AEA Technology pensions dossier

This dossier is a collection of papers describing the 2012 failure of the AEA Technology (AEAT) Pension Scheme and how it affects the pensioners.

It is intended to help journalists and politicians understand the story. It describes how the pension scheme was set up in 1996, the promises made that were later broken, and how AEAT employees feel that they were misled by the Government Actuary.

It shows how pensioners made many complaints to government departments and ombudsmen and were fobbed off.

The contributions have been arranged so as to tell the story in a logical sequence. They have all been prepared by pensioners or deferred pensioners of the AEAT scheme who suffer substantial losses from the scheme failure. We have not edited them into a uniform style. The views expressed are those of the contributors.

This is part of a joint campaign between Prospect, the main trade union representing the AEAT pensioners, and the independent AEAT Pensions Campaign.

Requests for more information or discussion or for copies of the documents cited should be addressed to:

Tony Wickett, Editor
T: 01929 462675
E: tony.wickett@btinternet.com

or to:
David Luxton, National Official, Prospect
T: 01932 577011
M: 07713 511713
E: david.luxton@prospect.org.uk

Contact information for contributors is also provided at the end of the document.

The first edition of this Dossier was published in July 2017. This second edition records recent changes and updates some contact details.

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Contents

1. Summary and overview

1.1 Summary of events

> *"I have made it absolutely clear that the Government have no intention whatever of selling employees short. Their terms and conditions and pension rights will be fully protected."*
> Richard Page MP, House of Commons Hansard, 2/5/1995 column 210.

> *"It is likely that the Scheme will wind up and be unable to continue to pay members' benefits in full."*
> Lynn Wilkinson, Secretary to the Trustee of the AEAT Pension Scheme, letter 1/8/2012 to Scheme Members.

The UK Atomic Energy Authority (UKAEA) was set up in 1954 to develop the UK's nuclear power programme, nuclear weapons and nuclear related research. Employees were in contributory defined benefit pension schemes similar to the then non-contributory civil service pension schemes.[1, 2]

In 1971 the Radiochemical Centre Ltd was formed to take on the UKAEA work on radioactive isotopes for medical and other uses. This became Amersham International Ltd which was floated on the stock market in 1982. Employees of Amersham International Ltd could remain in the UKAEA pension schemes.[1, 2]

In 1992 the Monopolies and Mergers Commission reported that "the authority's business activities rested uneasily in the public sector, and should be removed from it as far as practicable."[3]

The UKAEA commercial work was separated in 1994 as "AEA Technology". The Atomic Energy Authority Act 1995 was passed to enable the privatisation. AEA Technology plc was floated on the UK stock market in 1996, shares being sold at £2.80.

Employees were moved into a new AEA Technology Pension Scheme. They were given the option of joining the "Closed Section" that was a mirror image of the UKAEA scheme, for future service. They were also given the option of transferring past service accrued in UKAEA into the Closed Section.[4] Nearly 90% of them did this, influenced by a misleading note issued by the Government Actuary's Department.[5]

The Treasury paid a transfer value to the new pension fund. To match their distant liabilities the scheme trustees invested this mostly in equities and unit trusts.

To start with the company prospered, with the share price rising to nearly £10 in 1998. However the business then declined following a reduction in government funded work.

In 2001 the management sold off nuclear businesses. The AEAT pension fund had to pay transfer values to the purchasers to cover pension liabilities that they were taking on. Because the value of the fund's investments had fallen since 1995 these unexpected payments took a disproportionally large part of the fund.

The pension fund went into deficit. Eventually in 2010 the company agreed a 20-year recovery plan. In 2012 the company could not meet the agreed payments. A pre-pack administration was arranged which meant that the company's bank was paid in full but the pension liabilities were not.

The pension scheme was taken over by the Pension Protection Fund (PPF). This means that pensions are not paid in full.[6] There is no indexation of pension accrued before 5 April 1997. The pensions of those whose Normal Pension Age is after 8 November 2010 are only 90% of the value earned, subject to a cap.

Approximately 3,000 members of the pension scheme are affected by its failure. Typically they stand to lose 35% of their promised benefits – some more, some less.

The PPF calculates that the cost of providing the PPF benefits is £338 million on 7 November 2012.[7] So the total shortfall is in the region of:

£338 million x 35/65 = £182 million.

Organisation of this Dossier

The Dossier is in four parts:

1 Summary and overview

2 The promise made

3 The promise broken

4 The search for justice.

Part 1 summarises the events leading to the failure of the AEAT Pension Scheme in 2012, and the many complaints made by campaigners. It includes a personal account from one of our campaigners, Neil Hancox, of the effect on him and his family and his efforts to find justice. Finally we summarise two recent parliamentary debates in 2015 and 2016.

Part 2 describes the Parliamentary business leading to the privatisation of AEA Technology in 1997, the work done at the time by the recognized trade unions to

protect pension rights and how many of the employees of AEAT were deceived into thinking that their new private sector pensions were as safe as their public sector UKAEA ones.

Part 3 describes the events leading to the failure of the AEAT pension scheme and analyses the failure of regulation. It explains the costs to the individual pensioners and their families.

Part 4, the main body of the Dossier, describes many (but not all) of the complaints by AEAT pensioners and how the complaints have been evaded. It is summarised in Section 1.2.

As stated above, this Dossier has been prepared by a group of pensioners striving for justice. It describes some of their work to understand and correct their plight. However there are some things that we do not know or understand. We have flagged some of these in the text saying "this merits further investigation". We have almost certainly not identified all the unknowns. But we hope that this document will stimulate further investigation and, we hope, a fair resolution. We are ready to help with any such investigation.

Tony Wickett, the editor of this Dossier, joined the UKAEA Safety and Reliability Directorate in Culcheth, Cheshire, in 1980. He became a union representative for IPCS in 1987 and has since then served in a number of union roles.

At the time of the privatisation of AEA Technology he was Secretary of the UKAEA branch of IPMS. Tony was part of the privatisation but was sold on to Serco in 2001 and then to Amec in 2012. Tony was organiser and chair of the Amec branch of Prospect until his retirement in 2016.

Tony Wickett

References

1. "AEA Technology plc: Placing and intermediaries offer sponsored by Schroders", prospectus September 1996
2. "Principal Non-Industrial Superannuation Scheme: An explanatory booklet", UKAEA June 1972
3. HOC Hansard 14/3/95, column 700
4. "Past Service Option", letter from Yvonne Murray, AEA Technology Pensions Manger, to members of AEAT Pension Scheme, 13 November 1996
5. "Transfer from the UKAEA Superannuation Schemes to the AEA Technology Pension Scheme", Peter Noonan, Government Actuary's Department, November 1996
6. Lynn Wilkinson, Secretary to the Trustee of the AEAT Pension Scheme, letter 1/8/2012 to Scheme Members
7. Trustee of the AEAT Pension Scheme, letter 10/1/2013 to Scheme Members.

1.2 Summary of complaints

Part 4 of this Dossier contains 15 reports of complaints about the failure of the AEAT Pension Scheme and the responses to them.

In summary, our complaints are (as set out in Section 4.13):

1 DTI, UKAEA and GAD failed to advise us, when they invited us to transfer pension accrued in UKAEA pension schemes to the AEAT Pension Scheme in 1996, that the AEAT scheme carried a significantly higher risk of failure;

2 The Note on Options for dealing with our accrued UKAEA service, written by the Government Actuary in 1996, was not independent professional advice but had been changed, at the request of AEAT and UKAEA, to influence us to transfer past service from the UKAEA schemes to the AEAT scheme;

3 Inadequate funds, that did not include a proportional part of the accumulated surplus in the UKAEA schemes, were transferred from the UKAEA schemes to the AEAT scheme and

4 Since 2012, when the AEAT Pension Scheme failed, we have been treated badly by a range of government departments when we complained. Those who complained faced prevarication, delays, inaccuracies, misinformation, being passed from department to department, failure to answer our points and failure to investigate our complaints.

Complaints were addressed to 13 entities (12 government bodies and the AEAT Scheme Trustees). The complaints reported here come from 15 campaigners. This is by no means a complete account of the complaints: there are others. A table at the end of this summary lists the complaints to each entity reported here.

In many cases, the campaigners have been supported and encouraged by their constituency MPs. Notable among these are Sir Oliver Letwin (Con, South Dorset) and Ed Vaizey (Con, Wantage). Both were re-elected in 2017.

The campaigners are pensioners (some deferred pensioners) and have worked in professional engineering, scientific and senior administrative posts in UKAEA and AEA Technology. Many have served long careers. In some cases this has been their only employment.

The campaigners are articulate and have strong senses of logic and justice. Some of the complaints are from individuals and some by groups. In most cases more than one complaint has been addressed to each entity. The complaints are logical, detailed and persistent.

The responses display a range of styles. These include deep incompetence (Section 4.3), buck passing (Sections 4.3, 4.6, 4.13 and 4.14) and failure to answer questions (Sections 4.2, 4.3 and 4.14). In some cases, lawyers have been employed to reply to pensioners' complaints (Sections 4.7, 4.8 and 4.13). In some cases, the respondents have refused to divulge their legal advice on grounds of legal privilege (Section 4.13). The responses are consistent with an underlying strong direction to stonewall and give no ground whatsoever.

Nine of the complaints reported here have addressed an ombudsman: the Pensions Ombudsman, the Financial Services Ombudsman and the Parliamentary and Health Service Ombudsman (PHSO).

One might think that our ombudsmen are there to investigate and rule or recommend on difficult complaints. However it is striking that none of the ombudsmen have investigated our main complaints. The two exceptions were: The Pensions Ombudsman investigated maladministration by the Trustees and found none (Section 4.10) and the PHSO ordered an apology for an unclear complaints process (Section 4.12). But the ombudsman service has signally failed to address our main complaints. It is either not fit for purpose or is subject to direction from the government.

As one of our campaigners points out,

> *"Our cause must be very strong if PHSO and other Government Departments resort to desperate methods to avoid facing our complaint. They must recognise that we have a strong, genuine claim for restoration of our pensions that the Government does not want to meet" (Section 4.13).*

Complaints reported in Part 4 of the Dossier (this table lists the entities to which complaints were addressed)

Section	GAD	UKAEA	DTI BIS BEIS	DECC	Trust-ees	PPF	DWP	PR	PO	FSO	PHSO	Remarks
4.1	√											
4.2			√				√					
4.3			√	√			√					
4.4					√							
4.5						√						
4.6			√	√		√	√	√				
4.7									√			
4.8									√			
4.9									√			
4.10									√			
4.11							√					Pensions Minister in Westminster Hall debate
4.12							√				√	
4.13	√		√	√			√				√	
4.14	√	√	√				√		√	√	√	
4.15							√					Work & Pensions Select Committee

BEIS: Department for Business, Energy and Industrial Strategy (from July 2016)
BIS: Department for Business, Innovation and Skills (to July 2016)
DECC: Department of Energy and Climate Change (to July 2016)
DTI: Department of Trade and Industry (to 2007)
DWP: Department for Work and Pensions
FSO: Financial Services Ombudsman
GAD: Government Actuary's Department
PHSO: Parliamentary and Health Service Ombudsman
PO: Pensions Ombudsman
PPF: Pension Protection Fund
PR: Pensions Regulator
UKAEA: UK Atomic Energy Authority

1.3 The AEAT pension scandal

Eighty-one-year-old Dr. Neil Hancox will always remember Friday 3 August 2012. While his wife read a story to their seven-year-old granddaughters, he read a letter from the Secretary to the Trustee of the AEA Technology plc (AEAT) pension scheme.

The company, formed in 1996 by the privatisation of the commercial arm of the United Kingdom Atomic Energy Authority, (UKAEA), was in financial difficulty and it was likely that the pension scheme would be wound up and compensation, in lieu of a pension, paid by the Pension Protection Fund (PPF).[1]

PPF rules

- No indexation prior to 1997 (and then limited to 2.5%).
- Pensions commenced after a fund has entered PPF based on 90%, not 100%, of final salary.

The PPF is not Government funded. It is financed by the assets of failed pension schemes it has taken over and a levy on individual companies.

Personal results

I retired in 1998 and have lost 90% of the indexation for which I paid for throughout my working life. Over the period 1998 - 2012 my pension increased by 40% solely due to inflation.

My wife Margaret is nine years younger than me and both of us now worry how she would cope, if I die first, leaving her with a half pension with essentially no indexation.

Background

I worked for UKAEA for 28 years, much of it in support of the world beating UK nuclear power industry, which has provided the country with around 20% of its electricity requirements for five decades or more. In 1996 the Department of Trade and Industry (DTI) oversaw the privatisation of the commercial arm of UKAEA to form AEAT.

I was among the 3,000 staff transferred to the new company. Many assurances were given at the time that if staff transferred their UKAEA pension accruals to the new AEAT scheme they would receive a pension that was a mirror image of their previous one.

Pension assurances included:

- Statements in Parliament; statutory reassurance regarding status of our pension[2]
- Pension security given by the Atomic Energy Authority Act, 1995
- A note from AEA Technology HR group (note this is not AEA Technology plc but its predecessor still wholly owned by the Government)[3]

- An independent note prepared by the Government Actuary's Department (GAD) emphasizing the equivalence and similarity of the UKAEA and AEAT pension schemes for those transferring from the former to the latter.[4]
- We were never made aware in any way that the liability for change due to inflation was the responsibility of our new employer. This only became apparent in 2012. This is blatant deceit. Had I been aware of this I would never have signed my UKAEA pension accruals over to AEAT.

Retirement

- When I retired at the end of 1998 I was confident that my pension was secure.
- I had been assured by independent government actuaries that my new pension was in every way as good as my original one with UKAEA
- The fund was under the guidance of a board of seven trustees, three elected by the pensioners.
- The Pensions' Regulator had an overall watching brief.

What could go wrong?

Actions on failure of AEAT

When AEAT failed in 2012 and the pension bombshell hit, I immediately contacted my MP and over the next four years worked with many other pensioners in contacting and questioning:

- Department of Work and Pensions (DWP).
- Department of Business and Innovative Skills, (DBIS) (who had assumed the responsibilities of the DTI). Later this department became the Department for Business, Energy & Industrial Strategy, (DBEIS).
- The Independent Trustee Service, (ITS), who provide paid chairmen for trustee boards.
- On the advice of both the DWP and DBIS an official complaint was lodged with The Pensions and Health Service Ombudsman (PHSO).
- The Pensions Ombudsman (PO).

We obtained two Parliamentary debates, in 2015 and 2016. The first contained a serious inaccuracy.[5] This is a statement by Steve Webb MP (Minister for Pensions) that if AEAT were to be declared a special case, so that the Government would have a duty to protect the pension scheme members against loss, this would have to extend to other privatised employees from BT and British Airways. In fact such a protection already exists: the "Crown Guarantee" of the BT Pension Scheme.

Nature of complaint

- Our complaint was that we were grossly misled by the information supplied in November 1996, when we were given a short time to decide on a new pension.

- We had been given repeated positive assurances, including an independent report from the Government Actuary, that an AEAT pension was a mirror image of the UKAEA one.
- They concealed the fact that while the UKAEA pension was secure with Treasury backing, the AEAT Scheme was significantly less secure.
- We were not supplied with a risk assessment regarding the transfer of our accruals to the new scheme.

Official response

- From 2013 onwards, the Government has denied any responsibility whatsoever for misleading us or any wrong doing in their actions. They refuse to answer questions and come up with meaningless denials.
- DWP stated that the old and new pension schemes were equivalent only at the point of signing and not necessarily thereafter.[6] No one had told us this before, for example Section 2.2.4 of reference document number.[4]
- DWP stated that the GAD note refers employees who are unsure of the most suitable course of action to independent financial advice.[7] Firstly we were NOT unsure, the GAD note was an independent Government Actuary's Report; if they could not discern the truth then who could? Colleagues who did consult an IFA were told that the latter had no experience of the situation and could offer no advice. I recall speaking to my IFA who said that if I took my whole pension pot and he invested it I would have a better pension, though he admitted he could not match the indexation offered by a Government scheme.
- The PO and PHSO have refused even to consider investigating our complaints on the grounds that it is not within their scope, the remit of which changes from day to day. Since both bodies claim to be unable to act it appears that the government in totally unaccountable for its actions. One comment from a legal member of the PO team, saying that we should have realized something was wrong with the scheme in 1997 when the first Trustee's report was published, is simply wrong; there is no evidence of this at all in the report and yet the PO will not acknowledge that they made a mistake. [8]

Additional findings

- We have established that original 'objective' GAD note, 1996, was not independent advice – it had been massaged in consultation with UKAEA and AEAT to make it more likely that we would sign up for the new scheme.[9] This is despite GAD being described as fully independent professional body in letters from Richard Page MP (Parliamentary under Secretary of State for Small Business, Industry and Energy) and Michael Heseltine MP (Deputy Prime Minister): *"It is fully independent in its professional advice and opinions and the advice it gives is not influenced, or dictated to, by any arm of Government".*[10,11]
- The amount of money transferred from the Treasury to the new pension fund in 1996 was not subject to any risk analysis or consideration of what might happen in the future.

- A document from the Government Actuary's Department surfaced in 2015 from the files of DBIS stating that GAD's opinion that the AEAT pension scheme is no less favourable than those of UKAEA "assumes that the commitments and undertakings made by AEA Technology plc will be fulfilled".[12]
- In 2015 DBIS referred us to a DTI Memo, 1997, (unknown to us for two decades) which stated the DTI had no intention of allowing us to remain in the UKAEA pension schemes after privatisation or to be able to join a scheme identical to the UKAEA's.[7,13]. When queried why we had not been made aware of this at the time we were told that details would have appeared in Hansard in 1995 when the matter was first discussed, and it was implied that it was our fault that we had not picked this up![14]

Reactions

Are we complaining because our gold-plated pensions have been slightly tarnished? No!

At all times in my career with UKAEA and AEAT I contributed 7.5% of my salary to the pension scheme. I paid for my pension and indexation.

The Government stated in Parliament and in writing (the GAD note) that the new pension had statutory protection and that the two pension schemes were identical, and then reneged on this when AEAT failed. 'If they can do that to us,' Neil said, 'they can and will pick off any group they wish.

The Government claims that they want to develop nuclear electricity generation in UK with the help of money from abroad. So apart from ripping us off, they now try to slash the pensions of 11,000 workers in the Nuclear Decommissioning Authority. What an advert for UK Government probity! Would you trust them in business?

Neil Hancox

References

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4. Government Actuary's Department note prepared by Peter Noonan, November 1996, issued together with the pension transfer options form.
5. Steve Webb, MP, Hansard, 18 March 2015, 290WH
6. Letter from Ministerial Correspondence Team, DWP, to Dr Neil Hancox, Ref TO/13/26063, 23 October 2013.
7. Letter from Vince Cable, Secretary of State for Business, Innovation and Skills, to Dr Neil Hancox, 18 February 2015

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11. Letter from Michael Heseltine MP to Malcolm Andrew, Ref MH/95/O/1581, 30 November 1995
12. C D Daykin, Privatisation of AEA Technology PLC, Pension Arrangements To Be provided for Employees After AEA technology Ceases to be Publically Owned, 4 September 1996.
13. DTI memo, "The privatisation of AEA Technology", February 1997, section 7.3.4 (attachment to Ref 7)
14. Annex A to letter from Jo Johnson, MP, Department of Education, Department for Business, Energy & Industrial Strategy, to Dr N L Hancox, 6 January 2017.

1.4 Parliamentary debates

A number of AEAT Pension Scheme members have complained to their MPs. The importance and seriousness of the complaints have led to two parliamentary debates, initiated by MPs concerned at how their constituents have been mis-treated.

18 March 2015
The first debate was on 18 March 2015 [HOC Hansard 18/3/15 cols 284WH to 292WH]. It was opened by Geoffrey Clifton-Brown (Con, The Cotswolds). He was supported by four other MPs. Steve Webb MP (Minister for Pensions) replied for the Government.

Mr Clifton-Brown said that, when the AEAT Pension Scheme was set up:

- the scheme members were assured that their pension would be safe
- they were encouraged to transfer their accrued service by a leaflet from the Government Actuary's Department (GAD)
- the GAD leaflet had been changed at the request of UKAEA to remove references to the risks involved
- scheme members could not decide based on the risk because they had not been warned of any
- none of the surplus in the UKAEA scheme was transferred to the AEAT one, giving the Treasury a windfall.

Mr Clifton-Brown said that, when the company ran into cash flow problems in November 2011:

- the company started negotiating for a pre-pack administration to allow it to default on its pension obligations and start afresh
- the argument for the pre-pack was to maximise the scheme value for members
- this was false; the beneficiaries were the bank and the PPF
- the pre-pack was shrouded in secrecy
- the Government had a duty of care to the scheme members
- this was a special case because the company was formed through privatisation
- the pre-pack administration and the information given to scheme members about their transfer need thorough investigation
- scheme members need compensating accordingly.

Mr Webb sympathised hugely and said that this is a very unsatisfactory situation that all of us would want to avoid. He said that while the AEAT pension scheme allowed members to build up benefits that were no less favourable than those of the UKAEA schemes this did not mean that the scheme deficit was underwritten by the taxpayer.

He noted that pre-pack administration is controversial and difficult. He said that in this case it saved hundreds of jobs. He agreed with Mr Clifton-Brown that the

benefit was to the PPF and not the pension scheme members. He disagreed that AEAT should be treated as a special case: if it were the pension schemes of BT and British Airways would also have to be. (This is incorrect: the BT pension scheme has a Crown Guarantee.)

Mr Webb announced a slight relaxation of the cap on PPF compensation. This is unlikely to benefit many AEAT pensioners. This relaxation was eventually applied from 6 April 2017 [letter from Richard Harrington MP to David Luxton, Prospect, ref POS (3)4052/1012, 20/4/2017].

26 October 2016

The second debate was on 26 October 2016 in Westminster Hall [HOC Hansard 26/10/16 Volume 616 cols 161WH to 178WH]. Sir Oliver Letwin (Con, West Dorset) opened the debate and was supported by eight other MPs (five Conservative, two SNP and one Labour).

Richard Harrington (Parliamentary Under-Secretary of State for Pensions) replied for the Government. The public gallery was packed with AEAT pensioners.

Sir Oliver Letwin

- discussed the GAD guidance note, that described the advantages of transferring past UKAEA service into the new AEAT Pension Scheme
- said that GAD had a clear duty to bring out the difference in risk between the two schemes and did not
- said that this does not comply with a (later) GAD statement of practice
- said AEAT and UKAEA had a joint interest in trying to get as many pensioners as possible to transfer into the AEAT Scheme
- described in some detail the process by which AEAT and UKAEA persuaded the GAD to change the guidance note
- described how the law prevents the Parliamentary and Health Service Ombudsman from investigating the GAD's failure to point out the difference in risk between the two schemes
- said that this was arguably maladministration
- said that an amendment to the 1967 Parliamentary Commissioner Act would be needed to allow the Ombudsman to investigate the AEAT Pension Scheme so that the scheme members could be compensated.

Mr Edward Vaizey (Con, Wantage) supported Sir Oliver. He said that the AEAT comments on the draft GAD note meant "slant the advice to encourage people to transfer" and that this is why 90% did transfer.

Richard Fuller (Con, Bedford) asked whether it would be difficult for the Government to take action on employer behaviour at BHS if they do not keep their own ship in order.

Richard Harrington (Parliamentary Under-Secretary of State for Pensions) said that he had sympathy for those who have suffered. However the Government did

not accept that the loss of pensions was its fault and do not believe that it should provide compensation beyond that of the PPF. He said that the GAD note was not designed to be advice and, in his view, was not misleading.

Mr Harrington suggested that scheme members could complain to the Pensions Ombudsman naming GAD as a party. He said that the Parliamentary Secretary to the Cabinet Office (Chris Skidmore MP) would be pleased to meet Sir Oliver to discuss possible amendments to a forthcoming bill to set up a new public service ombudsman.

Observers of the debate were surprised at Mr Harrington's suggestion to complain to the Pensions Ombudsman (PO), because the PO had repeatedly said that it could not investigate complaints about GAD. Our attempts to resolve this apparent misleading statement to Parliament are reported in Section 4.11.

Tony Wickett

2. The promise made

2.1 Trade union campaigning on Atomic Energy Authority Bill

The Bill
In 1995 the employees of AEA Technology (then a part of the UK Atomic Energy Authority) were represented by these trade unions (listed in approximately descending order of membership):

- Institution of Professionals, Managers and Specialists (IPMS)
- Civil and Public Services Association
- General Municipal, Boilermakers and Allied Trade Union
- National Union of Civil and Public Servants
- Transport and General Workers Union
- First Division Association.

When the government announced its intention to privatise AEAT the trade unions discussed and agreed what their approach would be, to best represent the interests of members. They agreed not to oppose the privatisation outright. Instead, they identified a small number of key conditions that they wanted the privatisation to satisfy. These included:

- unitary privatisation (AEAT remaining as a single entity)
- protection of pension terms and conditions
- protection of redundancy compensation terms and conditions.

The lead trade union was IPMS.

Together the trade unions had a healthy membership among the workforce of AEAT and were trusted to represent members' interests. The unions decided to campaign, towards members of both Houses of Parliament, during the passage of the Atomic Energy Authority Bill through parliament. The Bill had its First Reading in the House of Commons on 1 March 1995.

Union members were strongly encouraged to write to their MPs. Around 400 letters were written to the relevant constituency MPs. Most MPs were sympathetic because UKAEA and AEAT were important employers in their often rural constituencies.

