

Public Accounts Committee

Oral evidence: AEA Technology pension case, HC 1005

Monday 13 March 2023

Ordered by the House of Commons to be published on 13 March 2023.

[Watch the meeting](#)

Members present: Dame Meg Hillier (Chair); Sir Geoffrey Clifton-Brown; Mrs Flick Drummond; Mr Louie French; Peter Grant; Nick Smith.

Transport Committee Member present: Chris Loder.

Gareth Davies, Comptroller & Auditor General, and David Fairbrother, Treasury Officer of Accounts, were in attendance. Questions 1 - 80

Witnesses

I: Martin Clarke, Government Actuary, Government Actuary's Department (GAD); Karl Banister, Director of Operations, Legal and Clinical, Parliamentary and Health Service Ombudsman; Tom Josephs, Director, Private Pensions and Arm's Length Bodies, Department for Work and Pensions.

Report by the Comptroller and Auditor General
Pensions transferred to AEA Technology when it was privatised
(HC 1169)

Examination of Witnesses

Witnesses: Martin Clarke, Karl Banister and Tom Josephs.

Q1 Chair: Welcome to the Public Accounts Committee on Monday 13 March 2023. Today, we are looking at a saga that still affects many people. The UK Atomic Energy Authority is the Government body that was responsible for research into nuclear technology, and AEA Technology was the commercial arm of this body, which was privatised in 1996 and went bust in 2012.

Today, we are looking very specifically at the handling of the pension scheme. Nearly 90% of eligible members of the pension scheme switched to a new pension scheme when AEAT was privatised, but since then there have been many complaints from scheme members about how that privatisation went, particularly in relation to the pension and the advice that they were given. The Government Actuary's office was involved in providing some of that information—I will introduce our witnesses in a moment—but there have been a number of calls for action from different MPs and different bits of the system, including in Parliament, since at least 2015.

Today, we are digging into what has happened, whether the Government did enough to protect the pension scheme members and, crucially, what would or should be done differently today to avoid repeating the same mistakes. I do really need to emphasise that neither the Public Accounts Committee nor the National Audit Office is a regulator. We are not ombudsmen. The NAO's briefing today is a factual briefing that draws no conclusions and makes no recommendations.

I also want to put on record our thanks to those who put in evidence, which will be published alongside our eventual Report—in fact, it is published on our website as of today—and has been incredibly helpful in looking into this issue. I also want to put on record our thanks to Layla Moran MP and David Johnston MP, who have put useful information to us and met with us in preparation for today's session to discuss the issues concerned.

I would like to introduce and welcome our witnesses today. Martin Clarke is the Government Actuary at the Government Actuary's Department. Karl Banister is the director of operations, legal and clinical, at the Parliamentary and Health Service Ombudsman, which is unable—for reasons we will come to—to look into what the Government Actuary's



HOUSE OF COMMONS

Department does, now or then. Tom Josephs is the director for private pensions and arm's length bodies at the Department for Work and Pensions.

Without further ado, I would like to turn to Chris Loder MP to kick off. Mr Loder is guesting with us today. He is not a member of the Public Accounts Committee, but he is joining us under the guesting rules, and it will become apparent why.

Q2 Chris Loder: Good afternoon, gentlemen. It is good to have you with us. First of all, I just wanted to ask how a pension scheme's terms can be deemed no less favourable than a public sector scheme if it does not have the protection of a Government guarantee. Mr Banister, could I ask you that first?

Karl Banister: First of all, I express my sympathy to the pensioners. It is a very difficult situation that they are in. In relation to that question, I do not have a view. As in the introduction, we do not have jurisdiction here. I have not looked into it, and neither have any of my colleagues, and so I do not think that I can really express a view about that.

Martin Clarke: Thanks for the question and for inviting me here. I should mention that I have been the Government Actuary since 2014, so I started after these events. Prior to that, I was at the Pension Protection Fund, which gave me a little bit of an insight into the circumstances that the current members of this pension scheme find themselves in.

"No less favourable" is a term used in the legislation, which was the Atomic Energy Authority Act, and in the correspondence of one of my predecessors, who judged that the benefits in the new AEAT scheme were no less favourable. To my understanding, that term refers, in this context, to the pension scheme benefits and not their security.

The exercise that was undertaken in that time, which was referenced in the NAO's note, is that my predecessor did a comparative assessment of the terms of the seeding scheme—the UK Atomic Energy Authority scheme—and the new Atomic Energy Authority Technology pension scheme. That concluded that the benefits were no less favourable, taken as a whole.

The certificate was to provide assurance that this transaction met the terms of the Atomic Energy Authority Act in relation to pensions. The Act and the certificate that my predecessor gave referred to benefits of the scheme in terms of being maintained by or on behalf of AEAT after it ceased to be in public ownership. People might infer from that that there is a presumption that this is no longer part of Government.

The Act did not require that this "no less favourable" terminology comparison consider the difference in security levels—that is, the fact that there was no guarantee enduring from the Government. In the penultimate sentence of my predecessor's letter, he said that, in his



HOUSE OF COMMONS

opinion, the arrangements, as I said before, complied with the requirements of the Act, but he also concluded by saying that it assumes that the “commitments and undertakings made by AEA Technology plc will be fulfilled”, so he was presuming that these were ongoing benefits.

Chris Loder: I am going to come back to you on some of those things in just a moment. Tom, can I just ask you for any view on that question briefly, please?

Tom Josephs: I should start by giving a similar message to the one that Karl gave and that DWP Ministers have emphasised before when addressing this issue, which is that we very much have sympathy for those individuals affected.

