr Burrowes: In relation to the issue about whether there should be a proper review of the scheme, do you think the Government response that there is ongoing litigation or other reasons are a sufficient reason for them not to follow that recommendation? The other issue is that obviously the Government has responded in terms of giving a tangible effect to their apology by the £500 payment. Do you think that was enough?

Ms Abraham: There are two points there. Could you repeat the first one again, please?

Q14 Mr Burrowes: It was in relation to the Government not following through the recommendation for a review of the scheme.

Ms Abraham: On the point about whether the very separate issue of the litigation has any effect here, I do not believe that that makes any difference. I am very clear, and the report goes into great length, as to why we consider that these issues were separate from any litigation going on in another place. In terms of the amount, I said in the report that there should be an apology and that recommendation for some time. We are not talking about new issues. ... about the severity, the intensity of the distress, not decided di

Q15 Paul Flynn: Could we just knock on the head this idea that the Government are behaving out of financial reasons; that they are waiting for the recipients to die? Could we just put in context the amount of money involved? Many of us would find it a very small amount of money, considering the terrible suffering of the prisoners, in terms of what compensation is paid today. Can we say that the amount of money, to the Department and to the Government, is microscopic; that it is protozoan in dimensions? Whatever the reasons behind what appears to be the extraordinary behaviour of the Ministry of Defence—it may be hubris, it may be someone just covering up over a bad estimate and so on—would you say that it is certainly not any attempt to save money?

Ms Abraham: I have seen no attempt at all to save money. I have not seen any evidence of that.

Q16 Chairman: I have just one final, factual question. Reading the material, it is pretty clear that there was reliance being put on the information
supplied by Mr Bridge of the Association of British Internees, Far East Region—ABCIFER—in terms of processing claims. From the work that you have done, have you been able to form a judgment as to how reliable the information that was being supplied was?

**Ms Abraham:** I have no suggestion that it was anything other than reliable, but what I hope the report makes clear is that my investigator spoke to Mr Bridge, who was extremely helpful in giving us background information and context, and explained about the dialogue he had had with government over a period of time on these issues. In relation to the cases of people who had had their claims accepted—who, once the criterion had been introduced, probably would not have been eligible—there was some information that was provided to us; but, as you can imagine, those individuals were very concerned that, if they came forward on the record, they might have their £10,000 taken away. The report makes very clear that we did not rely on evidence provided by Mr Bridge in relation to the findings of maladministration. I come back to my point that we asked the Ministry to demonstrate to us that they had considered the effects of this criterion when it was introduced some months into the scheme, and they were unable to do that.

**Q17 Chairman:** Just as we end this bit of the session, there is a smoking gun in all this, is there not? It is this memorandum from Mr Burnham, who was then the Acting Chief Executive of the War Pensions Agency, as it was described at that time. It is this memorandum of 10 April 2001, where he writes amongst other things, “Despite previous concerns at expansion of the eligibility, we are now firmly of the belief that the evidence of individual cases suggests that the present stance will be impossible to defend on grounds of fairness and logic. It does not seem that rejection of these cases will be in keeping with the original intent and spirit of the scheme”.

**Ms Abraham:** It looks like a smoking gun to me.

**Q18 Chairman:** I wonder if that is why we were told yesterday that Mr Burnham was not able to attend this morning after all.

**Ms Abraham:** I cannot comment on that.

**Chairman:** Thank you very much indeed.

**Ms Ann Abraham,** the Parliamentary and Health Service Ombudsman, in attendance.

**Witnesses:** **Professor Jack Hayward,** Mr Ron Bridge, **Chairman,** Association of British Internees, Far East Region, and **Mrs Ann Moxley** gave evidence.

**Q19 Chairman:** Could I welcome you very much, Professor Hayward. You were the subject of the Ombudsman investigation, so we are particularly glad that you have been able to join us. Mr Bridge, you chair the Association. We are very glad to have you and also Ann Moxley, a former internee. We are very glad that you are able to join us. The Committee thought that it would be extremely helpful if we had a little time with you before we saw the Minister, because we wanted to get your feelings about this. Could I perhaps ask Professor Hayward first? Could I start, if it is not going to be too upsetting, by going back even further and asking, just very briefly, about the experience which has triggered the whole issue?

**Professor Hayward:** I was a very young boy at the time, in my very early teens. Since then, I have put that experience pretty firmly behind me. I did not dwell on it. I do not think that it has marked me for life, though it may have given my education a slightly peculiar twist, in that obviously I did not have a normal schooling in the camp. Some of the words that are being used in this whole affair have, I must say, somewhat surprised me. The word “distress” keeps cropping up. I have not felt particular distress. I have felt anger and outrage at the central question that it seems to me has come up in this matter and which is of cardinal importance. It is the question of what it means to be British and what it means to have an identity as someone who is British. I happen to regard it as having inestimable value for me personally. People who apparently do not have that view have decided that they can discriminate between different categories of the British. Irrespective of the fact that I spent some years in the camp, therefore, it seems to me that there is a wider question. I do not want to go round, showing wounds and bruises. That, to me, is not the central question. The central question is why the British Government is repudiating and casting a slur on its fellow citizens who were at the time British; who are now British; who feel British; may not be biologically British. The Japanese, as has been repeated on a number of occasions in this affair, did not enquire of my family, myself, and others like me what our blood links were with the United Kingdom. Perhaps it was just as well that we were not in the hands of the Nazi Germans, because then they might have been interested in blood links.

Q20 Chairman: And, when they come up with this wretched £500 so-called “apology” payment, you have told them what to do with it, have you not?
**Professor Hayward:** I told them even before. Why I went through the Ombudsman and not through the courts—which the Ministry of Defence go on about—is, happening to be a political scientist, I know that the Ombudsman has access to papers and people. She and her staff were able to get at some of the information which a court, I suspect, would not have done. Therefore when she, as she has done, reported to you and to the Department, she is putting you in a position to see how this mess was arrived at. There are smoking guns, and more than smoking guns—if I may put it like that. It seems to me that the result, therefore, is that the process of going through the Ombudsman gets at the injustice, in a curious way, that a court of law finds difficult to get at justice.

**Q21 Chairman:** Thank you very much for that. Could I ask Ann Moxley to give us your perspective on this?

**Mrs Moxley:** Yes. I totally agree with what Professor Hayward has said. In fact, he has pretty well said what I was going to say. If I may, I would just like to amplify a bit on the question of why. My mother was a nurse. She had a number of friends who were nurses and they were working in Hong Kong at the time. We were in Shanghai, but they were in Hong Kong. When the Japanese came in, they threw the nurses on top of their patients, raped them, bayoneted them and the patients in their bed, and chopped them up; and there were body parts everywhere, I am told. I have just heard recently—I do not know whether any of you heard—a programme called *The Reunion* with Sue McGregor—one of those people explained that she had been a child who had been picked up. Her father and brothers had been taken off, but her mother and she, and possibly a couple of sisters, were taken into a camp. The only place they could put them to bed was in those wards where this had happened. I do not know whether the bodies were still there or not, but the floor was covered in blood because she, as a child, could not move her legs. It was sticky, and that is all she remembers about that. I do not know whether all those children’s great-grandmothers had had the wit to give birth in Britain. It seems to me to be abjectly nothing to do with where their grandparents were born. They were given British nationality. In fact, the British consul in Shanghai gave the Japanese the lists of people who were Britons. They were interned as enemy nationals. To turn round now and say, “Well, actually they weren’t really enemy nationals”, because something happened subsequently—I do not know what—that took their British nationality away—if it did—what the heck has that got to do with whether they should be reimbursed or not? I am lucky. I was reimbursed. I can show my grandparents’ birth certificates back to about 1500, because I happen to be interested in genealogy. Does that make me more valuable therefore as a Brit? Should I have had five times as much as them? It is a nonsense. It is totally irrelevant. If they were there, they should be paid the same as me, and the same as everybody else. I think that it is quite disgraceful. I do not think that it is understood or was understood in government, because I went to an AGM of the ABCIFER some years ago now, where Kit McMahon—and he was in at the time when John Major was Prime Minister—was trying to sell us a scheme the Japanese were apparently wanting to put forward, introducing bursaries and educational visits—a pro-Japanese, pro-British kind of liaison. He was voted out 100 per cent. There was not a single person who did not vote against him on that occasion. We all thought that it was a matter of principle and should go ahead as a matter of principle that we were all claiming together. That was five or six years ago—I am not quite sure how long ago it was. Ron could tell us, I am sure. Just after the meeting he turned to me and said, “You’re all fools. You’ll never get the money, and you’re going to waste an awful lot of time and money”. I said, “I don’t think this is about money, do you? It’s about the principle”. We were all willing to spend our money then to try and get that principle established, and I am very glad that we have. I hate the idea of the present government or the MoD, or whoever is responsible, actually waterering it down, because it seems to be quite wrong. We should be concentrating on who was there and making sure they are being paid, and they should be paid the same as everybody else. I feel very strongly about that, and so do a lot of other people I know.

**Q22 Chairman:** Thank you very much for that. Certainly from our experience some of the strongest representations have come from those who have had the payment, but who are incensed that people with whom they were interned have not had it.

**Mrs Moxley:** There is an awful lot of feeling about that, there really is. I did not realise until very recently that people I knew, who live in this country, in fact had not been paid. I am absolutely astounded that they have not.

**Q23 Chairman:** Is not Professor Hayward’s point the one that you are making and others make: that it is nothing to do with the blessed money? It is to do with the idea that there are two classes of Britishness?

**Mrs Moxley:** Absolutely. That is the essential. If you applied it to the country now and said that everybody who did not have a grandparent born here was not entitled to the Health Service, or education, you would not stay in office very long, any of you! It is just not right, and should not be muddled. There should be no irrelevant rules at all; that criteria for the settlement should be proscribed by the treaty that was abandoned. I think that was absolutely disgraceful, and I would personally like to sue the person who made that decision—but I suppose that is beyond it. However, Ron Bridge has a huge amount of information and we should use it.

**Q24 Chairman:** Could I move quickly to Mr Bridge and say this? One of the issues that arises is how many people. Is it possible to say with any certainty how many people have been affected?

**Mr Bridge:** When the announcement was made, the only information that the Government had of the numbers was an estimate that I had given them,
because I had the list of three camps with the ages. I took that to a firm of actuaries and persuaded them to do it for free, and to tell me how many of those people would still be alive. Applying that to the total number that I knew had been in the camps, they came up with the figure of 3,000 maximum that should be alive now. As far as the total number in the camps is concerned, there are various documents in the National Archives at Kew. They vary from 15,012, which was the number of civilians the Japanese Government declared they had in custody to the surrender documents on September 3, 1945, to a figure of 16,586, which the Colonial Office had come out with as the number of civilians held in January 1945—the discrepancy there was probably because the Colonial Office were not aware of deaths—and a figure of some post-war studies that were done in the 1950s, which suggested that there could be as many as 20,000. So I based all my calculations on the highest figure. If people should wonder why there is this discrepancy, it can be pretty well explained in that the members of the Volunteer Forces in the Far East, who had been recruited by the Colonial Office, were considered at the end of the war by the War Office—the precursor of the Ministry of Defence—as being civilians, because they had not been recruited under the auspices of the War Office. The Japanese considered that merchant seamen were civilians, and also the military DEMS crews—that is, the defensively equipped merchant ships’ anti-aircraft gunners—although they were serving, they were considered in the Japanese camps and in the Japanese records as civilians. There was also some dispute as to whether policemen were civilians or military. So that explains the discrepancy. However, I am pretty confident that 20,000 was the maximum that were incarcerated, and I am pretty confident that it is about 3,000 who are alive now. Having said that, the Ministry of Defence had no records. They asked me for records, which I tried to give them. In fact, I helped them in a variety of things. A number of people who had received the £48 10s, which was the list they had for authority to payment as being interned, were actually not interned, because the payments on that scheme were slightly different. They had been captured by the Japanese and in fact shipped home as members of the diplomatic staff, and the rest of it. So those people got paid. Other people who were in Red Cross homes or Church homes were also accepted, because they did not know. This is cited in documents which I have now seen, which I had no knowledge of at the time. However, I do know people where I have been asked for verification that they were in the camp, and where I quite categorically said, “No, he was not there, but his father was in that camp”, because I have now got the list of something like 45,000 names. Not all British of course, but you can then track it down.

Q25 Chairman: No, you are the absolute expert on this, which is why we are pursuing you. What I was really after was this. What is your best estimate? If the scheme had been implemented as we thought it had been announced in November 2000, before the blood-link stuff came in, and if the worry from the MoD is perhaps the floodgates argument, what is the number of people that would come in if it was implemented as it was believed in November 2000 it would be implemented? What is the number and what is the cost?

Mr Bridge: Three thousand people, which would be £30 million. In fact, I did do a paper to that effect which I sent, because I assumed policy emanated from Whitehall, to the Minister of Defence. It was sent on to the War Pensions Agency in Blackpool, and I had an acknowledgement from them to say that they were looking into it and would give me a reply within 28 days. So I then wrote another letter to the Minister and pointed out that, as it was policy, I thought that policy emanated from Whitehall and perhaps he would like to answer my paper. That was 19 June 2001. I am still waiting for a reply to that paper. It was fairly obvious—it is obvious now—that in fact they had made their minds up, “Don’t confuse us with facts. We’re not shifting”.

Chairman: You have been an absolutely assiduous defender of this cause and, unlike most lobbyists, you know more about what is going on than they do. We are very grateful for that.

Q26 David Heyes: I agree entirely, Chairman. I just want to put on record the experience of one of Ron Bridge’s members, a constituent of mine Celia Meade. She is 68 years old now and was taken into captivity as a four-year-old in 1942. She meets the blood-link requirements. Her family were second-generation colonial administrators, getting on with the business of running the Empire, when the Japanese arrived. She meets this bizarre, Nazi-like test of racial purity but she cannot prove it, because the first thing that happened was the house was bombed and all the records that would have allowed her to prove it were destroyed. Despite her best efforts over the years, she has not been able to produce a sufficient quality of information. Despite being able to trace, like Ann Moxley, her family back many generations, it has not been enough to meet the requirements. Briefly, her circumstances were that her mother was raped by a Japanese officer and then punished for not thanking him profusely enough after the event. She witnessed that as a four-year-old girl. She saw her nine-month-old brother die in captivity from malnutrition. She survived on maggots gathered from the latrines in the camp. I could go on. She suffered the most desperate privations, which resulted in the death of her father shortly after the war, broken mentally and physically. Both she and her mother, who did survive, were delighted when the £10,000 awards were announced. Little enough compensation as it was for what they had suffered, they felt that at last there was some recognition for what they had gone through. They therefore applied and, in June 2001, were turned down because they could not meet the test. I think that it is worth putting that on the record, but for me the question that flows from it is this. Why on earth did the Ombudsman need to get
involved in this? Why did natural justice and common decency not prevail? I would just ask you to comment on that, Ron.

Mr Bridge: I think there was a case to be looking at it. The various departments of government had resisted doing anything for a number of years. It was not until we found a document at Kew, in which there was categoric proof that the Foreign Office had in fact decided not to do its best for British subjects under the Peace Treaty—where they could have reopened the Peace Treaty under article 26, because Japan had done a better deal. The footnote on that document is, “We must never let this get out because, if it ever gets out, there will be a monumental political row”. That was written in 1955, and whoever it was certainly had a crystal ball. When this occurred, the Ministry of Defence were given the job to do. They would not communicate at all with the civilians. They did not want to know. In fact, the then Minister of Defence reported to our lawyers that he was not the slightest bit interested in civilians. The numbers that I gave I had to give to Number 10’s private office, and they would pass it on. When they made an announcement and there was a meeting on the implementation, I asked “What do you mean by the term ‘British’?”, because I dealt with war pensions and, at the time, war pensions were payable only to those born in the United Kingdom. There were various definitions of “British” and I said, “What do you mean?” They came back on 24 November 2000 and said, “What we mean is British under the then rules. It doesn’t matter where they live or what their nationality is now”. Then they introduced the grandparent. They still would not talk. I produced a paper. It is not a long paper; it is only three pages. I would have thought they could have at least discussed the matter. Subsequently, Andrew Dismore, who is chairman of the all-party group on this, has tried to get a meeting with various ministers. They do not want to know. In other words, they are frightened of the facts. They have made their minds up and that is it. They have dug a hole and, as far as I can see, they are still digging. I would add just one point. I was in a camp too. My paternal side are from Empire, having been out there a long time, but my mother was born in Yorkshire—and that was allowed as being part of the British Isles!