The unions made contact with the opposition Labour party and briefed them comprehensively about many aspects of AEAT and its proposed privatisation. As a result of these briefings the debates on the Atomic Energy Authority Bill in both Houses of Parliament reflected the unions' priorities, listed above.

The Atomic Energy Authority Act became law on 8 November 1995.

Measured against the aims listed above, the unions' campaigning was completely successful. AEAT was privatised as a single unit. The redundancy compensation terms were transferred unchanged to the new company.

The biggest surprise, announced on 27 November 1995, was that the terms of the UKAEA Pension Schemes were to be exactly replicated in the new AEAT Pension Scheme.

This was considered a major achievement: in all other newly privatised pension schemes at the time pensions were indexed by RPI capped at 5%. The AEAT scheme had unlimited RPI indexation. At the time there were strong memories of RPI inflation exceeding 10% in the 1970s and 1980s.

The first objective, unitary privatisation, lasted until 2001 when AEAT sold off its profitable nuclear businesses. The pensions fared better until the company's default in 2012. The redundancy compensation terms remain in some employees' contracts to this day, giving effective protection against redundancy.

Consultation on the new pension scheme

On 31 May 1996 the Department of Trade and Industry began a consultation on proposals by AEAT for the pension scheme to come into effect when AEAT ceased to be publicly owned (as required by the Act). The consultees included IPMS and AEAT Central TU Coordinating Committee (TUCC). A substantial correspondence ensued, covering a number of issues including:[1,2]

- the adequacy of funds transferred into the new scheme
- election of Trustees and their independence
- redundancy compensation terms
- membership of the new scheme in the Public Sector Transfer Club.

At the end of the consultation the trade unions put on record 12 outstanding issues, including the adequacy of the transfer values into the new scheme.[3,4] However the Secretary of State professed himself satisfied with the new scheme, in the wording required by the Act.[5,6]

Recent research using the Freedom of Information [FOI] Act has disclosed further documents surrounding the Secretary of State's approval of the AEAT Pension Scheme:

- undertakings from AEA Technology[7]
- a certificate from the Government Actuary's Department[8]
- a minute recording the Secretary of State's satisfaction with the new scheme and the reasons for it [we do not have this but it must exist and be obtainable through FOI]
- announcement that the Secretary of State was satisfied[5]
- Trust Deed and Rules of the new Pension Scheme. [9]

Tony Wickett

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5. S D Spivey, "Privatisation of AEA Technology plc: Proposals for a new Pension Scheme", letter to consultees, Ref DBA/33, 9/9/1996
6. B R Ferrar, "Privatisation of AEAT: Pension Scheme and Redundancy Arrangements", Letter to Mr D Mackay, Chair AEAT TUCC, Ref DBA 2/33, 23/9/1996
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8. C D Daykin, Government Actuary's Department, "Privatisation of AEA Technology plc: Pension Arrangements to be provided for the employees after AEA Technology ceases to be publicly owned", 4/9/1996
9. AEA Technology plc and AEAT Pension Trustees Ltd, "Definitive Trust Deed and Rules", 25/9/1996

2.2 How AEAT employees were misled into thinking that the AEAT pension scheme was secure

People who worked for the United Kingdom Atomic Energy Authority (UKAEA) and were compulsorily transferred into AEA Technology in the 1996 privatisation have lost a large amount of the pension that they expected to get on retirement.

Employees were given a limited time to decide whether to transfer their accrued pension contributions from the UKAEA pension scheme to the new AEA Technology pension scheme. A note from the Government Actuary's Department (GAD) was sent (along with the transfer forms) purporting to be independent unbiased advice.[1]

On the basis of this advice nearly 90% of the employees were persuaded to transfer their valuable accrued pension contributions from the UKAEA to the AEAT pension scheme. (This reduced the Governments' liability for the UKAEA pension scheme.)

UKAEA scheme members were given the 1996 GAD Note which stated that it "outlines the main factors to take into consideration in deciding whether or not to transfer accrued scheme benefits". Crucially, the Note omitted the following 'main factors':[1]

- The Note did not state anywhere that the AEAT pension fund was at greater risk than the UKAEA pension fund.
- The Note did not explain what would happen to members' pensions if AEA Technology or the AEAT scheme should fail.
- The Note did not point out that whereas the UKAEA scheme had a provision for a crown guarantee, there was no such provision for the AEAT scheme.
- The Note did not state that (as the Government now asserts) the "no less favourable" requirement of the Act expired on the day of privatisation.

It took until 2013 and repeated Freedom of Information requests to discover that UKAEA and the Government (with suggestions from AEAT) had influenced the wording in the GAD note to encourage transfer of employee's pension contributions, and that the GAD note was far from independent unbiased advice.[2]

This is directly against the standards expected from an Actuary which can be found in the Memorandum of Actuaries' Professional Conduct current at the time:[3]

> *"Although advice is primarily directed to the client a member (Actuary) needs to bear in mind that his advice may be made*

> *available to third parties who can reasonably be expected to rely on it."*

In this case the client was UKAEA and the Government. The third parties were the AEAT employees.

> *"A member should bear in mind that, as a matter of law, his duty of care can extend to persons or organisations whom he can reasonably expect to rely on the advice or the information that he gives."*

The section on the independence of an Actuary states:[3]

> *"For a member in a particular situation to describe the advice as independent he must be free, and must be seen to be free, of any influence which might affect his advice or limit its scope."*

The independence of the GAD advice was questioned in 1995 by Malcolm Andrew (Secretary of the AEA Technology Central Trade Union Coordinating Committee) who was supported by Robert Jackson (MP for Wantage at the time).

A DTI reply from Richard Page MP to Robert Jackson MP stated:[4]

> *"On the question of GAD's independence. I am afraid that Mr Andrew has misunderstood the relationship between GAD and the Treasury. GAD reports to the Treasury only for administrative purposes. It is fully independent in its professional advice and opinions, and the advice it gives is not influenced, or dictated to, by any arm of Government. This principle is enshrined in GAD's mission statement 'to provide public sector clients with independent, professional actuarial advice of the highest quality at reasonable cost'."*

The same wording appeared in a letter to Malcolm Andrew signed by Michael Heseltine MP (Deputy Prime Minister).[5]

At the AEAT privatisation debate in Parliament in 1995, the following assurances were given by Mr Tim Eggar (Minister for Energy and Industry):[6]

> *"When privatisation takes place the bill will place a statutory duty on the seller... to be satisfied that employees can join a pension scheme that is no less favourable than the authority's schemes."*

> *"On the question whether the new scheme that is provided by the purchaser is at least equivalent to the authority's schemes, that will be audited by the Government Actuary. In other words we shall have the advice of the Government Actuary as to whether that undertaking is made."*

> *"Employees are AEA Technology's greatest asset... We have no intention of selling employees short, and I am sure that the house will welcome the statutory reassurance that we are proposing".*

During the privatisation numerous assurances about the future health of the company and the employees' terms and conditions, especially pensions, were made by the company's senior management and by ministers in parliament and in letters to MPs.

Some of these are listed in Section 2.3 below.

Tony Reading

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1. "Transfers from the UKAEA Superannuation Schemes to the AEA Technology Pension Scheme: Note by the Government Actuary's Department on the Options Available in respect of Accrued UKAEA Benefits", Peter Newman, Government Actuary's Department, November 1996, sent by Yvonne Murray, AEA Technology Pensions Manager to members of the AEAT Pension Scheme, 13 November 1996
2. Letter and redacted copies of file from George Russell (Deputy Government Actuary) to D S Whitmell, 14/11/2014, ref WHI280714
3. "Memorandum on Professional Conduct", MPC v5.2, Faculty and Institute of Actuaries, 31 July 1996
4. Letter from Richard Page MP to Robert Jackson MP, 13 November 1995
5. Letter from Michael Heseltine MP to Malcolm Andrew, Ref MH/95/O/1581, 30 November 1995
6. HOC Hansard 14/3/95 cols 711-712, Atomic Energy Authority Bill Second Reading

2.3 Statements on pensions and the future of AEA Technology by Government ministers and senior management

These quotations come from my files for the period March 1994 to December 1995 which I accumulated as Secretary of the UKAEA branch of IPMS during the privatisation of AEA Technology.

These statements, by senior managers of the company and government ministers, potentially influenced AEAT staff in making their decisions on whether to transfer UKAEA pension service to AEA Technology in December 1995.

Overwhelmingly they create the impression of a secure future for the privatised company and pensions. On occasions when the union questioned this, we were told off by the minister or the management. Apart from this there was no discussion of the possibility of business failure or failure of the pension scheme to meet its liabilities.

These files contain most, but not all, of the Hansard records of parliamentary debates on the Atomic Energy Authority Bill in 1995. I can supply copies of the Hansard pages and other documents quoted here.

March 1994, AEA Times, circular to AEA Technology staff. "You have the experience and the skills to turn AEA Technology into a world class company." This is the confident yet pragmatic message from our chairman, Sir Anthony Cleaver. "The challenge for us all is to accept this vision and turn it into reality. …The opportunities are certainly out there – worldwide... Provided we can build on our track record and exploit our unique capabilities, then future success looks assured."... On the subject of salaries, pensions and other benefits, Sir Anthony said the arrangement that exists for staff gives as high a degree of protection as you are likely to get anywhere.

24/4/94, Observer: Sir Anthony Cleaver, UKAEA Chairman: "We have the skills and the technology and we are sure there are ample opportunities out there." Cleaver regards consultancy work in the nuclear industry as a growth business.

14/11/94 Letter Charles Wardle MP, Parliamentary under Secretary of State for industry and Energy, DTI, to John Butterfill MP " …Staff transferred would not be able to remain in the UKAEA pension scheme, but their accrued rights would be secure…" [This relates to the contractorisation of part of UKAEA.]

24/11/94 The Engineer, quoting Peter Watson, chief Executive: "...the business is ripe for privatisation. It already operates on a commercial basis and has plans to expand private sector and overseas work."

24/11/94 Swanage and Wareham Advertiser: "An AEA Technology spokesman at Harwell denied staff were being treated like slaves and said privatisation was seen as good news by workers... He described as 'absolutely ridiculous' the union claim that UKAEA wanted privatisation to pass on its statutory responsibilities for redundancies and pensions to a new employer."

25/11/94 Peter Watson speaking at a Roadshow meeting at Winfrith, reported by a Department manager, Steve Kinnersly, said: AEA Technology must be a business success, whether in public or private sector. Companies in AEAT's markets can flourish.

29/11/94 Letter Sir Anthony Cleaver to Robert Jackson MP "One area of particular concern to our employees is that of pensions... when AEA Technology is privatised, employees... will have the choice of transferring their past service into a new privatised AEA Technology pension scheme; preserving the benefits... Our experience in working on the FSD scheme will prove valuable in designing a new scheme appropriate to... AEA Technology and its employees." [No mention of commercial risk]

30/11/94 AEA Times, circular to AEA Technology staff. "Chairman, Sir Anthony Cleaver, speaking on BBC Radio oxford, said he hoped that 'over the next few years we will see an increase in employment opportunities as a result of privatisation'".

30/11/94 AEA Times circular to AEA Technology staff. Your questions answered: Q What is the procedure? A "...Royal Ascent is expected by the summer [sic]." Q Why are the Unions so hostile to privatisation? A "... it seems their position is based on a perception which... doesn't add up. They point to greater job insecurity, whereas in the public sector we saw a 50% decline in six years… they are fighting to keep the status quo, which inevitably would lead to a continuing decline in AEA Technology. Q What confidence should we have that we will achieve these goals? A "…the targets that we have set for the next two years should be within our reach and they, in turn, will give us the base for a successful commercial future."

22/12/94 Letter Sir Anthony Cleaver to Robert Jackson MP " …In each case of divestment or contractorisation ... we have given assurances that the package on offer to employees, including the vital area of pensions, is one of the major considerations for us... Safeguarding the interests of employees, where possible, will continue to be a priority... in approaching the privatisation of AEA Technology itself."

22/12/94 Letter Sir Anthony Cleaver to Ian Bruce MP. As letter to Robert Jackson MP.

22/12/94 Letter Sir Anthony Cleaver to Anthony Durant MP. As above.

16/2/95 Letter Richard Page MP Parliamentary Under Secretary DTI to Doug Hoyle MP "…neither the government nor UKAEA is in the business of selling staff short… the bill will include provisions specifically dealing with pensions."

16/2/95 Letter Richard Page MP Parliamentary Under Secretary DTI to Simon Coombs MP "...neither the government nor UKAEA is in the business of selling staff short….the bill will include provisions specifically dealing with pensions."

24/2/95 Notes by Sue Ramsdale of a roadshow meeting at Risley by Peter Watson: "Someone said that… TUPE only protected him for 1 year. Peter Watson emphatically contradicted this and said that changes to T & C had to be negotiated with unions after 1 year – so what's the problem. However later on Gwyneth [Marsden] and Ian Curbishley got him to concede that there were certain loopholes in TUPE. His reply was that AEA management are too honourable to play any dirty tricks."

1/3/95 HOC Hansard 1/3/95 col 1048 Atomic Energy Authority Bill 1995 1st reading in HOC.

2/3/95 Atomic Energy Authority Bill 1995 published. UKAEA press release: " ... the Secretary of State or the Authority... must be satisfied that the alternative provisions of the pension scheme... will be no less favourable overall than the Authority Scheme... " No mention of commercial risks.

14/3/95 Letter Richard Page MP Parliamentary Under Secretary DTI to Ian Bruce MP "….neither the government nor UKAEA is in the business of selling staff short….the bill will include provisions specifically dealing with pensions."

14/3/95 HOC Hansard Col 704 HOC 2nd reading: Tim Eggar Minister of State DTI "The Government will seek to protect the rights of public sector employees who move to the private sector. We shall certainly do everything we can... with regard to pensions to make sure that a fair and just arrangement is reached." [This is an extract from the HOC 2nd reading debate which should be looked at in full.]

30/3/95 HOC Hansard Col 99 Richard Page MP HOC Committee Stage "I am disappointed that the IPMS has suggested that AEAT will fail in the private sector."

4/4/95 HOC Hansard Col 109 Richard Page MP HOC Committee Stage "It is vital to make it as clear as possible that adequate protections exist for employees and that their valuable pension rights are not at risk through the whim of the system."

4/4/95 HOC Hansard Cols 111-112 Richard Page MP HOC Committee Stage "... it is better that the employees and the companies into which they move have complete control over how pension schemes can be tailored in the future... our

mission... is to show that pension scheme members, when given the choice, choose to have that control."

4/4/95 HOC Hansard Col 124 Richard Page MP HOC Committee Stage "In the meantime, AEA Technology, its employees and the economy as a whole would reap the benefits of privatization... There is no threat to employees."

2/5/95 AEAT report of 3rd Reading debate in HOC: Richard Page MP "...I have made it absolutely clear that the Government have no intention whatever of selling employees short. Their terms and conditions and pension rights will be fully protected."

17/7/95 HOL Hansard Col 94 HOL Committee Stage: Lord Fraser of Carmyllie "We shall ensure that employees can join a scheme that overall is no less favourable than the authority's scheme. Therefore, employees should have no fear about their future pension scheme."

17/7/95 HOL Hansard Col 95 HOL Committee Stage: Lord Fraser of Carmyllie "I believe that ought to be a matter of reassurance... once the various benefits are looked at, individuals will not have serious cause to complain."

17/7/95 HOL Hansard Col 96 HOL Committee Stage: Lord Fraser of Carmyllie "I said previously that perhaps no one could sue, but I am advised that I may have mis-stated that point. Should an individual be dissatisfied, there might be a redress against the Secretary of State, or the authority, as appropriate.

17/7/95 HOL Hansard Col 100 HOL Committee Stage: Lord Fraser of Carmyllie "What is important that we establish within this Bill is that there will not be a significant diminution of the rights of employees as they move from one pension scheme to another... something that is no less favourable."

23/10/95 HOL Hansard Col 919 HOL Report Stage: Lord Fraser of Carmyllie "We have no desire to do anything other than to ensure the employees who are transferred under the provisions of the Bill have their pension rights protected. That is why we have written on the face of the Bill statutory protection for employees to have a pension scheme which gives the same overall level of benefits as they currently enjoy... We all want AEA Technology to compete effectively in the private sector. Ultimately that is the only way in which jobs can be secured and their terms and conditions maintained.

30/10/95 HOL Hansard Col 1289 HOL 3rd reading debate: Lord Fraser of Carmyllie "... the employees of other parts of the authority which may be divested need not be concerned about their future pension arrangements. It is the authority's clear policy, irrespective of employment law, that employees who move to the private sector should be able to join a pension scheme which is broadly comparable with the authority pension scheme."

30/10/95 HOL Hansard Col 1290 Lord Fraser of Carmyllie "Privatisation will offer AEA Technology the opportunity to build on its already impressive track

record by stimulating the drive for new business... It is not only the best way forward for the business; it is the best way forward for its customers and the staff."

31/10/95 Letter Lord Fraser of Carmyllie to Malcolm Andrew, Secretary AEAT TUCC "... Commercial well-being is the best guarantee of secure employment."

9/5/96 HOL Hansard Col 200 PQs Baroness Miller of Hendon "I am happy to repeat that privatisation is in the best interests of companies and their employees."

August 1996 "Pensions: What you need to know" published by AEA Technology Human Resources Group: "Because we know how highly our employees value their existing pension benefits it was agreed to protect these under the privatisation legislation. The Atomic Energy Authority Act 1995 therefore requires that on privatisation, the company must offer existing employees access to a pension scheme with benefits which, when taken as a whole, are "no less favourable" than those of their UKAEA scheme. We have therefore designed a scheme which offers you benefits as similar as possible to those in your UKAEA scheme, including full index-linking."

26/9/96 Facts Fax circular to AEA Technology staff "Chairman, Sir Anthony Cleaver commented: 'We are delighted that so many of you want to take a stake in the company. The response shows both commitment to AEA Technology and confidence in the future. I believe this is good for our customers and investors. I am now looking forward to working with you to build a successful private sector company.' "

Tony Wickett

2.4 Underfunding of AEAT pension scheme at privatisation

People who worked for the United Kingdom Atomic Energy Authority (UKAEA) and were compulsorily transferred into AEA Technology in the 1996 privatisation have lost a large amount of the pension that they expected to get on retirement.

Transferred employees had accrued pension contributions in the UKAEA pension scheme when they worked for UKAEA. All of these accrued funds should have been transferred to the new AEAT pension scheme.

The UKAEA pension scheme is Government underwritten. Pension contributions from employees (money taken from their salary each month) was transferred to the Treasury. The Treasury did not ring fence this money but set up a 'notional fund'. The Treasury was supposed to fund the retirement income of current pensioners from the 'notional fund'. It is important to note that this is the equivalent of a savings fund to pay pensions of UKAEA employees, not a tax for the Government to spend or try to retain.

When the Government privatised AEA Technology, the Treasury agreed a sum of money to be transferred the new AEAT pension scheme. The amount transferred did not represent the percentage of the notional pension fund attributable to the employees transferred out of UKAEA into AEAT.

At that time, pension funds were generally in surplus, but none of that surplus was transferred because there were 'compelling value for money arguments for not going down this route'.[1]

In negotiations, kept secret from the employees, a transfer value was agreed between the Government Actuary's Department and the actuaries for the new pension scheme.[2,3] They decided that the transfer value on the day of privatisation was equivalent between the UKAEA and AEAT pension schemes. The agreed transfer value was £147,517,023.[4]

This was less than the proportionate amount of employee contributions received into the Treasury from the employees forced to transfer into AEAT.

This action by the Government underfunded the AEAT pension scheme from the start.

To calculate this loss it would be necessary to determine a value for the 'notional fund' that was held by the Treasury, and how much of this was attributable to the transferees to AEAT.

One would then compare this with the amount transferred to determine how much of the pension scheme members' contributions were kept by the Treasury.

This reduces the Treasury liability for the remaining UKAEA pension scheme members by effectively subsidising them at the expense of the AEAT pension scheme members.

If all of the Treasury funds had been had been transferred, what would have been the effect on the value of the AEAT pension scheme? Would it have been enough to keep the AEAT pension scheme out of the PPF and protect scheme members from the loss of adequate inflation protection caused by the iniquitous PPF rules? This merits further investigation.

The retention by the Treasury of the proportion of a public sector pension scheme surplus attributable to the employees being privatised is similar to the case of the National Bus Company, which was privatised in 1985.

In this case the pension scheme had a real, not a notional, fund. The surplus in the fund was retained by the Treasury at privatisation. Protracted litigation ensued, with at one stage the government paying the lawyers on both sides.[5,6] Eventually the case was settled in 2001 and the surplus was used to buy annuities for the privatised employees.

Arguably there should be a similar distribution of the part of the UKAEA pension scheme surplus attributable to the employees privatised to AEAT.

The PPF made a Funding Determination which stated that the value of assets of the AEAT pension scheme at wind up on 7 November 2012 was £278 million pounds with liabilities of £338 million.[7] The assets were taken into the PPF at the earliest opportunity. The valuation method overstates the assets and understates the liabilities.[7]

The actual deficit of the AEAT pension scheme at wind up was recorded as £167 million.[8]

Winding up a pension scheme triggers a debt from the employer under section 75 of the Pensions Act 1995. A section 75 debt is generally the amount that it will cost the scheme to buy annuities to secure members' benefits in full.[9] (This is an unrealistic situation.) This value was estimated as £450 million.[10] It was presented to the company and immediately forced AEA Technology plc into a pre-pack administration.

The pre-pack administration was then negotiated between all parties (starting in July 2012) except for the most affected stakeholders, the pension scheme members, who were kept in the dark until they were eventually presented with a fait accompli in November 2012.

Tony Reading

References

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2. George Russell (GAD) to D S Whitmell, 15/12/2014, ref. WHI191114
3. Seven letters between GAD and Bacon & Woodrow, 6-21/8/1996, attached to Ref. 2
4. AEA Technology Pension Scheme: Report and Accounts 26 September 1996 – 31 March 1997
5. "Prescott to hold talks on plundered bus pensions", Observer Business 21/12/1997 page 1
6. Private Eye 16/10/98 page 5
7. "The AEA Technology Pension Scheme", Letter from the Trustee of the Pension Scheme to Scheme members, 10 January 2013
8. W J Wright and M J Orton, "Statement of administrators' proposals for Robin A Technology Realisations plc (formerly AEA Technology plc)", 19/12/2012
9. Pensions Regulator web site, 4/7/2017
10. AEA Technology Pension Scheme Report and Financial Statements for the year ended 31 March 2012

3. The promise broken

3.1 Failure of AEAT and the pension scheme

When AEA Technology plc was privatised in 1996 there were many positive statements about its future as a nuclear service company. Some are reported in Section 2.3 of this dossier. The sale prospectus said:[1]

> *"Looking further ahead, the Directors believe that the strategy of pursuing increased sales to the UK private sector and overseas, whilst defending the Group's position as a leading supplier of services to the UK nuclear sector, will generate profitable sales growth overall. The Directors also believe that there will be opportunities to pursue acquisitions consistent with the Group's strategy and at any one time a range of such opportunities are being considered."*

To start with the company appeared to prosper. In the first full year, to 31 March 1998, turnover was £305.8 million and profit before interest and tax £31.9 million. By the year to 31 March 2000 these figures had increased to £362.2 million and £35.8 million.

A report from the National Audit Office, issued in March 199 8, noted that the share price had risen from £2.80 at flotation on 25 September 1996 to £6.175 on 27 February 1998.

It recommended that in future sales government departments should consider carefully the case for phasing the sale (so as to take advantage of any rise in the share price) and should ensure that where they rely on a process of taking prior soundings in the market place this should be conducted rigorously so as to indicate the likely demand at different prices.[2,3]

The share price increased from £2.80 at flotation to a peak of over £9 in mid 1998. However the results for the year to 31 March 2001 show turnover at £374.1 million and a loss before interest and tax of £3.9 million. This loss includes exceptional items of £24.0 million, mainly contract write-offs, asset impairment and redundancy costs.

This 2000-01 loss was restated as a loss of £11.7 million in the 2001-02 annual report. This is due to adopting new accounting standards that more correctly recognize turnover and profit on software licensing contracts.[4]

In 1999 the company conducted an early release exercise. The resulting augmentation cost was £10 million – comprising £3.8 million from the (then) Pension Scheme surplus with the remaining £6.2 million from an interest free loan from the scheme fund repaid over three years by an increase of 2.5% in the employer's contribution rate.