Of course, in DWP, we have been very focused over many years on trying to ensure that pension savers are given an adequate pension income and that we protect pensioners against the risk that they face. I might come back to talk a bit more about that later.

On the question that you have asked, my answer would be very similar to Martin’s. It is the case that the terms of the transfer were set out in the relevant Act in 1995, and they did not provide for a public sector guarantee for the private sector pension scheme. It required that, as Martin said, the benefits of the subsequent scheme were no less favourable than the predecessor scheme. It refers to the benefit structure of the scheme. It was not referring to a guarantee around the risks.

Q3 **Chris Loder:** The DWP fact sheet dated July 2013, which you may have and which I am referring to, says that the Atomic Energy Act 1995 had been repealed at that date, but I understand that the pension clauses were not repealed. Are you able to confirm that?

Chair: The DWP fact sheet is referred to in paragraph 15 of the NAO Report, just for clarity.

Chris Loder: The fact sheet said that the Act had been repealed, but the pension clauses were not repealed, as far as I understand it—it was only partly repealed. I just wonder whether you can confirm whether that is the case or not.

Tom Josephs: I cannot give you 100% detail on that, I am afraid.



HOUSE OF COMMONS

Q4 **Chris Loder:** Looking at this, I am wondering how realistic and factually based the DWP fact sheet is, which a lot of interested parties have been relying upon in terms of taking their information, and indeed the information that your Department is offering them. Just so that we are clear, you cannot confirm that. I wonder whether you might be able to confirm it in writing subsequently.

Tom Josephs: Yes, I am happy to do that.

Chris Loder: That would be helpful, thank you. I would just like to return to Mr Clarke, if I may. I just wanted to ask a little bit more about the GAD briefing note, which I am not sure if you are familiar with.

Chair: Just for clarity, the Government Actuary's Department briefing note.

Q5 **Chris Loder:** The briefing note was supplied to interested parties and was a very important part of the decision-making process for them. Could you confirm to the Committee whether that note was changed at any point after it was first issued?

Martin Clarke: No, it was not changed after it was first issued to the members, but, as the NAO briefing note noted, there were earlier drafts of that, which formed part of the dialogue between the Department and the commissioning body, which was the AEAT. There were several drafts of that, as I would expect would always be the case in work that we do of this nature.

Q6 **Chris Loder:** Do you see the Government Actuary's Department as an independent organisation?

Martin Clarke: No. It is a non-ministerial Department, but we are all civil servants.

Q7 **Chris Loder:** Who holds you to account, or who is responsible for you?

Martin Clarke: We are part of the Treasury family and, as I say, a nonministerial Department. I am accountable as accounting officer to the Treasury in that sense.

The advice that we produce is not controlled by Government in any shape or form. It is done according to professional standards, as you might expect of actuaries. The advice is given to the clients who commission it, which could be any one of a number of Government Departments.



Q8 **Chris Loder:** If the advice is wrong or there is a challenge, there is no means of recourse, appeal, challenge or accountability from the public.

Martin Clarke: The advice is given according to members of the actuarial profession, who are subject to codes and discipline, as every actuary is. If there is any question of complaint about the advice that is given by an actuary, there is recourse through the disciplinary and complaints processes of both the Institute and Faculty of Actuaries, as it is called now, and the Financial Reporting Council, which oversees this.

Q9 **Chris Loder:** But, as it stands at the moment, those who have, or believe they have, a grievance based on the information provided by your Department have no means of recourse. As we have heard from Mr Banister, the PHSO says that it does not have jurisdiction to investigate these things, and there appears to be no alternative, unless there is a change of legislation to enable that. Would you agree?

Martin Clarke: You are talking there about within Government. Depending on the timing of this, the Pensions Ombudsman could also be a body that would investigate the administration and management of the pension scheme. I do want to emphasise that the work of actuaries is highly regulated by their own professional body. It is referred to in one of the appendices to the NAO briefing note that this is an area that is open to the members of the pension scheme and, indeed, as far as I am aware, has been used as such, but not published.

Q10 **Chris Loder:** You suggested that there were several drafts of the briefing note. Are you able to tell us why that changed during its passage of drafting and who influenced the change of the drafting?

Martin Clarke: I am not, because I was not available at the time. As I said earlier, it is not uncommon in work of this nature, which is being done at the request of the client—in this case, AEA Technology—that we would partner with them to make sure that there was an opportunity to comment on the material that was being created.



HOUSE OF COMMONS

Q11 **Chris Loder:** My understanding is that a freedom of information request had to expose the fact not only that the briefing changed in its passage, but also that you consulted with AEAT as part of this process. We mentioned just a moment ago the independence of the Government Actuary's Department, and it appears that that may have been compromised along the route if, indeed, you were reliant on interested parties to influence the GAD to the extent that it changed.

Martin Clarke: I would not go that far. It is good practice to have a good working relationship with whatever client is commissioning the work. Certainly, in the work that I do for Government, I would not expect there to be no collaboration.

I would like to emphasise, though, that whoever signs that note off is offering their professional credibility and integrity to it. The note that you are referring to contains phrases such as "in my opinion", which is the professional opinion of the actuary signing it. Therefore, whatever has passed between him, his colleagues and the client would have, hopefully, improved the outcome rather than anything else, but, at the end of the day, he is putting his name and his professional qualification behind the product.

Q12 **Chris Loder:** Could you tell us, therefore, why it took a freedom of information request to understand that, rather than the Government Actuary's Department being open about it in the first place?