Chairman: It is good to have that on the record!

I have received it. That is fine. But I have seen these people—people who shared the same watery soup, the same mouldy bread—who were there because they had a British passport and who are now being rejected by their own government. It is actually downright criminal.

Q28 Julie Morgan: I agree with you. So you were told that you, as individuals, could not succeed against the might of the MoD?

Mr Bridge: That is right, yes.

Q29 Julie Morgan: You said earlier on that you felt that the MoD had made a decision, and that was that.

Mr Bridge: Yes.

Q30 Julie Morgan: That was the reason you were not able to get any further in relation to this relatively small group of people and relatively small amount of money. Could you say a bit more about that?

Mr Bridge: If payments were to be made to those who were entitled to a war pension under the Personal Injuries (Civilians) Scheme 1983, which is the last piece of legislation on that subject, they would have had to have been born in the United Kingdom—because that legislation requires the person to have been born in the United Kingdom. I received the money on 1 February. As I had been born outside the United Kingdom, my father had been born outside the United Kingdom, obviously they were therefore not using it. I find it significant that the bulk of rejection letters were sent out on one day, 25 June 2001, and it was the day that a caveat to the war pensions policy, signed by Hugh Bayley MP who was then the Minister, came into effect—widening war pensions to those who could prove that their grandparents were born in the United Kingdom. I think that they therefore latched on to a change in a different field and hoped that they could browbeat that through. I think that is what went through their minds, though I do not have the mind of the Ministry of Defence, unfortunately. It goes a little bit further. There are enormous repercussions, because some of the people who have been paid have had to prove that their grandparents were born in the United Kingdom, when in fact they were born in the Far East while their fathers were serving in the British Army. They had British military birth certificates. Those were not good enough for the Ministry of Defence, however, as being British. They had to prove it in relation to their grandparents. If you follow that logic through, it means that every person born of the British military who has been stationed in Germany since 1945 is not seen as British by the Ministry of Defence. The repercussions of that are enormous.

Q31 Julie Morgan: Under their criteria as it is now, do you think there have been many wrong payments?

Mr Bridge: I would suspect that there have probably been about 150. I know from the documents I have subsequently seen, signed by Mr Alan Burnham, that there was something like 30-odd people from
Rosary Hill, which was the International Red Cross home in Hong Kong, who had been paid. That is their own admission. I do know that there were about 25 or 30 who had come through and they asked me for proof of internment, and I said, “They weren’t interned. Their father was”. In those instances, their mothers were born locally. Once they went into a camp, the Japanese had to feed them. So they gave families options—wives who had children, generally under five, and there were quite a lot of those in Shanghai—to stay and live on the economy. Effectively, Japan at the time was interested in the Greater East Asia Co-Prosperity Sphere, did not want to upset those born in the Far East and living out in the Far East—except of course people with a European connotation—and they were trying to placate them. It was also very much the whim of the local military commander, the Japanese commander, as to who went into camp. In fact, my grandfather and grandmother were left to stay outside of camp. They were in their late-seventies and he was very much an invalid, having been beaten up by the Japanese in 1937—but that is a different story. The point was that they were allowed to live on the economy because the local commander thought, “Actually, a 78 or 80-year-old isn’t really a threat to Japan’s military might”.

**Q32 Julie Morgan:** Excluding the people in the Rosary Hill camp, it was about 120 people, was it? 

**Mr Bridge:** This is how I come to the figure—when they talk about 1,400 still not paid, or that sort of figure—that I think there is only about 800. I had 900 names sent to me, with dates of birth and, taking the proportion of those who I knew were not in camp, and said so—that they still had on the records and who they felt were in camp—I said that I could not give a certificate to them that they were in camp. I have had advances from people who have been trying to bribe my signature. I am afraid my signature is not for sale.

**Q33 Julie Morgan:** Are you aware of any people who have died during this period, who were entitled to this and did not get it? 

**Mr Bridge:** Yes, quite a few died, some of them abroad—who have gone abroad for their health. Quite a few of them have died, yes. Obviously time is catching up when people are in their late-seventies and eighties, and particularly when they have been through an experience like that. 

**Julie Morgan:** Which is why we need to settle this. Thank you.

**Q34 Chairman:** Rounding off this section, we are about to see the minister. What would you like to ask him—all of you? 

**Professor Hayward:** In a way, it is the sort of question I would like to put to members of this Committee as well as to the Minister. It is to say this. If you were denied your British identity when you feel you are entitled to it under the legislation that then existed, and you are either a Member of Parliament or, in his case, a Minister of the Crown, do you think this is conduct worthy of the office you hold?

**Q35 Chairman:** It is a formidable question, which we will attempt to do justice to. Ann? 

**Mrs Moxley:** I think that is a super question. I suppose, at the other end of the scale, it is perhaps a silly question but it is, “Haven’t you got something better to do than to mess about with all of this?”! 

**Q36 Chairman:** That is also a formidable question. Ron? 

**Mr Bridge:** “You have picked up a problem that was in existence before your time. Are you satisfied that your department is prepared to make decisions contrary to the facts, and to be too proud to try and establish the facts before they make any decision?”

**Chairman:** Thank you very much indeed for that, and thank you for coming along.

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**Ms Ann Abraham,** the Parliamentary and Health Service Ombudsman, in attendance.

**Witnesses:** Mr Don Touhig, a Member of the House, Minister for Veterans, and Mr Jonathan Iremonger, Director of the Veterans Policy Unit, Ministry of Defence, gave evidence.

**Q37 Chairman:** May I welcome Don Touhig, Veterans Minister at the MoD and Jonathan Iremonger, Head of Veterans Policy at the MoD. We had hoped to see Mr Burnham, the Chief Executive of the Veterans Agency. We thought until yesterday that we were going to see him. Do you know why he has not been able to come? 

**Mr Touhig:** May I explain that when I make my opening statement?

**Q38 Chairman:** I invite you to make your statement now. 

**Mr Touhig:** You have already introduced Jonathan Iremonger, sitting beside me. As you know, he is Director of the Veterans Policy Unit and took over responsibility for the Far East Prisoner of War Scheme some three months ago. I would like to say at the outset that the Government fully recognises the very strong feelings and the disappointment of those who were led by the terms of our initial announcement of the scheme to think they were eligible for compensation but were subsequently denied an award under the scheme. As I said in my statement to the House on 13 July, there was no intention to cause distress but we accept that that distress was real. The fact that it occurred is profoundly regretted. I would like to take the opportunity to apologise for it and I renew that apology this morning. It is well known that the conditions under which prisoners of war and civilian internees were held by the Japanese during the Second World War were appalling and their treatment was cruel. The Government felt that the suffering of those with a close link to the United Kingdom had for too long been overlooked and that
we owed a debt to those who had endured so much in such dreadful conditions. The scheme was intended as a tangible recognition of the extreme and the unique circumstances of those held captive in the Far East during this period. Despite the criticisms which have been directed at the way the scheme has been administered, I do not think we should lose sight of the fact that nearly 25,000 payments have been made, payments of £10,000 each; a total sum of £250 million has been paid, and no financial constraints were placed on the current arrangements. As you will be aware, Chairman, there is a matter before the courts at the present time and, because of that, the civilian part of the scheme is currently suspended. However, we intend to pay out on all valid claims. We have exceeded the budget originally set aside for this scheme. With any scheme of this nature, there must be rules. Whenever these are set, those outside them will feel that they have not been properly recognised. The Government has set what were felt to be reasonable and fair boundaries for the scheme, taking account of people’s links with the United Kingdom at the time and the way in which these should translate into the responsibility of our country today. You will be aware, Chairman, of course, and your colleagues too, that you and I had a conversation on Tuesday of this week when I did request that you might postpone this session this morning. I fully understand the reasons you gave, and perfectly to the age of the potential claimants. A considerable amount of work has been undertaken on scoping boundaries for the scheme, taking account of Parliament before Parliament rises for the Christmas recess. When I am in possession of all the facts relating to this investigation that I have set in train, I will of course come back to the committee and answer questions on any matters you want to put to me again, if that would be helpful. It was with the best of intentions that all parties involved sought to introduce the scheme as quickly as possible, due to the age of the potential claimants. A considerable amount of work has been undertaken on scoping some aspects of a possible scheme before its inception and I accept that it was announced before the criteria governing eligibility were fully and properly developed. This is very much regretted and has led to a great deal of concern and distress. I unreservedly apologise to all concerned for the consequences of that action. I think, Chairman, I should leave it there. I will happily now seek to respond to any questions you may have.

Q39 Chairman: I am very grateful for that and I hope I am encouraged by it, too. I hope you will understand why we felt it was important that you came along and said what you have just said because it says publicly what is happening. One question I would immediately ask is on what you have just said. In your letter to me you say, “While preparing evidence for this session, my officials have brought to my attention certain matters previously unknown to me and which may be central to the issue under scrutiny”. I think what would be perplexing, though, is, given the fact that this issue has been crawled over so extensively for so long, why did it take the Ombudsman and by others about the unique circumstances of those held captive in the Far East during this period. Despite the criticisms which have been directed at the way the scheme has been administered, I do not think we should lose sight of the fact that nearly 25,000 payments have been made, payments of £10,000 each; a total sum of £250 million has been paid, and no financial constraints were placed on the current arrangements. As you will be aware, Chairman, there is a matter before the courts at the present time and, because of that, the civilian part of the scheme is currently suspended. However, we intend to pay out on all valid claims. We have exceeded the budget originally set aside for this scheme. With any scheme of this nature, there must be rules. Whenever these are set, those outside them will feel that they have not been properly recognised. The Government has set what were felt to be reasonable and fair boundaries for the scheme, taking account of people’s links with the United Kingdom at the time and the way in which these should translate into the responsibility of our country today. You will be aware, Chairman, of course, and your colleagues too, that you and I had a conversation on Tuesday of this week when I did request that you might postpone this session this morning. I fully understand the reasons you gave, and perfectly to the age of the potential claimants. A considerable amount of work has been undertaken on scoping some aspects of a possible scheme before its inception and I accept that it was announced before the criteria governing eligibility were fully and properly developed. This is very much regretted and has led to a great deal of concern and distress. I unreservedly apologise to all concerned for the consequences of that action. I think, Chairman, I should leave it there. I will happily now seek to respond to any questions you may have.

Mr Touhig: Forgive me, I did not answer your question at the beginning on why Alan Burnham is not present. I have asked Alan, as the Chief Executive of the VA, actually to stay at his post and conduct this inquiry as quickly as possible. He is at the heart of getting this information. That is why I asked him to stay there and not come down this morning. On the point of your last question, this new
Chairman: You can see why this might seem surprising. When the department has been engaged in court cases, it has been the subject of an Ombudsman investigation, all these papers have been trawled through endlessly, why, three days before a select committee visit by a minister, is new material suddenly discovered?

Mr Touhig: I said I cannot give you any more information other than that is when it came to light. My officials immediately came in to see me and said, “Look, we have some doubts about statements that we have made in the past concerning the eligibility criteria.” For that reason, we need to go back and research all this paperwork to discover how this has come about. I cannot honestly say why this has just happened but it was in preparing the brief for me that it was discovered. It was discovered on Monday. I put this work in hand. I spoke to you on Tuesday. It was coincidence that I was coming here, but this is the brief I had for coming here, which makes no reference to these matters at all. You can see there is a tome and a half here, so the preparatory work was done for me to come and state the position as I believed it to be until lunchtime on Monday. The position is not probably that case now, and that is why I have set this work in train. That is why we are in this situation.

Chairman: When the Ombudsman made her report in July, one of her recommendations, which the Government rejected, was that there should be a review of how the scheme has been handled. The Ministry rejected that recommendation.

Mr Touhig: Yes.

Chairman: Now you are doing a review?

Mr Touhig: The most perfect view is always the one looking back. We all say “what if” and “if only”. At the time when we rejected the Ombudsman’s recommendation, we believed there was no justification for a further detailed review. It was only on Monday when it came to light that there could be a discrepancy between criteria applied before the birth link was introduced and criteria we have been applying since that caused me to say that we cannot go ahead with the simple evidence I was going to give you today; we have got to investigate this. It is important so far as the issue of the Ombudsman’s report is concerned but, more importantly, I think it impacts upon people who have suffered enough at the time when they were interned in that awful period but who have also suffered great stress as a result of the way we have actually announced and implemented this scheme, leading them to believe that they would get compensation and they are not. I would just add one further thing which I take from the Ombudsman’s report and that is concerning Professor Hayward. The Ombudsman makes a very important point: it was not the money issue that concerned Professor Hayward; it was the way he felt he was being thought of as a second-class British citizen or “not British enough”. My colleagues here from Wales will know that I have been very involved in a miners’ compensation issue recently. All the people I have been talking to have been concerned about receiving recognition for their suffering; it has not been the cash at the end of the day. I do not doubt that is the objective, that is the desire, of those people who are seeking to be included in this compensation scheme now.

Chairman: Just on that point, we asked Professor Hayward just before you came in what he would like to ask you. What he said, of course, was very much what you have just said, which is that he would want to know, as he thought you would want to know if it was you or we as Members of Parliament, why suddenly, after a lifetime of being British, you were told that you were not British enough. Here is a man who, yes, was interned in Shanghai, came here, was educated here, became one of the most distinguished political scientists in the whole country, laden with honours, did national service in the RAF, and then was told that he was not British enough.

Mr Touhig: We did not say he was not British enough. I fully understand that is his view of things. In truth to you, if I were in his situation, that would be my reaction, too. Any human being would have that sort of reaction. However, as you will be aware from the inquiries you have already made and perhaps the evidence already given, when the scheme was introduced there was a question about our responsibility to people who could demonstrate they were certainly British at the time of their internment. I think it has been very difficult to draw a line but a line has been drawn. As I have said in my statement, every scheme has to have rules and some people are included and some will be excluded. I cannot say, and I would not wish to raise anybody’s hopes, that as a result of this inquiry that I have now instigated there will be any significant change to this scheme, but I will tell you now that I would not rule anything in or out until I have that information.
Mr Touhig: Yes. I believe they would. I do not deny that at all. I do not think we have ever denied that in terms of saying that people’s expectations were raised. They were raised incorrectly; they were raised as a result of actions we took as a department.

Q45 Chairman: People believed what the Government said.

Mr Touhig: Yes, and the impression that was given was that if you were British, you qualified for this compensation scheme. At the time of the conflict, of course a great deal of the world, in quotes, was British; it was part of the Empire.

Q46 Chairman: There was no blood link discussion at that time when the scheme was announced. It was pretty straightforward who was going to be eligible for it.

Mr Touhig: The impression that was conveyed and the understanding I think of most people was that if you were British you would qualify under this scheme. We failed, as the Ombudsman points out I think in the report, to get that clarification in place at the right time.

Q47 Chairman: It is not just the Ombudsman. I read earlier on in this memorandum from Mr Burnham who is the sort of ghost at the feast and not able to be with us—

Mr Touhig: Mr Burnham is doing a very good job at the moment trying to get me this information I need.

Q48 Chairman: I am sure he is well deployed reviewing all this at high speed and at the last minute.

Mr Touhig: It is not high speed and last minute. I do not know what I have to say to you to convince you that this only came to my attention, my officials' attention, on Monday. There is no great conspiracy. It is more a cock-up than a conspiracy. This only came to my attention on Monday and my officials' attention, and we are taking immediate action to try to get to the bottom of it.

Q49 Chairman: Our friend Mr Burnham was writing this memorandum on 10 April 2001 pointing out the problems with any move to a bloodlink criterion, having announced the scheme previously. He says in this memorandum: “Despite previous concerns at expansion of the eligibility, we are now firmly of the belief that the evidence of individual cases suggests that the present stance will be impossible to defend on ground of fairness and logic. It does not seem that rejection of these cases will be in keeping with the original intent and spirit of the scheme.” So Mr Burnham himself had identified the problems that were going to arise from moving to this blood link criterion. You can see that here we are in December 2005 and Mr Burnham in April 2001 was trying to explain the problems with what the Government was doing.