During 2000 the company conducted a strategic review. The management decided to sell off the profitable nuclear businesses and concentrate on rail and environment. Nuclear Consulting was sold to Serco on 10/9/01 for £61.8 million and Nuclear Engineering was sold to Nukem Nuclear on 1/10/01 for £6.5 million. The company used some of the proceeds to pay a special dividend of 50p per share to shareholders.[5]

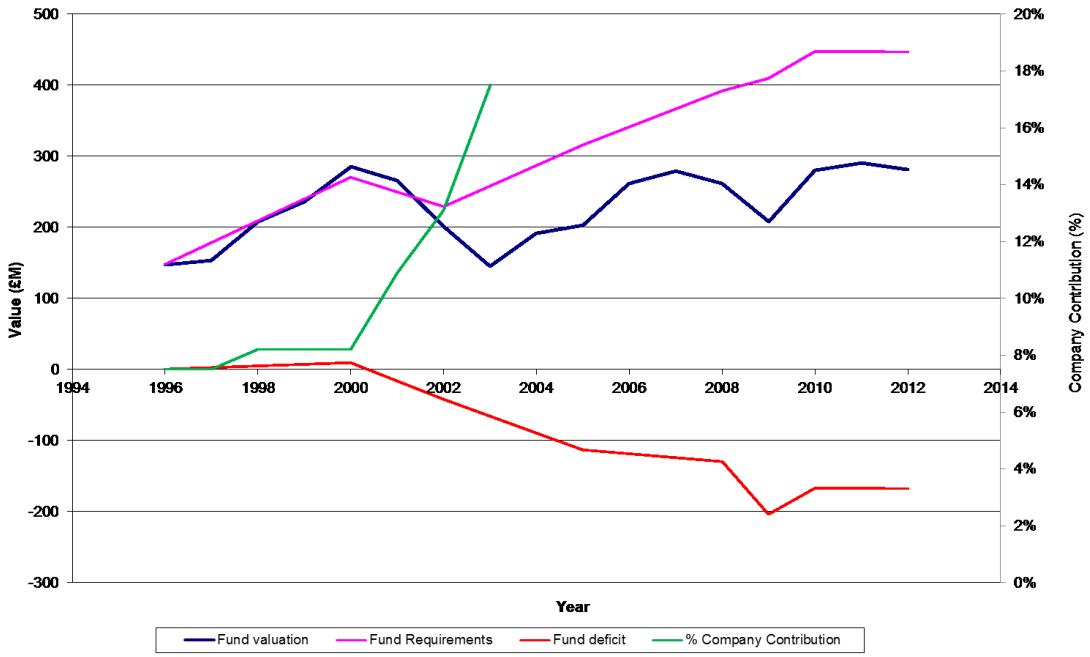
The sales in 2001 meant that the pension scheme had to provide cash transfer payments that it had not planned; as a relatively immature scheme it had invested in equities for the long term.

By 2001, due to Stock Exchange falls, these has decreased in value, as shown in the figure below (blue line).

In addition, the environment of

- low interest rates
- Bank of England Quantitative Easing
- increasing life expectancy
- the 1997 abolition of Advanced Corporation tax relief on dividends from stock market investment in pension funds, and
- restricted Pension Fund investment policy

all compounded to increase the fund requirements (purple line) and hence the deficit (red line) at a time when trading conditions for AEAT were very challenging, even though AEAT increased its contributions (green line).[6,7]



Evolution of Pension assets and shortfall during AEAT plc's history
(values are at 31 March of the stated year apart from 26 September 1996)

The actuarial valuation of the AEAT Pension Scheme at 31 March 2005 revealed a shortfall of £113.3 million.[8]

The Company responded by introducing four new sections for the accrual of future service. Benefits would build up more slowly and contributions increase. All new Normal Retirement Ages (NRA) would be 65, with actuarial reductions for retiring before this. Pensionable earnings would increase by no more than RPI; pay increases over this would not be pensionable. Index linking to RPI would be capped at 2.5% or 5% depending on the section.

Those in the Closed Section – transferees from UKAEA – would have an option to retain uncapped RPI indexation at the cost of a pay freeze. This option was also available to Open Section members opting to retain a NRA of 60. These changes were not a collective agreement.[8,9,10]

Both the company and the unions (led by Prospect) took legal advice; the Company's advice was shared with the unions. The advice said that pensions already accrued (past service) cannot be changed with or without consent. This reflects Clause 16 (a) (i) of the Trust Deed.[11] This covers NRA, accrual rate and indexation.

In addition, the rules for future accrual in the Closed Section cannot be changed with or without consent.[8]

This unusual provision stems from Clause 16 (a) (ii) of the Trust Deed.[11] It implements in perpetuity the promise in the Atomic Energy Authority Act 1995 that transferees would be entitled to join a pension scheme "no less favourable" than their UKAEA one. This rule would have been approved by the DTI to assure permanent protection. It was circumvented by the Company making continued accrual in the Closed Section conditional upon a pay freeze.

This appears to breach the promise because the 1995 Act requires the new pension scheme to be "no less favourable" "taking into account other benefits which he will obtain as a result of his employment by the successor company". However the legal advice was that a legal challenge would be likely to fail. [10]

In addition to these changes the company agreed to make greater contributions to the scheme:

- 5.5% of members' salaries
- £10 million in September 2006
- £100,000 per month until March 2008
- £540,000 per month from April 2008.

These were agreed between the Company and the Scheme Trustee with the involvement of the Pensions Regulator.[8]

The Company decided to close the scheme to future accrual from 1 August 2009. This was "necessary to protect the benefits already accrued by making it easier

to manage the risks and costs, and to assist the Company in supporting the Scheme going forwards."[12]

The actuarial valuation of the Pension Scheme at 31 March 2008 revealed a shortfall of £152.7 million. By 31 March 2009 this had increased to £204 million. The Trustee and the Company agreed a recovery plan that was expected to clear the deficit by 30 April 2029.

"In agreeing to these contributions the Trustee has to balance the needs of the Scheme against the continued survival and profitability of the Company."

As part of this plan AEAT agreed to pay monthly contributions of:

- £540,000 per month from April 2008 to May 2009
- £200,000 from July 2010 to June 2012 and
- £500,000 per month from July 2012 to April 2029. [12]

The 2010 Review of the AEAT Scheme states: "In accordance with the Pensions Act 1995, the Trustee and the Company have agreed a schedule of contributions designed to eliminate, over 20 years, all of the shortfall revealed by the 2008 valuation. This agreement has been reviewed by the Pensions Regulator. The Scheme Actuary has certified the schedule."[13]

Two House of Commons Select Committees have described a similarly long (23 year) recovery plan for the ailing BHS Pension Scheme as "extraordinary". They described the Pensions Regulator's response as "reactive" and "slow moving".[14,15] We discuss the failure of the Regulator to investigate the AEAT Pension Scheme in good time in Section 3.2 below.

The company raised additional funds from shareholders (existing and new):

July 2005	£33.0 million (£30.2 million after expenses) at 65p per share
July 2007	£6.7 million (£6.4 million after expenses) at 115p per share
August 2008	£39.7 million (£36.2 million after expenses) at 40p per share
Nov 2010	£55.6 million (£51.7 million after expenses) at 5p per share.[16,17]

The money raised in 2008 was used to fund the purchase of Project Performance Corporation (PPC), a Washington based data management business. The main business of PPC was contracts for the US government.[18] The money raised in 2010 was used to fund the purchase of Eastern Research Group Inc (ERG), an environmental consulting company based in Massachusetts. ERG's main customers were parts of the US government. [19]

Also in November 2010 the company established a new holding company, AEA Technology Group plc (AEATG). AEATG was based in Jersey. At the same time the formal capital value of the company was reduced in order to facilitate the payment of dividends (although none were).

During 2011 PPC lost a large contract for the US government. AEATG issued a profit warning in January 2011. This led to Lloyds Bank withdrawing the company's overdraft facility.

In November 2011 the company issued a trading statement and negotiated with the pension scheme Trustee to defer contributions due from December 2011 to March 2012 to be paid by 30 June 2012. The Trustee informed the Pensions Regulator [20]. We comment separately on the Pensions Ombudsman's Determination quoted here [20] in section 4.10.

In December 2011 the Trustee and the company drafted a plan to separate the pension scheme from the company, the scheme being taken into the PPF [20].

In April 2012 the company requested a further deferral of its contributions from the scheme and said that it could not afford any more until the company was "restructured". The Trustee told the PPF and the Pensions Regulator that they supported the separation of the scheme from the company, with the company being sold [20].

The lack of sufficient overdraft facilities meant that the company could not pay the pension contributions due in June or July 2012 or any further contributions.[19, 21] The Trustee agreed to defer all pension contributions [19].

On 1/8/12 the Trustee wrote to the scheme members announcing that the company would make no more contributions, the scheme would probably be wound up and would be unable to pay the full benefits. Scheme members should expect PPF compensation [21]. The company issued a press release on 8/8/12 announcing a strategy "identifying a new owner for the group, to realise value and thus discharge liabilities to the bank and to the pension scheme." [22] It is difficult to reconcile this with the Trustee's announcement that the company would make no further contributions.

On 19/9/12 the company held their annual general meeting. Shareholders rejected the company's report on Directors' Remuneration[19] by 71% to 29%.[23]

The company's businesses were put up for sale. The proceeds were not enough to meet the debts to the bank and the pension fund. A pre-pack administration was arranged. The company's debts to its bank had priority over those to the pension scheme. The pre-pack administration and the negotiations leading up to it involving the company, the Trustee, the Pensions Regulator and the PPF were done in secrecy, giving the trade unions and the pension scheme members no chance to intervene. The Trustee's involvement was limited to being informed of the progress of selling the businesses (without the names of the bidders).

The events of the company's final months leave a number of unanswered questions:

- The company paid £1.8 million for "professional advice in respect of restructuring debt and pension liabilities"[19]. Who was this paid to and what was it for?

- The company appointed Independent Trustee Services Ltd (ITS), represented by Chris Martin, as a Trustee Director of the pension scheme during the year ended 31/3/2009 [12]. What was the role of ITS in the pre-pack process?

- Were there any improper relationships between the company, the Trustee and the PPF?

- Did the pre-pack process amount to "Milking and Dumping" [24,25,26] ?

These questions merit further investigation.

Tony Wickett

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3.2 Regulatory failure by the Pensions Regulator

This section is based on our understanding of the powers and processes of the Pensions Regulator described in References 1 and 2.

The Pensions Regulator was set up as a requirement of the Pensions Act 2004. Logically, its first action should have been to examine pension schemes that were in deficit, especially if the deficit was rapidly getting worse.

The AEAT pension scheme should have attracted their attention immediately. It was in deficit and the deficit recovery plan failed to meet all three of the Pensions Regulator's own requirements. These are: [1, para 3.16]

1) The recovery plan is longer than ten years (AEAT was for 19 years)
2) The recovery plan appears to be significantly back-end loaded (higher contributions towards the end)
3) Assumptions underlying the recovery plan, especially investment assumptions, appear inappropriate.

This failure is defined by the Pensions Regulator as a *triggering event*. A triggering event means that the Pension Regulator is required to appoint a Case Team.

A Case Team consists of Pensions Regulator personnel tasked to examine how the pension scheme is being run and recommend actions or take control of the failing scheme.

The Government has given the Pensions Regulator substantial powers called Moral Hazard Powers to supervise or take control of failing pension schemes.

The Pensions Regulator can use its Moral Hazard Powers to:

Source	**Power**
S10 PA 95	Impose a civil penalty
S13 PA 2004	Issue an improvement notice
S14 PA 2004	Issue a third party notice
S15 PA 2004	Apply for an injunction or an interdict
S 16 PA 2004	Issue a restitution order
S 17 PA 2004	Power to recover unpaid contributions
S22 PA 2004	Power to wind up an occupational pension scheme
S23 PA 2004	Issue a freezing order
S33 PA 2004	Issue a prohibition order (prohibiting a trustee)
S35 PA 2004	Appoint a trustee
S36 PA 2004	Appoint an independent trustee
S72 PA 2004	Require the disclosure of information
S231(2)(a)PA2004	Modify the future accrual of benefits

S231(2)(b)PA2004	Direct the period to be covered by the recovery plan
S231(2)(c)PA2004	Impose a schedule of contributions
S38 PA 2004	Issue contribution notices where there is avoidance of employer debt
S43 PA 2004	Issue financial support directions where avoidance of employer debt is suspected
S47 PA 2004	Issue a contribution notice where there has been non-compliance with a financial support direction
S52 PA 2004	Issue a restoration order where there has been a transaction at an undervalue
S292PA 2004	Power of the regulator to ring fence assets

These are only some of the Pensions Regulator's Moral Hazard Powers. If they had been applied to the AEAT pension scheme from 2004, the scheme could not have been in a worse position than in 2004 and ought to have been in a much better position due to all employer contributions being collected and used for pension scheme deficit recovery.

AEAT's purchase of two USA companies, and the setting up and movement offshore of the holding group all took place after 2004.

The Pensions Regulator's actions are supposed to be preventive.

> *'we need, where possible to act before risks materialise'*

and to protect members

> *'we will support trustees and employers working to maximize protection of the benefits that the employer promised to pay and that the members are expecting'*

It is a statutory requirement on the Pensions Regulator not to allow a pension scheme to impose an avoidable burden on the Pension Protection Fund.

The Pensions Regulator should have:

1) Required scheme valuations more frequently than every three years.
2) Taken control of the rapidly failing AEAT pension scheme as soon as possible by appointing a Case team in late 2004
3) Used its comprehensive Moral Hazard Powers to assist debt collection and prevent the company from using its assets for purchases before the pension scheme was fully funded, or moving them offshore.
4) Ensured that third party debtors like Lloyds bank did not take priority over the pension scheme repayments. (the company never missed a payment to Lloyds bank, in contrast to missed pension deficit repayments)
5) Frozen and then wound up the AEAT pension scheme early enough to prevent the need to involve the Pension Protection Fund, with its very poor inflation protection.

In fact, a Case Team was only appointed in 2010, when the employer stopped making deficit recovery payments, and the pension scheme deficit was so great that nothing could be done to rectify the situation.

The scheme was still taking contributions from members in 2012.

This is clear case of regulatory failure by the Pensions Regulator.

Complaints to the Pensions Regulator in 2014, following the pre-pack administration of AEAT in 2012, resulted in a refusal to accept any responsibility for the AEAT situation and no explanation of why they did not use their substantial powers sooner to take control of the situation.

A considerable level of obstruction and refusal to answer questions was experienced from both the Trustee representatives and the Pensions Regulator.

Freedom of information requests were met with a response from their legal departments claiming that the law did not require them to respond to the questions asked and a complete refusal to engage with the complaint.

So far, the Pensions Regulator has rejected all complaints about its handling of the demise of the AEAT Pension Scheme. This merits further investigation.

Tony Reading

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2. “Defined benefit funding regulatory and enforcement policy”, The Pensions Regulator, June 2014

3.3 Effect on the retirement income of AEA Technology pensioners entering the Pension Protection Fund

Pension Protection Fund (PPF) compensation
This section describes the compensation paid by the Pension Protection Fund to former members of the AEAT Pension Scheme.[1]

You can lose your works pension that you have been paying for all of your working life, either by mismanagement of the pension scheme or by the actions of your employers. This happened to AEA Technology employees.

Employers have been using pre-pack insolvency of a company as a way of dumping historic pension liabilities on the Pension Protection Fund. It is a statutory requirement on the Pensions Regulator to try and stop this happening, but it did not use its powers to stop the AEA Technology pension scheme suffering this fate. [2,3]

A bad situation to be facing near to (or in) retirement, but at least the Pension Protection Fund will act as a replacement, won't it?

Well, it's better than nothing, but here are some of the reasons that they call it a pension compensation rather than a replacement for your works pension.

Some or all of these PPF rules can apply to you.

If you are a deferred pensioner (not yet retired) you will receive only 90% of the pension your works scheme would have provided. (There are exceptions to this rule, such as retirement due to ill health).

The PPF has inflation protection (determined by the rate of inflation) but capped at a maximum of 2.5% per year, at present. The PPF use CPI as the inflation index, which is usually lower than the RPI index used by the AEAT Pension Scheme.

The PPF has a top limit as to how much it will pay you as compensation.

Can it get worse? Oh yes.

There is an iniquitous PPF rule that no inflation protection is given on any pension contributions made before 1997. This is very damaging to the retirement incomes of older workers and is clearly age discrimination. It is also gender discrimination.

Take the case of an older worker who worked for two thirds of his employment before 1997 and one third after 1997. His inflation protection will be one third of the level set for the year by the PPF.

So, if the rate of RPI inflation is 3.5% and CPI inflation is 3% for the year, the PPF inflation protection will be capped at 2.5%, but the older worker will only receive one third of that, 0.83% in place of 3.5% in the AEAT Pension Scheme.

The effect of this is cumulative, as every year that your income falls below the true rate of inflation you get poorer and can never catch up. This effect is worse for women, who on average live two years longer than men, so lose two more years of inflation protection.

So, you see that the Pension Protection Fund is a poor substitute for a works pension. More of a Pension Destruction Fund in practice.

AEAT pension scheme taken into PPF

When the company went into voluntary liquidation, secret negotiations took place between the directors, the Pensions Regulator (who took no action to monitor or correct the worsening financial situation of the pension scheme until it was too late, and beyond help), and the PPF (who took on long term liabilities of £338 million, but in the short term, gained £287 million, the remaining assets in the AEAT pension scheme).

All interested parties, except the pension scheme members, were involved in the negotiations. A sale to a new owner was completed, without any transfer of pension liability, the bank involved received five times as much money from the remaining assets of the company as the pension scheme, and the scheme members were only told about the outcome as a fait accompli, and could not raise any objections.

Scheme members were informed that the AEAT Pension Scheme would enter a period of assessment for the PPF, and pensions would be paid according to PPF rules during this time. The AEA Technology pension scheme has been taken into the PPF and retirees are experiencing all of the problems outlined above.

Older pensioners in their 70s and 80s have virtually no inflation protection, as most of their pension contributions were made before 1997. Many are worried that, if they have the cheek to die, their wives will have to try and manage on half of this reducing income.

This is the exact opposite of what they paid for, in full, in good faith, when buying their works pension, which was supposed to have full inflation protection.

They never missed a payment, retired, and are now worried that in their final years they may struggle to make ends meet.

Contrast this with the huge salaries and bonuses that were paid to the directors of AEA Technology to manage a company that failed, and also failed to meet its financial commitments to the pension scheme.

AEA Technology pension scheme closed and open sections
As part of the privatisation two pension options were available for the employees. There was a Closed Section and an Open Section in the AEA Technology Pension Scheme. [4]

Closed section
This was only available to the employees transferring from UKAEA. Its purpose was to maintain the mirror image scheme these employees enjoyed in UKAEA. Apart from some technical issues (to ensure that the new scheme qualified for tax relief) it was identical. It was created to protect the benefits of the transferring employees. It was not available to new employees.

Open section
This did not have the same RPI protection as the Closed Section and was not designed to mirror the UKAEA scheme. Pensions were based on 100% of pensionable earnings as opposed to 93.5% (for those who joined after April 1973) in the UKAEA scheme.

As a consequence the employees' contributions were lower and the pension potentially greater, but without the safety net of RPI indexation.

The following table, taken from Reference 4, highlights some of the differences between the Open and Closed Sections. Full details are in Reference 4, available on request.

	UKAEA PNISS and AEAT closed section	**AEAT open section**
Pension	1/80 of PFE for each year of service (Maximum 40 years)	1/60 of PFE
Lump sum	3/80 of PFE	None
Inflation protection	RPI indexation	RPI indexation capped at 5%
Pensionable Final Earnings (PFE)	93.5% of best 12 months of PE in last 3 years	100% of best 12 months of PE in last 3 years
Employees' contributions	7.5%	5.75%

PNISS: Principal Non-Industrial Superannuation Scheme
PE: Pensionable Earnings

So what happens in the PPF?
The PPF strips out the RPI protection of pension accrued before 1997 (which is nearly all the contributions in the Closed Section) for those (nearly 90%) who chose to transfer their past service into the new Scheme.

So what does that mean?
It means that those in the Open Section, whom the Government had no duty to protect, will in many cases receive a higher pension for lower contributions than

those in the Closed Section, which was set up by the Government specifically to protect them!

In other words if the Government had done absolutely nothing whatsoever to protect these ex-Government employees they would have in many cases been better off.

There is no way that is what the Government intended. It is an absolutely bizarre situation and the Government refuses to acknowledge it.

Funding and stability of the Pension Protection Fund

You may think that the PPF is a Government-backed (underwritten) fund. It is not.

The Government put a small amount of money into the PPF when it was first set up, but does not underwrite its future. The PPF has to generate its own income from investments and a levy on companies that still have final salary pension schemes. Companies offering final salary pension schemes are reducing, which reduces the income to the PPF from the levy.

Lady Judge (Chairperson of the PPF) stated in the PPF annual report for 2013 that her best estimate for financial self-sufficiency was 2030.[5]

The PPF has the right to reduce compensation if it cannot generate enough income to meet payments. This insecurity is faced by all of the ex-AEAT pension scheme members for the future.

Your retirement income has been reduced through no fault of your own. There was no monitoring or protection applied by the Pensions Regulator, and you carry the risk of future income reduction.

As it says in its introductory pack 'Welcome to the Pension Protection Fund'.

Tony Reading, Keith Hammond

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4.1 Critical facts concealed during privatisation of AEA Technology

Andrew Turner worked for UKAEA from 1975 until 1996, accruing 23 years of service (including two bought-back years) on Battery Development, nuclear waste management and Industrial Processing. In 1996, I (and 90% of other eligible staff) was persuaded to transfer the pension benefits accrued with UKAEA into the Closed Section of the AEA Technology Pension scheme as this was promised to be "no less favourable" than the UKAEA scheme.

At the time we were provided by UKAEA with a document written by the Government Actuary's Department (GAD) on options available to us.[1] When AEAT went into pre-pack administration in 2012, we discovered that the promises made by government that we thought we could trust were worthless.

I am particularly concerned that the corrosive impact of inflation on pre-1997 service under PPF rules will erode my pension to virtually worthless levels especially for my wife (who is nine years younger than I) should she survive me.

Correspondence
I wrote to GAD in May 2014 concerning the advice that they gave to employees (via UKAEA) after their forcible transfer from UKAEA to AEAT, concerning their historical benefits.[2]

1. GAD had the role of ensuring that the new pension scheme would be equivalent and no less favourable than the UKAEA scheme.
2. A special closed section was set up to preserve these benefits, with a higher contribution rate.
3. The increased risk to a private sector pension scheme was virtually ignored, with inflation being cited as the most significant factor in making decisions about whether to preserve or transfer historic benefits.

In their reply, GAD suggested that we should have sought independent financial advice, referring to the erroneous DWP "Fact Sheet" and that they did not fall under the oversight of PHSO.[3]

In fact I did seek advice from an IFA, but they accepted the published advice of GAD as authoritative guidance and merely focused on the comparative issues of inflation and career advancement, as recommended by GAD in their note of 1996.

Background
Given the then recent history of privatizations (Amersham International, BT, BAe), the promise made during the Second Reading of the Atomic Energy

Authority Act (1995), Hansard[4] by the Minister for Energy and Industry (Mr Tim Eggar) that

> *"when privatisation takes place, the bill will place a statutory duty on the seller.... to be satisfied that the employees can join a pension Scheme that is no less favourable than the Authority's schemes",*

it was assumed by many to be a similar Crown Guarantee for AEA Technology, as the UKAEA Pension Scheme was underwritten by the Treasury.

During the privatisation process, UKAEA commissioned the Government Actuary Department (GAD) to prepare a Note of Pension Options [1] to guide employees whose employment was being compulsorily transferred from UKAEA into AEA Technology. This focused on the likelihood of salary and career progression outstripping inflation, and that these considerations were of greater significance than the possibility that pension promises would be broken.

The risks of such a transfer were not spelled out by UKAEA, AEA Technology or GAD, who provided the advisory note.

Actuarial professional conduct by GAD

In my view the 1996 GAD Note contravenes the prevailing Institute of Actuaries Professional Conduct code of practice, as well as advice given in subsequent GAD notes , about pension comparability in privatisations, in that it understates the risks of transferring past service from the UKAEA pension scheme to the AEAT one, leading to losses now sustained by AEAT pensioners.

In the standards expected from an Actuary at the time[5] point 9 states:

> *Although advice is primarily directed to the client a member needs to bear in mind that his advice may be made available to third parties who can reasonably be expected to rely on it.*
>
> In Point 10, *a member should bear in mind that, as a matter of law, his duty of care can extend to persons or organisations whom he can reasonably expect to rely on the advice or the information that he gives.*

Under the section on Independence (section 13):

> *For a member in a particular situation to describe the advice he offers as independent he must be free, and must be seen to be free, of any influence which might affect his advice or limit its scope.*

In a subsequent Freedom of Information request, it has been discovered that the text of the GAD note supplied to employees[1] was modified in the light of suggestions/requests by UKAEA to encourage transfer of pension benefits.[8]

The 1996 GAD note did not acknowledge the influence of the UKAEA on its wording. Instead, it gave the impression of independence.

The GAD Statement of Practice issued in 1999 [6] discusses comparability of pension rights between Public and Private Schemes, as measured against Value, Contributions, Benefits, Membership, Security and Type of Scheme (essentially on defined benefit schemes).

"Broad comparability" is a weaker protection than "no less favourable" required by the Atomic Energy Act 1995. Nevertheless the guidance is instructive.

As to value, we were promised that our benefits would be "no less favourable" than the UKAEA Pension Scheme. In the section on Security it recognized that the security of a private sector scheme cannot be provided in the same form as that applying in the public sector.

This was not made clear in the communications to transferring UKAEA staff in 1996. It would have been a material factor in their decision as to transfer their accrued UKAEA benefit to the new AEA Technology Pension Scheme (which was misleadingly described as having protection under the privatisation legislation[9]).

In the section on certification, it states that firstly the onus is on the current employer (the Government owned AEAT at that time) to ensure that the pension promises made by the prospective employer (privatised AEAT) are delivered for the staff concerned – implying that the Government has responsibility for making sure our pensions are not devalued.