Martin Clarke: I am not quite sure what question you are asking.

Q13 **Chris Loder:** My understanding is that pensioners had asked these questions as part of their investigatory work along the route. That information was not forthcoming and it took a freedom of information request in order to ensure it was available. I am just wondering why that was.

Martin Clarke: I cannot answer that question, I am afraid. I do not know.

Q14 **Chair:** What would be your current practice at GAD if a similar request for information was made?

Martin Clarke: Of that nature?

Chair: Yes.

Martin Clarke: We would treat as if it was a freedom of information request, on the basis that, if we refused it, the next thing would be a freedom of information request. I cannot say that that would happen in all cases, but I certainly do not know what happened 27 years ago.



HOUSE OF COMMONS

Q15 Chris Loder: The pensioners affected have said that they believe that briefing note to be misleading. Would you agree with that?

Martin Clarke: I do not think that I will agree with that, but, just in terms of the context, let me explain. The briefing note is quite clear to say what its purpose was, which is what I would expect the author to do, working as a professional actuary. He offers his opinion on what the most important factors are to take into consideration.

Q16 Chris Loder: That opinion was influenced by AEAT, was it not, as part of that process? That is what the FOI showed.

Martin Clarke: I do not know if I would draw that conclusion, frankly.

Q17 Sir Geoffrey Clifton-Brown: Good afternoon, Mr Clarke. I am going to try to pursue this point, which is an important one. In his speech to Parliament—and I quote from Hansard—on 26 October 2016, Oliver Letwin says, “Section 3.1.1 became section 3.2.3 because UKAEA supported the AEAT proposition that the advantages of preserving—in other words, staying in the public sector—should not be presented before the advantages of transferring, as it was in the original draft”. The thing was clearly changed under pressure from both parties. Oliver Letwin’s statement also says: “The whole sequence of events illustrates very clearly that AEA Technology and UKAEA had a joint interest in trying to get as many pensioners as possible to transfer into the AEA Technology scheme”. Was that really something that a respected Government Actuary should be doing?

Martin Clarke: To emphasise, it is not something that I have direct knowledge of. The only thing that I would emphasise is that, whatever the route to get to the final version of this, one finds in many cases that the construction that one is putting on the language, or whatever it might be, might not be the most appropriate. That is why you consult with the commissioning bodies to do it.

The end result is the one that you stand behind. That is your outcome. If the person who was signing this particular information note off was unhappy, they should not sign it. If they have concerns, there are provisions to speak up about it, and those concerns will be taken very seriously. As an actuary, you have the support of your professional body.

Q18 Chair: When you say “speak up”, is that to your professional body?

Martin Clarke: It would ultimately be, but you would be recommended to follow an internal route first. Ultimately, you would be able to get the support of the professional body to advise you on how to deal with any misgivings that you might have, were you in that particular situation. Whatever the route is to get there, you are putting your name to a document that has to stand the test of time and the sort of scrutiny that we are talking about now.



Q19 Sir Geoffrey Clifton-Brown: Can I go to this precise point? I take your point about language and that we are all dealing with hindsight. Nevertheless, I think it is reasonable to put this to you. I do not know whether you have seen the voluminous evidence that we have had put to this Committee on this subject. Have you had a chance to read it?

Martin Clarke: I have seen the notes that the pensioners' body has maintained on their files.

Sir Geoffrey Clifton-Brown: We have had lots of individual evidence.

Martin Clarke: What I have not seen is possibly some of the stuff that you are talking about. I have also probably not seen all the communication material that would have surrounded this particular transaction.

Chair: Just to be clear, the evidence will be published after this session.

Q20 Sir Geoffrey Clifton-Brown: Let me just put, for the benefit of the Committee and everybody else, a comment made by David Roberts, who was one of the pensioners affected. He says, "The GAD note also failed to consider the greater security of the UKAEA scheme...The Government Actuary did not carry out a formal risk assessment and neither UKAEA nor the GAD note warned me that a risk assessment had not been carried out. Both failures are contrary to the codes of practice for fellows of the Institute of Actuaries. It was grossly negligent and misleading of GAD and the UKAEA not to provide a full and proper warning of the risks involved with transferring my accrued UKAEA pension into the AEAT pension scheme. The GAD note is an example of pension mis-selling. This is particularly serious because it was written by a Government Actuary, and the primary duty of an actuary is risk assessment". That is quite strong stuff.

Martin Clarke: Indeed, but I do not change the response that I gave. The actuary signing this thought that he was concentrating on all the factors that were important, in his professional opinion. He acknowledged that a failure of the pension promise, whether it was within the Government or in the private pension scheme, was possible. He used the term "unlikely". What he did not explain—and I do not know how he came to that conclusion—was how that particular view was formed. He probably concluded, but I do not know, that, in the circumstances, it was inappropriate to do the sort of analysis that you might think.

The only thing that I can add from 27 years further on is that the world looked very different in 1996. The concept of the failure of sponsoring employers leaving huge pension deficits had not emerged. That phenomenon became a thing of the later 1990s and early 2000s. Pension schemes were generally very well funded at that particular time, and issues such as what would happen if things all went wrong were less of a factor. I am just saying that, judging with hindsight, if you were doing that today, you would probably concentrate more on some of those risks.



HOUSE OF COMMONS

- Q21 **Sir Geoffrey Clifton-Brown:** Can I just stop you there? That is a really profound statement. I do not want to steal Mr Loder's thunder, but the circumstances at the time when this happened were even more serious than they are today, because the PPF was not in existence. The risk to the pensioners of something going wrong with their pension was much greater then than it is now, so was it not even more important that the advice outlined the risk very clearly?