Mr Touhig: The agency had signed up to the criteria we were applying some weeks before that memorandum was written. This does show a degree of conflict. Again, this will figure in part of my better understanding in the work I have commissioned as to why, in this particular case, this matter was raised and no action was taken. I have fully to appreciate and understand that. I am in no way dodging any responsibility. I was not on the scene at that time but I am the Minister responsible. I take full and personal responsibility for all that happens in the department in the past and at the present time. I have to answer to Parliament and to you for my actions. All I am saying to the committee is: please give me a few weeks to delve into these matters. Your questions are perfectly proper and we must answer your questions, but it will take me some time to get to the bottom of why this memo was written, why no further action was taken, and why this has come to my attention now at this late stage.

Q50 Chairman: Is it the case that, as a result of this review that you are now doing, there is at least a possibility that what Mr Burnham was telling you in April 2001 will be reverted to and that the kind of scheme that was originally announced in November 2000 will be the one that is now applied? Mr Touhig: I wish I could travel down that road with you at the moment and say “yes” but I cannot and I do not—on the point you made earlier, Chairman—want to raise anyone’s hopes falsely that we can revisit the scheme at all.

Q51 Chairman: I was only asking if it was a possibility that that would be the outcome. Mr Touhig: It will be part of my consideration when I get all this information in. That will be analysed and I will get reasons for why no action was taken on it at that time. Anything that comes to my attention that impacts on the future of the building of the scheme will be under consideration.

Q52 Chairman: Do you feel uncomfortable that this is only the third time in the history of the Ombudsman’s office over nearly 40 years that she came to my attention on Monday and my official’s attention, and we have a disagreement about some of the outcomes. That is perfectly proper. If we have a disagreement, it is right that we should state that. We would not expect the Ombudsman to roll over if we had some dispute about something she was saying, any more than she would want us to do so. She has made perfectly important and proper points. We disagree with some of them. It is no embarrassment to me if I believe that our reasons for rejecting her recommendations are proper. All this will come out in the rinse when I get this further report.

Q53 Chairman: The reason I ask that is that it is not a question of picking and choosing amongst Ombudsmen reports, those that you like or those that you do not like. If you look at the Government’s official position, and this is written up in the Cabinet Office document The Ombudsman in your Files, it
says that we shall accept Ombudsmen recommendations. I put it to you that you ought to feel uncomfortable on those extremely rare occasions, three times only in nearly 40 years, when you do not accept what the Ombudsman says, particularly when now you are telling us that you are doing the thing which the Ombudsman recommended, which was to go back and review the files.

Mr Touhig: No, we are not doing precisely what the Ombudsman asked. We are trying to get to the bottom of why this information has now been arrived at in the way it is arrived at. No, I do not feel uncomfortable. I feel the Ombudsman has acted perfectly properly in bringing these matters to everybody’s attention and it is perfectly right for any department, if it feels that it is in dispute with the conclusions made in a report, to say so.

Q54 Kelvin Hopkins: About Mr Burnham first of all, and perhaps I have a suspicious mind, and he is not here today, but if he is doing a review which would take two or three weeks, taking half a day out to be at this select committee this morning surely would have been helpful to his review because he would have teased out some of the issues in our discussion?

Mr Touhig: I think it is more important, frankly, that he is doing the work that I have asked him to do now because I want to get this information to you, to Parliament and to the people concerned as quickly as possible. I do take the point; it does seem a small period of time out of the timespan it would take him to prepare the report, but I have to make a judgment on priorities, and my priority is getting the answers to the questions I have asked. That is what I have tasked him to do. There is no disrespect to you or the committee. I just think it is important.

Q55 Kelvin Hopkins: It looks suspiciously like he is hiding in his office.

Mr Touhig: He is not hiding in his office at all. He is doing the work that I have asked him to do. I would hope from me you would take that as an honest and straightforward answer.

Q56 Kelvin Hopkins: The next issue: you said you rule nothing in and nothing out in the conclusions of this review, and yet in subsequent comments you said that expectations were raised incorrectly. That sort of implied that this review is just going to be another explanation as to why the Government is not going to change its mind.

Mr Touhig: No, that is not the purpose. The purpose of this review is to establish whether or not we used common criteria before and after the birth link, whether we had the right information on that, the impact of all that upon the scheme, so you can better understand why I simply could not come here—and I do not mean that in a throw-away way—and answer all your questions this morning. That was my intention. There is my brief for that. It is because it came to light on Monday and that I asked the Chairman if he would consider postponing this meeting so that I could get all the information and come and present you with all the information. I fully understand his reasons for declining that, but I will come back and give you all the information I turn out in this root and branch examination as to why we are in this position and why we might have given the impression in statements and other remarks in the past that there was a consistency in the criteria right across this whole scheme.

Q57 Kelvin Hopkins: So it is possible that the review could come to a conclusion that a grotesque mistake has been made, that this is gross injustice, and that the Government was wrong and they have apologised, and that all these citizens are going to be regarded for the future as equal citizens with every other British citizen?

Mr Touhig: I am not going to anticipate what might come of this. It may be, as a result of this review, that I have to go to the Secretary of State and say that the whole scheme ought to be examined again. I do not know that and I do not honestly in truth want to raise anybody’s hopes that that is what I will do. I do not have all the facts at the moment, Kelvin. Until I have all the facts, it is extremely difficult. I appreciate that makes life hard for you, but you will appreciate that I am trying to be as helpful as I can, but I do not have all the facts at the moment to be able to say that there would be any significant change or no change of any kind whatsoever.

Q58 Kelvin Hopkins: About one-third of British citizens in my constituency may not in future consider themselves to be equal British citizens with others because one-third of them possibly do not qualify according to these criteria, bloodlines and whatever? They come from all parts of the world but they are British citizens. How am I going to go to this particular citizen in my constituency, who was a doctor, a British citizen working at a British military hospital and looking after British service personnel in Hong Kong, who was then interned, when he came out he spent the rest of his life working in the National Health Service as a doctor in a hospital from 1948 until he retired, but has since been told, after all of that, he is actually not quite as good a British citizen as other British citizens and therefore he will not get his £10,000. Not that the money is the principal concern; it is the fact that he has been told, in effect that he is not quite up to full British citizenship. Is that not grotesque?

Mr Touhig: We have never said that and I think that is grotesque from his circumstances, but I can perfectly understand, as I said with Professor Hayward, that this is a feeling people would have. I would have the same feelings if I were in such circumstances. However, as I said earlier on, any scheme has to have guidelines, parameters, rules, and we have implemented the rule concerning birth link. That means some people were included in the scheme and some were not. To a lot of people that is unfair and unjust along the lines you have mentioned, and you have stated it very eloquently in your point just a moment ago. That is the scheme that we have got and that is the one that is operating at the present time.
Q59 Kelvin Hopkins: I do not think I am alone in feeling that this is a disgraceful decision by our Government of which I personally am heartily ashamed. Will you be able to come back in three weeks and reassure me that I no longer need to feel this shame?

Mr Touhig: I am proud of this Government. I feel nothing to be ashamed about a government that has changed the face of our country after some very difficult years when we were in opposition. I would say this to you: I cannot give you a firm undertaking that I can come and give you the answer you want in a few weeks’ time. I am telling you that I have an open mind about it. I am not saying we will not or cannot or should not change anything. I just do not know at this stage, and you will have to forgive me that I cannot be more explicit, but I have to get this information so that I can make a better judgment. One of the problems we have had, and I am sure you recognise it, the Ombudsman certainly recognises it, is about the speed with which this scheme was introduced, perfectly properly in the sense that people recognise the suffering that had gone on and that people who have suffered are getting older. We wanted as a country to give some tangible recognition to that suffering. The scheme was introduced at such a pace, perhaps before all the criteria had been properly worked out, and that is why we are in the problem we are in today. I do not want to have that mark 2; I want to try to get it right this time round.

Q60 Mr Burrowes: I am very pleased, Minister, that you have an open mind. I presume that mind is the same that was present when you made a statement to the House in July. What has changed to the extent that you were not willing to undertake any kind of review at that stage, given that you were concerned about pending court cases, but now there is information available to you that was not present at an earlier stage?

Mr Touhig: At that time, I did not see any justification for acceding to the request of the Ombudsman to carry out the review along the lines that the Ombudsman had suggested. I had no plans to have a review. I had no plans to have a review until Monday of this week when information was brought to my attention by my officials who had been at a pre-meeting before they came into me and cast doubt upon the position we had held up until now. That position has been that there is common criteria right the way through in applying this scheme. That is now in doubt. For that reason, I have moved on from my statement in July and that is why I have caused this inquiry to be made.

Q61 Mr Burrowes: I hear that. You must appreciate that there is some cynicism because your statement to the House was based upon a specific instance concerning pending cases and not on whether there is any information and the state of that. It was almost on the principle of the fact of pending litigation that you made the indication that you were not considering any kind of review. That has caused worry about why there was no consideration of the merits of the concerns from the Ombudsman about the fairness of the criteria.

Mr Touhig: That does not mitigate the distress and suffering people have gone through for those who anticipated or thought they might be compensated under this scheme. I will tell you that immediately officials realised this on Monday, they came straight through my door and told me. I think we could not be more up-front than immediately responding. I talked to the Chairman on Tuesday when I started to go through some of this stuff. I said there is a change and our position is not as I thought it was and so on. I hope you will accept that that was done perfectly properly immediately officials came and told me, “There is a problem, Minister. We do not think what we had been saying we can continue to say because there is some doubt now that the criteria were the same before and after the birth link was introduced”. They immediately told me and I responded.

Q62 Mr Burrowes: On that point, would you be able to say whether at first hand the information came to you or whether it is new information that was not present at the time when the Government was considering the recommendations from the Ombudsman?

Mr Touhig: It is the first time it came to me.

Q63 Mr Burrowes: The new information?

Mr Touhig: When I say it is new information, I believe this information might have been there but it had not been understood or recognised. You will remember the point in my statement. A lot of the work was done in preparation but, with the speed of this scheme, there is not a paper audit trail that we can follow to say, “Yes, we met with X and Y”. Mr Iremonger: It all arose out of some work that was done on the weekend of 19/20 November. That information had not been there before. The analysis had not been undertaken. On the basis of that, we asked some questions and we were not entirely satisfied with the answers, and that was the point at which we briefed the Minister. It was only on the Monday that I received the information about the work that had been done over that weekend, and we briefed the Minister straight away after that.

Q64 Chairman: Do you want to say what kind of work it was?

Mr Iremonger: It was a review of some of the cases that had been dealt with pre March introduction of the birth link criteria.

Q65 Mr Burrowes: And that had not been undertaken before?

Mr Touhig: No.

Mr Iremonger: It had not been undertaken before. It was a very selective review, which is why we need to do more work.

Mr Touhig: We are not content with what we have discovered thus far, and that is why we need to do more in order to establish the facts.
Q66 Mr Burrows: Was it not appropriate to understand any analysis similar to that following the Ombudsman’s recommendations.

Mr Iremonger: I think the question of why some of these things did not turn up before is one that will need to be looked at as part of this review.

Q67 Chairman: But this is not news to anybody else. These questions about the basis on which payments have been made or not made and the fact that there might be discrepancies and inconsistencies, we have all known this. What is the great revelation this weekend that suddenly sent you off to do a weekend’s work on it?

Mr Iremonger: There has been no evidence, and the Ombudsman certainly gave no evidence, of cases which had been treated differently before the introduction of birth link criteria and afterwards.

Q68 Paul Flynn: But there were people who had the awards and they would no longer be entitled to an award under the new criteria. We know that.

Mr Iremonger: We are aware of no such cases. We were certainly aware of no such cases before Monday anyway.

Q69 Paul Flynn: This is extraordinary. The information that we have and the evidence we received this morning is that people were given, after Lewis Moonie’s announcement, the compensation and when the criteria were announced later, there were people who would not be entitled to that, and so there was an anomaly there. This is not new.

Mr Iremonger: I think it is, actually. Certainly, no cases have been brought to us which would not have met the birth link criteria but which were agreed before the birth link criteria were introduced.

Q70 Chairman: I do not know whether the Ombudsman would like to say a word at this point?

Ms Abraham: Only to say that in the course of the investigation I did meet with the now retired Permanent Secretary of the Ministry of Defence in May when we discussed this very issue. I have already said to the committee that I did not rely on evidence that had been given to us in relation to individuals who had received the payment but had felt that subsequently they probably were not entitled, and they were very concerned that we did not share information. But the subject matter and the fact that we had seen evidence made this something that I felt it appropriate to raise with and discuss with the Permanent Secretary in May.

Q71 Chairman: In May this was flagged up as an issue with the Permanent Secretary?

Mr Iremonger: The department agreed that if those cases were put forward, it would not take away the £10,000. We were keen to investigate those cases. We thought, on the basis of what we knew, that those were cases we understood which were not in breach of the birth link criteria, but the cases were not put forward; therefore we could not look at them.

Mr Touhig: We have not had the information.

Q72 Mr Burrows: You will realise that we may have some sympathy for Mr Burnham’s comments in his memo that it is impossible to defend the scheme on the grounds of fairness and logic.

Mr Touhig: As I said in an answer earlier, that memo was written and I need to know why the department did not respond to that memo.

Q73 Chairman: One thing is clear, is it not? When the Ombudsman said to you in her report, “This needs a review” because of the material that she has looked at, she was dead right; it needed a review?

Mr Touhig: But I think you should understand, Chairman, that for some reason I do not think the Ombudsman shared that information with us. We did not actually have any cases where these had been—

Q74 Chairman: She had spoken to the Permanent Secretary about it.

Mr Touhig: I am sorry; my advice is that we did not have any specific cases to look at where people had had money taken back from them.

Mr Iremonger: No specific cases were mentioned to the Permanent Secretary and no specific cases are mentioned in the report.

Q75 Mr Liddell-Grainger: That is not what the Ombudsman is saying.

Mr Touhig: If we do have cases in the department, I will want to find them. Do we have cases?

Ms Abraham: I think it is important that the review is done, and I have been saying for a long time that there needs to be a review. I think the point that I have made is that when I discussed this with the Permanent Secretary, we did on that occasion show him an anonymised letter that had been sent, which we felt was evidence that there was an issue here that needed to be looked at because people were very concerned that they did not want their cases looked at again. I know there were assurances about that, but I think people’s individual feelings about that had to be respected, and we respected that. What I am saying is that we raised the issue with the Permanent Secretary. Obviously I met him personally and discussed these matters. What we said is that we feel, in order to demonstrate good administration, the Ministry should be able to show that it considered the effects of the introduction of the new criteria some months into the scheme and be able to demonstrate that there was no unfairness. We repeatedly asked that question but we were never shown information that demonstrated that the Ministry had looked at this and had satisfied itself that there were no discrepancies between cases decided before and after. I think what is being said now just reinforces the point that a review was necessary.

Q76 Chairman: Whatever else comes out of this, the Ombudsman was right, was she not? It needed a review?
**Mr Touhig:** We are not conducting the kind of review that the Ombudsman asked for. The review we are conducting at the moment is to discover why it is that the information we had been acting upon, the statements that we were making, for some considerable time, appear not to be accurate. When I get to that point and have an understanding of that point, there may be further work to be done, which might go along the lines perhaps that Ann Abraham has suggested, but, at this stage, my first concern is to discover how we got into this situation and to see what ought to be done to remedy it.

**Mr Iremonger:** May I make one point? I think there is one respect in which we are doing what the Ombudsman says. She was concerned about whether there was consistency of application criteria before and afterwards, and that is certainly what we are looking at now.

**Q77 Kelvin Hopkins:** We have been looking at the adjournment debate raised by Andrew Dismore. It is clear that many anomalies were raised during that debate. Why are we suddenly doing a review at this stage when we should have been doing this much earlier?

**Mr Touhig:** We are doing the review. Kelvin, because the information brought to my attention on Monday caused me to have doubt that I was prepared to come here today and say something that could not stand up. It is as simple as that.