Secondly, that the certificate will be in a form which can be distributed to the employees and their representatives. The certificate in existence in September 1996 was not distributed to prospective members .

The subsequent GAD note in 2006 [7] states that for Public Service Schemes (including UKAEA)

> *"Public service pension schemes are normally established under an Act of Parliament and are underwritten by the government. The benefits and contributions for each public service scheme are normally set out in regulations or rules approved by Parliament. This means that the benefits are guaranteed to be paid in full. Whereas for Private Sector Schemes "many of the laws governing the way in which schemes operate are intended to provide security to members, although it must be recognised that the level of security offered by these rules is lower than that implied by a government guarantee."*

On the wind-up of the AEA Technology Pension Scheme, the PPF refused to recognise any protected status of the "Closed Section" for members who had transferred from the Public Sector UKAEA Scheme. However this would seem to be contrary to the advice given in the 2006 GAD note[7], where it states:

"The private sector scheme must provide for greater than statutory protection of ex-public service employee benefits in the event of scheme wind up…"

Summary

All these principles must have been known in 1996, when GAD prepared the initial note for UKAEA. If it was thought necessary later to provide that very clear guidance on the risks associated with a private sector pension scheme for later transfers, as set out in the 1999 and 2006 GAD notes, then it is implicit that the information given for the AEAT transfer in 1996 was inadequate and the limited scope of the information meant that employees were unable to reasonably rely on it when making such a major decision. This might be regarded as a breach of professional conduct and a failure of a duty of care.

It is clear that GAD regarded UKAEA as the client, making scheme members persons who an Actuary 'can reasonably expect to rely on the advice or the information that he gives' (paragraph 10 of the Memorandum [5]) and for whom his legal duty of care can extend. We could reasonably be expected to rely on that information because we believed it safe to trust the integrity and professionalism of the GAD. It should be noted that this note was attached to the transfer form sent to all employees bearing the UKAEA logo and the wording "UKAEA Pension Scheme".

Employees were also misled by the absence in the GAD note [1] of any risk assessment relating to the transfer of pension benefits from UKAEA to AEAT for Closed Scheme (ex-public sector) members. This was revealed in a subsequent FoI request. Risk assessment is the primary duty of an actuary. Failure to mention risks associated with a financial product is a breach of the Actuary's code of conduct.

In summary, GAD played three roles in the privatisation process, which might have introduced a conflict of interest:

- Acted as auditor of the pension fund provisions and reported back to the Secretary of State, and made AEAT sign that they would set up the fund accordingly. Here they were acting for the DTI.
- Wrote the Note on Options, sent to scheme members. Unbeknown to the scheme members it was designed not for them but for UKAEA, who proposed modifications to encourage transfer of pension benefits. It understated the risks of transferring past service to the AEAT PS.
- Negotiated the capital amount to be transferred to the scheme against the AEAT actuary, hence working for the Treasury.

Andrew Turner

References

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4.2 DBIS and BEIS brush off complaints

I have formally complained, without success, to both the Department for Business, Innovation and Skills (DBIS) and the Department for Business, Energy and Industrial Strategy concerning the reduction in my pension caused by the failure of AEAT plc in 2012.

On privatisation of the commercial arm of UKAEA in 1996, UKAEA staff, who were compulsorily transferred to AEAT plc, were assured from many governmental and management sources that their pensions with the new company would be fully protected and as good as they would have been had we remained with UKAEA.

The government reneged on this when AEAT plc went into pre-pack administration in 2012.

Complaints to DBIS
First complaint: I wrote to Vince Cable, MP, Minister, DBIS, 22 November 2014. I detailed some of the evidence provided in 1996 regarding the security of our new pension and the excuses/'explanations' used to fob us off by Department for Work and Pensions (DWP) in July 2013, when we contacted them about our pension problems. I said that it was apparent that we had been misled in 1996 when signing up for our new pension and asked that this be carefully considered and our pensions restored to their correct values.

The reply, 18 February 2015, reiterated that the phrase 'no less favourable', in the Government Actuary's Department (GAD) note of 1996, referred to the benefits of the scheme at the time of transfer and not afterwards. I had never heard of, or met, this statement before!

Also included were:

(1) **A quote from a DTI document (Section 7.3.4, Feb 1997)** on the privatisation of AEA Technology, commercial arm of UKAEA, to form AEAT plc (a wholly independent private company) in 1996, stating that, 'Ministers rejected pressure to allow AEA Technology employees to remain in the Authority pension scheme after privatisation or to be able to join a scheme which was identical to the Authority scheme.' This, I was informed, was mentioned in Hansard, 1995.

(2) A note, 'Privatisation of AEA Technology PLC Pension Arrangements To Be Provided For The Employees After AEA Technology Ceases To Be Publically Owned', from **C D Daykin, Government Actuary,** 4 September 1996, concerning the new pension arrangements, ending with the sentence, 'It assumes that the commitments and undertakings made by AEA Technology plc will be fulfilled.' (This document was dated before we were asked to decide on our new pension and so could have been supplied to us at that time – it was NOT).

Neither of these pieces of information was known to me or my colleagues in November 1996 when we had to make a decision about our new pensions. Had they been available I would not have signed up for the new scheme. Were we, seriously, meant to have read through Hansard for the year prior to privatisation to see what ministers were saying?

I wrote again to Vince Cable, 3 March 2015, restating my case with detailed questions which I asked to be answered.

I received a terse, one page, reply, 25 March 2015, which closed the matter. I was told that I could take the matter to the Parliamentary and Health Service Ombudsman (PHSO) and use the Courts to challenge the government's interpretation of the relevant parts of the Atomic Energy Authority Act.

Complaints to DBIS/BEIS. Note that the Department changed its title during this correspondence.

I wrote to my MP, Nicola Blackwood, (Oxford West and Abingdon) on **30 Apr 2016,** yet again pointing out that we were mis-sold our pension and deliberately deceived as to the true nature of the AEAT scheme in 1996. I received a letter from my MP on 13 July 2016, which enclosed a letter from Jo Johnson, MP, Minister of State for Universities and Science at DBIS, dated 24 June 2016.

His letter concerned the pre-pack administration of AEAT plc and the failure of our pension scheme but not specifically the issues of miss-selling or deception in 1996. Johnson stated that the action of the trustees negotiating with AEAT when the scheme failed had been investigated by the Pensions Ombudsman (PO), (PO 4816), that there had been an Adjournment debate (**Mar 2015**) and that BIS (sic), DWP and GAD had replied to many questions raised.

Thus he could see no strong argument for an independent enquiry, though if I had a substantive question, not already answered, I could write to him again.

The PO investigation he refers to concerns the action of the trustees in relation to pre-pack administration in 2012. My questions related to mis-selling and deception in 1996 – something that is entirely different and occurred 16 years before. In other words he dodged my questions and provided information that was irrelevant.

In reply I supplied a detailed account of our case and flagged up three new pieces of evidence, viz.

(3) **The original GAD note, Nov 1996**, was massaged before it was issued to us.

(4) The revelation, nearly 20 years later, of the **document by Daykin, GAD**, (see (2) above).

(5) The existence of a **DTI memo** (see (1) above).

I emphasised that none of these were known to me when I had to make our pension decision. I also pointed out that Steve Webb, MP, had made a serious error in the Adjournment debate when he had implied, for example, that compensating AEAT plc pensioners would open the flood gates to BT pensioners. This is wrong – the BT pension fund is Crown protected and so one could say that the flood gates are already open!

I received a reply from Jo Johnson, MP, 6 January 2017; (now at BEIS). He stated that my submission had been investigated by a Director of the Department, independent of the teams that have handled previous correspondence or policy issues relating to AEA (sic).

He concluded that all my questions/complaints had already been fully answered, that little could be added and, unless new information was forthcoming, the department could do no more. He ignored my comment about the error in the Adjournment debate.

In addition he had asked GAD to look at the comments I had made concerning them, in my submission. Their replies were:

(6) There was nothing improper in GAD having asked other parties (UKAEA, AEA Technology) to comment on the GAD note, Nov 1996, before it was issued.

(7) **The GAD note**, Nov. 1996, does refer to the risk of AEAT plc failing. However, they go on to state that the note from Daykin, GAD (see above) had been dealt with already in July 2013 by DWP. I am confused by this point. I received a note from the DWP, attached to a letter from Steve Webb, MP, via my MP, Nicola Blackwood, entitled AEA Technology – Factsheet Issued By DWP – June 2013. GAD refer to a note dated July 2013 which I do not have. My DWP note, above, says that the two schemes were effectively the same at the moment we signed but not thereafter. While this information may be based on the note by Daykin this source was unknown to me and my colleagues in 1996. We should have been told then of this situation not in 2013!

(8) **The quote from DTI** (see above) will have been recorded in Hansard, implying that I should have accessed this information in 1996.

They end by saying that they may decline to answer further correspondence.

Neil Hancox

4.3 Five years on and DBIS still won't answer questions

AB joined UKAEA from the NHS in February 1995 transferring from one public sector body to another. She then commenced the transfer of her 15+ years NHS pension to the UKAEA pension under the Public Sector Transfer Club rules.

The commencement of the privatisation and creation of AEAT prevented the transfer so initially she transferred just her UKAEA pension into the 'Closed' scheme of the AEAT pension based upon the Government promises and then once the AEAT pension scheme joined the Public Sector Transfer Club she transferred her NHS pension into the AEAT Closed Scheme as well.

Correspondence
When CB (AB's spouse) initially wrote to the Government his complaint was directed to the DWP. It stayed here for about 18 months until the DWP decided it was not their responsibility and redirected him to DECC.

DECC also decided it wasn't their responsibility, but it took six months for them to find anyone who would take responsibility. Initially they tried to return him to DWP and after a short dalliance with GAD for a few months it was eventually decided that it was DBIS's responsibility, not that anyone at DBIS would take it on for quite some time! CB chased DECC for the promised contact in DBIS on 22/4/2014, 4/6/2014, 23/6/2014, 22/7/2014, 28/7/2014, 11/8/2014, 13/8/2014, 1/9/2014, 6/10/2014 and 15/10/2014.

Eventually DECC provided a contact on 16/10/2014 and the saga of correspondence with them commenced.

CB like many others wrote to DBIS. All his letters were sent by email. CB wrote on 30/10/2014 and followed up on 25/11/2014.

Nobody actually ever got a reply to a letter. That is not to say he didn't receive letters, but the contents of those letters never addressed any issues or questions he had asked. They referred to stuff he hadn't asked and the contents were usually completely inaccurate.

The first reply to CB, on 26/11/2014, said that that legal advice was being sought. This was followed by a photocopy of an unidentified page on 27/11/2014.

CB complained and requested a proper reply on 28/11/2014. It took two and a half months to get a letter. That letter, dated 18/2/2015, was a generic letter that was sent out to many people. It did not answer a single question he had asked and covered topics not even raised.

He wrote back on 26/2/2015 asking that they answer the questions in the letter he had sent.

Another month and the same thing happened. He received a generic letter on 1/4/2015 that ignored all his questions and issues.

He wrote back on 2/4/2015 asking them to confirm that they were refusing to answer his questions.

Initially they refused to answer this letter. He insisted that he wanted a reply confirming they were refusing to answer his questions.

He chased for the next two and a half months requesting either answers or confirmation that they were refusing to answer. He sent emails on 2/4/2015, 14/4/2015, 17/4/2015, 20/4/2015, 29/4/2015, 5/6/2015 and 11/6/2015.

Unbelievably he then received another response on 11/6/2015 and it was exactly the same as previous ones. It was generic and sent to many people and ignored all his questions and issues again and again answered questions he had never raised.

CB wrote back on 17/6/2015 pleading with DBIS to just please answer the questions he has asked. No reply was received.

An entire year had been wasted trying to get a meaningful reply from DBIS without success.

An opportunity arose again however. A year later in August 2016 CB was made aware of a letter from Jo Johnson MP to another member of the Pension Scheme where he offered to answer questions. Jo Johnson worked at DBIS.

CB responded in a letter to Jo Johnson MP on 12/8/2016 pointing out various inaccuracies in Jo Johnson's letter and supplied a copy of CB's last letter sent to which no reply had been received asking for a reply.

And so the saga continued. A reply to this letter was received from DBIS on 5/9/2016 and once again it ignored all the issues and questions raised and instead answered questions not asked and once again made mistakes in those responses.

The most bizarre part was not only did it not respond to one of the inaccuracies pointed out, but actually repeated it in the reply. It was as if his letter had just not been read.

CB tried for a third time on 26/9/2016 this time just asking for a reply and attaching all the previous unanswered letters. This time his MP also forwarded the letter to Jo Johnson.

The reply received on 17/10/2016 said DBIS had answered his questions even though this clearly was not true.

CB wrote again to DBIS on 3/11/2016 and chased on 28/12/2016 and 17/1/2017. This letter was also forwarded to DBIS by CB's MP. CB's MP received a reply on 12/1/2017 from Jo Johnson. It did not answer any questions.

CB's MP wrote to Jo Johnson on 31/1/2017 giving an example of the nonsense sent to CB by DBIS. DBIS had stated, in two letters, that the Pension Ombudsman had found that the trustees had not acted perversely at the time of the pre-pack administration.

CB had pointed out that he had not complained about the trustees, or the 2012 pre-pack administration. He was complaining about UKAEA at the time of the privatisation some 16 years before. This correction had been ignored.

It appears after all this time DBIS does not even have a clue what CB is complaining about!

No reply to the 31/1/2017 letter to Jo Johnson has been received yet. CB's MP has followed it up on 27/6/2017. It is outstanding.

Outstanding FOI request and the breaking of the law by DBIS/BEIS

CB made a FOI on DBIS on 15 September 2016. A response should be received within 20 days.

DBIS requested 3 extensions (on 13/10/2016, 10/11/2016 and 8/12/2016) to the deadline for reply under 'Legal Professional Privilege'.

The final extension expired on 10 January 2017.

DBIS have been chased numerous times (on 17/1/2017, 23/1/2017, 9/2/2017, 7/3/2017, 14/3/2017, 20/3/2017, 28/3/2017, 22/4/2017, 1/5/2017, 6/5/2017, 9/5/2017, 16/5/2017 and 24/5/2017). Twice (on 24/1/2017 and 28/3/2017) they have confirmed it is ready, but they were awaiting clearance and it will be sent within days. It has apparently sat at the most senior levels within BEIS in breach of the FOI Act.

CB complained to the Information Commissioner (ICO) on 10/5/2017 about this breach. The ICO took action on 23/6/2017. Finally after the intervention of the ICO the information was received on 27/6/2017, over nine months later. The Act requires it to be delivered within 20 days.

CB submitted a second FOI request, to find out the reason for the delay, on 1/6/2017. This has also missed its deadline, given as 29/6/2017. Eventually BEIS replied on 20/7/17 with a covering letter and a pdf file of 28 pages

Responses to the FOI requests

The first FOI response was a shambles. BEIS sent a paper copy followed, at CB's request, by an electronic version. The paper copy consists of 204 sides. The electronic copy consists of 22 pdf files numbered 1 to 22, although 2 of these were duplicates of others. The electronic copy contains material missing from the paper copy and vice versa. The ordering of the two versions is very different and neither is in a logical order. It is impossible to reconcile the two.

The ICO criticized BEIS for the delay, unnecessary redactions and the disorganized layout of the response. A huge amount of material, including correspondence, is missing, which BEIS state they do not have. The FOI response raises a significant number of issues including, but not limited to, the following:

a) BEIS has deliberately refused to answer pension fund members' questions. This has been an ongoing complaint and it is clear from numerous BEIS internal emails that they specifically decided not to answer questions (although the reasons for doing so are not clear). For example:

"detailed points do not need addressing I suggest"

"I do not believe that detailed response is called for"

"a line by line response to his letters is pointless in my opinion because of the Government's stated position at the time and the involvement of the unions at the time"

"nothing we can say is likely to satisfy the correspondent".

b) The ministers' briefing documents clearly show ministers were very poorly briefed. There were numerous inaccuracies in these notes, which were often carried forward to letters that were sent to pension scheme members.

For example, a complaint about the UK AEA and DTI at the time of privatisation (1996) led to the advice that the Pensions Ombudsman (PO) had investigated and found that the trustee's actions were reasonable. This PO investigation was in fact about events in 2012, some 18 years later.

c) Recent letters from a minister have claimed that an independent internal review of correspondence has been carried out by BEIS and yet the FOI reply is missing many of the letters and emails sent to them. On querying this point BEIS have confirmed that everything they have has been sent in the FOI response. How can the correspondence have been reviewed if it has been lost?

The second FOI request asking about the delay in sending the first revealed that the Permanent Secretary and other very senior officials were overseeing and heavily involved in the original FOI response. One has to wonder why someone so senior was involved in a simple FOI response?

4.4 Trustees did not act in scheme members' interests

Andrew Turner worked for UKAEA from 1975 until 1996, accruing 23 years of service (including two bought-back years) on Battery Development, nuclear waste management and industrial Processing, when he was part of the privatisation to AEA Technology (AEAT). Andrew worked with AEAT up to 2003 when he left the company to become an independent consultant. Andrew worked on electrochemical environmental management products for AEAT during this period.

Correspondence
Stage 1 IDRP
I first wrote to the Chairman of the AEAT Trustees (c/o Independent Trustee Services Ltd (ITS)) on 10/5/2014 at the instigation of the Pensions Ombudsman as part of the dispute resolution procedure to register a formal Stage 1 complaint.[1]

This concerned the loss of benefits on entry to the PPF for the Closed Section Members (into which former UKAEA employees had transferred their historic benefits after privatisation) as a result of the loss of indexation on our total benefits – particularly those prior to 1997 – and the 10% reduction on a benefit yet to come into payment.

The Trustees were aware of the requirement to comply with the pre-privatisation rights and provisions in the Closed Section and it was accepted by AEA Technology in Section 16 (a) (ii) of the Definitive Trust Deed prevented any amendment being made that might adversely affect those past and future rights to ensure that we continued to receive the same benefit entitlements had we been able to remain in the UKAEA public sector scheme in which we had participated prior to privatisation.

In particular, the rules of the Closed Section provided full index-linked annual increases to our benefits based on our total UKAEA/AEAT reckonable service (I worked for AEA Technology until 2003).

My formal complaint was about the failure of the Trustees to take into account the rights and safeguards given to our benefits and the duty owed to us to protect those benefit entitlements under the provisions of the Atomic Energy Authority Act 1995 (the Act). The Trustees had a legal duty to act in the best interest of scheme members.

ITS replied that it was up to AEAT to continue contributions to the pension scheme to provide benefits "no less favourable" than those we would have received from UKAEA.[2]

The Act did not provide any guarantee beyond the life of the Scheme. They also claimed that they had been advised that the "Closed Section" didn't have any special provisions underpinning the benefits. The Trustee was therefore unable to treat the Closed Section of the Scheme in a different manner than the rest of the scheme.

Stage 2 IDRP

A Stage 2 complaint was then returned to ITS, making reference to the note[3] issued by the Government Actuary's Department (GAD), at the request of UKAEA in November 1996 to explain the options available in respect of historic benefits accrued in the UKAEA Scheme.

This gave assurance that my fully index-linked pension benefits accrued during over 20 years' service in the public sector would be equally as secure in the private sector and gave no warning that the Government was no longer prepared to continue to underwrite those same benefits. In the extract from that Note below:

2.2.4 The overall effect of taking a transfer value is that the whole of your benefits (including that part based on UKAEA Scheme service) will be provided by the AEAT Scheme. The benefit structure of the closed section of the AEAT Scheme is very similar to that of the UKAEA Schemes, so that your transferred benefits will be identical (or very close) to those you would have received if you had been able to continue to contribute to the UKAEA Scheme for future service. If you take advantage of the special transfer terms and also remain in the closed section of the AEAT Scheme, your total benefits will be identical (or very close) to those you would have received if you had been able to continue to contribute to the UKAEA Scheme for future service."

During the second reading of the Atomic Energy Authority Bill (1995), Hansard[4] reported that the Minister for Energy and Industry (Mr Tim Eggar) stated that:

> *"when privatisation takes place, the bill will place a statutory duty on the seller (i.e. the Government) .... to be satisfied that the employees can join a pension Scheme that is no less favourable than the Authority's scheme".*

He added:

> *"On the question whether the new scheme is equivalent, that will be audited by the Government Actuary. In other words, we shall have the advice of the Government Actuary as to whether that undertaking is made".*

He later said:

> *"Employees are AEA Technology's greatest asset. We have no intention of selling employees short, and I am sure that the House will welcome the statutory assurance that we are proposing."*[5]

I was therefore assured that by opting to take advantage of the special bulk transfer terms and remaining in the Closed Section, my transferred and total benefits will be (not might be), identical to those I would have received had I been able to continue to contribute to the UKAEA Scheme for future service; a scheme fully secured by Government funding.

I acted on this advice in the belief and full expectation that this undertaking, given without provisos in the GAD document, meant that once my pension benefit came into payment, it was guaranteed that I would continue to receive it on the same basis as the pension due to me under the provisions of the public sector UKAEA Scheme in which I had participated prior to my compulsory transfer into the private sector AEAT Pension.

No caveats or provisos were mentioned either in the Atomic Energy Act or the GAD note stating that would no longer be in force should AEA Technology plc go bankrupt while the pension fund was in deficit.

The duties of the Trustee are to act in the best interests of beneficiaries. In the situation of Closed Section members, this would mean ensuring that the assets were such that, in the event of the winding up of the scheme, there would be sufficient funds available to meet the full liability of the statutory promises given to the members of the Closed Section concerning my pension benefit entitlement throughout both my lifetime, and that of my spouse (at 50%) should I predecease her.

This was particularly important for those transferred benefits I accrued in the UKAEA Scheme – a scheme underpinned by Government guarantee, as these comprised the bulk of my service (75%).

It was predetermined by UKAEA that those benefits could only transfer into the Closed Section and that they **had to remain there** because of its special protected status, irrespective of which scheme I subsequently opted to join for future service.

At the point of transferring these pension benefits there was again no warning from UKAEA that the rights and safeguards required by the Act to protect those transferred and future benefits in the Closed Section would be only for a finite period, or that the Government was no longer committed to continue to underwrite those same benefits should the AEAT Scheme fail.

I was told that it had been agreed that my highly valued pension benefits earned and paid for during long service as a Government employee would be protected under the privatisation legislation.[6]

Unless it had been agreed that, in order to be equally as secure in the private sector it would be necessary for the Government to continue to underwrite those same benefits, the Trustee was legally obliged to ensure that the funding needed to meet those statutory provisions in full remained ring-fenced within the overall scheme at all times to guarantee that I continued to receive throughout my retirement the same 'no less favourable' pension benefit payment I had been promised.

The Trustee has failed to explain why they failed to meet this commitment, particularly for those benefits I accrued in the public sector.

In their response the Trustee had obtained legal advice to establish whether there is any statutory guarantee attached to the benefits of the Closed Section of the Scheme which would mean that Closed Section benefits should be paid in full [2]. This confirmed that the Closed Section benefits should be subject to PPF levels of compensation and that there is no statutory or legal obligation for the Trustee to pay the benefits in full.

Another responsibility of the Trustees is to oversee investment strategy – ensuring that sufficient returns are achieved to support the benefits promised to pension fund members.

Figure 1 shows the published fund valuations and deficit over the period of AEAT Pension Fund life. It can be seen that as early as 2002, the size of deficit was progressively growing.

How is it that the trustees have presided over such a significantly poorer fund performance that this benchmark – and failing to meet one of their key responsibilities?

In response, the Chair of the AEAT Pension Scheme (Joan Mulcahy) argued that the first valuation confirmed it was funded above the Minimum Funding Requirement (MFR).[7]

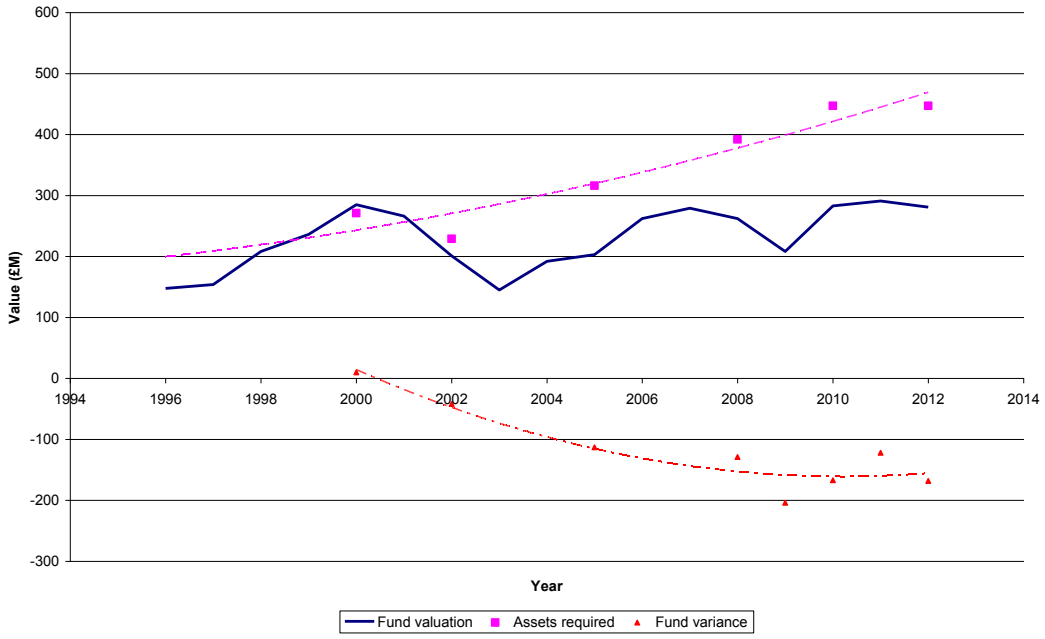

Figure 1 Pension fund value and deficit

> *"It remained funded above the MFR until the 31 March 2005 valuation which confirmed it was only funded to 90% of the MFR level. Investment returns had been significantly lower than expected and economic conditions caused the cost of providing benefits to increase at a greater rate than those assumed. As the Scheme was funded below the MFR level the Trustee took action to return the Scheme to a funding level above MFR. A revised contribution schedule was agreed with the Company, sections of the Scheme were closed to new members and to future accrual. The next Scheme valuation was carried out at 31 March 2008. For this valuation the MFR funding basis was replaced by the Scheme Specific Funding basis under the Pensions Act 2004. The Scheme Specific Funding regime required the Trustee to be more prudent than the MFR basis and the Scheme was shown to have a shortfall of £152.5m. Following this the Scheme closed to new benefit accrual from July 2009 and extra contributions were agreed with the Company which, at the time, were expected to clear the shortfall by April 2029... The 2005 pension exercise did not change the protective status of the benefits nor did it change the risk to the security of members' benefits in the event the Company failed. Had the Company continued, and the required contributions continued to be paid, the members who chose to remain in the Closed Section would have continued to receive full indexation of their pension benefit."*

However, it is particularly difficult to understand why in July 2005, when the Scheme was already in deficit and existing members of the Closed Section were required by AEAT to potentially forego future pay increases in order to continue as members of that Section, the Trustee failed to ensure that those individuals

were warned that their pre-privatisation protective rights were **now interpreted as not being guaranteed** in the event of the Scheme failing.