Martin Clarke: You say that it was more at risk then than now. I am not in a position to judge that.

- Q22 **Sir Geoffrey Clifton-Brown:** It was, because the PPF was not in existence, so if something went wrong the consequence for the pensioners was much greater.

Martin Clarke: Equally, we are talking about a transfer into a pension scheme that was going to be funded. The money that would be transferred out of the Government pension scheme to the new pension scheme would have reflected the cost of providing those pension benefits, as assessed at the time.

It subsequently transpired, when the AEA Technology business went bust, that there was not enough money in the pension fund to meet those requirements. The precautions that there are when transfers of this nature happen would, I would suggest, lead one to assume that, at the point when the transfer took place, the pension benefits that were being secured at that point were funded, the money was separate from the company and the security was there. It is later events that undermined that security.

The degree to which that could be foreseen with any depth or knowledge is debatable. I appreciate what you are saying, looking at it from the perspective of today, but I am suggesting that, in the eyes of the professionals handling this at the time, they considered those factors to be much less significant than we would today.

- Q23 **Chris Loder:** Mr Clarke, could you just tell us why it was not made clear that the Government guarantee would be lost? Ultimately, that is the real issue here, is it not? We can talk about a lot of things, but the fundamental issue here is that the Government guarantee was lost, and I would just like to understand from you why you think that that was not clear in the document.

Martin Clarke: Reversing it out slightly, while I do not mean to be flippant, there was nothing in any of the materials, as far as I am aware, that suggested that the Government guarantee would persist.

- Q24 **Chris Loder:** My understanding is that the whole document was meant to have been an independent piece of advice that all pensioners could take and read, so that they could understand the risks, the benefits and the downsides of them moving to the AEAT pension. Of course, the reality is



HOUSE OF COMMONS

that most, if not all, of them believed that the Government guarantee would continue, but that was not within the GAD document. The real question here is about the influence AEAT had in the changes of the drafts that meant that, in effect, more information was put in it, but that did not necessarily expose this point about Government guarantee, because there was a belief that fewer people would move pension scheme.

Martin Clarke: The intention of the information note produced by the Government Actuary's Department at the time was to assist with people making the decisions over their pensions that they had at the time.

Q25 **Chris Loder:** How do you know that if you were not there?

Martin Clarke: It is what the note says in the first paragraph. I would expect any piece of actuarial material to state its purpose. It came as part of a suite of information. There were other documents, I understand, that were also given to pension scheme members, including a frequently asked questions document produced by the employer, which I have seen. I would be very surprised if there were no other communications over a period leading up to this.

Just concentrating on those two for now, the GAD information note said that it was about helping you make your mind up. As we have covered already, he gave a statement that he would cover, in that information note, the main factors that would be important in that area.

Q26 **Chris Loder:** I am sorry to interrupt, but the question is about the Government guarantee.

Martin Clarke: There was nothing in that note that said that the Government guarantee was continuing. There was nothing in that note that said that there was no guarantee. Equally, the frequently asked questions sheet did cover the circumstances in which the company might fail or be taken over. The frequently asked questions sheet that was produced to accompany this package had a paragraph headed, "What happens to the pension scheme if AEA Technology fails or is taken over?"

Chair: This is at paragraph 1.9 on page 13.

Martin Clarke: I would suggest that, if there was a Government guarantee, that would have been the opportunity to mention it.

Q27 **Chris Loder:** Would you be able to clarify for the Committee, maybe afterwards in writing, the exact changes that were made in the drafting that I have referred to, which the FOI identified?

Martin Clarke: Sure.

Chair: It is information that the National Audit Office has had access to.

Q28 **Chris Loder:** I understand that there were several drafts, and it would be good to understand what changed in each draft, if that were possible.

I would like to talk a little more about Government responsibility. At this



HOUSE OF COMMONS

point, I am more interested in understanding not just what part of Government has responsibility for this issue but, in the, I hope, unlikely event that it were to happen again, what sort of situation we could face. Tom, I would like to ask you that question first, please.

Tom Josephs: Pension policy is a complex and wide-ranging area, so it touches on a number of Departments. DWP has responsibility for many aspects of private sector pensions policy, although the Treasury also has some responsibility, particularly around pension tax issues. Similarly, the regulation of private sector pensions is split between the Pensions Regulator, which is sponsored by DWP, and the Financial Conduct Authority, which is sponsored by the Treasury. Public sector pensions are the responsibility of the relevant Department, the Treasury and the Cabinet Office.

You asked previously about the fact sheet that DWP produced in 2013. That was around the time that AEAT was in financial difficulties and the scheme was going into the PPF.

Q29 **Chris Loder:** That got progressively worse over the years, did it not, and that is what ultimately ended up in the company folding? It is arguable whether the Government were aware of that in the first place.

Tom Josephs: Did you say whether the Government Actuary was aware of that or the—

Chris Loder: No. It was clear, was it not, that the company continued to be loss-making? I understand that a pre-pack administration was administered, which is a question in itself, but probably one for another time. Did DWP not see fit at some point to intervene beforehand?

Tom Josephs: DWP does not intervene directly in cases such as that. The Pensions Regulator is involved in working with pension scheme trustees and employers. Its aim is to, as far as possible, ensure that pension schemes are well funded and can continue to be supported by the employer. Indeed, in this case, it was in contact with the scheme at the appropriate points.

Q30 **Chris Loder:** Is there a risk of us seeing this situation happen again?