**Chairman:** We welcome that very much. We welcome the fact that you have said that you were prepared to come along and simply defend what you thought might be indefensible and that you wanted to do further work on it. I think that is something that we respond to positively, but you understand, too, why we are perplexed as to why it took so long to put in hard work which has brought you to this position when it seemed so evident to many people for quite a long time and the Ombudsman advised you to carry out a review in her report. We have been there.

**Chairman:** We understand that. We welcome that hope that you have, which I do not wish to fire up, will be realised in some way. I cannot say at this stage. I can only repeat that matters were brought to my attention on Monday which caused me concern. I have now asked for this inquiry to take place into why I certainly have been under a misunderstanding about our position on the criteria applied in the past. When I have got that clear, if that impacts upon the way the scheme operates or should there be any changes, then I will consider that. I have made it clear that I am not shutting my eyes to the distress, worry and concern it has caused a lot of people and the sense of injustice—Kelvin articulated it very well—that many people feel about the way the scheme seemed to suggest that they are not British enough to qualify and be recognised by their country for the suffering that they went through. I can only say that we applied a certain criteria at the time. If, for any reason, I have cause to review that, then I will review it, but at this stage I need to get to understand how it was that up till Monday of this week I was coming here to tell you that we had the same criteria right throughout this operation and there is no justification to do what Ann has asked in terms of a full review. On Monday afternoon that position changed.

**Q78 Mr Liddell-Grainger:** I am going to come back on this. We have been reading through the Hansard reports and looking at all these things. I am sorry to be blunt, but this has been going on far too long. There is plenty of evidence. If you look in September 2004, column 692, there is plenty in that. It was replied to by your predecessor at column 691. Hansard goes on and on about this. I cannot believe a department like yours could only find something on Monday and then sent a letter to the Chairman of the select committee to say, “I am sorry, we want to think about this”. This has been going on far too long. You are hiding behind officials. I am sorry to have to say that. I just find this completely inexcusable.

**Mr Touhig:** Ian, I do find that personally offensive. I think you know me well enough to know that I do not hide behind my officials. I have made it clear that I take full responsibility, even for actions that occurred in the department before I was the Minister. That is what I am there for. That is what I am paid for. That is what I am answerable to Parliament for. I am not hiding behind any officials whatsoever. I am simply telling the truth and the fact is that matters were brought to my attention on Monday which I was not previously aware of and because of that I then spoke to the Chairman seeking a postponement. I then wrote to the Chairman and it is that investigation that I have caused to take place. When I have that information, I will come and submit myself to your questions further. That is right and proper.

**Q79 David Heyes:** It will be obvious to you, Minister, that expectations will be raised, despite your exhortations to people not to do that. My expectations are raised by what you have said today. It is encouraging that you are going to do a review. I still cannot see why you need to do that. All the evidence is in place already. It is overwhelming. This has been a serious miscarriage of justice. It is an affront to natural justice and common decency. I know that you are a decent, honest, good politician. Why can you not just use the powers of the Minister and say, “Scrap this racial purity test now? Make the payments and we will do the review and find out what went wrong and we will learn from it”? You could reverse the order?

**Mr Touhig:** I could do all those things. I have to justify any action to Parliament and to the people concerned. It may well be that the kind of hope that you have, which I do not wish to fire up, will be realised in some way. I cannot say at this stage. I can only repeat that matters were brought to my attention on Monday which caused me concern. I have now asked for this inquiry to take place into why I certainly have been under a misunderstanding about our position on the criteria applied in the past. When I have got that clear, if that impacts upon the way the scheme operates or should there be any changes, then I will consider that. I have made it clear that I am not shutting my eyes to the distress, worry and concern it has caused a lot of people and the sense of injustice—Kelvin articulated it very well—that many people feel about the way the scheme seemed to suggest that they are not British enough to qualify and be recognised by their country for the suffering that they went through. I can only say that we applied a certain criteria at the time. If, for any reason, I have cause to review that, then I will review it, but at this stage I need to get to understand how it was that up till Monday of this week I was coming here to tell you that we had the same criteria right throughout this operation and there is no justification to do what Ann has asked in terms of a full review. On Monday afternoon that position changed.

**Q80 David Heyes:** It will certainly be the case that that sense of injustice, which was exacerbated by the insulting offer of a payment of £500, will be further exacerbated and there will be a greater sense of injustice if the result of your review is to endorse the present position and say “no change”.

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1 December 2005  Mr Don Touhig and Mr Jonathan Iremonger
Mr Touhig: We decided that there should be some tangible compensation paid in recognition of the distress caused to many people who thought they would be included in the scheme and, at the request of the Ombudsman, I have signed many hundreds of letters in the last few weeks to people. On three occasions in the letter I express my apologies and regret for the stress. By the way, three-quarters of the letters have gone to people who are not resident in the United Kingdom. Some people believe that it is a derisory mention of miners’ compensation scheme and the sad Q84 Paul Flynn: have gone to people who are not resident in the United Kingdom. That was the birth link criteria about which Grandparent born in the United Kingdom at the time I was talking in the context that my understanding was that the Ombudsman might have had some cases of people where the actual detail was not brought to our attention. We have no information of any case where somebody was treated in the way the question was put to me.

Q86 Paul Flynn: Was Mr Burnham one of the officials who came to you this week with new information? Mr Touhig: Yes.

Q87 Paul Flynn: Was part of that information the letter of 20 April 2001? Mr Touhig: No.

Q88 Paul Flynn: I do not know if you are embarrassing, Don. Are you not embarrassed by the information in that which says that the scheme is unfair and indefensible? Is it not up to the Government now to suggest that something will be done? The amount of money involved in this is microscopically small but the sense of injustice is gigantic. Should not the Government be giving some hope this morning and, instead of appearing as
defensive as you are about a matter which is of very
great significance, be making some statement saying,
“Yes, we did get it very badly wrong and we have
unnecessarily upset and insulted people who have
suffered a great deal and it is time for us to say a few
mea culpas”?
Mr Touhig: You and I being papists have the benefit
of confession. Paul. Let me say this to you. I do not
want to repeat the mistake that was made in the past
about speedily coming to some announcement,
some decision, at the end of the day which left a lot
of people excluded from a scheme when they
expected to be part of the scheme. I can happily
come here this morning and be all singing and all
dancing and I would be carried shoulder high
through the streets for some announcement that you
might want me to make, but in truth I cannot make
that until, or I may not be able to make it at all, I
have examined why we got into this position. That is
the purpose behind the inquiry I have set in train
now at the beginning of this week. You as a
committee would surely not publish a report before
you had considered all the aspects of it and reached
a consensus and a conclusion. Please accept that I
am not in a position to give you an answer to some
of these points until I have this information. I am not
being defensive about it. I am being truthful and
honest about it. To be absolutely straight, I do not
have in my possession the information at the
moment that I require in order to respond to some of
your questions. I do not know how we got into this
position. I want to find out.

Q90 Paul Flynn: Why is it that you refused to meet
the all-party group which is chaired by our colleague
Andrew Dismore on this matter? We were told this
morning in the submission from one of our witnesses
that they have asked for a meeting between the MoD
and the organisation called ABCIFER but the MoD
has refused to entertain that suggestion. Andrew
Dismore has given a great deal of evidence to you in
committees and elsewhere. All this has been brought
forward. If you have refused to have that meeting
between yourselves and the organisation of veterans,
ABCIFER, which has unique knowledge of this, does
it not appear that you have been a bit ghoulish
recently about this?
Mr Touhig: I would have thought it is not normal in
to government to start paying out on schemes before you decide the
criteria?
Mr Touhig: I would have thought it is not normal in
to government to start paying out on schemes before you decide the
criteria?
would be compensated when they are not. That has left people with a lot of stress and distress and the feeling, as Professor Hayward has articulated, about not being British enough to be recognised for the suffering they endured.

Q94 Julie Morgan: Do you not think that those people who to me and colleagues on the committee seem should be eligible for the scheme were interned because they were considered to be British?
Mr Touhig: I think it is a proper assumption that people the Japanese considered were British were interned because the Japanese believed they were British.

Q95 Julie Morgan: Do you not think that should be reason enough?
Mr Touhig: I cannot say at this stage, without raising any false hopes, that I can amend the scheme or should amend the scheme, but I accept the moral argument that you have put so far as that is concerned. I really have to be careful that I do not add any more distress to people who have suffered enough by leaving them with any impression today that after this review I will be able to come back or make a statement in the House in a few weeks’ time to say that we are now changing the whole scheme and everybody is going to be included. I cannot say that, I do not want to say that, but I am not shutting my eyes to that if that is something that ought to be examined and I was not prepared to examine it.

Q96 Paul Flynn: Can I bestow penitential absolution on the Minister for one thing I accused him of and it was his predecessor who in fact was refusing to meet ABCIFER on the grounds that there was not any new argument. This seems rather ironic now the new argument has appeared because it could not possibly have come from ABCIFER or anyone else; it comes from the Ministry itself.
Mr Iremonger: May I make two comments? One is on the question of whether payments were made without criteria. I think the issue is not were payments made without criteria in place; payments were not. It is a question of whether payments were made with criteria that were consistent with the birth link criteria that were introduced in March. We were not making payments just to anybody who came. It is not as loose as that. On the issue of British, the problem at the beginning of the scheme was that anybody who was born in the Empire pretty much was British; so anybody born in India, be they Hindu, Muslim, Sikh, Christian, whatever, was British; anybody born in Malaya likewise and Australia and Burma. That is a very large number of people. The view that the Government took at the time was that a number of these countries had become independent and it is right that the responsibility for their people has transferred with independence. The question was what the UK Government’s residual responsibility was. The UK is a much smaller country with much lesser responsibilities for its residual people, if you like, whether that was a residence requirement or a birth link requirement or whatever, but there had to be a decision there as opposed to paying simply the whole former Empire.

Q97 Julie Morgan: The number of people involved we were told today is relatively small.
Mr Iremonger: It is not. The figure you were given is for civilians. On the military side, if you take the whole of the Indian Army for example, you would be talking about a very big sum of money. Hundreds of millions of pounds is at stake.

Q98 Chairman: The Minister told me earlier on when I asked him about Professor Hayward that it was legitimate to think when the scheme was announced that Professor Hayward was British enough to be part of this scheme. Now you roll it back and start talking about residuum. As Mr Burnham pointed out, the spirit or intention of the scheme was quite clear when it was announced, that the Professor Haywards of this world are going to be in it. They turned out not to be.
Mr Iremonger: Mr Burnham and his agency had signed up to an agreement about a month before which said that a close link to the UK was an inherent part of that scheme. Mr Burnham, when he saw some of the effects as he saw claims come through, had reservations about that. Whether those reservations were reasonable or not is obviously something the Minister will want to consider.

Q99 Chairman: When he makes this consideration, the question we want to know the answer to is: when you have done the reviews and looked at the thing, is Professor Hayward going to be in this scheme or not?
Mr Touhig: I cannot say.

Q100 Chairman: But you have conceded that when the announcement was made about the scheme, you would have expected Professor Hayward to be in it. Presumably your review that looks at the efficiency of this scheme puts Professor Hayward back in it?
Mr Touhig: What I am saying is that when the scheme was announced, if I were Professor Hayward, I would believe I would have been covered by this scheme. The point I am making, as I have made several times, is that the way we handled the announcement and developing the criteria ongoing has meant that he is not in the scheme. I cannot say—

Q101 Chairman: You cannot say you are going to put him back in it?
Mr Touhig: I cannot say that because that would be unfair and I need, at the moment, to get to the bottom of how we came to the understanding that I had up until Monday. The criteria had been common right throughout. That is one of the reasons we rejected Ann’s recommendation for a major inquiry because we believed the whole thing was running properly with the criteria we had set down. I am now in doubt about that. When I get that information, I will be in a better position to judge
how we got here. When we get that information, if it means that the department has to look at the scheme overall again, we will look at it.

Mr Iremonger: Could I make one other comment?
Professor Hayward applied because he thought he was eligible. Somewhere between 40,000 and 50,000 ex-members of the Indian Army also applied because they thought they were eligible.

Q102 Chairman: We are talking about the civilian internees, are we not?
Mr Iremonger: The scheme has to be coherent as a whole because the members of the Indian Army were British at the time. Are they less eligible than Professor Hayward?

Q103 Mr Burrows: Obviously that will extend in terms of the financial impact of the issue of eligibility. Is the financial consideration a key relevant factor?
Mr Touhig: No.
Mr Iremonger: The issue is who is the current British Government responsible for as the United Kingdom as to people who have a link to the United Kingdom.

Q104 Mr Burrows: As long as it is not at all a financial consideration.
Mr Touhig: No. I made that clear in my statement.

Q105 Mr Burrows: For clarification, finally: when was the Minister in particular made aware of the contents of Alan Burnham’s 2001 memo?
Mr Touhig: I cannot be sure when that was, in all truth. I cannot be sure, but I made the point, in response to the Chairman’s remarks this morning, that what I need to do, as part of this review, this inquiry, is to discover what the department did in response to that memo. I am not clear from the evidence I have at the moment what we did.

Q106 Mr Liddell-Grainger: Briefly, Don, in your statements, and I am just following on from what David said, you said that the budget had already been spent.
Mr Touhig: We had spent more than we budgeted for.

Q107 Mr Liddell-Grainger: Have you not got extra money to be able to sort this out?
Mr Touhig: There is not a question on that.

Q108 Mr Liddell-Grainger: I think you said, and you will correct me if I am wrong, that 25,000 people had already had payments.
Mr Touhig: About 25,000.

Q109 Mr Liddell-Grainger: When Ron Bridge was here, I think he said there were under 20,000 civilians, or that is what he thought. Who are the 25,000? How was that made up?
Mr Touhig: It is the POWs—I think I have the exact figures here. I do have some figures on the numbers.

Mr Iremonger: I think it is 20,000 for the number of civilians surviving after the war. By the time the scheme came in 2001, a large number of those were deceased.

Mr Iremonger: Could I make one other comment?
Professor Hayward applied because he thought he was eligible. Somewhere between 40,000 and 50,000 ex-members of the Indian Army also applied because they thought they were eligible.

Q110 Mr Liddell-Grainger: The 15,517 have had some form of payment. What have they had, the £500 or the £10,000?
Mr Touhig: They have had £10,000.

Q111 Mr Liddell-Grainger: There are still roughly 3,000 to go?
Mr Touhig: It depends on the criteria that would apply. As we said in response to earlier questions, if you had wider criteria, then a great many more people would be eligible for a claim under the scheme.

Q112 Mr Liddell-Grainger: When you have had your deliberations, will you be passing on facts to the Ombudsman? Is the financial consideration a key relevant factor?
Mr Touhig: I do not see why not. We might have a disagreement with the Ombudsman about her role, on which I think she answered earlier this morning. I recognise the Ombudsman has an important role to play in these matters. As I have said earlier, there are times when government departments will dispute the outcome of an Ombudsman’s report but I think it is better to be frank and honest about it. There are clearly going to be matters that affect the Ombudsman and her interests in this matter, and there is no way in which I believe anything I tell you or the House should be denied the Ombudsman. She should have all that I have got.

Q113 Chairman: It is a good job we asked you to come along, is it not?
Mr Touhig: If it had been in a couple of weeks’ time, I might have been able to answer some of the questions more fully. I do apologise to colleagues if they feel that I have not answered as fully as I would like to.

Q114 Chairman: I understand that. It was a good idea for us to ask you to come along on the back of the Ombudsman’s report because, as you say, it was only in preparing for this session that this new information came to light.
Mr Touhig: I think that is great credit to the foresight of this committee!

Q115 Chairman: You are going to make a statement to Parliament before Christmas?
Mr Touhig: A statement will be made to Parliament before Christmas.