Those individuals that chose to remain in the Closed Section did so because they valued the promise of receiving full indexation on their pension benefit more than potential future increases on their actual pay. They were also prepared to continue to make a higher contribution rate for that entitlement than that required for the Open Section offering benefits more appropriate to the private sector.

Why did the Trustee did not consider it necessary during the 2005 AEAT pension exercise to alert existing members of the Closed Section to the potential risk to the security of the benefit entitlement they had been assured would continue to be fully protected on transferring into the private sector, thus allowing them to reach a better balanced decision for their future service?

Also, why did the Trustee choose not to disclose to the PPF the protected status of benefits accrued in the Closed Section?

The winding up of the AEAT Scheme does not mean that liability for meeting the statutory requirements applying for my pension benefit can be regarded as having been discharged. Neither the Trustee nor the PPF has the power legally to rescind retrospectively the statutory provisions governing my pension payment based on my total service accrued in both the public and private sector.

Given that the pension benefits due to me were defined by Act of Parliament, I maintain that this protection of the pension benefits of staff compulsory transferred from the public sector into the private sector are of a 'permanent effect' or 'enduring nature' as described by the High Court Judge in the *Urenco vs Mossop* case[8] – and that subsequent PPF rules should not be considered to "trump" these promises – particularly provisions affecting pensions already in payment.

The Chair of the AEAT Pension Scheme responded that the legal advice confirms that the Closed Section benefits should be subject to PPF levels of compensation and that there is no statutory or legal obligation for the Trustee to pay the benefits in full. The PPF is aware that the Trustee sought this advice and the PPF also is aware of the outcome.[7]

Contacting former pension scheme members

In March 2014, on behalf of the AEAT Pension Campaign, I requested that Capita circulate a letter to former AEAT scheme members to ask them to contact us, if they would like to be involved in seeking a remedy as a group.

I received a reply from ITS refusing permission to do this, as they felt it an improper use of Scheme funds to support a lobby group.[9] They said that it was the Trustee's duty to act impartially and in the best interests of all members within the terms of the Trust Deed and Rules, and that any involvement in

lobbying on behalf of one section of members could be seen to be contrary to this responsibility.

This seems to be inconsistent with an earlier letter from the Trustee to Scheme members giving them contact details for the Pensions Action Group (which campaigns for justice for those who lost some or all of their company pension when their schemes were wound up).[10] This letter was sent at the request of Keith Hammond.

ITS stated that they were aware that the home page of the Pensions Action Group's website contains a link to our campaign and that any interested members have therefore been provided with a platform to contact us. Due to data protection, ITS was unable to provide a list of Scheme members.

Andrew Turner

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3. Transfer from the UKAEA Superannuation Schemes to the AEA Technology Pension Scheme. Note by the Government Actuary's Department on the options available in respect of accrued UKAEA benefits. Peter Nolan November 1996
4. Hansard, HC Deb 14 March 1995, vol 256 cc711,712
5. The Atomic Energy Authority Act, Schedule 4, Paragraph 7
6. AEA Technology Human Resources Group, "Pensions: What you need to know", August 1996, page 1
7. Letter, Joan Mulcahy, Chairman, AEAT Pension Scheme to Dr A D Turner, "AEA Technology Pension Scheme Internal Dispute Resolution Procedure – Stage 2 response", 8/1/2015
8. "Your pensions are protected", Prospect Nuclear Pensions Briefing, June 2012, 2012/00934
9. E-mail, Anna King (ITS) to Andrew Turner, "AEAT Pension Campaign Request", 4/3/2014
10. Letter, Andrew Bevan (for Trustee of the AEAT Pension Scheme) to Scheme members, 27/9/2013

4.5 Pension Protection Fund ignores statutory pension rights

Andrew Turner worked for UKAEA from 1975 until 1996, accruing 23 years of service (including two bought-back years) on Battery Development, nuclear waste management and industrial Processing, when he was part of the privatisation to AEA Technology (AEAT).

Andrew worked with AEAT up to 2003 when he left the company to become an independent consultant. Andrew worked on electrochemical environmental management products for AEAT during this period.

Correspondence
I first wrote to the Pension Protection Fund (PPF) in April 2014 complaining that the PPF compensation offered was significantly less than those benefit entitlements promised under the provisions of the Atomic Energy Authority Act 1995 for the Closed Section (into which former UKAEA employees had transferred their historic benefits after privatization) as a result of the loss of indexation on our total benefits – particularly those prior to 1997 – and the 10% reduction on a benefit yet to come into payment.[1]

My letter said that the Trustees were aware of the requirement to comply with the pre-privatisation rights and provisions in the Closed Section and it was accepted by AEA Technology in Section 16 (a) (ii) of the Definitive Trust Deed which prevented any amendment being made that might adversely affect those past and future rights.

The Trustees had a legal duty to act in the best interest of scheme members so I find it strange that the Trustees seem to have failed to disclose to the PPF those rights enshrined in statute and remaining in force in November 2012. This is even more difficult to understand, particularly as I understand that the Pensions Regulator and the PPF had a role in the insolvency event of November 2012 and the winding-up process of AEA Technology.[1]

Essentially the PPF reply was that they are limited in the compensation they are allowed to provide by Statute. They also commented that the AEAT Pension Scheme was privately funded – dependent on the ability of the employer to sustain the Scheme. However, in the final paragraph of their reply they stated that this was "not to say that there is no scope for a policy decision from DWP to reconsider compensation for ex-UKAEA members, should this be deemed to be fair and reasonable."[2]

In a follow-up letters of March, April and May 2016, I disputed the ignoring of the "Closed Section's" Status by PPF – but the PPF claimed that this was not within their remit to apply any variation.[3,4,5,6]

Contacting former pension scheme members

In December 2016, on behalf of the AEAT Pension Campaign, I requested the PPF to circulate a letter to scheme members who had transferred into the PPF to ask them to contact us, if they would like to be involved in seeking a remedy as a group.[7]

In their reply, they refused to do this, instead suggesting we use Facebook (not commonly used by 60-80 year olds!) – claiming that circulating a letter on our behalf would be an inappropriate use of members personal details.[8]

When I contacted the Information Commissioner, they confirmed that this would not actually contravene use of Confidential Data, but the PPF did not HAVE to help us. Even a letter from my then MP (Nicola Blackwood) had no effect in persuading them to assist in contacting former fellow pension scheme members.

Andrew Turner

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1. Letter, Dr A D Turner to PPF, "Formal Complaint to PPF concerning Assessment of the AEA Technology Pension Scheme (Closed Section) for entry into the PPF", 30/4/2014
2. Letter, Ross James, PPF, to Dr A D Turner, "AEA Technology Pension Scheme – formal complaint to the Pension Protection Fund", Ref PPF/AEA Technology/RJ, 17/6/2014
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4. Letter, Dr A D Turner to PPF, "Proposed entry of AEA Technology Pension Fund into PPF", 24/4/2016
5. Letter, Dr A D Turner to Andrea Joseph, PPF, "Note for the record AEA Technology Pension Fund entry into PPF", 2/5/2016
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4.6 Pensions Regulator and Pensions Ombudsman pass the buck

Background
I started work at UKAEA Harwell in 1974, joining the UKAEA pension scheme.

I was compulsorily transferred into AEA Technology (AEAT) when it was split away from UKAEA as a trading fund and then privatised as AEA Technology plc in 1996.

I was misled into transferring 23 years of valuable accrued pension contributions into the Closed Section of the AEA Technology pension scheme, primarily by the information given in the Government Actuary's Department note *"Transfers from the UKAEA superannuation schemes to the AEA Technology pension scheme"* (November 1996) given to all AEAT employees, which was attached to the transfer forms.

I was concerned about how little time was allowed to think and take advice.

The other piece of information that influenced my decision was the 1995 Pensions Act. This Act lays down statutory duties of Trustees and the requirement for a minimum funding level for pension schemes.

The Minimum Funding Requirement (MFR) for pension schemes was supposed to ensure that a pension scheme had sufficient funds to meet its liabilities at all times.

I believed that this legislation would ensure that if the new, untried company failed, it could not take the pension scheme with it. There was no protection against loss of all of your pension under these circumstances in 1996, but I was told that the MFR would not allow this to happen.

In 2005 I received letters from AEA Technology trying to encourage me to transfer from the Closed to the Open section of the pension scheme.

The letters stated that, if I transferred, my monthly pension contributions would be lower, but my inflation protection would be capped at a maximum of 5% per year, instead of RPI.

I would also lose the statutory protection of my pension terms and conditions enshrined in the 1995 Atomic Energy Authority Act.

Even though the pension scheme was in increasing deficit, there was still the option of remaining in the Closed section of the pension scheme. The cost of remaining was higher monthly pension contributions and a company-imposed salary freeze for the rest of my career.

The company said this was to cover the extra cost of providing a pension with inflation protection at RPI. As a risk averse person, I chose to remain in the Closed section with, what I was told, was a greater level of protection, and accept the pay freeze.

I left AEAT in 2006 when my job was TUPE transferred into a private company that was a buy-out from AEA Technology.

The only information I received from the AEAT pension scheme after 2006 was via annual Trustee reviews. These assured me that the pension scheme was in good hands:

> *"Your Scheme in good hands: A range of highly qualified people help to look after the Scheme on your behalf."*[1]

I was worried that the AEAT pension scheme was in increasing deficit, but I was powerless to take any action to improve my pension situation.

I was effectively made redundant from the private company in 2009, by being offered early retirement at acceptable terms.

In 2012 I was already retired, and drawing my AEAT pension, when I saw press reports that AEA Technology was in financial trouble. The company went into a pre-pack administration in November 2012.

I was told that the pension scheme would be unlikely to pay benefits in full in August 2012 in a letter from the scheme Trustee. [2]

I was most concerned to find out that the Pensions Regulator had allowed the AEAT to dump its historic pension liabilities and put the pension scheme into assessment for entry into the Pension Protection Fund.

I was horrified, as I realised how adversely my retirement income would be affected if the AEAT scheme was taken into the PPF. I was told that I would receive pension payments according to PPF rules during the assessment period.[3]

As I was already retired, I received that same monthly pension, but with much reduced inflation protection (the very reason that I chose to pay to remain in the Closed section of the AEAT pension scheme).

The main problem affecting me in the PPF is its iniquitous rule that no pension contributions made before 1997 received inflation protection. Here is how it affects me:

- I worked 23 years for UKAEA/AEAT before 1997 when it was Government owned, and then nine years for AEA Technology plc, 32 years in all.

- This means that I will receive the PPF inflation protection on only 9/32 of my pension. The PPF inflation protection is CPI inflation (which is less than RPI inflation) capped at a maximum of 2.5% per year. This means that the best inflation protection that I could ever get under PPF rules is 0.7% per year (2.5% x 9/32).

- In May 2017, CPI inflation rose to 2.9% and RPI inflation to 3.7%.[4] I lose 3.0% (3.7% - 0.7%) of the purchasing power of my PPF pension as a result.

This loss is cumulative and, without government intervention, cannot be corrected, thus making me progressively poorer for the whole of my retirement.

Through no fault of my own, this is the exact opposite of the fully inflation proofed pension that I worked and paid for in full, in good faith. I missed no monthly pension payments, unlike the company.

No government regulator monitored or attempted to correct this situation.

I will lose at least £60,000 over the course of a 20-year retirement, which would easily cover the cost of my food for the whole of my retirement.

Complaints made to government
Since the failure of the AEAT pension scheme I, in collaboration with colleagues, have complained to a range of government bodies aiming to have the unjust cuts in our pensions investigated and put right. This has turned into a saga of rejection and buck passing. What follows is the sequence of my complaints.

8 November 2012
I met my constituency MP, Edward Vaizey with a group of AEAT pensioners. Mr Vaizey said:

> *"a pension is only of use if it there when you need it".*

He promised to write to the Pensions Minister (Steve Webb).

I also wrote to the Department for Work and Pensions (DWP) stating that I was promised a pension with AEAT that was "no less favourable" than the UKAEA pension that I could no longer contribute towards.

This promise was made by UKAEA, AEAT, and in Parliament, by the DTI Minister, Tim Eggar MP, in the privatisation debate.[5]

The Minister also stated that I would have statutory protection for my pension and that he would advised by the Government Actuary's Department that these conditions had been met, before he signed off the AEAT pension scheme as equivalent to the UKAEA pension scheme.

This information reassured me that my AEAT pension was a safe mirror image of my old UKAEA pension scheme, and it would be protected by statute, as the terms and conditions were protected by the 1995 Atomic Energy Authority Act and Clause 16 (a) (ii) of the AEAT Pension Scheme Trust Deed and Rules dated 25/9/1996 meant that they could not be changed.

7 November 2012
I wrote to Ed Vaizey MP demonstrating the loss of my retirement income due to PPF payments differing to those paid for and expected from the AEAT pension scheme. I asked Vaizey to raise my situation with the Secretary of State for Business, Innovation and Skills (Vince Cable).

17 December 2012
I received a letter from Ed Vaizey, MP confirming that he fully understood my concern and had written on my behalf to the Pensions Minister (Steve Webb) and the Secretary of State for Business Innovation (Vince Cable), as I requested.

There was no reply from Vince Cable. He buck-passed my request to the DWP and Steve Webb.

16 July 2013
The DWP responded to a second letter from Ed Vaizey (DWP ref: POS(3)11055/253).

DWP reported a meeting with Prospect union officials (March 2013) in which they agreed to modify the PPF compensation cap. This only affects very few pensioners at top end of the scale. There would be no change to the iniquitous pre-1997 indexation rule that affects most pensioners.

The DWP attached their "Factsheet" of June 2013. This is full of inaccuracies and attempts to re-write history in their favour.[6]

The "Factsheet" was immediately rejected by the AEA Technology Pension Campaign who pointed out all of the false statements and demanded the immediate withdrawal of this document.

Instead the DWP passed it to other departments and tried to make it a statement of the AEAT situation. It is still being quoted by Government departments and Regulators four years later.

The last statement in the DWP "Factsheet" states that:

> *"Payments relating to service on or before 5th April 1997 will not increase because there was no statutory requirement on pension schemes to increase pensions in payment before this date."*

The 1995 Atomic Energy Authority Act and the Government Minister, Tim Eggar MP, speaking in Parliament both state that the AEAT Pension Scheme will have statutory protection. This pre-dates 1997.

The DWP ignored most of my complaints which refer to the loss of inflation protection, not the relaxing of the income cap which affects only a few highly paid pensioners.

10 October 2013
I received a letter (Ref: POS(3)11055/255) from Pensions Minister Steve Webb (via Ed Vaizey MP) referring to the DWP letter of 16 July 2013 and stating that no more can be added.

It states that the PPF does not pay inflation increase on contributions made before 1997, because prior to that date, pension schemes were not required by law to make inflation related increases to all pensions in payment.

It goes on the state that this is an essential cost control measure that aims to ensure the long-term protection of the PPF.

(This is factually incorrect. The 1995 Atomic Energy Authority Act required the AEAT Pension scheme to retain the same inflation protection as that enshrined in the UKAEA pension scheme terms and conditions, so that the Closed section of the AEAT Pension scheme would be *'no less favourable'* as guaranteed by Government Minister, Tim Eggar, speaking in Parliament in the privatization debate.)

The Minister has been informed of the 1995 Atomic Energy Authority Act, and is choosing to ignore it.

27 November 2013
I received letter from my constituency MP, Ed Vaizey, forwarding a letter dated 21/11/2013 to Mr Vaizey from officials in the DWP signed on behalf of Pensions Minister, Steve Webb.

The DWP response to Ed Vaizey:

- Did not mention the GAD advice document or its lack of risk statements.
- Claimed that the 1995 Atomic Energy Act 1995 had been repealed. (This is factually incorrect. The 1995 Atomic Energy Authority Act was only partially repealed and the sections pertaining to pension terms and conditions were not repealed and are still a current Act of Parliament as at June 2017).
- Admits that this Act did contain a duty for the Secretary of State to satisfy themselves, prior to the transfer to AEA Technology that the new pension scheme would provide benefits "no less favourable" at the time of transfer, and claimed that the Secretary of State had discharged his duty.
- Claimed that subsequent performance of the scheme was the responsibility of the employers and the trustee.
- Claimed that PPF compensation did not make inflation related increases on pension contributions before 1997 as pension schemes were not required by law to do this. (This is factually incorrect. The statutory

protection in the 1995 Atomic energy Authority Act was implemented in Clause 16 (a) (ii) of the AEAT Pension Scheme Definitive Trust Deed and Rules [25/9/1996] which stated no changes to terms and conditions in the Closed Section could occur. This predated 1997.)

- Stated that this was an essential cost control measure for the PPF.
- Stated that the Government has no plans to change how PPF compensation is calculated.
- Stated that the AEAT situation was referred to the PPF by the Pensions Regulator (PR) in November 2011.
- Made no mention of what the PR was doing between 2005 and 2011.
- Stated that the Trustee took until June 2012 to trigger insolvency. (Why so long?).
- Stated that the Price Waterhouse Cooper review of AEAT pension scheme in February 2012 stated pension scheme funding position has deteriorated in previous 12 months and that the recovery plan was unachievable.

This raises the question why did it take to August 2012 to notify pensioners that the scheme would be unlikely to pay the benefits in full [2] ?

29 October 2013
In *The i* newspaper, Lady Judge, chairperson of the PPF, stated that:

> *"We remain firmly on our glide path to financial self-sufficiency in 2030".*

So, until at least 2030, pensioners paid by the PPF will have to carry the risk of financial failure.

6 February 2014
I sent a complaint to the DWP and copied it to Ed Vaizey MP. I received an acknowledgement from Mr Vaizey.

My complaint to Department of Work and Pensions covered:

a) failure to address previous complaints (made on 7/11/2013, 23/11/2013 and 23/12/2013) about trying to change my pension benefit entitlements retrospectively and the potential transfer of my pension into the Pension Protection Fund.
b) The long-term stability of the PPF
c) The inaccuracy of statements in the DWP 'Factsheet' issued June 2013.

I provided Ministerial statements from the privatization debate [5]

a) "With regard to pensions, to make sure that a fair and just arrangement is reached."
b) "Employees can join a pension scheme that is no less favourable than the authority's (UKAEA) scheme."

c) *"The new scheme must offer benefits which are at least equivalent to the authority's schemes."*
d) *"We have set it out expressly in the Bill so that employees know exactly where they stand."*
e) *"So that there is no misunderstanding, the rights that have been accumulated in the AEA public sector scheme will remain in place if the employees so wish."*
f) *"On the question whether the new scheme that is provided by the purchaser (AEA Technology plc) is at least equivalent to the authority's (UKAEA) schemes, that will be audited by the Government Actuary. In other words we shall have the advice of the Government Actuary as to whether that undertaking is made."*
g) *"Subject to the absolute assurance that the new scheme (AEAT) must offer benefits that are at least equivalent to the existing authority schemes."*
h) *"We have no intention of selling employees short."*
i) *"I am sure that the house will welcome the statutory reassurance that we are proposing."*

I asked the DWP, as the Government department responsible, for the duty of care to ensure that the above promises made by a Minister of the Crown speaking in Parliament were honoured, and my pension entitlements were restored to those set out in the scheme rules of the AEAT Pension scheme.

I complained about the lack of risk statements in the GAD document (written by Peter Noonan, Fellow of the Institute of Actuaries, Government Actuary's Department, Issued November 1996).

- It contained no risk statements especially that if AEAT failed, and the Pension scheme was in deficit, that I could lose all of my pension (There was no PPF in 1996).

- This is so fundamental to determining the risk of the new pension scheme that it is an inexcusable omission from a qualified actuary.

- It is also a breach of the Actuary' s professional code of conduct.

- This is negligent mis-statement or deliberate concealment by a qualified actuary in breach of his professional standards.

I complained about the inaccuracies in the DWP 'Factsheet' issued June 2013 in an attempt to re-write history and enable the Government to evade its responsibilities:

- It tries to claim that Government responsibility for all the assurances it gave at privatization ceased on the day after transfer. (For a retirement income for life!)

- If that was the case they should have stated that the Closed section of the pension scheme (with its higher contributions compared to the Open section) was pointless as it offered no extra security, because its terms and conditions would not be honoured.

- It tried to evade responsibility by claiming that I could have consulted an IFA. I did, and was told that an IFA is not qualified to assess the risks associated with a pension scheme. That is the job of an actuary. The Government Actuary had all the information about the new pension scheme and had the responsibility to provide independent actuarial advice. It did not do so.

I complained about the UKAEA document Pensions -What you need to know (AEA Technology Human Resources Group, Issued August 1996):

- It has a table defining and comparing the terms of the Open and Closed section of the AEAT pension scheme (see Section 3.3).

- It indicates that the Closed section is for employees who want the terms and conditions of their AEAT pension to be as near to those of the UKAEA pension scheme as possible, including full inflation protection, and are prepared to pay for this.

- In 2005 AEAT forced me to lose a salary increase in exchange for the right to remain in the Closed section of the AEAT pension scheme.

- On Page 4 of this document there is a section headed *'Is the AEA Technology pension scheme safe?'.* It states that:

  a) "recent pensions legislation ….. has been designed to ensure the security of pension scheme funds".
  b) "The law prescribes MINIMUM FUNDING LEVELS for pension schemes".
  c) "The assets will be entirely separate from the company"
  d) The trustees will be legally bound to act in the best interests of the scheme members.

I stated that this was clear mis-selling by Government owned UKAEA, for which the Government must bear responsibility and provide redress.

I asked why the DWP continually ignored my right to the statutory protection of my accumulated pension rights enshrined in law under the 1995 Atomic Energy Authority Act. The inflation protection that this Act confers on my pension income is still in place, despite the repeal of some parts of the Act.

It has never been Government policy to retrospectively reduce the terms and conditions of pensions once in payment.

I complained about the Pension Protection Fund (PPF) rule that no pension contributions made before 1997 would receive inflation protection. This is discussed in Section 3.3 and I have described its effect on me towards the beginning of this section.

I said that the 1997 rule was a clear example of age discrimination, which is illegal under European law. (Treaty of Lisbon, ratified 1/12/2009) states discrimination 'on any ground ' is illegal)

I pointed out that I had made a responsible choice to buy an inflation proof pension and I was promised by various Government owned bodies that my retirement income would be safe.

I called for the Government to show me a duty of care and honour the many promises made.

I questioned the long-term stability of the PPF. Lady Judge (Chairperson of the PPF) stated in the PPF annual report for 2013 that the PPF would not be self-sufficient until 2030. This leaves the risk to be carried by the members, who have already suffered once with the loss of their pension schemes.

I complained that the DWP response in its letter of 21/11/13 that *'there is no suggestion that the level of compensation by the PPF will need to be reduced'* did not address my concerns. I doubt the Pensions Minister would make such a cavalier statement if his pension was at stake.

I complained that my situation is against stated Government policy.
David Cameron (Prime Minister) on Andrew Marr Show (BBC) 5/1/2014"

> *"People who have worked hard and done the right thing should not have to worry about pensions lagging behind inflation"*

Coalition Government Website: Our programme for government:

> *'The Government believes that people deserve dignity and respect in old age, and they should be provided with the support they need. This means safeguarding key benefits and pensions."*

19 February 2014
I received a letter from DWP (REF: TO/14/2667). The letter from the DWP:

- Quoted their inaccurate factsheet that had already been challenged as containing incorrect information.
- Stated Government did not accept 1995 Atomic Energy Act (factually incorrect, it is the 1995 Atomic Energy Authority Act) offered a lifetime guarantee, but only that it required UKAEA or the Secretary of State to satisfy themselves that at the point of transfer (they underlined this in the letter) the rules of the AEAT pension scheme would produce a pension 'no less favourable' that then the rules of the UKAEA pension scheme.