Tom Josephs: If you are asking about the risk around a private sector company getting into financial difficulties and having to enter into the PPF, then yes.

Q31 **Chris Loder:** The question I am asking specifically, just so we are clear, is whether we are likely to see this situation again, where there has been a move from a Government-funded pension to a private sector pension, with this whole exposure of the Government guarantee not being the case in reality.

Tom Josephs: It is worth saying that the guidance that is now in place in terms of transfers of pensions when public sector companies are privatised has changed. That is Treasury policy. It introduced what it



HOUSE OF COMMONS

called the new Fair Deal in 2013. That means that the guidance now is that, in those circumstances, employees should remain in the public sector scheme.

- Q32 **Chair:** You say that, but paragraph 1.9—and we have referred to this FAQ document before—says, “The pension scheme assets are, however, protected under pensions law and the employer cannot use the pension funds to support the business...The trustees are legally responsible for the proper management of the scheme, including making appropriate arrangements for future benefits if AEAT ceases to exist”. Although you say that things would not happen now, that paragraph in the frequently asked questions document sounds quite reassuring to anyone reading it who is not a pension expert.

Add to that that, in paragraph 1.13, the NAO, although it makes no conclusions, lays out the fact that, because GAD was involved, that reassured independent pensions advisers that it was a strong recommendation to go into the new scheme. What was DWP’s position at that time? On a reasonable measure, most people reading that would say that that is very strong advice that the new scheme would be good.

Tom Josephs: DWP is not responsible for public sector pensions and, therefore, not involved in policy around the transfer of public sector pensions. This predates the existence of DWP.

- Q33 **Chair:** Are you saying that this is all down to the company?

Tom Josephs: On the point that you are making, I would go back to the point that Martin made. The GAD’s note was very clear that it was not providing advice and that, if members felt they needed advice, they should seek that from an independent financial adviser. I would not agree that it was very strong advice.

- Q34 **Chair:** This was quite a small pension scheme in the grand scheme of things. We have seen that, with other very narrow schemes, independent financial advice on something that is quite specific is quite challenging for the independent adviser, because they have to get to know the scheme and what the issues are. In this case, they had some reassurance from GAD and from documents like the one I just quoted from, giving a lot of warm, reassuring words.

For an average independent financial adviser, even though they have their professional responsibilities, that would back up a reasonably positive view about the AEAT pension scheme and its ability to cope and to make sure that it was paying out the pensions that it was supposed to. Would you not agree? Just on a reasonableness level, if you read that, it sounds pretty reassuring.

Tom Josephs: It does start with a sentence that says that the company “will be subject to the fluctuations of the market”.



Q35 Chair: Then it says there will be “appropriate arrangements for future benefits if AEAT ceases to exist”, so it balances out the first warning with a very big reassurance that “the trustees are legally responsible for the proper management of the scheme”.

Tom Josephs: I would go back to the point that Martin was making. It is very difficult, 27 years later, with the benefit of hindsight and without the context at the time, to really judge these things. This is one excerpt from what is, presumably, a larger document, which we do not have.

Q36 Chair: Just to be clear, Mr Josephs, this is an excerpt that the National Audit Office has highlighted. The National Audit Office does not cherry pick bits of documents in order to present a particular position. This is just a factual document and it has drawn no conclusions and made no recommendations. It is simply pulling together the facts on an egregious case that has lasted, as you say, for 27 years. We just need to be absolutely clear that there is no cherry-picking from that. Those are the facts.

Martin Clarke: As for the wording that you are quoting, Chair, these are precursors to PPF and the regulatory funding. The situation here would be that the transfer value for members moving their past service over would be paid between the two schemes, as I said earlier, the presumption being that that would be sufficient.

In cases where the employer failed before the PPF, the trustees of that scheme would still be responsible for managing the money. In all probability, they would begin to wind the scheme up and give whatever proportion was appropriate to the pension scheme members.

Just reading that, that sentence is describing that situation there reasonably fairly, in so far as it is saying, “The money is yours. It is given over to the new pension scheme. If the company fails, the trustees of that pension scheme will be responsible for seeing whatever benefits they can pay to you out of that money that has been transferred over at the time”. It does not describe circumstances like we see today, where there is a regulatory environment and a backstop fund.

Q37 Chris Loder: In that case, Mr Clarke, could you just help us understand why the GAD statement of practice 1994 says, “It is also relevant to consider, when moving from a public service scheme, that the benefits under those schemes are absolutely guaranteed by the Government”? While you said a little earlier that what we refer to as the GAD note did not say one way or the other, you could quite reasonably say that those reading the statement of practice, in terms of its references used, and making that decision would fairly assume that the Government would underwrite such a situation, as we have seen come to pass.

Martin Clarke: I have to ask for a little more clarity on what you are quoting from.



HOUSE OF COMMONS

Q38 **Chris Loder:** I have here the GAD statement of practice 1994. I am not an expert like you are, but I am just looking at my note.

Chair: Perhaps we can share that afterwards.

Chris Loder: Maybe we could do that and I could just ask you to respond to us about it.

Martin Clarke: I will do.

Q39 **Chris Loder:** That is a crucial point in this work. There is clearly a difference of view and position about it, but, ultimately, it is where those affected pensioners are saying to us, understandably, that they believed that the Government would underwrite in the event of failure of AEAT.

Martin Clarke: As far as I am aware, there was no custom and practice around guarantees in place at the time of this transfer, but I will respond to you.