Q116 Chairman: We may then want to invite you back and we can talk again about some of the details of this?
Mr Touhig: Indeed, and I would be happy to come back.
Q117 Chairman: As people have said, there is a tragedy in the fact that here is a scheme which was hugely welcomed when it was announced and we all took pride in the fact that a British Government was doing it and then to be so penny-pinching, we finish up feeling a sense of shame about the way it has been administered. I told you what Professor Hayward’s question to you was. Ann Moxley’s question was: have they not got something better to do? That means, given the numbers, given the amount involved, surely this is not something that should prevent the intention of the scheme being realised and all the credit that came with it being fulfilled. We are looking to you with great hope now, Don. You are going away and you are going to do this review. You are going to make an announcement before Christmas. As David said to you, it would make it even worse if, having announced a review, the review were not to deal with the kinds of issues that have been raised here and previously. We thank you for coming along and being as honest as you can be. We thank you for going off and doing the review that the Ombudsman asked you to do, and we look forward to the product of it and to talking to you further about it. That is probably as much as we can say this morning. Thank you very much indeed.
Written evidence

Memorandum by Professor Jack Hayward (DH 01)

After several years of procrastination before dealing with what the Ombudsman’s report has called a “debt of honour”, the MoD hastily improvised a scheme that—when modified—resulted in an offensive discrimination against some British subjects interned during the Second World War by the Japanese. As one of those invited to apply under the original scheme, I did so, determined to give the financial compensation to charity, being primarily concerned with the welcome if belated recognition by the British Government of those of us who had suffered internment in the Far East solely because of their British identity. As well as my parents, both brothers and one of my three sisters incarcerated have since died, as have many others.

The central issue of maladministration arises from the unwillingness of MoD officials and their badly advised ministers to acknowledge their conspicuous errors. As the Ombudsman’s report indicates in para 100, the DWP lawyer made the crucial point that “the key is to ensure that ‘British’ is based on the legislation at the time”. The 1914 British Nationality Act was then operative; imperial Great Britain had not yet shrunk to the dimensions of a Little Britain as conceived by the MoD in confining being British to those with a UK blood link. Quibbles about a post facto “intention”, disingenuous and implausible other than as an afterthought, do not face this fact. As para 117 shows in quoting a Veterans Agency note to the MoD, they were well aware of the “potentially embarrassing contradictions arising out of the current definition”. The MoD chose then and persists now in refusing to acknowledge the resulting slur on the British subjects excluded from the scheme although imprisoned alongside their fellow Britons.

By upbringing, culture and values I have always felt wholly British, even before being “repatriated”—yes, repatriated—to Britain early in 1946. To be informed, by implication, that I belonged to a lesser breed and Colonial Volunteer Forces as civilians by the UK War Office’s continuing refusal to acknowledge that I was (and am) a Briton without prefix or suffix. The MoD seems to regard its prime concern not to be national defence but self-defence.

My hope is that, in the light of the Ombudsman’s Report, the House of Commons will at last extract from a reluctant minister reparation for the shameful conduct of his predecessors. To continue to endorse it is to compound their obstinacy and obstinateness, unworthy of senior officials and ministers of the crown who purport to speak in the name of the British people.

November 2005

Memorandum by Mr Ron Bridge (DH 02)

I, Ronald William Bridge, Chairman of the Association of British Civilian Internees Far East Region, make the following Statement to the Parliamentary Administration Select Committee on 1 December 2005.

I was elected to the Committee of ABCIFER in May 1995 and became Chairman in May 2001. I have been closely involved with War Pensions throughout those ten years. With the previous Chairman Keith Martin, I had trawled the Foreign Office Records at Kew in 1997 and found documents which showed that the Foreign and Commonwealth Office had not done its best for British subjects in the 1950s and that HMG still had the right to reopen the Peace Treaty under Article 26 because Japan had granted better reparations to other countries. This document was escalated through the then Foreign Secretary Robin Cook, to the Prime Minister Tony Blair. With a request that HMG assist former PoWs and Internees to get more equitable reparations from Japan. HMG apparently felt that this would upset Japan. In the late summer of 2000, I was asked for an estimate of the number of British civilian internees. The HMG and/or the MoD apparently knew the number of military PoWs and military widows. I believe these were both expected to be around 7,200. The latter was grossly in error as I understand that over 14,000 claims have been paid. (There were 57,000 British Military PoWs of Japan.)

At that time I had the detailed nominal roll of three civilian camps with inmates ages, through the good offices of a leading firm of Actuaries I asked what percentage of these could now be expected to be alive and was given a global figure of about 15% of those alive in 1945. No adjustment was possible for the effects of Japanese deprivations. These were known for PoWs and this would seem to reduce the expected number to 12%. Depending on the source document, the total number of British civilians in custody varied from 15,012 to 20,000. The variation could be attributed to merchant seaman being counted as civilians by Japan and Colonial Volunteer Forces as civilians by the UK War Office. Taking the highest figure 20,000 and applying the actuarial attrition I passed a figure of between 2,500 and 3,000 British civilians still alive to the Prime Minister’s private office, the Ministry of Defence then, as now, being reluctant to communicate with civilians.

The Prime Minister announced the scheme now called the “ex gratia” to the nation in the National Army Museum on 6 November 2000 and Dr Lewis Moone simultaneously announced the scheme in Parliament. This stated that one of the beneficiary groups was “surviving British civilians who were interned by the Japanese” without caveat.
From my detailed experience of War Pensions and dealing with the then DSS and WPA I realised that the definition of British was often very loose and that the authorities were adept at avoiding paying war pensions on the flimsiest of excuses, dredging obscure letters out. I was also aware that the then War Pensions policy for British civilians required any recipients to have been born in the UK, a policy which excluded a large percentage of British civilians still alive who were interned by Japan and suffering from that deprivation with medical conditions that were only just manifesting themselves. Furthermore, I knew that the 1950s disposal of Japanese assets required beneficiaries to be resident in the UK and to have been over the age of 21 on 8 December 1941. A meeting was called on 15 November 2000 to discuss the detailed implementation of the scheme, citing these examples, I asked what the Government meant by the term “British”. The answer was not immediately forthcoming but the meeting was told that an answer would be obtained. The DSS policy branch communicated with the then ABCIFER chairman 10 days later that British meant “British” by the regulations in force at the time, and that it did not matter where they now lived or what their nationality now was.

A month later it became evident that HMG had little, if any, records of British civilians who had been interned. The WPA advised that they were going to use the list of beneficiaries of those who had received the £48.10s.0d Japanese assets payment in the 1950s as authority. (These payments required UK residency at the time of payment and capture by Japan in 1941–42 thus included diplomatic personnel and others who had never been interned but had been repatriated.) I offered to assist in verifying internment, as by that time I had built up a list of some 15,000 internees not all of whom were British. (Currently I hold 45,000 names.) After fears about the Data Protection Act and WPA confidentiality had been assuaged by saying that I could identify by full name and date of birth, I was not interested on a persons present whereabouts. I was sent initially over 700 names for verification, some I could do immediately but others had been given with current surnames. This was resolved and it was agreed that I would sign a simple certificate that I was satisfied that xxx had been detained by the Japanese during World War 2 in yyyy camp from evidence that I had found in one or more of the following sources and listed the entire sources that I had consulted. The WPA list contained people who I knew from the evidence to hand, had not been interned or who were not British at the time of their internment and the WPA were so advised, nevertheless I now know that some of these received payment.

In April 2001, I attended a meeting with the WPA management in which reference was made to the questionnaire that the WPA had sent out requesting detailed genealogical information. An assurance was given that “bloodlink” would not exclude and that in any case any major change in the scheme would entail detailed discussions with ABCIFER. (This promise was broken by the MoD.)

In May 2001 I took over as Chairman of ABCIFER and shortly after realised that HMG were intending to use lack of a “bloodlink” to exclude, and to ignore the British Nationality and Aliens Registration Act 1914, the legislation in force when the British were incarcerated. Accordingly I wrote a short policy paper on the 19 June 2001 and sent it to the MoD as I was aware that they had taken over responsibility for the WPA and from my “war pensions” experience knew that policy always emanated from Whitehall. The response I got was an acknowledgement from the WPA that the MoD had passed it to them and I could expect an answer in 28 days. I immediately wrote to the Minister, Dr Lewis Moonie, stating that I thought he was responsible for policy and could I have a response to my paper. I am still waiting. I am now aware that they had changed the rules in May 2001 a month earlier, and presumably MoD did not want to revisit a decision even though that decision was taken without knowledge of the facts. Subsequently MoD communicate platitudes and avoid the issues. I was particularly concerned that British civilians had been refused unless proving a “bloodlink” despite holding a UK Consular Birth Certificates or a UK Military Birth Certificates. That evidence of being British inadequate yet the originals are held at the UK General Register Office, Southport, Lancashire. (This precedent has enormous repercussions even under the present British nationality legislation.) Attempts at getting responses through the Prime Minister’s office and by MPs have been met with the same type of response, “our minds are made up, do not confuse us with facts”.

On a number of occasions, in writing and in person, to Dr Lewis Moonie and Ivor Caplin (at annual WPA/VA Christmas receptions). Both of whom told me to stop wasting time as there was no way I could win against the MoD. I have offered to assure their fears on the numbers that were held and thus the maximum number that could benefit from the “ex gratia”. Similarly, Andrew Dismore MP, Chairman of the All Party Group on the matter has asked for a meeting between the MoD and ABCIFER but the MoD have refused entertain the suggestion.

The position is therefore that about one quarter of those British civilians who were interned by Japan because they held British passports and were considered a threat to Japan’s Greater South East Asia Co-prosperity Sphere have been effectively disowned by HMG. Those affected fall into the following general categories: being of the Roman Catholic or Jewish religions, with a foreign born parent, women who married Britons and those who took out British naturalisation prior to WW2.

November 2005
Introduction

1. This Memorandum provides information about the report of my investigation into the administration of the \textit{ex gratia} scheme for British groups interned by the Japanese during the Second World War. The scheme was the responsibility of the Ministry of Defence (MoD).

2. My report—\textit{A Debt of Honour}—was laid before both Houses of Parliament on 12 July 2005, pursuant to section 10(3) of the Parliamentary Commissioner Act 1967. I reported that I had found that maladministration had caused injustice to those whose complaints I had investigated, but that the Government did not propose to remedy that injustice.

Background to My Investigation

3. I launched an investigation of a complaint by Professor Jack Hayward, which was broadly representative of others I had received from people in a similar position to him, in June 2003.

4. The scheme which was the subject of his complaint was announced to Parliament on 7 November 2000. The Minister announcing it said that it aimed to reflect the Government’s belief that “the country owes a debt of honour” to both those in the armed forces and those civilians who had been interned by the Japanese and who had been subject to cruel and inhuman treatment. The Minister said that those who would be eligible for payment under the scheme were, in his words, “British groups” “British civilians” and “UK citizens”.

5. Although Professor Hayward’s complaint was originally referred to my predecessor in December 2001, consideration of it was suspended while the Courts considered an application by the Association of British Civilian Internees (Far Eastern Region) (ABCIFER) for judicial review of the eligibility criteria for the scheme. That application was unsuccessful. In giving judgment, the Court of Appeal said, “We do not think that the introduction of this scheme was well handled by the Government”.

6. Following the conclusion of those proceedings, I decided to conduct an investigation into Professor Hayward’s complaint, which was that he had been caused injustice by maladministration in the way in which the scheme had been devised, announced, introduced and administered.

Key Issues that I Investigated

7. The principal issues covered by my investigation were:

   (i) in relation to how the scheme had been devised: whether officials had drawn up options as to whether such a scheme should be established—and, if so, had formulated criteria as to who should be eligible for it—appropriately;

   (ii) in relation to how the scheme had been announced: whether the Ministerial announcement had set out the scope of the scheme clearly;

   (iii) in relation to how the scheme had been introduced: whether early payments made under the scheme had been determined in line with clear eligibility criteria that were consistently applied; and

   (iv) in relation to how the scheme had been administered: whether the late introduction of an eligibility criterion had led to unequal treatment of those whose claims were determined following its introduction, and whether the new criterion had been explained properly to those who might be affected by it.

My Findings

8. My findings are set out in paragraphs 135 to 210 of my report. These were, in summary:

   (i) that the way in which the scheme was devised constituted maladministration in that it was done overly quickly and in such a manner as to lead to a lack of clarity about eligibility for payments under the scheme;

   (ii) that the way in which the scheme was announced constituted maladministration in that the Ministerial statement was so unclear and imprecise as to give rise to confusion and misunderstanding;

   (iii) that, at the time when the “bloodlink” criterion was introduced, the failure to review the impact of that introduction to ensure that it did not lead to unequal treatment constituted maladministration; and

   (iv) that, as part of the administration of the scheme, the failure to inform applicants that the criteria had been clarified, when they were sent a questionnaire to establish their eligibility, constituted maladministration.
9. I also expressed concern that the Government was unable to provide evidence of the basis on which early payments under the scheme had been made and that thus I had been unable to determine fully whether the scheme had been operated properly from its inception. In addition, I expressed my disappointment that no review of the scheme had ever been undertaken in the light of the criticisms of it by the Courts, in Parliament, and elsewhere.

RECOMMENDATIONS

10. In considering whether Professor Hayward and others in his position had suffered an injustice, I found that he was entitled to expect that the scheme would be devised properly, with clearly articulated eligibility criteria. In my view, he was also entitled to expect that he would be provided with pertinent information and that the scheme would be operated properly. This did not happen.

11. I therefore recommended:

(i) that the MoD should review the operation of the ex gratia scheme to enable it to be satisfied that the late introduction of the “bloodlink” criterion had not led to unequal treatment of Professor Hayward and others in a similar position to him compared with those whose applications were determined prior to the introduction of the criterion;

(ii) that the MoD should fully reconsider the position of Professor Hayward and those in a similar position to him, who had been denied a payment when their application was considered after the late introduction of the “bloodlink” criterion;

(iii) that the MoD should apologise to Professor Hayward and to others in a similar position to him for the distress which the maladministration identified in my report has caused them; and

(iv) that the MoD should consider whether they should express that regret tangibly.

12. In addition to these recommendations, which were specific to the subject matter covered by my investigation, I also made three more general recommendations. These were:

(i) that ex gratia schemes should be devised with due regard to the need to give proper examination to all of the relevant issues before the scheme is announced or otherwise advertised;

(ii) that, once advertised and implemented, any changes to eligibility criteria in such schemes, if such changes are needed, should be publicised and explained to those potentially affected by the changes; and

(iii) that, where such schemes are the subject of large numbers of complaints alleging maladministration or of other criticisms from the courts or in Parliament, it is good administrative practice to review the relevant scheme.

THE GOVERNMENT’S RESPONSE

13. I raised my more general recommendations with the new Cabinet Secretary following the publication of my report. I will take forward these recommendations in dialogue with him and with Government more widely, in order to seek to avoid a repetition of the maladministration identified in my report.

14. In relation to my findings that were specific to this investigation, as will be seen from paragraphs 219 to 222 of—and the annex to—my report, the Government did not accept all of my recommendations.

15. The MoD has only agreed to implement the third and the fourth recommendations and has done so by way of a Parliamentary Written Statement, which set out the terms of the Government’s apology to those caused distress and outrage, and by a decision to make a consolatory payment of £500—as a tangible expression of their regret for this distress and outrage—to each person denied payment because they did not meet the “bloodlink” criterion. I understand that the Minister is sending an individual letter of apology to all those qualifying for the payment.

CONCLUSION

16. As I said in the introduction to my report, I considered it appropriate to lay this report before Parliament for a number of reasons:

— First, while the report set out the results of my investigation into Professor Hayward’s complaint, his was only one of a number of complaints about the same matters received by my office. Thus, the representative investigation I conducted into his complaint had application to other people in a similar position to Professor Hayward.

— Secondly, the complaint related to public policy issues that have been of interest to Parliament and which had been debated there on a number of occasions.

— Thirdly, the report contained a number of general recommendations which have significance beyond the particular scheme complained about and are relevant to other ex gratia schemes operated by public bodies.
Finally, because the Government—exceptionally—did not accept all of the recommendations I made to remedy injustice caused by maladministration. That is rare.

17. I have laid my report before Parliament and my work on this investigation is now complete. It is now for Parliament—through this Committee—to consider the reasonableness of the Government’s response to my recommendations. I am happy to offer the Committee any information or assistance it requires in that respect.

*November 2005*

**Letter to Chairman from Mrs Hils Hamson**

I am writing to you about my concern at the injustice shown by this government to ex Internees who have not received the ex gratia payment because they cannot prove a “blood link”.