- They blamed the scheme trustees and said that AEAT was the guarantor of scheme funding.
- They stated that the PPF is only required to provide inflation protection post April 1997 with a cap of 2.5% per year.
- They claim that the AEAT pension scheme was only required by law to meet these conditions (though the scheme rules may provide something better), thus ignoring the statutory requirement of the 1995 Atomic Energy Authority Act.
- It rejects my concern that the PPF rules are age discriminatory.
- It rejects my concerns that the PPF funding is uncertain and transfers future risk to the pensioners.
- It states that even if it was accepted that the Government made promises at the privatization of UKAEA in 1995 (factually incorrect: UKAEA was not privatized), the department now responsible was the Department for Energy and Climate Change, so I should take it up with them.
- Suggests that my MP may refer my complaint to the Parliamentary Ombudsman (This had already been done by other members of the AEAT Pension Campaign without success).

28 February 2014
I replied to the DWP rejecting their response. I commented on questions not answered, such as long-term funding for the PPF. I suggested that it was cynical and disingenuous that the government can disclaim responsibility for all the guarantees and reassurances it made at privatisation, and claim that any guarantees cease on the day of transfer (for a retirement income for the rest of my life!)

20 March 2014
Prospect issued a newsletter stating that their legal advisors, Slater & Gordon, had given a legal opinion that we did not have a case. Prospect had been promising this advice for at least six months.

20 March 2014
I managed to phone AEAT Pension Campaign delegates on the train on their way to meet Steve Webb at the DWP to press our case to tell them about the Prospect legal advice.

26 March 2014
I received a letter from the DWP (Ref: TO/14/04185) stating that the DWP has no responsibility for providing misleading information and passing the buck to the Department for Energy and Climate Change (DECC). It stated that if DECC will not accept responsibility I could complain to the Parliamentary Commissioner for Administration.

10 June 2014
I wrote to Ed Vaizey MP asking for further action from him and introducing the *Mossop vs Urenco* High Court ruling, that pension protections created by the Energy Act 2004 continue after any number of transfers.

I asked him to ask Steve Webb why the DWP was allowed to ignore this High Court ruling. What is the point of having an independent judiciary if the Government ignores its rulings when it suits them?

I also pointed out that the Pensions Regulator had completely failed to monitor the pension scheme properly.

16 July 2014
The high court upholds the Crown Guarantee granted by the Government for the BT pension scheme. This demonstrates that the Government has given a Crown Guarantee on the pension scheme of a privately owned company.

28 August 2014
I wrote a letter to Independent Case Examiner asking for them to investigate the DWP responses to my complaints, as maladministration.

4 September 2014
Response from Independent Case Examiner, Joanna Wallace, (ICE Reference No. DWP00894/14) received. She:

- Refused to investigate transfer of pension from UKAEA to AEAT.
- Stated that they had the power to investigate the misleading information in the DWP "factsheet" of June 2013, but decided not to do so.
- Said it could not interpret legislation (Mossop judgement).
- Suggest referral of complaint to PHSO (buck-passing again).

2 November 2014
I sent a Stage 1 complaint to the Pensions Regulator (PR). I complained that the Regulator:

- Approved the Trustee's winding up of the AEAT Pension Scheme without regard for the consequences for Scheme members
- Failed to regulate the Scheme adequately from 2004
- Not acted in the best interests of Scheme members
- Failed to intervene to ensure the Scheme was not put at risk by actions of the Trustees and the Company
- Agreeing to the pre-pack administration of the Company.

I said that these actions amounted to deliberately defrauding the Pension Scheme members.

27 November 2014
The Pensions Regulator replied to my Stage 1 complaint[7] saying that:

- The Regulator does not have a power to approve actions of trustees or to advise them.
- They do not uphold the complaint.

- They cannot explain their actions in respect of the Scheme because this would include information that is defined as "restricted information" under section 82 of the Pensions Act 2004.

11 December 2014
I sent a Stage 2 complaint to Pensions Regulator about their failure to monitor or regulate the AEAT pension scheme from 2005 to 2010.
I complained of:

- Failure to use its Moral Hazard Powers to control the company or the trustee.
- Failure to prevent the company taking actions that disadvantaged the pension scheme (buying foreign companies, forming an offshore holding group in a tax haven, taking pension holidays, missing deficit recovery payments).
- Allowing the trustee to propose unsustainable deficit recovery plans in contravention of the PR's own regulations.
- Failure to insist on the timely closure of the pension scheme when it had sufficient funds to avoid entry into the Pension Protection Fund, in contravention of one of its statutory objectives (to reduce hazard to the PPF).

The PR's Moral Hazard Powers are set out in "The regulator's statement: How the Pensions Regulator will regulate the funding of defined benefits", The Pensions Regulator, September 2008.

23 December 2014
I was a co-signatory of a complaint by a group of AEAT pensioners to the department of Business Innovation and Skills, as the department now responsible for UKAEA. The complaint was about:

- Misleading information provided by UKAEA at privatization reassuring employees that pensions transferred from the UKAEA scheme would be *'no less favourable'*
- No risk assessment about the security of the AEAT scheme.
- No mention of the Government's claim that the *'no less favourable'* condition only applied at the point of transfer.
- Inaccuracies in the DWP 'Factsheet' of 2013.

28 January 2015
I received a response from the Pension Regulator (Ref: CS2 14/07) to say my complaint was not upheld. The PR letter:

- States that they have no powers to order valuations more often than three years (This is not what is stated in their list of Moral Hazard Powers).
- States that regulator does not agree scheme deficits or recovery plans.
- Claims that all actions must be negotiated and agreed between the trustee and the employers only. How is this regulation?

- States that Moral Hazard Powers can only be used if concerns are serious (like a failing scheme with a massive deficit?) and the trustee and employer are unable or unwilling to address them by other means.
- States that since the Regulator is not a party to these agreements, its powers to influence what the parties will eventually agree are somewhat limited. How is this regulation?

I had asked what actions the Regulator had taken in respect of the AEAT pension scheme. The Regulator claimed this was restricted information under Section 82(5) of the Act for the Regulator.

Most of my complaint was not considered, as the Regulator's remit is tightly defined. They suggested that I speak to the Trustee about the following issues that I had asked the Regulator to answer:

- scheme funding
- recovery plan agreements
- payment of deficit contributions
- investment performance
- recourse against investment managers
- use of Scheme assets
- closure of the Scheme to members and further accruals
- announcements made to members.

The Regulator buck-passed my questions about the sale of the company and the use of a pre-pack, referring me to the Joint Insolvency Practitioners. They claimed that the PR was not a party to these decisions.

How could it be regulating if it was not a party to the pre-pack negotiations? Who agreed to the company being allowed to drop its historic pension liabilities to secure a sale? These questions merit further investigation.

17 February 2015
I sent an e-mail to John Herron in the DWP. This replies to some of his earlier statements. Herrron states that:

> *"the DWP is not ignoring the 1995 Act (Atomic Energy Authority Act); the act has no bearing on the payments made from the PPF"*

In fact, the 1995 Act is the statutory protection for the terms and conditions of my pension. Herron writes:

> *"the DWP is not responsible for the privatisation of UKAEA"*

This is factually incorrect. UKAEA was not privatised. As DWP and DBIS have stated that they have a "joint position" on the AEAT pension scheme, the DWP must know this, so this is deliberate misinformation.

The Government was responsible for the privatisation of AEAT. Is the DWP not part of the Government?

26 February 2015
I was a co-signatory of a complaint to the Department of Business, Innovation and Skills (DBIS). This was rejected in a generic letter from DBIS (Margaret Housden, Complaints Manager, DBIS)

I rejected the response from DBIS as inadequate. The attempt to exonerate the GAD for its inaccurate information, the refusal to accept the inaccuracies in the DWP 'factsheet', the admission of a 'combined position' by the DWP and DBIS (so much for departments dealing with complaints 'in confidence'), the refusal to consider scheme underfunding.

With regard to transfer of the scheme surplus, Freedom of Information obtained by Derek Whitmell states:

> *"GAD had advised that the Government usually only received about 50p in proceeds for every £1 of surplus – there were therefore compelling value for money arguments for not going down this route."* [8]

18 March 2015
Westminster Hall debate in Parliament on the AEAT Pension scheme (see Section 1.4 for discussion of Crown Guarantees).

16 July 2015
High Court upholds Crown Guarantee for BT Pension Scheme.

A Freedom of Information disclosure from DBIS in 2010 lists these pension schemes with Crown Guarantees:

- The BT pension scheme (formerly the BT staff Superannuation Scheme)
- The Mineworkers Pension Scheme
- The British Coal Staff Superannuation Scheme
- The 1994 Pensioners Section of the Railways Pension Scheme
- The BR Superannuation Fund
- The BR (1974) Pension Fund
- The CAB International Superannuation Scheme
- The Local Enterprise and Development Unit (LEDU) Retirement and Death Benefits Plan
- The National Museum of Wales Pension Scheme
- The National Library of Wales Pension Scheme
- The BAE Systems Pension Scheme
- The Remploy Ltd Pension and Assurance Scheme

The question why AEAT was not given such a guarantee merits investigation.

27 March 2015
I received a response to my e-mail of 17th February to John Herron, DWP (Ref: TO/15/03447). He stated:

- DWP was not responsible for providing me with a pension under the Energy Act 2004 (which reconfirms the pension rights stated in the Atomic Energy Authority Act 1995)
- The only legislation that applies to the PPF is the Pensions Act 2004.
- My pension situation was not the responsibility of the DWP and it would not provide a remedy

1 September 2015
I was co-signatory of the complaint to the Parliamentary and Health Service Ombudsman signed by 140 members of the AEAT Pensions Campaign. This is described in Section 4.13.

27 March 2016
I complained to the Pension Protection Fund (PPF) about the proposed transfer of the AEAT Pension Scheme into the PPF. I said:

- The transfer will result in significant loss of pension (more than 10%) as PPF rules severely reduce my inflation protection due to no inflation protection on accrued pension contributions made before 1997 (as discussed above in this Section)
- How it could be legal that PPF compensation rules could retrospectively change the terms and conditions of my pension as laid out in a current act of Parliament (1995 Atomic Energy Authority Act)?
- Why is the PPF compensation identical for Open and Closed section of the AEAT Pension scheme, despite the Closed section members paying more pension contributions, (see Section 3.3)?

15 April 2016
I received an e-mail Response from Lauren Aitchison Turner, Complaints Advisor, PPF. She stated that:

- The PPF was obliged to calculate compensation as defined by the statutory compensation provisions in the Pension Act 2004.
- Any changes to these rules would have to be made by Government.
- The trustee was responsible for the scheme until it transfers and I should address any further questions to them (buck -passing).

19 April 2016
I replied to Lauren Aitchison Turner, Complaints Advisor, PPF

- I pointed out that the 1995 Atomic Energy Authority Act provided a statutory guarantee of my benefit entitlements. It is a current Act and predates the Pension Act 2004 that governs the PPF.
- I asked her to confirm in writing that the PPF had consulted with the Government to ensure that they were not complicit in defrauding scheme members, like myself, of their pension entitlements. I received no such assurance.

19 June 2016
I wrote a Letter to Frank Field MP. Frank Field was Chairman of the House of Commons Work and Pensions Select Committee which was conducting an Inquiry into the PPF and the Pensions Regulator.

I described our five years of work to get redress for AEAT pensioners and the obstruction met from all Government departments, Regulators and Ombudsmen. I asked for an investigation of the failure of the AEAT Pension scheme, the Government reneging on all of the promises it made at privatization, the inadequate performance of the Pensions Regulator, and the harsh PPF rules that destroy inflation protection.

21 June 2016
I received a response from Frank Field MP saying that my comments will be given to the Committee Clark to 'take out those points which he feels might be of most help to our inquiry.'

This worried me as it indicates that some of my complaints will be filtered out and an incomplete set of facts presented. I therefore made a formal submission to his Committee's Inquiry into the PPF and the Pensions Regulator. See Section 4.15.

21 July 2016
I wrote to Letter to Ed Vaizey MP, encouraging him, that now he was free of Ministerial conventions, to become more vocal and raise the profile of the AEAT pensioners and press for redress of our situation

16 September 2016.
I met with Ed Vaizey MP with Derek Whitmell. We asked Mr Vaisey to:

- complain to PHSO about trying to re-write and not consider parts of our joint complaint, and trying to claim large parts were outside its remit (Section 4.13).
- lobby the Work and Pensions Select Committee on our behalf.
- support Sir Oliver Letwin MP's proposed amendment to the Parliamentary Commissioner Act 1967, to allow the PSOS to investigate the GAD.

26 October 2016
Second Westminster Hall debate, sponsored by Sir Oliver Letwin, MP.

This is described in Section 1.4.

19 June 2017
I wrote another letter to Frank Field (Chair of the House of Commons Work and Pensions Select Committee) to reinforce the concerns about the AEAT Pension situation, and ask that any recommendation made by the committee are

retrospective so that AEAT Pension Scheme members can get redress for their shabby treatment by the Government.

12 July 2017
Frank Field MP has been reelected unopposed as Chair for the House of Commons Work and Pensions Select Committee.

Tony Reading

References

1. AEA Technology Pension Scheme Review 2010: Pensions newsletter for members of the AEA Technology Pension Scheme.
2. Letter from Lynn Wilkinson, Secretary to the Trustee of the AEAT Pension Scheme, 1/8/2012.
3. Letter from Lynn Wilkinson, Secretary to the Trustee of the AEAT Pension Scheme, 12/10/2012.
4. Office for National Statistics, "UK consumer price inflation: May 2017".
5. Atomic Energy Authority Bill HC Debate 14th March 1995, Hansard vol. 256 cc699-785.
6. AEA Technology – Factsheet issued by DWP – June 2013.
7. Letter, Anne Packer, Corporate Secretary, PR, to Mr A Reading, "Formal Complaint – AEA Technology Pension Scheme", Ref CS1 14/23, 27/11/2014
8. DTI internal document "The Privatisation of AEA Technology", February 1997, section 7.3, Pensions

4.7 Pensions Ombudsman's excuses

I have complained, unsuccessfully, twice to the Pensions Ombudsman regarding the failure of the AEAT plc pension scheme in 2012.

Complaint 1. 12 July 2015
I made a detailed complaint concerning the failure of the Trustee of AEAT plc pension scheme to ensure that my pension was fully protected from the inception of the company in 1996 to the pre-pack administration in 2012.

A Jurisdiction Investigator replied, **15 December 2015**, stating that the PO had decided not to investigate my complaint. The reasons given were:

(1) The company no longer existed.

(2) Some of the matters raised had been known to me for more than three years, thereby rendering them outside the time limit for investigation.

(3) My complaint could have a detrimental effect on other members of the scheme.

(4) They would probably not be able to investigate before the scheme entered the Pension Protection Fund (PPF).

(5) They cannot look at complaints involving statutory duties under, for instance, the Atomic Energy Act 1995.

They noted that I had not made a complaint to the Trustee under the Internal Dispute Resolution Procedure (IDRP) and that might be an option. They also stated I could ask for another staff member of the PO to review this decision.

I replied, **18 December 2015**, refuting all the above points On **25 January 2016** I resubmitted a revised version of my original complaint and, in addition, a fresh complaint, Complaint 2, concerning the miss-selling of the AEAT plc pension scheme. This was backed with the three pieces of evidence that had first come to my attention in 2015 (ie nearly two decades after I had had to make my new pension choice), viz:

(6) The massaging of the GAD note.

(7) The GAD document by Daykin, September 1996, stating that, 'It assumes that the commitments and undertakings made by AEA Technology plc will be fulfilled'.

(8) The DTI memo, February 1997, stating that ministers had no intention of allowing transferred staff to have a pension comparable with the original UKAEA one.

Note that items (7) and (8) are attachments I received with a letter from Vince Cable, MP, dated 18 February 2015.

On **4 July 2016** I received a reply to my appeal on **Complaint 1** from a legal member of the PO (she described herself as 'lawyer'). Again she upheld all the previous reasons for rejection and implied that as I had not made an IDRP complaint the PO could not investigate. There was, in addition, a lot about time scales and the Limitation Act 1980.

The new information mention see above (6,7,8) was apparently not new information (well it was to me) and should have been known to me before! In particular the AEAT plc Pension Report for 1997 should have alerted me to the fact that the scheme was in trouble.

How I was supposed to have known about hidden documents is quite beyond my comprehension. Furthermore neither I, nor any of my colleagues, can find anything in the 1997 Pension Report indicating that the scheme was in trouble.

On **10 July 2016** I replied to the PO's letter of **4 July 2016**, refuting all the comments and asking for the evidence that showed that the 1997 Pension Report indicated that the scheme was in difficulty.

On **28 July 2016** the PO replied to **Complaint 2** saying that the two complaints were the same, that the PO cannot investigate mis-selling and that they would not consider my complaint.

I received a letter from the Casework Director of the PO, **23 September 2016**, in reply to a protest I had made about their relying on information that was wrong (i.e. their interpretation of the 1997 Pension Report).

They refused to discuss the matter but said I could challenge how the decision was made (but not the decision) through a judicial review. This was their final response. If dissatisfied I could appeal to the PHSO!

I made a request, under the FoI Act, on **3 October 2016**, to the Director of the PO asking for all internal and external documents relating to my submissions to the PO.

The Business Director of the PO replied to my FoI request, **24 October 2016**, stating that the correspondence I requested does not exist. I was told I could ask for an internal review at the PO and if that failed, go to the Information Commissioner (IC).

On **6 February 2017** I received a reply from the Casework Manager at the PO concerning my appeal against the failure of the PO to investigate **Complaint 2**. This stated that the PO cannot investigate complaints about Department for Business, Innovation and Skills (DBIS) as it is not an employer, trustee or manager of the scheme, neither have I used an IDRP to query the miss-selling.

The PO said my **Complaint 2** actually referred to documents that I had not received before I joined the scheme rather than mis-selling of the scheme (the difference between these two statements is beyond me). They declined to investigate my case and said that this was a final decision.

Comment
The PO employ 'defence in depth' and appears to have an inexhaustible supply of excuses, which may change with time, for not doing anything. Neither will they answer specific questions or explain why they use evidence that is simply wrong.

Furthermore they appear to have no records of what is happening apart from the letters I have sent to them and their replies. They are clearly determined to stop a proper examination of the facts in this fiasco at any cost.

Neil Hancox

4.8 Ombudsman gives new reasons for not investigating AEAT pensions scandal

Andrew Turner worked for UKAEA from 1975 until 1996, accruing 23 years of service (including two bought-back years) on Battery Development, nuclear waste management and industrial Processing.

In 1996, I (and 90% of other eligible staff) was persuaded to transfer the pension benefits accrued with UKAEA into the Closed Section of the AEA Technology Pension scheme as this was promised to be "no less favourable" than the UKAEA scheme. At the time we were provided by UKAEA with a document written by the Government Actuaries Department (GAD) on options available to us.[1]

When AEAT went into pre-pack administration in 2012, we discovered that the promises made by government that we thought we could trust were meaningless. I am particularly concerned that the corrosive impact of inflation on pre-1997 service under PPF rules will erode my pension to virtually worthless levels especially for my wife (who is nine years younger than I) should she survive me.

Correspondence
On behalf of 119 former AEAT Pension Scheme colleagues, I made a formal complaint to the Pensions Ombudsman on 6 November 2015 against UKAEA (original employer), DTI (company owner prior to floatation) and AEAT (final employer) concerning the loss of pension benefits resulting from the proposed transfer of the Scheme into the PPF. The complaint comprised three sections:

1) I was not properly informed by the UKAEA (our then employer) or DTI (as the owner of UKAEA at the time of privatization) of the enhanced risk level associated with the new AEAT Scheme, which it now appears, contrary to all the reassurances given at the time, offered no guarantees to maintain payments in the event of the company's failure with the scheme in deficit. We were on numerous occasions reassured that 'statutory guarantees' were in place to protect our benefits in the Special Closed Section which was created to receive pension benefits transferred from UKAEA service. In the light of this, we presumed that, like a number of other privatized companies, we would continue to enjoy a Crown Guarantee, or at least the equivalent as appeared to be enshrined in the enabling legislation for privatization (The Atomic Energy Authority Act, 1995). Removal of Treasury backing, as occurred here, represents a significant reduction in pension fund security, but was not even mentioned in any of the literature we were given – let alone the note commissioned by UKAEA from GAD. Given that the benefits structure of the new Scheme was very similar to that of the UKAEA Scheme we were leaving, this reduction in security means that that there is no way the new Scheme could be considered "no less favourable".

2) I have recently learned that the advice given to us by UKAEA, commissioned from GAD to guide our decision on whether to transfer our benefits to the AEA Technology Pension scheme, was not the independent, professional advice on options and risks that we would have reasonably have expected from such a source. It has been revealed from a Freedom of Information request that during drafting, significant changes were made to the original at the request of UKAEA to make the scheme look more attractive, and therefore encourage staff to transfer their pension benefits to the AEAT Scheme.[2] In fact, not only had a proper risk assessment of the various options not been carried out by GAD on behalf of UKAEA/DTI – something that an Actuary would normally be reasonably expected to undertake, but neither UKAEA or GAD gave any warning that a risk assessment had not been carried out. Both failures are contrary to Actuarial Codes of Practice or Quality. As the responsible organizations that had originally commissioned and distributed the document, UKAEA and DTI should have checked that these requirements had been carried out as they are such a significant factor in investment decisions.

3) We also believe that the minimum funds allocated to the new Scheme to cover the transfers from UKAEA to AEAT were inadequate not only due to the failure to include the notional surplus associated with the UKAEA Scheme but also to allow for the increased risk associated with pension funds in the private sector (without any Crown Guarantee). At the time of the transfer, the employer and administrator of our pensions was the UKAEA, which was in the public sector and under the aegis of the Department of Trade and Industry (DTI) – now DBIS. GAD have since admitted that they have not tested the performance of index-linked gilts to see if the transferred money could have been considered adequate?

On 15 December 2015, I received a reply from Jane McCue (Jurisdiction Investigator, PO) implying that they could investigate neither DTI (as a Government Department) nor AEAT (as no longer extant).[3]

She implied that the problem had been known to us for longer than the statutory three years before lodging a complaint (but providing no evidence for this). She also felt that as the resolution of the problem would have a negative impact on other scheme members this also inhibited their ability to investigate, as well as the fact that the scheme was imminently due to enter the PPF. She also assumed that we had not exhausted the Internal Dispute Resolution Procedure (IDRP) of the Scheme.

In my reply of 12 January 2016, I sought to correct the misunderstandings and assumptions that has led her to the decision not to investigate.[4]

a) I confirmed that our complaint was primarily against UKAEA. It is now implied that the guarantees we had been given at the time of privatisation were not intended to be a guarantee of the security of the AEAT Pension

Scheme. I was therefore misinformed by UKAEA (who owned AEA Technology until its vesting as AEA Technology plc on 31/3/1996) and by the Secretary of State for Energy (and later the DTI) who owned AEA Technology plc until its flotation on the stock market on 30/9/1996, who assured us that the new pension arrangements under the AEAT Closed Section would be "no less favourable" than under the UKAEA scheme. We were not advised that our benefits transferred into the Closed Section would be at risk.

b) My awareness that there was a problem was in March 2013 (32 months prior to my complaint). The delays since then were a result of going through all the required steps (e.g. writing to the trustees on 10/5/2014, but not receiving their advice to contact PO after IDRP Stages 1 and 2 until 8/1/2015), contacting MPs, DWP (including the Pensions Minister) who advised us to take it up with DECC, DBIS and GAD and UKAEA. A colleague (Dr Peter Cains) also discussed the matter with TPAS as the recommended first stage of bringing this affair to the PO, but they responded that it was too complex and involved too many parties for them to be able to help, and they recommended that we come straight to the PO.

My complaint was therefore sent to PO on 6 November 2015, which was within the three years of the pre-pack administration event on 8/11/2012 and the subsequent application for entry of the Pension Fund into PPF Assessment which precipitated the chain of events which led ultimately to our awareness of a significant problem (that the reassurances we were given in 1996 were no longer in force, when the AEAT scheme recently failed).

Before the pre-pack administration event I did not, and could not have known that there was a problem of my losing pension benefits, that the promise to provide a pension "no less favourable than the UKAEA scheme" was going to be broken, and that I had therefore been misled. The inability of the Trustees and Government Departments to take appropriate responsibility and reply speedily is the cause of the time interval before identifying how the matter should best be investigated and approaching PO.

c) We were NOT asking PO to seek compensation for our claim from the AEA Technology Pension Fund – but from the object of our complaint – UKAEA. As a result, this would have NO impact on other Scheme members. Our original benefits were under the UKAEA public sector pension arrangement underwritten by the Treasury, with full indexation of pension benefits – so it is they who ought to offer compensation. We are unable to identify any Scheme members who will be worse off as a result of the rectification we are seeking – that is compensation of our losses from UKAEA. I can conceive of no cases where the payments under PPF compensation would exceed those conferred by the original scheme.

d) This complaint does not require that the AEA Technology Pension Scheme is prevented from entering the PPF. As far as this complaint is concerned, it is irrelevant to us whether the Scheme enters the PPF or not.

e) Jane McCue also stated that it is unlikely that PO could investigate my complaint because she supposed that our complaint might tie into events that the PO cannot look into – such as statutory duties under the Atomic Energy Authority Act (1995)31. I had not asked PO to investigate these – so I do not understand why this fictional objection has been introduced.