Q40 **Chris Loder:** That may have been the case, but, depending on the effect of the statement of practice 1994, it is very clear that that advice says that, so it would be good, if you would not mind looking at it.

I am going to bring my questions to a close, but, in doing so, I just wanted to further the point on overall responsibility for this issue. Mr Banister, I am conscious that you have not had many questions yet, so I should probably come to you. The PHSO has determined that it does not have jurisdiction in this field to help. Are there any other particular schemes or situations that may be similar to this, where you do not have jurisdiction to look over it? Are there any particular glaring holes in your remit that we might not know about?

Karl Banister: That is an incredibly difficult question to answer.

Chair: Have you had any others that have cropped up?

Karl Banister: The ombudsman is on record as saying that he finds this particular situation quite difficult, because he sees that there has been a jurisdictional gap in the past in relation to this. He is on record as saying that, if Parliament was willing to fix it—



Q41 **Chris Loder:** What action have you taken to highlight that to Parliament?

Karl Banister: He has spoken to interested MPs. He assisted in identifying the issues that ought to be covered by a private Member's Bill in 2021, because it is a relatively straightforward issue to fix. The ombudsman does have jurisdiction in relation to GAD, but it is in relation to a very specific point, which is that there was an amendment to enable an investigation into the circumstances around the failure of Equitable Life. You can see GAD in schedule 2 of the bodies that are subject to investigation.

Chris Loder: But only in respect of Equitable Life.

Karl Banister: In respect only of matters before a particular date making it possible to investigate Equitable Life, and in relation only to prudential regulation.

Q42 **Chris Loder:** For the benefit of the Committee, would you be able to briefly tell us what legislative requirements there would be for you to have this issue within your remit?

Karl Banister: If we were to have this particular issue in our remit, we would need an amendment to schedule 3 of our Act. Schedule 3 sets out the matters we cannot investigate. There is a broad exception, which is that we cannot look at personnel and superannuation matters. That is the problem here. We would need something very short saying that we could do that in specific circumstances relating to this particular matter.

Q43 **Chris Loder:** If that legislative change were to happen, you would therefore be able to look into this.

Karl Banister: Yes.

Q44 **Chris Loder:** What powers do you have to find a resolution, should that be within your jurisdiction?

Karl Banister: We have very broad powers in the sense of information recovery. We have extremely broad powers to require information. Being completely frank, the issues we have are the passage of time, the information that is available now, people's recollections and so on. In principle, if material is held, we can get it and can consider it.



Q45 **Chris Loder:** Will you be in a position where you could tell the Government that they would have to pay?

Karl Banister: The way we are set up, we do not have powers to compel the payment of remedies. We make recommendations, but Government comply in over 99% of the cases where we investigate.

If Government do not comply with a recommendation—"sanction" is not quite the right word—we have the ability to lay a report before Parliament. If that is something in the remit of PACAC, the Public Administration and Constitutional Affairs Committee, they will normally call the Department to account for why it has not complied with a recommendation. It is more difficult for other Committees. If another Committee has supervision of the issues, that is more difficult. We would like to see that being done routinely because it is a key part of the relationship we have with Government.

Q46 **Sir Geoffrey Clifton-Brown:** Mr Banister, you have explained very clearly why the Act specifically prohibited you from investigating the activities of GAD. If that Act were changed in the way you wanted, would you welcome the ability to investigate GAD's activities? It would not be retrospective; it would be prospective. You would be up against Mr Clarke's colleagues, who are expert Government actuaries. You would need people of equal standing to be able to investigate their actions, would you not? How would all that work?

Karl Banister: First of all, the situation I was responding to was considering these particular events. Tom Josephs has already suggested there might be a difference in jurisdiction. That is not something I am an expert on. That is to do with the Pensions Ombudsman and its jurisdiction.

In relation to these particular events, if we were to investigate, we would do what we normally do: gather all the information and decide whether we think there are indications of maladministration. The question we would have to look at is whether the issues were about the fact sheet or broad communication. It might be a panoply of material. We would then have to take a view about what that meant, if we did find a problem.

We normally take expert advice only in investigations into matters in relation to the NHS because our jurisdiction there allows us to look at the merits of a decision. We are able to consider whether clinical care was good clinical care. In relation to the non-NHS jurisdiction, we look at maladministration only. Normally we do not need expert support for that, but we would have to consider, in the particular case, whether we did. If we did, we would get expert support.



HOUSE OF COMMONS

Q47 Sir Geoffrey Clifton-Brown: Here is a question for all three of you. The universal declaration of human rights requires that any process should have an appeal. If the appeal was not to you, Mr Banister, at PHSO, who would the appeal be to? Could any of the three of you please answer that?

Karl Banister: Any decision by a governmental body is subject to judicial review.

Q48 Sir Geoffrey Clifton-Brown: You and I know that is a very expensive process. Surely pensioners or citizens should have a relatively easy-to-access right of appeal. I am simply asking all three of you where that right is, in this case.

Karl Banister: I would say that is why the ombudsman, Rob Behrens, was interested in having jurisdiction here. He would not call it a right of appeal; he would call it a right of supervision by the ombudsman.

Q49 Sir Geoffrey Clifton-Brown: Whatever it is, if there had been a right of supervision, they would have been able to look at GAD's advice and then opine as to whether it was adequate and whether there was any financial disadvantage. There was no appeal, was there?

Karl Banister: That is as far as I would go on this.

Q50 Sir Geoffrey Clifton-Brown: What about the other two of you? Was there or was there not a right of appeal?