Many MPs support the fight for justice on behalf of these ex internees. I hope they force a debate on the Ombudsman’s report on the MoD.

Of course you are aware of all the background to this dispute. This is my background to it. I was a 5½ year old, living in Hong Kong when the Colony surrendered on Christmas Day 1941. I spent the next 3½ years in Stanley Internment Camp. So you see many of those denied the ex gratia payment were my friends—maybe younger, maybe older, but my friends. I realize now that some of them were mixed race, some had lost dads and brothers in the fight for Hong Kong, some had tried to get away but were not accepted by Britain, Australia or Canada because of their parentage (disgraceful). I could easily trace my family to Britain—my father found work in Hong Kong because of the depression in Britain. He was born in Devon, my mum in London. He was a sanitary inspector, working across health and welfare and I have no doubt working with colleagues who had mixed race families—very normal in the Colonies. The Colonies gained greatly from such input. When Hong Kong was attacked everyone was involved in the battle and in the subsequent surrender the Japs set about internning ALL who were considered British. They went to the British Embassy and got list of names there. NO IFS, NO BUTS, in we went. What is more, in the case of Stanley, in we stayed, even though it may have been possible to evacuate and send home some women and children when the Americans were repatriated. However between Mr Gimson, the Colonial Secretary, and the Colonial Office it was decided that repatriation was not a good idea as it would be seen as implying that the British had abandoned Hong Kong. So, many of us find that our personal welfare, even as a child, had to take second place to strategic consideration. (I suspect this is now the case with the MoD and funding). This applied to ALL even though Mr Gimson must have known that our fate and likely demise at the end of hostilities could be very unpleasant indeed. He could never have foreseen a quick surrender by the Japs, the likelihood was anything but. In fact, my father carried two half razor blades throughout internment to dispatch us humanely. I doubt whether the Japs would have wasted a bullet on a child, besides which as a young girl I might not have been dispatched before the soldiers had their “fun”. We were ALL subjected to the same fears and conditions.

Mr Blair made his promise of ex gratia to ALL former British internees and he should honour that promise. It was only when it was handed to the MoD that they added the blood link criteria. How can this be allowed in a democratic country. It can’t be, the MoD are a law unto themselves.

Here we have a department that:

(a) can ignore the Parliamentary Ombudsman when she tried to castigate them about a complaint made by an internee, only the third case in 40 years to be ignored by the department involved; and

(b) appeals against a High Court judgement that the blood link rule breaches the Race Relations Act.

It is a picture of a department above the law of the land and above the reproof of Parliament. It is not democracy at work.

Many of these mixed race families lost their British husbands fighting the Japs, or they died in PoW camps. Their menfold, to whom we all owe our thanks would expect our nation to honour their wishes that we protect their loved ones. Otherwise all this business of honouring those who fought and died is meaningless. In other words—ladies and gentleman of the Select Committee, this IS a debt of honour and many in Britain will expect it to be honoured and upheld.

I also include an appeal from the SSIFA. The problem is that the MoD remit is the fighting forces. They should not be responsible for those injured in battle. That should ALL be funded separately and until this is done there will be a great many people fighting for justice in the form of compensation. What a waste of taxpayers money as the MoD fights case after case of compensation. It’s a ridiculous situation. Time it was sorted.
I hope to hear soon that the government and the MoD will see the justice in granting the ex gratia to all former internees.  

Hils Hanson  

PS: I will also add that at 69 I do find these letters (three written today) very emotionally upsetting. Time the MoD saw sense.  

31 October 2005

Letter to the Prime Minister from Mrs Ann Moxley  

THE DEBT OF HONOUR—COMPENSATION PAYMENTS TO FORMER POW OF JAPAN  

I am writing to you as a British subject, a civilian interned by the Japanese in the Far East during World War II, and who were all denied the benefit of reparations from the Japanese by the failure of a former British Government to obtain them for us.  

Because of your own concern to right that wrong when you became Prime Minister, a compensation payment of £10,000 in lieu, has been paid to most of us, and we are grateful, relieved and delighted to have received it. We thank you for recognising the injustice of the past. At the same time we are concerned that the payment was not made equally to every British internee, as some of our fellow captives have been discriminated against in a very un-British way.  

Had those reparations come from Japan, would the British Government have agreed that the Japanese did not need to compensate those British POWs who could not prove that one of their grandparents were born in Britain? Would the British public as a whole have accepted that there are two classes of Briton, based on the place of their grand-parent’s birth? The one due compensation for ill-treatment and loss of liberty,—while the other is not?  

In the event these payments have been funded by the British taxpayer of today. If the same criteria were to be applied to other situations, would they agree that the health services or schooling for example should be provided only to Britons who could prove that their grandparents were born here? Imagine the outcry! Rightly so!  

Yet the payments that have been made to British POWs who have never lived in this country, and who do not pay taxes here, have in fact been subsidised by their fellow British internees who have lived, worked, served in the armed forces, and paid their taxes for the past 50–60 years in this country. These latter have been denied any compensation, although that same British Government of long ago had served them just as badly in their dealings with the Japanese. This seems to me, and also to many others, to be quite wrong in principle. As a taxpayer paying my share of the bill, I believe that citizens of this country, in this situation, deserve compensation, rather than rejection, and we should do what is right for them.  

As the debt of honour is nearly, but not quite fully discharged, I hope that you, as a man of principle, will ensure that it has been fairly dealt with, please before you leave office, the pending court cases proceed, more time and money is wasted in protests, and the qualifying recipients have died.  

6 November 2005

Letter to Chairman from Don Touhig MP  

As you are aware, I am to appear before the Public Administration Select Committee this Thursday 1 December. I have been invited to provide evidence to the Committee with regard to the Parliamentary Ombudsman’s Report on the complaint brought by Professor Hayward in respect of the Far East Prisoner of War and Civilian Internee ExGratia Payment Scheme.  

As I explained to you verbally earlier today, while preparing evidence for the session, my officials have brought to my attention certain matters previously unknown to me and which may be central to the issue under scrutiny. I am of the view that these matters are sufficiently important to require further investigation but because of the substantial amount of documentation which will need to be examined, this cannot be completed before the session on Thursday.  

As you will appreciate, I have considered this matter very carefully. I believe it is right for me to seek clarification on certain aspects of the Ex-Gratia Scheme and would ask for your forbearance if during Thursday’s session I am unable to answer many of the questions put to me by the Committee. I know this will greatly inconvenience Committee members and I sincerely apologise for this. However, I hope you will understand that I would not make such a request unless I felt there were compelling reasons for doing so. This is an important issue for many people and I believe it would be in everyone’s interests if I could be allowed more time to explore these findings further.  

It is intended that officials will have completed this work within the next two to three weeks after which I would be in a position to report on the outcome to the Committee.  

I do hope this will be acceptable to you.  

29 November 2005
Letter to Veterans Agency, Ministry of Defence from Professor Jack Hayward (DH 04)

I have now received the unsolicited cheque for £500 (returned herewith) forecast in your letter of 25 October.

No doubt badly advised by his officials, Mr Touhig (to whom I wrote about this matter) instead of belatedly discharging in full the debt of honour incurred by the errors made by his predecessors, has chosen to fob off people in my situation with a desirey “tangible” expression of regret for the maladministration identified by the Ombudsman.

Would you confirm receipt of this £500 cheque which I categorically reject. Money is not the measure of all things, least of all when matters of national and personal honour are at issue.

My rejection of this gesture is motivated by the fact that it is an evasion of the main and reiterated issue: an official apology for the insult to those who suffered internment as British subjects and have arbitrarily been denied this recognition. Persistence in this discreditable conduct is unworthy and unforgivable and I will not appear to countenance it by accepting the sum offered.

3 November 2005

Memorandum by John Halford, Bindman and Partners (DH 05)

UNPRECEDENTED, UNEXPLAINED, UNACCEPTABLE

A briefing for the Select Committee on Public Administration on the Ministry of Defence’s response to the Parliamentary Ombudsman’s investigation of the Far East Prisoners of War Compensation Scheme

1. On 12 July 2005 the Parliamentary Ombudsman exercised special powers to lay a report before Parliament, “A Debt of Honour”—the ex gratia scheme for British groups interned by the Japanese during the Second World War. The Ombudsman’s office was established in 1967, yet this was only the third occasion on which these special powers had been used. They are reserved for the exceptional situation where “injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied”1. On previous occasions when departments have disagreed with the Ombudsman, they have nevertheless acted to address the injustice identified save where statute law has made doing so impossible. And Parliament has repeatedly been assured by Ministers that, although Ombudsman’s recommendations are not legally binding, “they will be accepted”.

2. With A Debt of Honour, however, the Ministry of Defence has refused both to implement key recommendations and to act to address the injustice identified. It asserts that the Ombudsman was wrong to identify injustice in her report. Worse still, there is no comprehensible explanation, let alone a satisfactory one, as to why the Ministry has taken this unprecedented course. The key question for the Select Committee is whether the Ministry’s response is acceptable in a constitutional democracy where the Ombudsman has, from the late 1960s until now, acted as an important check on the misuse of administrative power. For if the position the Ministry has taken is seen to be acceptable, there is no reason why any other government department should not decide just how accountable—or unaccountable—it wishes to be in future. The Ombudsman gave evidence on this question to the Select Committee on 20 October 2005:

“In my memorandum I have invited the Committee to reflect on the Government’s response because I think constitutionally it is significant and it is highly exceptional it is of huge concern to me to see indications that the Government may be picking and choosing which of the Parliamentary Ombudsman’s recommendations it wants to accept.”

3. As the Select Committee is aware, Bindmans represents Diana Elias, the Respondent to the Ministry’s appeal against Mr Justice Elias’ finding that the compensation scheme is racially discriminatory.2 That judge also ruled the Ministry had broken its duty under section 71 of the Race Relations Act 1976 (as amended) to review the Scheme and assess its impact on the elimination of unlawful discrimination, a ruling which the Ministry has not appealed but proposes to do nothing about for now. This briefing does not discuss the Ministry’s appeal or Mrs Elias’ cross appeal about direct discrimination and the lack of flexibility in the Scheme: those are matters for the Court of Appeal. It is however perfectly legitimate for the Select Committee to enquire why the Ministry has failed to review the Scheme under its Section 71 duty following the Elias judgement.

THE COMPENSATION SCHEME AND THE “DEBT OF HONOUR”

4. In November 2000 a new compensation scheme was announced for the benefit of former British internees and POWs, the responsible minister Dr Lewis Moomey MP stating:

“The Government recognise that many UK citizens, both those serving in the armed forces and civilians, have had to endure great hardship at different times and in different circumstances, but the experience of those who went into captivity in the Far East during the Second World War was unique.”

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1 Section 10(3) Parliamentary Commissioner Act 1967.
We have said before that we believe the country owes a debt of honour to them. I hope that I am speaking for everyone here when I say that today something concrete has been done to recognise that debt…” (see Appendix 1).  

Many survivors applied and most were paid in February 2001. In all, over 24,000 applications were made but in July 2001 approximately 1,100 were refused, all for the same reason: the scheme rules had been “clarified” so as to impose a requirement for a “bloodlink” to the United Kingdom (in fact, as the Ombudsman found, this was a wholly new requirement). Such a “bloodlink” is acquired by birth here or having a parent or grandparent born here. All other ties to the United Kingdom—time spent living here, family here, taxes paid, public service, present British Citizenship—are considered simply irrelevant.

5. The Ombudsman found this approach was not supported by those who had to administer the Scheme at the War Pensions Agency. On the contrary, they argued for a different rule, one consistent with what they believed was the original “spirit and intention” behind the Scheme. For example, on 10 April 2001, the Agency’s then Acting Chief Executive wrote the first of two memos to the Cabinet Office voicing his concerns: 

“It now appears that if we apply the eligibility criteria we will be left with some 800 which do not qualify. Not only will this result in a much larger number of rejections than expected but the individual circumstances of many of these cases will be hard to defend. Many of the individuals, now ‘fully naturalised British citizens’ have lived in the UK for over 50 years and would be deemed by the general public to be wholly ‘British’. Most importantly for presentational purposes, they were interned solely because the Japanese deemed them to be British.

Despite previous concerns at expansion of the eligibility we are now firmly of the belief that the evidence of individual cases suggests that the present stance will be impossible to defend on grounds of fairness and logic.”

and yet the Ministry has maintained precisely that “indefensible” stance and defended it for the last four and a half years. Mr Burnham’s key memos are reproduced at Appendix 2 to this briefing and should be read carefully.

6. There are very particular reasons why this country continues to owe those refused under the bloodlink rule a debt of honour. For one thing, in common with other internees and former POWs, their interests were not adequately championed when Britain negotiated with Japan in the 1950s over compensation for victims of its war crimes. Further, on 26 June 1941, fearful of a Japanese invasion, the Foreign Office endorsed an evacuation order for the benefit of British civilians living in Hong Kong. Over 3,500 non-essential personnel left by sea under these arrangements, mainly heading for Australia. Yet not all British civilians benefited from the order: only those of “of European origin” were instructed to report for evacuation and others were turned away. This meant that along with the essential personnel, several hundred British people with origins outside of Europe, yet loyal to the Crown and holding British passports, were ordered to assemble in Murray Parade Ground or rounded up later by the invading Japanese troops. These British people, including the 17 year old Diana Elias, were taken to Stanley Camp where, for the next four years, malnutrition, disease, overcrowding would be a daily reality and beatings, torture and summary execution were a constant threat.

7. Many did not live to see the liberation of the camps in 1945. As far as civilian internees in Hong Kong are concerned, it is precisely this group that have been refused compensation 60 years on, thanks to the Bloodlink rule.

**THE OMBUDSMAN’S KEY FINDINGS**

8. The Ombudsman investigated for just over two years. Paras 230–231 of her Report record: 

“…those for whom this scheme was supposed to offer a tangible expression of ‘a debt of honour’—owed to them by this country in recognition of the inhuman treatment and suffering they endured in the 1940s at the hands of the Japanese, who considered them to be British—were entitled to expect that the scheme would be devised, announced and administered without maladministration. . . . It is of considerable regret to me that this did not happen. It is also deeply disappointing that the Government has not accepted that it should properly remedy the injustice I have found was caused by maladministration”.

and she concluded as follows:

— the justified feeling of outrage and distress caused by those who were implicitly “not British enough” to receive a payment expressed to be in recognition of a “debt of honour” constituted an injustice (para 206);

— the meaning of “British” was discussed for the first time several months after the scheme was announced and several weeks after the first payments were made—only at this late point was the Bloodlink rule devised and introduced (para 172);
— the introduction of the bloodlink rule in this way, many months into the scheme’s operation, without devising a method to ensure that late introduction would not lead to the inconsistent treatment of applicants or to other administrative anomalies constituted maladministration, and the Ombudsman was not satisfied that all applicants had been afforded treatment equal to those whose applications were determined prior to the introduction of the rule because the Ministry had been unable to provide the evidence that had happened (paras 193–196);

— it was also surprising that the bloodlink rule was chosen as being the means to decide whether to repay a “debt of honour” to those interned as British civilians, and she had great sympathy for those who were British enough to be interned during the second world war but did not have a sufficient Bloodlink connection to qualify for an ex gratia payment under the compensation scheme (paras 160–164);

— the operation of the scheme constituted maladministration because principles of good administration require systems to be transparent, and to be designed in such a way as to produce—and be seen to produce—consistent outcomes (paras 165–192);

— it was a matter of concern that the compensation scheme had not been reviewed in the light of criticism by the courts and others (para 198);

— the announcement of the Scheme before its criteria had been fully determined constituted maladministration, because it lacked sufficient clarity, and caused “extreme disappointment and anger, and good administration of extra-statutory schemes required clearly articulated entitlement criteria to ensure that those potentially covered were not put to unnecessary distress or inconvenience” (paras 152–159); and

— the Ministry of Defence ought to have informed applicants that the criteria had been “clarified” when they were sent a questionnaire to establish their eligibility, and the failure to do so constituted maladministration (para 197).