On **4 July 2016**, I received a letter from Sacha Bain (PO Solicitor),[5] upholding Jane McCue's decision based on:

i. Asserting that if I had not transferred into the scheme, this might have inhibited the bulk transfer in 1996, which might have affected whether the Scheme would be able to enter the PPF.

ii. She asserted that we should have known the risks of transferring from an occupational scheme to a private one – despite the fact that we were not told of these risks (in fact they were obscured). A fictitious comment in the 1997 Pension Scheme Report was also supposed to have alerted us – although the POS have never identified what is was!

iii. She also applied the Limitation Act (1980) Clause 14B as putting a negligence claim out of time.

In my response on 13 July 2016, I dealt with each of these matters.[6]

i. I stated that there was no potential for a conflict with the interests of other Scheme members because my complaint proposed that the solution was to: "Instruct UKAEA/DBIS to make good the shortfall in pension benefits as is the case where other privatized Company Pension Funds have been given Crown Guarantees (as for BT, BAE) or Public funding as for Royal Mail." I stated that this solution is based on the promises we were given at the time by Mr Tim Eggar (Minister for Energy and Industry) in the House of Commons debate

"Employees are AEA Technology's greatest asset…We have no intention of selling employees short, and I am sure that the House will welcome the statutory assurance that we are proposing".[7]

We believed we had a promise backed by statute that our pension rights transferred from UKAEA to AEA Technology Pension Scheme were "no less favourable" - "transferred benefits will be identical (or very close) to those you would have received if you had been able to continue to contribute to the UKAEA Scheme for future service".

The fact that the UKAEA Pension was a Treasury backed Scheme led us to believe that the new scheme or at least the transferred UKAEA element

was underwritten by the Treasury (like a Crown Guarantee). We only discovered that it was not, when AEA Technology went into pre-pack administration and the Pension Fund applied to enter the PPF.

The PPF have failed to recognize the difference in status and conditions between the "Closed" and "Open" sections of the pension fund. From the PPF website, it says in the Crown Guarantee Section *"However, where a pension scheme has only a partial guarantee the unsecured element of the pension scheme is eligible for Pension Protection Fund compensation."* It has been reported that there are some 20 cases of full or partial Crown Guarantee.[8]

ii. The statement in paragraph three of page three of the letter is incorrect – in that we were NOT transferring from an occupational scheme to a private scheme! Our UKAEA public service benefits were being transferred from one occupational scheme to another.

At the time, we were assured that our new pension was "no less favourable" (to be confirmed by GAD, as promised by Mr Tim Eggar)[9] and came with statutory protection and assurances. There was no proper assessment of risk, either in the wording of documents provided to employees or in the value of money transferred into the AEA Pension Fund by UKAEA, as confirmed by GAD.

As I reported in the original complaint, I consulted an IFA at the time, who deferred to the expertise of GAD in advising me to enter the Closed Section. Others of my colleagues who attended the Frizzell Sessions concluded the same.

The PO says that it was not up to our employer to tell us what to do, however it was their duty to tell the truth, the whole truth and nothing but the truth, so that we could make a properly informed decision – WHICH THEY DID NOT DO – hence my complaint. On the contrary, on the basis of the FoI information concerning the drafting of the GAD note, there is evidence that they deliberately set out to mislead us. This is the Breach of Duty which is at the heart of this complaint.

iii. As the PO had raised the Limitations Act 1980 as a new factor to be considered (beyond issues raised by Jane McCue) and PO had also gone beyond the remit of determining whether this complaint is within the scope of the Pensions Ombudsman by making assumptions about what might not be true that result in its exclusion from the remit, we cannot accept that the determination as final – as if PO assumptions are not true, then our complaint will fall within the remit of the Pensions Ombudsman. I suggested to the PO that clause 32 of the Limitations Act (1980) was probably of more relevance, as the change in Pension Scheme Security has been concealed from us in all the Pension Communications and including

> the GAD Note on Options [1] – only to be discovered on the closure of the AEAT Pension Scheme. They refused even to consider this further [10].
>
> However it should also be noted that the Financial Ombudsman Service (FOS), as stated on its website does not apply the 15 year rule when the problems only become apparent at a later date, "reflecting the fact that financial products are "intangible" and can be of a very long-term nature". (www.financial-ombudsman.org.uk/faq/businesses/answers/rules_a12.html)

Lord Hunt in his 2008 review of the FOS says:

> *"I do not believe, however, that it is possible to specify a "long stop" date beyond which complaints cannot be considered, because the point at which the customer becomes aware of possible detriment will vary significantly."*[11]

On the basis of Clause 32 Limitations Act (1980), we are requesting that PO do likewise – and therefore reconsider the decision not to investigate our complaint.

The changes made to the GAD note (obtained under freedom of Information) indicate a deliberate breach of duty to inform employees openly of the full implications of transfer – including loss of Treasury backing of the transferred Pension Benefits – amounting to concealment.

Even so there was a blank refusal even to investigate the complaint [10]. A freedom of information request failed to reveal ANY internal discussion of the case or provide evidential backing for the PO assertions. This is currently under investigation with the ICO at a Tribunal. The Tier 1 tribunal has rejected my request for an appeal, but I have just applied directly to the second tier tribunal on the basis that I have evidence of relevant documents, that were not included in the Freedom of Information package. This reveals that the Pensions Ombudsman were selective in what they included.

Conclusion

The PO sent a final decision letter to my complaint on 4 July 2016 [5]. I responded on 13 July 2016 answering all the points in their 4 July letter [6]. They sent me two e-mails on 10 July 2016 refusing to consider my case any more [10].

The following points therefore remain unanswered by the PO:

- There is no conflict between my complaint and the interests of other members of the AEAT Pension Scheme.
- The GAD note [1] misled scheme members by failing to mention the increased risk in transferring past service from the government backed

UK AEA schemes into the private sector AEAT scheme. It was edited to minimise this perception of risk.

- There was nothing in the 1997 AEA Technology Pension Scheme Annual report to alert us to risks in the scheme.
- Clause 32 of the Limitations Act 1980 deals with fraud, concealment or mistake. Non-disclosure can come under this clause. Clause 32 would remove a time bar which the PO claims stops them from investigating this case. Whether or not clause 32 applies would need a detailed scrutiny of the relevant documentation. Documents obtained under freedom of information gives no indication of such a scrutiny, so the PO should either have conducted such a scrutiny or proceeded on the basis that clause 32 may apply, and not have refused to investigate on the grounds of a time bar.

This merits further investigation.

Andrew Turner

References

1. Transfers from the UKAEA superannuation schemes to the AEA Technology pension scheme note by the Government Actuary's Department on the options available in respect of accrued UKAEA benefits. Government Actuaries Department (13th November 1996)
2. Letter and redacted copies of file from George Russell (Deputy Government Actuary) to D S Whitmell, 14/11/2014, ref WHI280714
3. Letter, Jane McCue to Andrew Turner, "UKAEA Pension Scheme and AEA Technology Pension Scheme", ref PO-10826, 15/12/2015
4. Letter, Dr A D Turner to Jane McCue, "UKAEA Pension Scheme Complaint (PO-10826)", 12/1/2016
5. Letter, Sacha Bain to Andrew Turner, "UKAEA Pension Scheme and AEA Technology Pension Scheme", Ref PO-10826, 4/7/2016
6. Letter, Dr A D Turner to Sacha Bain, "PO-10826 Complaint against UKAEA and DBIS", 13/7/2016
7. Atomic Energy Authority Bill Second Reading 14th March 1995 Hansard vol 256 col 712
8. Daily Telegraph PPF says up to 20 funds have Crown protection by Russell Hotten (20/4/2006)
9. Atomic Energy Authority Bill Second Reading 14th March 1995 Hansard vol 256 col 711
10. E-mail from Sacha Bain to Dr A D Turner on 20th July 2016, confirmed by an e-mail from Jane Stephens to Dr A D Turner on 20/7/2016
11. The report of an independent review of the Financial Ombudsman Service by Rt Hon Lord Hunt of Wirral MBE (April 2008) paragraph 7.26, page 66

4.9 Ombudsman fails to explain why pensioners should have known in 1997

This section should be read in conjunction with Dr. Andrew Turner's contribution in Section 4.8.

AB joined UKAEA from the NHS in February 1995 transferring from one public sector body to another. She then commenced the transfer of her 15+ years NHS pension to the UKAEA pension under the Public Sector Transfer Club rules.

The commencement of the privatisation and creation of AEAT prevented the transfer so initially she transferred just her UKAEA pension into the 'Closed' scheme of the AEAT pension based upon the Government promises and then once the AEAT pension scheme joined the Public Sector Transfer Club she transferred her NHS pension into the AEAT Closed Scheme as well.

Correspondence
CB (AB's spouse) submitted a complaint to the Pension Ombudsman on 31/7/2015 similar to, but not identical to, the complaint submitted by Dr. Turner. He (like many others) received an identical reply and on the same day as everyone else, 15/12/2015 (even though the complaints were individually prepared).

The reply from the Ombudsman (as detailed in Dr. Turner's document) was nonsense. CB prepared an individual response, sent on 13/1/2016, (as did many others) and like many others received a new reply from the Ombudsman to his second letter on 13/7/2016. This new reply was again nearly identical for everyone.

Please see Dr. Turner's document for the breakdown and responses to the points in these letters.

Additional correspondence for CB
One reason given for not investigating the complaint given in the second response from the Ombudsman was that we should have had concerns when we received the 1997 Annual Report of the Pension Fund (the first ever report) and as more than three years have passed since that report it is now too late to complain. No reason was given by the Ombudsman as to why we should have been aware of a problem in 1997.

CB like everyone else was confused by this. In 1997 the fund had only just been set up and the Pension Fund report was glowing. It announced that the Government had transferred the funds into it as promised and that it was 100% funded. What possible concerns could there be in 1997?

He asked the Ombudsman to tell him why he should have been concerned as the evidence pointed precisely to the opposite conclusion i.e. the fund was healthy.

The Ombudsman simply refused to provide this evidence or explain their reasons and they did this over and over again, on 25/8/2016, 5/9/2016, 14/9/2016, 26/9/2016, 4/11/2016, 11/5/2017 and 30/6/2017.

He requested this information or an explanation on 15/8/2016, 2/9/2016, 5/9/2016, 13/9/2016, 14/9/2016, 20/9/2016, 26/9/2016, 3/10/2016, 16/11/2017, 28/12/2017, 27/1/2017, 9/2/2017, 28/3/2017, 22/4/2017, 1/5/2017, 6/5/2017, 9/5/2017 and 22/6/2017. Every time he was either ignored or the Ombudsman confirmed that they were refusing to answer the question as to what the evidence was or how they had come to their conclusion. It was just a completely irrational response.

His MP, Sir Paul Beresford, wrote to the Ombudsman on 11/10/2016 and again on 27/6/2017 stating that he had asked a reasonable question and in the interest of openness and transparency they should answer it.

Finally he received a reply from the Ombudsman in response to the MP's letter. However it **still did not answer the question** as to what was in the 1997 Report that should have raised any concerns. The evidence they provided was actually a document from Dr Turner's submission. That document identified that we became aware of funding issues when we received a letter from GAD and data from a FOI request.

Both of these occurred in 2014. So the evidence used to show we should have been aware of an issue in 1997 in fact showed we weren't aware until 2014.

The letter from the Ombudsman was nonsense. It showed the exact opposite to what it was trying to argue.

CB requested on 16/11/2016 that the case now be investigated. The Ombudsman considered that request from November 2016 until May 2017 (6 months).

In May 2017 CB received a letter from the Ombudsman turning down his request. That letter still gave no explanation as to what was in the 1997 Report that should have raised concerns for pensioners.

CB wrote again pleading that the question be answered. He was supported by his MP. The PO declined to respond in a letter dated 6/7/2017.

Keith Hammond

4.10 Ombudsman threatens pensioners with prosecution

People may think that if they have a problem with their pension scheme, the Pensions Ombudsman (PO) will be there to help.

Early on in the campaign for justice for ex-members of the AEAT pension scheme, several members made formal complaints to the Pensions Ombudsman. The treatment of some of these complaints is described in Sections 4.7, 4.8, 4.9 and 4.14 of this dossier.

This section describes the complaint by Richard Lee.

These complaints included:

a) Being misled about the security of the AEAT pension scheme in 1996 (at privatisation). The new pension scheme was mis-sold as safe.

b) No risk statements were given that, if the new company failed and the pension scheme was in deficit, all pensions could be lost. (There was no PPF in 1996).

Richard Lee's complaint to the Pensions Ombudsman asked the PO to consider how it could be fair or lawful that:

a) The AEAT pension scheme could be "no less favourable" (Government promise) than the UKAEA pension scheme (Government underwritten) to which the members could no longer contribute, if the AEAT pension scheme did not have an equal level of protection to that of the UKAEA pension scheme. Should the privatisation have been signed off by DTI Minister, Tim Eggar MP?

b) The Government Actuary's Department (GAD) note, that influenced so many employees to join the AEAT pension scheme has been shown by Freedom of Information requests to be biased (by UKAEA and Government influence), to be misleading, and deliberately exclude important information, like the relative risks of the UKAEA and AEAT pension schemes (concealment). This is in contravention of the Actuary's professional code of conduct.

c) That PPF payments for older pensioners are so strongly affected by the PPF rule, that no inflation protection is allowed for pension contributions made before 1997, that their inflation protection is effectively destroyed. This is the complete opposite of what members of the Closed Section (set up for transferees from UKAEA) paid for throughout their working lives. It is also age discrimination.

d) That in the PPF, ex-members of the Open Section of the AEAT pension scheme (set up for employees appointed after privatisation) receive the same payments as ex-members of the Closed Section, who paid more in pension contributions and suffered a salary freeze from 2005 to remain in the Closed section.

Instead of the considering these injustices fairly, the attitude of the Pensions Ombudsman mirrored the way that Government departments (previously contacted) have behaved. In Richard's case these were the Department of Work and Pensions (DWP) and the Department for Business, Innovation and Skills.

These behaviours include:

a) Procrastination and delay. The PO promises to respond within 20 days. They respond no earlier than 20 days.

b) They attempt to re-write the complaint in a way that makes it easier for them to reject it.

c) They try to eliminate the parts of the complaint that would be most difficult for them to answer.

d) They spend a lot of time and money using their tax-payer funded lawyers to find any way that they can claim that parts or all of the complaint are beyond the remit of the PO.

e) When the complainant receives the first PO decision rejecting their complaint and challenges this, the review process is as slow and biased as the response to the original complaint.

All of these occurred in Richard's case. The whole experience seems to be designed to frustrate the complainant and make them give up in despair. It is neither fair or just.

Where Richard requested more information about the closure of the AEAT pension scheme, and how the pre-pack negotiations that dumped the pension scheme liabilities were carried out, the PO tried to claim that information could not be released due to 'commercial confidentiality' without defining why the information requested could be considered confidential. (The sale of the company had already taken place).

Richard's case is unique among those reported in this dossier in that the PO agreed to investigate part of his complaint, instead of refusing to investigate it on the grounds that is was outside the PO's scope. This is because the part of the complaint about the Scheme Trustees is clearly within the PO's scope.

It appears that the PO sent the complaint to the Trustees who refuted all the complaints about maladministration and provided an information pack of over

580 pages. This included technical language inaccessible to an ordinary pension scheme member. [1, 2]

After investigating part of Richard's complaint, the Pensions Ombudsman issued a Preliminary Decision followed by a Determination. [3, 4, 5] The Determination stated that: [4]

a) The investigation is complete and the Pension Ombudsman's Determination is final and binding on all parties.

b) Any appeal can only be to the Chancery Division of the High Court and must be made in a very short time (often 14 days).

c) Appeals filed after 6 April 2014 require the permission of the High Court.

The Preliminary Decision included a section on Confidentiality that seems purpose designed to stop the spread of information to other members of any group making joint appeals to the Pension Ombudsman, or the media. This section is so draconian that it bears repeating in full:

> *"Confidentiality*
>
> *"During our investigation, you must treat all information you receive relating to the complaint as confidential and not disclose it to anyone who is not involved. You may only disclose any documents or information you receive to someone that you are taking advice from in connection with the complaint. You should make them aware that they have the same responsibility to keep this information confidential.*
>
> ***"If you break these rules regarding confidentiality, you may be found in contempt of court and be subject to penalties imposed by the court (although this would be a last resort).***
>
> *"When the investigation is complete we will publish the final Determination. The Determination will not be confidential but your duty to keep all other papers and information relating to our investigation confidential will not change."*[3]

Being threatened with prosecution by the Government is a good way to try and stifle further complaint.

Pension Ombudsman's response to Richard Lee's complaints about the AEAT pension scheme.

The PO response to all of these complaints was that the trustee's negotiations with AEAT, and its support of the company's approach, were within the trustee's powers. Faced with AEAT's failure to pay contributions to the Scheme, the trustee's chosen course was not perverse.[4, 5]

The response[5] failed to address a number of aspects of Richard's complaint: [2]

- No mention or consideration of the complaints listed at (a) to (d) at the beginning of this section.
- No comment on the failure of the Pensions Regulator to monitor the scheme properly between 2004 and company failure in 2012.
- No comment on the build-up of the huge pension scheme deficit between 2004 and 2012.
- No comment on the use of pension scheme funds to assist the company, both by borrowing funds and failure to pay pension contributions when due.
- No mention of the failure of the pension scheme to meet the Minimum Funding Requirement (in force up to 2004)
- No comment on how a pension scheme with liabilities for 3000 pensions could be supported by a company with only 300 employees by 2012. This obviously unsustainable situation was known from 2005 to 2012 with no remedial action by any regulator.

Complaint to Pensions Minister
The lack of help and fair treatment of complaints by the Pensions Ombudsman was raised with the then Pensions Minister (Steve Webb MP), at a meeting with AEAT Pension Scheme members on 20/3/2014.

The Minister was supported by David Bateman and Pam Briceman (DWP) and Geoff Cruickshank (Pensions Regulator). The pensioners were supported by Nicola Blackwood MP, Sir Alan Haselhurst MP and Ed Vaizey MP.

The Minister suggested a further complaint to the Parliamentary and Health Service Ombudsman (PHSO). This was done. The PHSO has the same attitude as the PO of procrastination, delay, trying to re-write the complaint, and declaring the important parts of the complaint to be beyond their remit. It follows the same pattern as all the other parts of the Government complaints procedure.

So far the PHSO has spent over a year trying to re-write the complaints, ignoring parts of them, and coming up with one excuse after another that the complaints are beyond their remit to investigate. They have spent a considerable amount of costly time and effort NOT investigating our complaints. This is described in Section 4.14.

The Government appears to have shut off all routes of legitimate complaint for AEAT pensioners. They think that legal action is beyond the means of the pensioners.

It is outrageous that the Government can use its overwhelming power and financial resource to bully pensioners, who have a valid case, and who only want what they worked and paid for.

Richard Lee, Tony Reading

References

1. Letter, Peter O'Brien to Richard Lee, "AEA Technology Pension Scheme", Ref PO 4816/PJOB, 28/7/2014

2. Letter, Richard Lee to Peter O'Brien, "AEA Technology Pension Scheme", Ref PO-4816/PJOB, 20/8/2014

3. Letter, Peter O'Brien to Richard Lee, "AEA Technology Pension Scheme", Ref PO-4816, 4/12/2014

4. Letter, Peter O'Brien to Richard Lee, "AEA Technology Pension Scheme", Ref PO-4816, 30/1/2015

5. Tony King, Pensions Ombudsman, "Determination by the Pensions Ombudsman" to Mr Richard James Lee, PO-4816, 30/1/2015

4.11 Minister misleads Parliament and wriggles out

On 26 October 2016 Sir Oliver Letwin MP (Con, West Dorset) sponsored a Westminster Hall debate on AEAT pensions. Sir Oliver was supported by eight other MPs who were dismayed at how their constituents, members of the AEAT Pension Scheme, had been treated.[1]

During the debate Richard Harrington MP (Pensions Minister), replying for the Government, said that, as far as he could see, there was nothing to stop people complaining to the Pensions Ombudsman (PO) about the Government Actuary's Department (GAD). Mr Harrington repeated this advice on 15 November 2016 in a letter to David Rutley MP and on 25 November 2016 in a letter to Caroline Noakes MP.[2,3]

Those listening to the debate were surprised at Mr Harrington's advice. This is because the PO has repeatedly refused to investigate complaints about the GAD because they are outside its remit.

For example, a 2013 letter from the PO says that his

> *"jurisdiction extends to investigating complaints that are against the employer, the trustee, the manager and/or the administrator of the pension scheme which the complaint is about. In this case GAD were not the employer, the manager or the trustee of the Fund or the Scheme."*

The letter goes on to argue that the GAD is also not an administrator of the scheme and concludes that the PO cannot investigate a complaint about the GAD.[4] This is consistent with the PO website at the time.[5]

Prospect and Sir Oliver Letwin wrote to complain at this misleading advice.[6,7]

The minister replied that earlier statements, dating back to 2013, that the PO could not investigate GAD "was an opinion by an adjudicator and was not final".[8,9] The PO only made a "final" decision on this important point on 21 December 2016, long after dealing with complaints from scheme members.

Richard Harrington, as pensions minister, has responsibility for the Pensions Ombudsman. He should therefore have known, during the 26/10/16 debate, that the PO would not investigate GAD. It is difficult to see his advice, to complain to the PO about the GAD, as anything other than misleading and his subsequent letters [8, 9] as lawyerly wriggling out of accusations of misleading Parliament, on a technicality.

Tony Wickett

References

1. HOC Hansard 26/10/16 Volume 616 cols 161WH to 178WH

2. Richard Harrington MP, letter to David Rutley MP, Ref POS(3)11271/351, 15/11/2016

3. Richard Harrington MP, letter to Caroline Noakes MP, ref POS(3)11339/240, 25/11/2016

4. Letter "UKAEA Pension fund & AEA Technology Pension Scheme", Paul Strachen, Investigator, PO to Dr Michael Denham, 15/8/13, Ref: PO-2717

5. www.pensions-ombudsman.org.uk/Complaints/What we can investigate/index.aspx at 30/5/13

6. David Luxton, Prospect, letter to Richard Harrington MP, 17/3/17

7. Oliver Letwin MP, letter to Richard Harrington MP, 24/3/17

8. Richard Harrington MP, letter to David Luxton, Prospect, ref POS(3)4052/1012, 20/4/17

9. Richard Harrington MP, letter to Sir Oliver Letwin MP, ref POS(3)10757/246

4.12 'Investigation' of the DWP 'Factsheet' by the Parliamentary and Health Service Ombudsman

I have put two words in the above title between quotation marks because both refer to parodies.

The DWP 'Factsheet' [1] was issued in June 2013 in response to a number of complaints from pension scheme members via their MPs, about the failed scheme and consequent broken undertakings.

It was reissued with very minor revision the following month. It is a curious document of four pages, with no file reference or bookmark and no paragraph or section numberings. Although clearly unsuitable as a reference document, it has been used as such on several occasions by Government Departments.

Following advice from my MP (Sir Alan Haselhurst, C. Saffron Walden), I decided to lodge a complaint with the PHSO about the 'Factsheet', in particular about the errors and misinterpretations it contained.

My complaint was originally submitted in early December 2013.[2] I was told that I had firstly to exhaust the DWP internal complaints procedure (two stages) and the Independent Case Examiner (ICE) before my complaint could be considered by PHSO.

I finally heard the predictable outcome from the ICE on 4 September 2014[3] that the Examiner was not willing to consider the complaint and the complaint passed to PHSO. So a year was wasted on pointless extra work.

I received a letter from PHSO on 5 November[4] stating that PHSO were refusing to investigate the complaint. I was subsequently notified on 30 March 2015[5] that PHSO would be investigating the complaint, or the limited part of it that fell within their 'remit'. I don't know exactly what led to this change of heart, but it suggests that PHSO have a loose set of guidelines in deciding what they will and will not investigate. The report issued in August[6] 'partly upheld' my complaint, in that DWP should have given me clearer information about the complaints process.

I was due an apology; in the words of my MP 'an apology butters no parsnips'.

My commentary about the inaccuracies in the 'Factsheet' are set out in the complaint and the annexes (available on request), but they are hardly in contention now; our case was very clearly advocated by pensioners' MPs in the Parliamentary Adjournment Debate of the 26 October 2016, called and led by Sir Oliver Letwin, Member for West Dorset. What is important here is that, in making their assessment, PHSO did not undertake any consideration whatsoever as to whether the contents of the 'Factsheet' were true or accurate.

DWP stated in their response [6] that the 'Factsheet' had been compiled by soliciting the 'positions' of the various Government Departments who had a hand in setting up the new pension scheme when AEA Technology was privatised, and summarising them in a single document.

Apparently, they took no interest in whether these 'positions' were justified by the verifiable factual evidence that was available; they saw themselves as simply the mouthpiece. The 'Factsheet', being the shoddy document it is, made no mention that this was the methodology employed.

The impression was thus falsely given that this document reflected information that was factually correct and authoritative.

More seriously, the Ombudsman's view is that the accuracy or otherwise of this information is not within his/her terms of reference to investigate. The report of the investigation contains many caveats with respect to aspects of the case that couldn't be included, and it seems that DWP can be forgiven for not stating anything about the methodology by which the 'Factsheet' was produced, or the sources or quality of the information on which it was based.