Tom Josephs: The Pensions Ombudsman was able to look at some aspects of this. It decided it was not able to look at the role of GAD. There was an issue around its jurisdiction. The key issue for the Pensions Ombudsman is the relevant time limits. One is the time that has passed after an incident until someone is able to make a complaint. There is also a time limit around the broader statute of limitations, which, as I understand it, meant they felt they would not be able to apply a remedy even if they were—

Chair: That is retrospectively. That is because it has gone on for so long despite many attempts—

Q51 Sir Geoffrey Clifton-Brown: There was a lot of obfuscation at the time. By the time the pensioners realised the one person they might be able to go to was TPO, he then ruled it was out of time. Effectively they had no right of appeal.

Tom Josephs: In terms of this incident, the time that had passed was relevant.

Sir Geoffrey Clifton-Brown: Because of all the obfuscation that took place.

Tom Josephs: A long time passed from the point of transfer in 1996 through to the company failing and going into the PPF in 2012. There was



no issue in between those periods. It reflected the time that passed before the scheme went into the PPF.

- Q52 **Sir Geoffrey Clifton-Brown:** Moving on, Mr Clarke, there is this whole business about whether the GAD was seen as advice. I will read you out the final sentence in paragraph 1.13 in the C&AG's Report. This is agreed by you and by everybody else: "Scheme members also reported that some had consulted independent financial advisers about their pension options, many of whom had deferred to the expertise of GAD, which was seen as an independent actuary with access to key information regarding risk".

It would have taken quite a brave independent adviser to go against the advice of GAD, which was recognised through the profession, to which you have constantly referred today. Is it not a bit disingenuous for GAD to say that pensioners should rely on independent advice?

Martin Clarke: I have no way of knowing whether the part you have quoted is factually true or otherwise.

- Q53 **Sir Geoffrey Clifton-Brown:** It is an agreed Report that was produced by the C&AG.

Martin Clarke: My point is that I have absolutely no knowledge of the conversations between members and their financial advisers. I do not wish to sound complacent or glib here, but, if I got a note out of the blue that recommended that I should go and seek financial advice without any preparation, I would want to know why that was being put in that note.

More generally, the circumstances are very individual, in this particular case, to the member. If I am close to retirement and have a lot of past service, I do not necessarily stand to gain very much from transferring the benefits of that past service to a new employer. If I am a young person or I have limited past service, it might be more attractive or appear more attractive to transfer those benefits because I would be leaving behind inflation proofing in favour of salary proofing. If I am on a salary scale that is rising, my past service benefits will be continuing to increase in value because of salary inflation as I get promoted through the company.

Each individual circumstance is different. It is not possible to give individual advice in a broad note such as this. The note was simply saying, "These are the factors you need to take into account. If you are uncertain about what to do, the recommendation would be to seek financial advice".

It is perfectly reasonable to put that in. Certainly, if I were on the receiving end, I would regard that as something to take seriously. Even if I did not know a financial adviser, I would probably take it back into the workplace and say, "What is all this about?"



HOUSE OF COMMONS

Q54 Sir Geoffrey Clifton-Brown: Clearly, they did take advantage of your GAD note because 90% of them did transfer. Clearly, your note had a huge effect. You are saying, "Well, perhaps they should have taken independent financial advice," but they did not have to. These were extremely bright people, some of the top scientists in the country, and 90% of them transferred. They were clearly influenced by something. I put it to you that it was that GAD note, with all its imperfections, that influenced them.

Martin Clarke: I could not answer that question. You can be the judge of that. I know what was in the note. I know the intention of the note. It is clearly stated. I know the note gave a professional opinion.

I do not know what other information or communication was going on well before the period when the note was issued. I do know the note that is in the NAO Report was part of a package with the frequently asked questions. I would not expect, from 27 years' distance, the GAD note to be the only basis on which the sort of people you are talking about had made their decision.

Sir Geoffrey Clifton-Brown: They did not have much other information, did they?

Chair: They had a month to make the decision.

Q55 Sir Geoffrey Clifton-Brown: That is the next question I was coming on to, Chair. They had one month to make this huge, life-changing financial decision. In your professional opinion, was one month a reasonable deadline to make the decision?

Martin Clarke: Certainly, were that to be repeated today, if it was out of the blue, one month would be judged to be inappropriate. I cannot speak for the circumstances that occurred here because I do not know what happened before the month started. I cannot imagine it came as a big surprise to the people receiving it, but I do not know. I do not know exactly what other information and what lead-up time there was to that one month's notice.

Q56 Sir Geoffrey Clifton-Brown: Mr Josephs, why did your Department, the Department for Work and Pensions, initially respond to complaints on behalf of the Government and then six months later say it was not responsible and direct scheme members elsewhere?

Tom Josephs: The Department issued the fact sheet in 2013 at the point the scheme was entering the Pension Protection Fund. The Department is responsible for oversight of the Pension Protection Fund. I was not around at the time, but I think that, for that reason, a number of complaints or questions were directed to the Department. In order to try to assist with those questions as well as the Department could, it decided to issue the fact sheet.



As you say, the Department also subsequently clarified a wide range of responsibilities, including around the original transfer from the public sector scheme, which is not DWP's policy lead. As you are aware—it is set out in the NAO Report—the ombudsman looked at this issue and said the DWP should have made that clearer in the fact sheet. The Department accepted that and issued an apology at the time.

Q57 Sir Geoffrey Clifton-Brown: An apology is one thing, but it does not make up for a shortage of pension. In February 2014, your note suggested that scheme members refer any further complaints to BIS as the Government Department responsible for overseeing the 2012 changes or to the Parliamentary and Health Service Ombudsman, if they were not satisfied with the outcome of their complaints to DWP.