9. In the Ombudsman’s view, this established maladministration called for a “full review” of the Scheme “in relation to indications that the late introduction of the bloodlink criterion may have led to unequal treatment” and

“if a thorough review of the scheme confirms that such payments were made prior to (and because of) the late introduction of the bloodlink criterion . . . the Government should fully reconsider the effects of that on those whose applications were determined subsequently” (paras 212–215).

THE MINISTRY’S UNPRECEDENTED RESPONSE

10. The Introduction to the Cabinet Office’s consultation Reform of the Public Sector Ombudsmen Services, August 2005 commented:

“The Government is committed to delivering first class public services that meet the needs of the citizen. Where levels of service fall below standard, people have a right to expect a robust and user-friendly system for the investigation and resolution of complaints.”

and yet on this occasion, as the Ombudsman noted in her October 2005 memorandum to the Select Committee:

“The Government did not accept all of my findings and has only agreed to implement the latter two recommendations. This is of considerable regret to me and, being highly exceptional, is a matter on which the Committee may wish to reflect”.

In fact, of the Ombudsman’s many findings, the Ministry has accepted only that the announcement of the scheme was maladministrative and that the questionnaire should have made it clear that the eligibility criteria had been changed (see paras 5 and 6 of the Annex to the Ombudsman’s report). The recommendation for a review has been rejected. The wholly unprecedented nature of this response becomes clear when circumstances surrounding the previous two special reports of the Ombudsman are considered.

11. The first such report arose out of a complaint about the lack of publicity about the provisions of the Land Compensation Act 1973 which the Ombudsman considered inconsistent with previous practice. The Department of Transport accepted the criticism, but considered there was a legal obstacle to accepting late claims from the complainants absent statutory reform. Self evidently, that is very far from the situation here.

12. The second occasion the Ombudsman issued a special report concerned properties blighted by the Channel Tunnel development. Here the establishment of a wholly new scheme to compensate those suffering “exceptional or extreme hardship” because of generalised blight was recommended. The government disagreed that there had been maladministration but nevertheless accepted matters needed to be reconsidered, and the injustice identified was ultimately addressed through legislative reform.

4 HC 598 of Session 1977–78.
5 HC 193 of Session 1994–95.
6 HC 819 of Session 1994–95.
13. Although the special report power was not used, the Ombudsman’s investigation into the Barlow Clowes affair also merits attention. Here the government did not accept the reasoning by which the then Ombudsman had reached his conclusions about Department of Trade oversight of the relevant financial market, but nevertheless decided to pay out £150 million of compensation “in the exceptional circumstances of the case and out of respect for the office of the Parliamentary Commissioner”.8

14. The respect that the Ombudsman’s office should be due reflected in many other Parliamentary statements and Cabinet Office publications, eg:

— in 1972 the Select Committee noted that “government departments are very willing to accept the views of the Commissioner and to afford a remedy for injustice”;9

— in 1997 the Cabinet Office published guidance for departments entitled The Ombudsman in Your Files10 which comments “Ministers have publicly confirmed that the Government normally accepts and implements the Ombudsman’s recommendations” quoting as the source for this Francis Maude, the then Financial Secretary who told the Select Committee on 18 December 1991 “that is the basis on which the Government has tended to work—and has, as far as I am aware, always worked—in that we do accept and implement the recommendations that are made”11 (relevant extract at Appendix 3)12; and

— the Cabinet Office’s current guidance to government departments Handling of Parliamentary Ombudsman Cases13 comments “The Ombudsman’s recommendations are not legally binding but Ministers have made it clear to Parliament that they will be accepted” (relevant extract at Appendix 4)14.

15. In short, for almost 40 years a constitutional convention has operated with the effect that injustice identified by the Ombudsman will be addressed unless there is some statutory impediment to doing so.

16. But no such impediment exists in this case. The compensation scheme is extra statutory and even were that not so, it would hardly prevent the Ministry of Defence from implementing the Ombudsman’s key recommendations: to “thoroughly review” the scheme and “reconsider” the position of anyone identified as being disadvantaged as a result of the late introduction of the bloodlink rule.

17. What compelling explanation has the Ministry given for flouting this long-established constitutional convention? The answer is none whatsoever.

THE MINISTRY’S INCOMPREHENSIBLE EXPLANATIONS

18. In the wake of the Ombudsman’s report, Don Touhig, the responsible Under-Secretary of State told Parliament on 13 July 2005 that:

“The words used in November 2000 led Professor Hayward to think that, as a former British civilian internee, he was covered by the Scheme. This expectation was ended when his claim was subsequently rejected as he did not meet the birthlink criterion. We accept that the way the scheme was introduced and announced led to distress for Professor Hayward himself and for some other people in a similar position. There was no intention to cause such distress but we accept that it is real. The fact that this occurred is profoundly regretted and I would like to take this opportunity to apologise for it.”

19. He added:

“The Parliamentary Commissioner made a number of criticisms and recommendations on other aspects of the Government’s handling of the scheme, notably relating to the birthlink criterion itself, which we do not accept. This criterion, on which Professor Hayward’s application was rejected, is the subject of judicial review in which judgment was handed down on 7 July. This judgment is now being considered and it would not be appropriate to make further comment until the final outcome of the case is known”.

7 HC 76 of Session 1989–90.
12 Not printed.
14 Not printed.
20. As for the “tangible expression of the apology” for the admitted maladministration in the way the scheme was announced, this takes the form of an offer of £500 per former internee refused under the bloodlink rule before July 2001. This payment, it is said, is to:

“recognise that the scheme’s initial announcement did not fully spell out the eligibility criteria, and in particular, to compensate those who would have qualified but for the later clarification that ‘British’ was to be defined by the ‘birthlink’ criteria. As a result . . . many were led by the initial announcement to believe that that might be eligible and may have been caused distress by this loss of expectation.”

see the letter to Jacob Hardoon (Diana Elias’ brother) reproduced at Appendix 5. The £500 offer has attracted scathing criticism, not least from other prisoners of the Japanese who themselves have been compensated yet find the Ministry’s stance incomprehensible. For example, on 12 October 2005 The Times carried this report:

“Pitiful payment for less-British PoWs . . .

British war veterans were last night dismayed at the Government’s decision, accusing ministers of letting down the former prisoners who failed what they have described as a discriminatory “birthlink” test.

Jack Nield, 81, War Pensions Secretary of the Burma Star Association, said: ‘They joined us and fought with us and they should now be treated the same. I don’t know the full details of the new decision but it sounds very discriminatory. I would like to know the reasoning behind this. Five hundred pounds isn’t worth very much, is it?’ Mr Nield, awarded an MBE in 1999, served as a Morse code signalman during the Second World War, including a nine-month spell in Burma, in which he was involved in the famous battle of Kohima. He said that the MoD should think again and pay all the former internees £10,000.”

21. It is bizarre that the outcome of a two year investigation by an officer of Parliament should be dismissed with such a terse and opaque statement. To do so is hardly consistent with the “respect for the office of the Parliamentary Commissioner” shown by previous governments, let alone the convention that recommendations “will be followed”. On the contrary, it is contemptuous. The Annex to the Ombudsman’s report contains further “reasons” why the Ministry was unwilling to accept the Ombudsman’s recommendations, but neither they, nor what is said in Mr Touhig’s statement can withstand a moment’s scrutiny:

— First (at paras 11–25 of the Annex), the Ministry argued that inconsistencies in the way scheme applicants were dealt with could have been raised by means of a legal challenge and therefore the Ombudsman was precluded from investigating them. That is quite wrong: in law, the Ombudsman must consider whether it is “reasonable” for a complainant to have recourse to the Courts. But where, as here (see paras 26–28), she has asked that question and decided that court action was not reasonable, her power to investigate remains.

— It was then said that the Ombudsman’s reasons for believing Professor Hayward could not be expected to litigate against the Ministry were “unsatisfactory” given others have done so (para 15). The two “others” (of the 800 plus refused compensation) are ABCIFER and Mrs Elias. But ABCIFER is an organisation, not an individual: its circumstances cannot be compared with those of Professor Hayward. Mrs Elias raised three narrow legal arguments, none of which were considered or addressed by the Ombudsman. ABCIFER’s challenge failed. The Ministry originally characterised Mrs Elias’ as “hopeless” in correspondence, threatened to seek the legal costs of defending itself from her (as it had from ABCIFER), and contends that the judge who allowed her judicial review was wrong to do so. Quite how it can simultaneously argue that Professor Hayward should have gone to law is impossible to understand.

— Neither legal challenge examined the compensation scheme in the round and both ABCIFER and Mrs Elias were repeatedly refused access to many of the documents provided to the Ombudsman. As the Court of Appeal observed in a case where another ombudsman’s decision to investigate notwithstanding the existence of a legal remedy was challenged by way of judicial review “[i]t is for the commissioner to decide whether or not he is satisfied that it is not reasonable to expect the person aggrieved to pursue the alternative remedy.” Here, of course, the Ministry brought no such challenge, presumably because it knew it would fail. It merely complained once it became clear that the Ombudsman would make criticisms of the scheme and refused to accept them.

— Next, the Ministry said (at para 17 of the Annex) that ABCIFER had argued the same point about inconsistent decision-making under the Scheme and this argument was dismissed by the Courts. Yet this seeks to conceal three important points about the Ombudsman investigation. First, in the ABCIFER case, the Ministry argued that there was no real change in the eligibility criteria. But as the Ombudsman established thanks to her access to the complete background materials, that was wrong. Second, the classes of people the Ombudsman compared were those people whose applications were determined before and after the bloodlink rule was introduced (para 172),

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15 Not printed.
16 R v Local Commissioner for Administration in North and North East England, ex parte Liverpool City Council [2001] 1 All ER 462, at para 40.
whereas the “common law equality” argument advanced in ABCIFER was quite different: it compared those with and without a bloodlink. Third, ABCIFER focussed on the question of whether the scheme was unlawful, not on whether it was maladministrative in a way falling short of illegality, which was the test the Ombudsman applied (para 33). The Court of Appeal has repeatedly held that that these are different tests. Try as it might, the Ministry cannot hide behind the finding in ABCIFER that the scheme was lawful in defending itself against the entirely different charge of maladministration.

Then the Ministry complained (at paras 18–20 of the Annex) that there was no evidence that the Ombudsman’s concerns about inconsistencies were borne out. This is highly disingenuous. The Ombudsman’s findings (paras 194 and 195) were that “it was incumbent on the MoD at that time to satisfy itself that the late introduction of an eligibility criterion would not lead to the inconsistent treatment of applicants or to other administrative anomalies. They did not do so. I consider that this failure constitutes maladministration . . . The Government has also not been able to provide me with evidence to assure me now that applications from people in the same situation for the purposes of the scheme’s eligibility criteria were not decided differently.” The Ministry is under a strict duty to cooperate with the Ombudsman in her investigations. It appears to believe that its own failure to honour the letter and the spirit of that duty (enabling the Ombudsman to conclude one way or the other whether there have been inconsistencies) creates a basis for criticisms of the Ombudsman’s view of the limited evidence she does have. That is patently absurd.

On this basis, however, the Ministry concluded that there should be no review of the scheme (para 26 of the Annex). That cannot be right: if the Scheme really was operated consistently as between former internees who have no bloodlink, that would emerge from the review. If not, fairness would demand reconsideration of the position of those who had been refused.

22. Mr Touhig’s 13 July 2005 statement advanced a somewhat different explanation for the failure to review the scheme in response to the Ombudsman’s criticisms, however: that the bloodlink rule is the subject of Mrs Elias’ judicial review and “it would not be appropriate to make further comment until the final outcome of the case is known”.

23. But it is a tried and tested tactic of the Ministry to attempt to avoid or at least stall one form of inquiry into the compensation scheme by reference to another. In this way, the Ombudsman was told that she should not investigate the scheme pending the outcome of ABCIFER’s case (see para 51 of her report). But when that outcome was known and the Ombudsman did investigate, she was told that she should not have done so because of that case (paras 11–25). Similarly, the Commission for Racial Equality was told the Ministry could not answer its queries about the Scheme because of the ABCIFER case and, later, the Ombudsman investigation and the Elias case. Mrs Elias herself was told that she should not litigate her case, it being “hopeless” in the light of ABCIFER. Parliament is now being told that no further explanation of the rejection of the Ombudsman’s findings is warranted because Elias remains undetermined. A certain pattern emerges.

24. It is quite wrong to argue that the refusal to accept the Ombudsman’s findings had or has anything to do with the Elias case. In reality, this is simply another pretext for the Ministry to avoid accountability:

— Although the Ombudsman’s report postdated the Elias judgement (by five days) it was provided in draft to the Ministry and the key findings rejected months earlier, on 24 February 2005.

— The Secretary of State’s grounds of appeal in Elias have nothing to do with the Ombudsman’s findings of maladministration. They focus—as they must—on why the Ministry believes the judge was wrong to find that indirect race discrimination was unjustified.

— An administrative scheme may be both unlawful and maladministrative for quite different reasons (just as it may be one or the other of these things). Yet for the Ministry to fail or refuse to deal with identified maladministration on the basis that its scheme may or may not also be ruled unlawful on appeal (when it has been found to be so by a first instance court) is wrong in principle: two identified wrongs cannot, through some process of malign alchemy, make such a scheme right. Conversely, if its appeal succeeds, the Ministry will simply have established that there was no unlawful racial discrimination. The maladministration identified by the Ombudsman will remain unaddressed.

AN ACCEPTABLE RESPONSE?

25. Last, it is necessary to say something about whether the £500 offered to former internees and the Ministry’s response more generally ought to be acceptable to the Select Committee and indeed to Parliament.

17 See eg ex parte Liverpool City Council op cit at paras 28 and 30 and R v Commissioner for Local Administration, ex p Croydon London BC [1989] 1 All ER 1033 at 1044.

18 Sections 7 and 9, Parliamentary Commissioner Act 1967.
— £500 is a sum lawyers normally characterise as a “nuisance” or “botheration” payment. It cannot sensibly be characterised as adequate recognition of the “distress caused by [the] loss of expectation” that someone would qualify for a payment of £10,000 caused by a misleading announcement. That is especially so when that distress is experienced by someone now in their ‘70s or ’80s who became an internee because they were British only to be told that they are somehow insufficiently British to be compensated for that. In short, the £500 offer adds insult to injury.

— If, as the Ministry now apparently accepts, former internees were misled by the announcement of the scheme and this (at least) is maladministration, then the appropriate form of redress is to put such internees into the position they would have been “but for” that admitted maladministration—by paying them that to which they were led to believe they would be entitled, £10,000. As the Cabinet Office publication The Ombudsman in Your File comments “TREATING PEOPLE FAIRLY—Not only must you act fairly and impartially, but you should also ensure that your actions are seen to be fair and impartial.”

— In fact, governments have accepted this as the appropriate approach to redress for maladministration for more than a decade: in the previous Government’s Response to the First Report From the Select Committee on the Parliamentary Commissioner19 (Appendix 6)20 it said “Where maladministration has led to a direct and readily quantifiable financial loss, departments and agencies should seek to set redress at a level which would return the complainant to the position he or she would have been in if the maladministration had not occurred.” Chapter 36 of Government accounting was amended accordingly. Current Treasury guidance (in Government Accounting 2000) echoes these principles. Yet they too have been flouted by the Ministry.

CONCLUSION

26. The Ombudsman’s investigation concerned a wrong which occurred over four years ago in respect of a compensation scheme intended to recognise yet greater wrongs that occurred more than 60 years ago. There is real, ongoing prejudice to the victims of these wrongs. They continue to experience injustice in the form of the “outrage at the way in which the scheme has been operated and distress at being told that they were not ‘British enough’ to qualify for payment under the Scheme” (para 206). As Mrs Elias put it when interviewed on BBC News, April 2005:

“When the compensation scheme was announced I applied because it was a scheme for British people. I am still British now, but I have been told I am not quite British enough for my suffering to be recognised. The ‘bloodlink’ rule disgusts me.”

and the stark fact is that many will die before that injustice is addressed if the Ministry is allowed to continue to defy the Ombudsman and Parliament: in the evidence put to the courts in the ABCIFER case and that of Mrs Elias, Tom McKane, a senior Civil Servant within the Ministry and the scheme’s principal architect deposed that applicants under the scheme were “dying every day” (relevant extract at Appendix 7)21. The Court of Appeal’s judgment will probably be handed down in March 2006, but that may well be followed by an appeal to the House of Lords, taking up to a further two years.