I came away from this experience with the distinct impression that PHSO have no interest in helping citizens and Government to identify and remedy shortcomings and maladministration. Rather, their function seems to be:

1) To wear potential complainants down in making useless and pointless enquiries to other bodies, like the Departments against whom the complaint is directed, who everybody knows will not be prepared to give the complaint serious consideration.

2) To find as many legal loopholes as they can to avoid carrying out a serious investigation. (More recently, we have a case where the Ombudsman has made an unusual and innovative interpretation of the scope of the Parliamentary Commissioner's Act, 1967.)

3) To carry out any investigation in a restrictive way that vindicates the past & present misbehaviour of Government departments and that circumvents any need to assess whether information used is accurate or verifiable.

I therefore question the competence and integrity of the Ombudsman; it seems it thoroughly deserves the poor reputation it has acquired in recent years. As a taxpayer, I object to paying for this useless quango. It is in serious need of reform.

Dr Peter Cains

References

1 'AEA Technology – Factsheet Issued by DWP – June/July 2013' Unreferenced document

2 Complaint to Parliamentary & Health Service Ombudsman, ref. EN-180031, 4th Dec. 2013

3 Letter from Independent Case Examiner, ref. DWP00895, 4th Sept, 2014

4 Letter from Parliamentary & Health Service Ombudsman, ref. EN-201812/0040, 5th Nov. 2014

5 Letter from MP Sir Alan Haselhurst, 30th March 2015. Also confirmed in letter from Parliamentary & Health Service Ombudsman to Dr C. Benson, 25th March 2015, ref. PA-201691/0072

6 PHSO Report 17th August 2015, Case ref. PA-201812-CAINS

4.13 Ministers sent us on a wild goose chase to the Parliamentary and Health Service Ombudsman

Derek Whitmell joined AERE Harwell in 1965, initially intending to stay for only three years, but then declined offers with greater salaries elsewhere in favour of the greater security offered for both employment and pension with UKAEA.

He worked on various Materials and Radioactive Waste Management Projects until 1988, then moved into the centre to give close support to the Directors, particularly for strategic business planning.

After transferring to the new private company AEAT plc he became Property Manager, first for the Culham site and then moved back to Harwell until he retired in 2000.

Despite misgivings for the future prosperity of the new business (brought about by his earlier experience of business planning) he was persuaded by the assurances given him by the DTI, UKAEA and the Government Actuary (GAD) to transfer 31 years of pension benefits accrued with UKAEA into the Closed Section of the AEAT Pension Scheme.

Key to that decision was the GAD advice that the risk of losing his pension in the AEAT Pension need not be considered but that the most significant factor in making the decision whether to transfer or preserve benefits was the relative impact of inflation or career progression.

This advice by GAD could only be valid if GAD had carried out a thorough risk assessment and satisfied themselves that the new pension scheme was underwritten in some way.

When AEAT went into a pre-pack administration in 2012, and the pension scheme went into the Pension Protection Fund (PPF) he discovered that the promises made by the DTI in 1996 that the AEAT Pension Scheme would offer benefits that were ‘no less favourable’ than the public sector UKAEA scheme were meaningless and that GAD had also misled him – concealing the difference in Scheme Security between UKAEA and AEAT.

The transfer of the Pension to PPF has resulted in the loss of all inflation protection on about 90% of his pension, which will have an increasing impact in successive years, especially if high inflation rates return.

The campaign to restore our pension rights has so far taken nearly five years. We initially approached the DWP but made little progress until three of us met the Minister for Pensions in 2014.

Steve Webb said that DWP could not do anything as they had not been involved in the setting up of our pension scheme; we should take it up with the Government department concerned, which he identified to be Department for Energy and Climate Change (DECC). If, after exhausting all the channels the matter had not been resolved, we could refer our complaint to the Parliamentary Ombudsman.

He was sadly misinformed as DECC knew nothing; eventually DBIS (successor to DTI) admitted that they held the files. We wrote complaints to DBIS and GAD but neither would recognise our complaints, refused to address our points and directed us to pursue the matter with the PHSO.

The experience of previous submissions to the PHSO by colleagues had shown that the PHSO had a very limited remit: they could not investigate GAD, as they were deemed not competent to second guess and judge the performance of professionals; nor could they consider complaints relating to public sector employment or pensions (which were excluded by the 1967 Parliamentary Commissioners Act).

Four of us jointly submitted a complaint to the PHSO (on behalf of a much larger group) that had **four components**. The **first** was that DTI, UKAEA and GAD had not advised us that the AEAT Pension Scheme carried a significantly higher risk of failure. On the contrary we had been assured that our pensions were protected by legislation and that the risks were no higher than those of the public sector we were leaving

The **second complaint**, (the most significant for me) was that the Note on Options (attached to the UKAEA transfer form), written by the Government Actuary (GAD) was not the independent, professional advice on options and risks that we would have reasonably have expected from such a source.

From recent Freedom of Information requests, we have found that GAD and UKAEA made significant changes to the original draft to encourage staff to transfer their previously earned pension benefits to the AEAT Scheme.

The advice we received assured us that we need not consider the relative risks to the UKAEA and AEAT Pension schemes when deciding between options to leave our pensions with UKAEA or transfer to the AEAT scheme; whereas GAD was fully aware that the risk to the AEAT Scheme was higher than the Treasury backed scheme.

Their advice, in contrast, hinted that the AEAT scheme had a Crown Guarantee but, as we found later to our cost, such a guarantee did not exist.

GAD's own files show that they were fully aware of the situation but chose not to comply with their Actuarial Codes of Practice. No assessment of the risk of transferring our pension was carried out by GAD, nor did they advise us that their advice was given without a study of the risks. Instead they deliberately biased their advice to encourage us to move our pension.

The document is non-compliant with the Actuarial Codes of Practice and certainly would never comply with the regulations observed by Financial Investment Advisors. UKAEA and DTI were responsible for commission and delivery of the document to us and thus must also take the blame.

The **third complaint** relates to the funding of the new scheme by the government to cover accrued pensions transferred into the scheme. At that time, pension funds were generally in surplus, but none of that surplus was transferred because there were 'compelling value for money arguments for not going down this route' [DTI internal document "The Privatisation of AEA Technology", DBB98.8, February 1997, section 7.3 "Pensions"].

As a result, when pressure increased on the AEAT fund, it had no reserves on which to fall back. We also suspect that the sum was based on public sector risk levels: it should have been higher to cover the private sector environment.

The **fourth complaint** relates to the way we had been treated by Government departments since 2012, in terms of the prevarication, delays, the way we were directed from department to department, each of them not answering the points we made and hiding behind a smokescreen of inaccuracies and misinformation.

This submission was supported by a vast set of correspondence between us and various departments and was handed to the PHSO by the Rt Hon Ed Vaizey MP in November 2015 on behalf of the 43 MPs who represented the 145 other co-signatories.

At the end of April 2016 PHSO advised us that they would investigate the complaint but they had paraphrased and reworded our submission of four complaints, ignoring complaint number four and described our statements inaccurately as a single complaint that 'the UKAEA and DTI provided misleading information about your pension options upon the privatisation of UKAEA in 1996'.

I replied and requested them to use our original wording of the complaint, which PHSO was later found to have ignored.

But in June 2016, PHSO, still using their inaccurate description, informed us that they had taken legal advice and could not consider our 'complaint' further. The reason given was that they 'could not investigate public sector pensions and that whilst they appreciated our comment that our pensions were private sector pensions, ultimately our complaint concerns advice on what were public sector pensions at the time we were employees'.

To us this was gibberish as we were employed in the private sector when the actions causing our complaints occurred!

Three of the authors replied individually, addressing the various issues. I pointed out that complaint number two related to 'a misleading statement and

unsubstantiated, fictitious risk assessment of the future prospects of a private pension scheme, delivered to members of a private pension scheme (after they had moved into the private sector) by UKAEA'.

As such I believed that it fell within the PHSO remit. However, in August 2016, the PHSO replied that they had been advised by their legal team that the relevant section act excluded not only issues that arise from current employment but also prior employment.

Their relevant internal file: PA-242243/0172 (later released to me through FoI) gave their argument:

> *"My understanding of Paragraph 10(1) of Schedule 3 to the 1967 Act is that it is very wide-reaching and is designed to preclude us from looking at pretty much any issue that arises from current or prior employment in the public sector. For me, the test is generally could the complaint have arisen if the complainant had not been employed in the public sector? If the complaint could not otherwise have arisen then Paragraph 10(1) would apply.*
>
> *I think that is the case here. I appreciate that in his review request Mr Whitmell is focussing on the advice he says he received after UKEAE had been privatised and after the pension scheme had been privatised, but the advice only arose because of his previous public service."*

[Note that they are still misquoting us and cannot even spell UKAEA! Neither UKAEA nor the pension scheme was "privatised"]

In a letter dated 21 November 2016 I asked them to justify their extension to the Act as Schedule 3 Paragraph 10(1) of the published Act states, (in a simplified form), that the PHSO may not investigate issues relating to pension and employment in the public sector. There is no mention of including issues in the private sector that arise from prior employment in the public sector.

In a long reply dated 20 December 2016 they failed to justify their position. They declined to state whether they had used this ruse before and they failed to give any legal justification, claiming legal privilege for the legal advice they had been given! I replied to this on 23 February 2017.

'Legal privilege' is the right of a client to protect confidential information given to their legal advisor. But the role of the PHSO is not as a client but as an independent judge. Any advice (legal or otherwise) PHSO seeks in order to make a decision in its role to consider evidence and act as a judge must be open to everyone involved to see and understand.

There would be no reason to hide from us any advice on the interpretation of the Act. The obvious conclusion is that they succumbed to external pressure to find a reason not to investigate our complaint, which they could not disclose.

Derek Whitmell, Andrew Turner and Keith Hammond have received the same reply dated 24 April 2017. Keith drew attention to our fourth complaint concerning the way we have been treated. He pointed out that it had nothing to do with 'public' pensions but has never been considered by PHSO although they have already set their own precedent as they investigated and ruled on an almost identical complaint against the DWP in 2015.

Andrew Turner is in active correspondence with PHSO about their refusal to investigate our complaint. In a letter dated 14 November 2017 PHSO justify their refusal using paragraph 10(1) of Schedule 3 of the Parliamentary Commissioner Act 1967. This act sets up the PHSO. Schedule 3 lists matters that the ombudsman cannot investigate. Paragraph 10(1) lists:

> "Action taken in respect of ….. superannuation or other personnel matters, in relation to …..
>
> (b) service in any office or employment under the Crown or under any authority to which this Act applies; ….."

PHSO argue that this exclusion applies to our complaint because it relates to UK AEA superannuation. Their internal files, quoted above, show that they interpret paragraph 10(1) to prevent them from investigating not only superannuation in the public sector, but also issues relating to past employment in the public sector. As stated above Derek Whitmell challenged PHSO to justify their interpretation of paragraph 10(1), but they declined to disclose their legal advice, claiming 'legal privilege'.

Paragraph 10 arose because the Act was supposed to govern issues between the Government and the citizen, not between the government and their employees. Ministerial statements in the parliamentary debates leading to the 1967 Act make it clear that relations between public sector staff and employers, including resolution of complaints, were adequately covered by the Whitley Council.

In his reply to PHSO dated 17 November 2017 Andrew therefore argues that the exclusion of UK AEA superannuation can only extend as far as the scope of the UK AEA Whitley Council. AEAT staff ceased to be employed by UK AEA, and so left the scope of the UK AEA Whitley Council, on 31 March 1996. Our complaint relates to advice from GAD given to us in November 1996 when we were not covered by Whitley council arrangements.

Andrew also argues that because our complaint relates to bad advice about the transfer of benefits accrued with UK AEA into the AEAT pension scheme, rather than the accrual of such rights or the payment of pensions, this is not covered by the exclusion of superannuation (which is the accrual and payment of pensions).

PHSO acknowledged receipt of Andrew's letter on 21 December 2017 and stated their intention to respond in the new year (2018).

The refusal by PHSO to investigate means that we have been sent on a fool's errand by Government ministers for five years starting with the DWP, then DECC, DBIS, GAD and other agencies before arriving at a door closed, without due reason by the PHSO.

Taking the positive from our experiences, our cause must be very strong if PHSO and other Government departments resort to desperate methods to avoid facing our complaint. They must recognise that we have a strong, genuine claim for restoration of our pensions that the Government does not want to meet.

Preparations are in hand for a Bill in Parliament to introduce a new Ombudsman, to take over from others including the PHSO. If this goes forward the new Act must provide stronger measures to ensure that the new Ombudsman can be seen to act totally independently. Our experience and of many others is that the present organisation cannot act independently when under pressure from the government.

Derek Whitmell, Andrew Turner, Keith Hammond

4.14 Pension rights sinking in Ombudsman Bermuda Triangle

When AEA Technology got into difficulties in 2012 and transferred its pension liabilities into to the PPF, the value of my pension fell by 40%. It means that, although I had paid the same amount into my pension as my colleagues who remained with UKAEA when AEA Technology was spun off in 1996, the pension I get is lower than theirs and it will get lower still as inflation takes its toll.

I was a professional Chemical Engineer and worked for many years for UKAEA on the safety of nuclear power stations. It was satisfying work which was useful to society and that was more important to me than earning lots of money. My choice. But I was also keen to ensure that my wife and I would be independent and not reliant on benefits in old age, so the secure UKAEA pension was attractive.

By the time AEA Technology was being spun off I was very busy in charge of a series of complicated, large-scale and expensive tests. These were potentially dangerous to the people involved in them if they were not carried out with great care and attention to detail. I was regarded by the company as bright, conscientious, a safe pair of hands.

But like many other people, I was naïve when it came to personal finance. I tended to believe what I was told. For example, I bought an endowment mortgage in the 1980s which in the 2000s failed to pay out as much as it was supposed to do. This well-known mis-selling scandal eventually resulted in compensation for policy holders, 25 and more years after the policies were originally sold.

In this case, the government ensured that financial services companies paid compensation, provided that people produced the information they were originally given, showing that it did not mention the risk that the policy might be less favourable than the alternative (a repayment mortgage) or might not pay out as much as it was designed to do.

When years ago I transferred my UKAEA pension into the new AEA Technology scheme, I was aware of reassuring statements made by the government and its agents, for example “Because we know how highly our employees value their existing pension benefits it was agreed to protect these under the privatisation legislation”.[1] The thing I relied on most of all was the 1996 Note by the Government Actuary, no less!

This note claimed to ”outline the main factors to take into consideration in deciding whether or not to transfer accrued UKAEA Scheme benefits”.[2] But nowhere did it say that an AEA Technology pension would be less secure than a UKAEA one and so was less likely to pay out as much as it was designed to do. This was mis-selling.

In 2013 the DWP, in collusion with GAD, tried to justify this crucial omission by saying "At the time, AEA Technology was a profitable organisation".[3] This shows an unbelievable lack of appreciation that a pension is for life, not just for one moment in time! In 2017 the Pensions Minister Richard Harrington tried again to justify the omission to MPs, telling Parliament "It was eight pages long and it was not intended to cover everything"![4]

A Freedom of Information request has recently made it clear that the 1996 Note from the Government Actuary was not the work of unbiased professionals, which at the time it appeared to be.[5] Instead it was an unscrupulous device to persuade people to transfer their pensions from the UKAEA scheme into the less secure AEA Technology one, thereby reducing the government's liability for the pensions.

I and colleagues (listed at the end of this section) who worked at the UKAEA's Winfrith site in Dorset, have complained fruitlessly to GAD and to our former employer UKAEA. At the time of privatisation, UKAEA were the "relevant owner" according to the Atomic Energy Authority Act 1995 and so they were responsible under the Act for ensuring that our AEAT pensions were no less favourable than the UKAEA ones. UKAEA did not respond to our complaint but simply forwarded a generic, dismissive DBIS document.

Amidst government confusion as to which government department was responsible, we also complained to both DWP and DBIS. Neither of these responded in an honest, straightforward and reasonable manner to our complaints.

They claimed that the statutory guarantee of the benefits of the AEAT Pension Scheme expired on Day One of the scheme, and did not explain why they had not told pension scheme members this at the time.

We then took our complaints to the Pensions Ombudsman, the Financial Services Ombudsman and the Parliamentary and Health Service Ombudsman. Eventually, all three decided that they are prevented by law from considering our complaints.

The Pensions Ombudsman said he can't investigate because there is a 15 year time limit for complaints. The Financial Services Ombudsman said that, although there is no time limit for complaints, he can't investigate company pension schemes.

The Parliamentary Ombudsman said that she can't investigate public service pension schemes. Further, for obscure reasons, it appears that the Government Actuary is outside the remit of both the Pensions Ombudsman and the Parliamentary Ombudsman.

Since the failure of AEA Technology in 2012, pensions ministers have sown confusion wherever possible, to delay and frustrate complaints.

When he was Pensions Minister, Steve Webb advised AEAT scheme members to complain to the Parliamentary Ombudsman [6]. In 2015 The PHSO required DWP to apologise for the confusion they had caused.[7]

But this was water off a duck's back because in October 2017 the Pensions Minister Richard Harrington told parliament that the AEA Technology pensioners could take their complaints about the Government Actuary to the Pensions Ombudsman. This was despite the fact that back in 2013, the Pensions Ombudsman service told me and others that the law prevented them from investigating a complaint against GAD!

Our MP, Sir Oliver Letwin, has actively supported us and put our case to parliament in a debate in October 2016. He proposes a change in the law via the draft Public Service Ombudsman Bill to allow the ombudsman to investigate our case.

We are afloat in a Bermuda Triangle of ombudsmen, without a paddle. The ombudsman system has failed us because it is not allowed by law to hold the government and its agencies to account for our case. We need a change in the law, or we are sunk.

Mike Denham, with the support of the members of the West Dorset Group of AEAT pension scheme members:

Bob Mott; Chris Benson; Dave Lee; Jon Jenkins; Mark Gugan; Susan Adams

References

1 "Pensions: What you need to know", AEA Technology Human Resources Group, August 1996

2 "Transfers from the UKAEA Superannuation Schemes to the AEA Technology Pension Scheme: Note by the Government Actuary's Department on the Options Available in respect of Accrued UKAEA Benefits", Peter Newman, Government Actuary's Department, November 1996, sent by Yvonne Murray, AEA Technology Pensions Manager to members of the AEAT Pension Scheme, 13 November 1996

3 AEA Technology – Factsheet issued by DWP – July 2013

4 Richard Harrington MP, HOC Hansard 26/10/2016, Volume 616 Column 176WH

5 Letter and redacted copies of file from George Russell (Deputy Government Actuary) to D S Whitmell, 14/11/2014, ref WHI280714

6 Note for the Record of Meeting with Mr Steven Webb MP, Minister for Pensions 20 March 2014

7 Report by the Parliamentary Ombudsman to Rt Hon Oliver Letwin MP, 17 Aug 2015

4.15 Nine submissions on AEAT Pension failure to Work and Pensions Select Committee

Andrew Turner worked for UKAEA from 1975 to 1996 when he was part of the privatisation to AEA Technology (AEAT). Andrew worked with AEAT up to 2003 when he left the company to become an independent consultant. Andrew worked on electrochemical environmental management products for AEAT during this period.

Andrew responded to the call for evidence by the House of Commons Work and Pensions Select Committee as part of their inquiry into the Pension Protection Fund and the Pensions Regulator.[1]

A total of nine submissions about the failure of the AEAT Pension Scheme (AEATPS) were sent to this inquiry.[1-9] Andrew's was the longest (12 pages) and most comprehensive.

Andrew's submission starts with an account of the events leading up to failure of the AEATPS. This is a good starting point for someone new to this scandal. Responding to the call for evidence the submission covers the Pensions Regulator (TPR), the Pension Protection Fund, the role and powers of the pension scheme trustees and the relationships between TPR, PPF, Trustees and employers.

Recommendations of the submission are:

Pension Regulator

- There should be a requirement for additional reporting to TPR on pension schemes providing benefits to privatised public service employees to help protect the investment of taxpayers' money.
- Employer contribution holidays should be treated as a "notifiable event" to TPR
- In the event of a corporate sale, TPR investigate the implications for the pension scheme.
- Transactions transferring significant numbers of members of a defined benefit (DB) to another employer should be notifiable to TPR.
- TPR should have powers and resources to diagnose and prevent arrangements to get rid of pension liabilities.
- There should be an investigation into the performance of the Government Actuary's Department (GAD) in relation to the advice given to employees transferred from UKAEA to AEAT in 1996.
- There should be a full investigation into the AEATPS from privatisation to failure of the scheme to identify regulatory actions and powers that could have averted the failure.
- Government should waive time limitations on claims arising out of the failure of AEATPS.

- The treatment of scheme members by government departments and ombudsmen should be investigated.
- There should be an integrated ombudsman service.

Pension Protection Fund

- PPF compensation should as far as possible match pension promises, particularly those made by the government.
- The PPF compensation cap should be removed except as needed to prevent abuse.
- PPF compensation should include promised indexation on pension accrued before 1997
- The 10% reduction in PPF compensation should be removed.
- There should be a review of all privatised DB pension schemes.
- There should be a check that incorporating the Financial Assistance Scheme into the PPF will not weaken PPF's ability to pay compensation.

Scheme Trustees

- Trustees should have sufficient powers to ensure fair allocation of surpluses.
- Trustees should have guidance on balancing the employer's health with that of the pension scheme.

Relationship between TRP, PPF, Trustees and employers

- "Milking and Dumping" should be prevented by legislation.
- Defaulting on pensions for commercial reasons needs to be controlled.

Report of the Work and Pensions Select Committee

Despite receiving nine submissions, the Work and Pensions Select Committee report[10]only referred to the AEATPS in one paragraph (No. 119). This highlighted the uncertainty and distress caused when a pension scheme enters the PPF.

None of the failings by the GAD, the TPR or the company, which managed to get rid of its pension liabilities and continue trading, that the submission highlighted, were mentioned in the Report.

Letter to Frank Field MP

Prospect's Parliamentary and Campaigns Officer, Graham Stewart, wrote to Frank Field MP, Chair of the House of Commons Work and Pensions Select Committee, on 25 October 2017[11]. Graham pointed out that the Committee's Report[10] did not mention a number of issues raised in the nine submissions. These included:

- Why was the AEAT PS not given a proportional share of the surplus in the UK AEA pension schemes when it was set up?
- The misleading GAD advice on transfer of past service.

- Does the Pensions Regulator have enough powers?
- Are the assumptions used to value pension scheme liabilities too pessimistic?
- Should the pension scheme be a preferential creditor when a company goes bust?
- Do the PPF compensation rules comply with the EU Insolvency Directive (2008/84)?
- Should the protection of the AEAT PS terms from the Atomic Energy Authority Act 1995 override the PPF terms?

Graham said that scheme members have been seeking an independent investigation since 2012 and requested that the House of Commons Work and Pensions Select Committee conduct an inquiry into the failure of the AEAT PS.

Frank Field MP replied promptly[12] on 30 October 2017 that his committee did not currently plan to do this, but that they may revisit the issue as part of their work on defined benefit pension schemes, particularly where liabilities are transferred or reduced to the detriment of scheme members as a result of corporate insolvency and restructuring events such as pre-pack administration. He recognised it as an important matter.

References

Items 1 to 10 are available on the web site of the House of Commons Work and Pensions Select Committee.

1	Andrew Turner – written evidence	PPF0041	October 2016
2	Prospect – written evidence	PPF0020	July 2016
3	David Standerwick – written evidence	PPF0027	September 2016
4	Sylvia Colgate – written evidence	PPF0087	October 2016
5	Prof Mike Hutchings – written evidence	PPF0089	October 2016
6	Anthony Reading – written evidence	PPF0101	October 2016
7	BMA – written evidence	PPF0116	October 2016
8	W D Griffiths – written evidence	PPF0118	October 2016
9	Dr Ken Nicholson – written evidence	PPF0120	November 2016

10 House of Commons Work and Pensions Committee – Defined benefit pension schemes, HC 55, December 2016

11 Letter, Graham Stewart, Prospect, to Frank Field MP, "AEAT Pension Scheme", 25 October 2017

12 Letter, Frank Field MP to Graham Stewart, 30 October 2017

Andrew Turner, Tony Wickett

Contributors' contact details

Please address requests for further information, in the first instance, to:

Tony Wickett, Editor

T: 01929 462675
E: tony.wickett@btinternet.com

or to:

David Luxton, National Official, Prospect

T: 01932 577011
M: 07713 511713
E: david.luxton@prospect.org.uk

Contributors:

Tony Wickett	tony.wickett@btinternet.com
Neil Hancox	neilhancox@hotmail.com
Tony Reading	reading553@btinternet.com
Keith Hammond	keithhammond001@gmail.com
Andrew Turner	andrew.d.turner@btinternet.com
Richard Lee	richardj.lee@ntlworld.com
Peter Cains	peter_cains@msn.com
Derek Whitmell	derek.whitmell@btinternet.com
Mike Denham	mike@mikedenham.co.uk

West Dorset Group of AEAT pension scheme members:

Bob Mott	mail@robertmott.co.uk
Chris Benson	christopher.benson997@yahoo.com
Dave Lee	davelee123@live.com
Jon Jenkins	jon.jenkins@tradebe.com
Mark Gugan	Mark.Gugan@nuvia.co.uk
Susan Adams	g_s_adams@btinternet.com