27. In reality, as explained above, the ongoing litigation is irrelevant to the question of what should be done now about the maladministration and unremedied injustice that the Ombudsman has identified. It is not for the courts to pronouce on whether the Ministry’s response to the Ombudsman is acceptable and consistent with the standards Parliament sets for its servants, including Ministers of the Crown: that responsibility falls to the Select Committee. The hearings on 1 December will provide an opportunity to do just that and, in due course, to implore Parliament to do justice by the British former internees who continue to be denied it. The time has come to reject the feeble and dishonourable explanation the Ministry has offered as to why it, uniquely amongst government departments, need not account to the Ombudsman or to Parliament for its administrative misdeeds.

29 November 2005

Memorandum by John Halford, Bindman and Partners (DH 06)

Note to the Select Committee on Public Administration on the relationship between the Parliamentary Ombudsman’s Report, “A Debt of Honour” and the appeal in Secretary of State for Defence v Diana Elias
malnourishment. Mrs Elias herself was exposed to treatment which was so horrific in its nature that the judges dealing with her case have made Orders prohibiting evidence and information about it being disclosed to the public. The government of Japan has offered Mrs Elias and her fellow internees no redress. Cases taken in the Japanese courts have failed. The United Kingdom government will not reopen negotiations on the Peace Treaty.

2. However, in November 2000 a compensation scheme was announced by the Secretary of State for defence for such former British internees and POWs. Survivors applied and most were paid in February 2001. Approximately 1100 people were not paid. They were subsequently told that the scheme rules had been “clarified” so as to impose a requirement that applicants have a “bloodlink” to the United Kingdom (in fact, as the Ombudsman found, this was a new requirement). Such a bloodlink is acquired by birth here or having a parent or grandparent born here. All other ties to the United Kingdom—time spent living here, family here, taxes paid, public service, present British Citizenship—are considered quite irrelevant.

3. Shortly before the 60th anniversary of V J Day I wrote to the Chair and Members of the Select Committee about the failure of the Secretary of State for Defence to accept certain findings and address the key recommendations made by the Parliamentary Ombudsman in her report “A Debt of Honour: the ex gratia scheme for British groups interned by the Japanese during the Second World War” (HC 324). I asked the Committee to act by enquiring into and taking steps to address that failure.

4. I have had a helpful discussion with the Committee Clerk who has told me that this issue will be raised (amongst others) when the Committee meets with the Ombudsman on 20 October 2005. The Committee has been made aware that the Secretary of State is pursuing an appeal against an order made in judicial review proceedings brought by Mrs Elias on 7 July 2005. In that order, Mr Justice Patrick Elias (no relation) allowed a claim for judicial review by Mrs Elias on the basis that refusal of payment to her on the grounds that she did not satisfy the bloodlink rule amounted to unjustified (and thus unlawful) indirect discrimination on grounds of race. I understand that the Committee would like to know whether there is an overlap between the legal issues in the appeal, and the question of why the Secretary of State has disregarded the Ombudsman’s recommendations and refused to address the maladministration she identified.

5. The short and unequivocal answer is that there is no overlap at all and every reason for the Committee to look into the Secretary of State’s response to the Ombudsman’s report at the earliest opportunity. I shall explain below why I say this.

THE OMBUDSMAN’S REPORT

6. The Ombudsman embarked on an investigation into the scheme following a complaint received (by her predecessor in the office) on 12 December 2001 (see para 18 of her report). The formal investigation began in 2003.

7. The Ombudsman found that:

(a) The manner in which the ex gratia scheme was developed constituted maladministration in the sense that it was not devised in accordance with good administrative practice (paras 143, 145–151).

(b) The announcement of the scheme before its criteria had been fully determined constituted maladministration, because it lacked sufficient clarity, and caused “extreme disappointment and anger’, and good administration of extra-statutory schemes required clearly articulated entitlement criteria to ensure that those potentially covered were not put to unnecessary distress or inconvenience (paras 152–159).

(c) It was puzzling that the meaning of “British” was discussed for the first time several months after the scheme was announced and several weeks after the first payments were made (para 172).

(d) It was surprising that the bloodlink criteria were chosen as being the means to decide whether to repay “a debt of honour” to those interned as British civilians by the Japanese, and she had great sympathy (as did Mr Justice Scott Baker, as he then was) for those who were British enough to be interned during the second world war but did not have a sufficient bloodlink connection to qualify for an ex gratia payment under the Compensation Scheme (paras 160–164).

(e) However, it was not for her, but for the courts to determine the fairness of the bloodlink criteria (paras 162–164).

(f) Notwithstanding that, the operation of the scheme constituted maladministration because principles of good administration require systems to be transparent, and to be designed in such a way as to produce consistent outcomes (paras 165–192).

(g) The introduction of the bloodlink criteria many months into the scheme without devising a method to ensure that the late introduction of it would not lead to the inconsistent treatment of applicants or to other administrative anomalies constituted maladministration, and she was not satisfied that all applicants had been afforded treatment equal to those whose applications were determined prior to the introduction of the bloodlink criteria (paras 193–196).

(h) The Ministry of Defence ought to have informed applicants that the criteria had been “clarified” when they were sent a questionnaire to establish their eligibility, and the failure to do so constituted maladministration (para 197).
(i) It was a matter of concern that the Compensation Scheme had not been reviewed in the light of criticism by the courts and others (para 198).

(j) The justified feeling of outrage and distress caused by those who were implicitly not British enough to receive a payment expressed to be in recognition of a “debt of honour” constituted an injustice caused by the maladministration (para 201–210).

**The Government’s Response to the Ombudsman’s Report**

8. The Ombudsman set out her recommendations for remedying this injustice, and observed that the MoD had not accepted all of these (paras 211–222).

9. She also observed that the conception of a “debt of honour” scheme had much to recommend it and had been widely welcomed and concluded (paras 229–231):

“In those circumstances, it is a great pity that a comparatively small number of individuals should have been caused such distress as a result of the maladministration of what was, after all, a highly commendable attempt to recognise ‘a debt of honour’. The number of rejected claims from former civilian internees living in this country would appear to be no more than about 300, and those living abroad total approximately 800. Some of those claims may fail to be rejected on grounds other than the bloodlink criterion. That compares with nearly 24,000 claims that have been paid.

However, those for whom this scheme was supposed to offer a tangible expression of a ‘debt of honour’ owed to them by this country in recognition of the inhuman treatment and suffering they endured in the 1940s at the hands of the Japanese, who considered them to be British—were entitled to expect that the scheme would be devised, announced and administered without maladministration.

It is of considerable regret to me that this did not happen. It is also deeply disappointing that the government has not accepted that it should properly remedy the injustice that I have found was caused by maladministration.”

10. On 13 July 2005, Mr Don Touhig, the Parliamentary Under-Secretary of State for Defence responded in the House of Commons to the Ombudsman’s report. He apologised for the distress caused to those such as Professor Hayward arising out of “the way the scheme was introduced and announced”. He said that the government was looking at whether there were means to express this apology in some tangible form. I understand that the Ministry of Defence now proposes to offer a contemptible £500 “nuisance payment” to former internees who suffered the maladministration identified.

11. Mr Touhig also announced that, pending the final outcome of the Elias case, the compensation scheme had been suspended for new applicants: claims could continue to be submitted, but none would be considered meanwhile (Hansard HC Col 29). This, he said, was because:

“The Parliamentary Commissioner made a number of criticisms and recommendations on other aspects of the Government’s handling of the scheme, notably relating to the birthlink criterion itself, which we do not accept. This criterion, on which Professor Hayward’s application was rejected, is the subject of judicial review in which judgment was handed down on 7 July. This judgment is now being considered and it would not be appropriate to make further comment until the final outcome of the case is known.”

**The Appeal and Cross Appeal**

12. The Secretary of State’s appeal against Elias J’s judgment was lodged on 21 July 2005. Mrs Elias’s own appeal was also lodged on 21 July 2005. Her Respondent’s Notice and cross-appeal were lodged on 3 August 2005.

13. Copies of each of these documents are appended to this note. In summary, however, the matters canvassed in the appeal and cross-appeal are as follows:

(a) The Secretary of State has appealed against the finding that the bloodlink criteria indirectly discriminated on grounds of race. He has not appealed the finding on section of the 71 Race Relations Act 1976 as amended but, pending the outcome of this appeal at least, proposes to do nothing to address the finding that he was (and remains) in breach of his statutory obligations in that regard.

(b) Mrs Elias has appealed against the learned judge’s decision on relief. She submits that he erred by failing to order the Secretary of State to reconsider her application for compensation under the Compensation Scheme as it existed at the time of her application, but with the unlawful and discriminatory criteria disappplied. She argues that whatever latitude a decision-maker may have to respond to a ruling of unlawful discrimination by formulating policies for the future on making

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22 Not printed.
payments which are non-discriminatory and lawful, he cannot effectively remedy past discrimination by pretending that others have not been paid (and in turn treated more favourably than the person discriminated against).

(c) Mrs Elias has also cross-appealed against the learned judge’s decisions that she has not suffered direct race discrimination and that the Secretary of State did not unlawfully fetter his discretion when—by his own admission—he applied the bloodlink criteria as an absolute and inflexible rule, thereby closing his mind absolutely to the possibility of making an exceptional ex-gratia “debt of honour” payment to her, either because of the particular extent of her suffering as a person interned by the Japanese on the ground that she was British, and/or because of the other indicia in her case of closeness of connection to the United Kingdom.

**IS THERE A RELATIONSHIP BETWEEN THE OMBUDSMAN REPORT AND THE APPEAL?**

14. Jurisdictionally, no. The Ombudsman is only permitted to inquire into and report on whether there is maladministration. The Courts are only permitted to rule upon whether an act or failure is unlawful. Here the issues with which the Court of Appeal is grappling are further circumscribed by the scope of the appeal and cross appeal that has been brought.

15. Questions of sub judice simply do not arise in my view if the Committee does not raise questions about whether the scheme discriminates unlawfully on grounds of race, or ought to operate flexibly (so as to permit exceptions to the bloodlink rule), or regarding the remedy ordered by Mr Justice Elias. These are the exclusive issues raised on appeal.

16. It might be said that the factual ground covered is the same and that, because the Ombudsman and the Court are considering the same scheme, the Committee ought to wait and see what the Court has to say about its legality, before deciding whether the Ombudsman was right to identify maladministration and whether it is wrong, in terms of accountability to Parliament, that the Secretary of State has refused to comply with her key recommendations. That would be quite wrong for the following five reasons:

(a) The Secretary of State’s stated reasons for not accepting the Ombudsman’s findings of maladministration have nothing to do with Mrs Elias’ case let alone the appeal: they were set out in full in the appendix to her report. The reference to the judgement in Mrs Elias’ case in Mr Touhig’s statement came only after the Ombudsman’s report was published. It cannot form any proper justification for not addressing maladministration identified. On the contrary, the reference has every appearance of an opportunistic attempt to find yet more reasons not to account to Parliament for the maladministration identified by the Ombudsman. I would respectfully draw attention to what was said at the beginning of one of the Committee’s sessions with the Ombudsman on 27 November 2003 when questions arose about her decision on investigating certain matters connected with another matter of great public interest and concern: the Equitable Life scandal. The Equitable Members Action Group had also threatened (and later pursued) a judicial review of the Ombudsman’s decision. However, the Committee’s chair rightly highlighted the:

> “important constitutional right of Parliament, again to quote the 1999 Joint Committee report, to ‘discuss any matters it pleases’, and in the public interest we are reluctant to accept any restriction of that right, however sound the reasons appear to be. We would deprecate attempts by any party to use the judicial review to delay or avoid Parliamentary scrutiny or, indeed, to gain any legal advantage. We are determined as a Committee to investigate this issue, and will do so.”

(b) A scheme may be both unlawful and maladministrative for quite different reasons. That is plainly the case here: the Ombudsman was at pains to distinguish her role from that of the courts, including that which had dealt with Mrs Elias’ case a few days earlier. Yet for the Secretary of State to fail or refuse to deal with identified maladministration on the basis that his scheme may or may not also be ruled unlawful on appeal (when it has been found to be so by a first instance court) is wrong in principle. Two identified wrongs cannot, through some process of malign alchemy, make such a scheme right.

(c) The Ombudsman’s investigation concerned a wrong which occurred over four years ago. It would be quite intolerable if the question of what should be done about the maladministration identified cannot be determined authoritatively by Parliament now. If the outcome of the appeal to the Court of Appeal is awaited, that could take a further six months. The case raises complex legal issues and might be appealed to the House of Lords in which case the outcome will not be known for at least another 18 months. It is, as I said in my letter to the Committee, high time that Parliament took responsibility to put matters right in relation to this scheme now that its Officer has reported precisely what is wrong in terms of maladministration.

(d) There is real, ongoing prejudice to the victims of the maladministration identified by the Ombudsman. They continue to experience injustice in the form of the

> “outrage at the way in which the scheme has been operated and distress at being told that they were not ‘British enough’ to qualify for payment under the scheme.” (para 206)
and in the meantime the stark fact is that many will die: in the Secretary of State’s evidence to the court in the ABCIFER case and that of Mrs Elias, a senor civil servant within the Ministry off Defence deposed that applicants under the scheme were “dying every day”.

(e) Last, the Committee will be aware that the Secretary of State’s response to this report raises questions which go far beyond the scheme. If the Ombudsman’s reports are to be disregarded with impunity, that will undermine public confidence in her office and its utility as a means of ensuring the accountability of central government departments. That will have a knock on effect for other ombudsman schemes and could well lead to an increase in litigation.

12 October 2005
Letter to Mr Ron Bridge from the War Pensions Agency, November 2000

Thank you for your letter of 7 November 2000 about claims from former Far Eastern Prisoners of Japan and your offer of assistance to enable claims to be resolved expeditiously.

I am very grateful for your offer of assistance and I welcome any help which would enable claims to be finalised as quickly as possible. We are keen to pursue all avenues to establish eligibility and we do not currently have the civilian lists prepared in some camps in 1944 which you mention. I would be grateful if we could arrange to have copies of any records you have which may help to establish eligibility. I understand that you may be meeting Alan Burnham and Jim Wareing at RBL today and they will be able to discuss this with you. They will also explain the approach we are taking and how we can help with forms and leaflets.

Please let me know if you identify any issues with which we can help or any difficulties which your members or others encounter with our service.

Thank you again for your offer of assistance which I gladly accept.

15 November 2000
Letter to Mr Ron Bridge from the War Pensions Agency, December 2000

Re: Payments to British groups held captive by the Japanese

At our meeting of 15 November I agreed to keep you advised of progress. We have now received in the region of 11,500 claims. Many thanks for everything that you have done so far in helping us to publicise the scheme and attract this number of initial claims. I am sure you have also handled numerous requests for assistance from your members during this period.

As forecast we are achieving high success rates in the validation of claims through our existing documentation of the 1950s scheme. Of the 11,500 claims received so far some 7,000 have reached the stage of verification and of these we have been successful in around 98% of cases. There are, of course, some cases where it is proving more difficult to obtain evidence and I am grateful for your many offers of help and assistance and for the information and records that you have made available.

Whilst much has gone according to plan there have, of course, been some minor difficulties. We have experienced some problems coping with the large numbers of documents that people have provided in support of their claims. Given that these documents are often of great personal significance to the senders we have sought to take great care in their handling. As such the process of recording, photocopying and returning is sometimes slow and we have had to rely on people’s patience for any delay in the return of these valuable items.

Similarly we have had a significant number of cases where people have struggled to provide appropriate bank or building society details. I recognise that this is a confusing area for many older people and we are attempting to make contact wherever possible to assist people in completion of the details. These represent only minor difficulties and the administration of the scheme continues to progress very well. This has and continues to be a significant undertaking for the War Pensions Agency and we continue to devote much time effort and resource to the exercise.

May I take this opportunity to wish you and all your members an enjoyable Christmas. I will of course write to you again some time early in the New Year to provide further details of progress.

18 December 2000