That was pretty disingenuous, was it not, when you have just heard from Mr Banister that you knew perfectly well that he was not able to investigate any complaints?

Tom Josephs: I would not agree with that characterisation of the Department's position at that time.

Sir Geoffrey Clifton-Brown: Why not?

Tom Josephs: Again, I was not around at that time.

Q58 Sir Geoffrey Clifton-Brown: No, I know you were not around at the time. Surely there is an incontrovertible argument here, is there not? You have sent out advice to pensioners suggesting they go and seek advice from the ombudsman, but you knew perfectly well the ombudsman did not have it within his remit.

Chair: If you did not know, why did you not?

Sir Geoffrey Clifton-Brown: If you did not, as the expert Department you certainly ought to have known.

Tom Josephs: I am sure the Department was not deliberately misleading people. That would not be the case at all. Karl might want to add on this, but there was a view that the parliamentary ombudsman would be able to take a view on some aspects—

Q59 Chair: When you say there was a view, was that inside DWP or across the Government as a whole? Was it hopeful or was it based on an interpretation of the Parliamentary and Health Service Ombudsman's remit that was not shared by the PHSO himself?

Tom Josephs: It also reflects the fact that, as you are referring to, there are a number of bodies involved in this case.

Sir Geoffrey Clifton-Brown: We know that.

Tom Josephs: The parliamentary ombudsman does have jurisdiction over some of the bodies involved, as I understand it.



Q60 Sir Geoffrey Clifton-Brown: It does not—Mr Banister has made it quite clear, and I have it written down here in black and white. I think schedule 2 must have been updated. The ombudsman is subject to the notes in schedule 2, which use the words, “relating to the exercise of functions under (a) Part 2 of the Insurance Companies Act 1982, or (b) any other enactment relating to the regulation of insurance companies within the meaning of that Act”. That was the only bit of the GAD that the ombudsman was able to look after. Yes, I give you the benefit of the doubt that it was not deliberate, but your Department was the lead Department with specialists within it. That was a staggering lack of knowledge, was it not?

Tom Josephs: It is not the case that that note was specifically about GAD’s role in this. My understanding is that the parliamentary ombudsman can look, for example, at the role of the Pensions Regulator and other bodies.

Q61 Sir Geoffrey Clifton-Brown: Let me just stop you there. You have made a statement about your understanding of what the parliamentary ombudsman can look at. Let us go to you, Mr Banister. Is that a correct statement or not?

Karl Banister: The Pensions Regulator is in schedule 2 of the Parliamentary Commissioner Act 1967. DWP is in schedule 2. GAD is there, but it is subject to the notes, as you say. In relation to GAD, as I have explained, there is a restricted jurisdiction. It was included for that one purpose.

Everything in schedule 2 is subject to any restrictions on our powers that are found in schedule 3. We are not intended to look at employment matters, essentially. I assume that, when the legislation was drafted, a long time ago, it was felt that we have employment tribunals and so on to consider those matters and the ombudsman was not needed then. Certainly, we do not seek that jurisdiction in a broad sense.

Q62 Sir Geoffrey Clifton-Brown: Mr Josephs is saying that you could investigate; you are saying you could not.

Karl Banister: I am saying that it is often the case—I am speculating here—that it is only established whether we have jurisdiction when someone comes to us with a complaint.

There are so many bodies. The list of bodies in schedule 2 is long. I do not know what the situation was then or what people did or did not know. It is certainly the case—and it does happen now—that sometimes a complaint comes to us and it is a surprise to people when we are not able to investigate because of one of these restrictions that we have.

Q63 Chair: It is a surprise to people. Is it a surprise to you, sometimes?

Karl Banister: It is sometimes a surprise to us. The point I am making is that, by the nature of things, you can sometimes have complaints about



HOUSE OF COMMONS

quite small bodies that do not normally cause issues. They come to us at a certain point, and we look at the jurisdiction and say we cannot do it. That is not to say anything about what people should or should not know about that.

- Q64 **Sir Geoffrey Clifton-Brown:** At the very least, Mr Josephs, would you not admit that the advice was not clear and that your colleagues at that time should have checked whether the ombudsman could investigate this complaint before they wrote a letter to pensioners telling them that they should take their complaint to the ombudsman?

Tom Josephs: As Karl said, it is not that clearcut.

- Q65 **Sir Geoffrey Clifton-Brown:** In that case, why did you write a note saying they should?

Tom Josephs: Karl is saying there was scope for the ombudsman to look at this case, but they had to make a judgment on the full facts when they saw it. There is a similar issue with the Pensions Ombudsman. Again, it was only when the Pensions Ombudsman did a full assessment of this case that he was able to make the judgment that looking at GAD in this case was outside jurisdiction.

- Q66 **Sir Geoffrey Clifton-Brown:** I will leave it to others to judge, but I think that letter was misleading. Anyway, let us move on. When the Pensions Minister wrote in 2020 that the AEAT pension scheme had been thoroughly investigated, what did this investigation involve and what did it find?

Tom Josephs: My understanding is that that refers to the fact that there had been a large amount of correspondence with the Department on the issue. There had been two Westminster Hall debates. At that point the ombudsman had looked at some aspects of this. It is not referring to a single review; it is referring to all of those investigations.

- Q67 **Sir Geoffrey Clifton-Brown:** In order that we can get something out of this hearing, what more can the Government do to ensure that they respond to pensioners' complaints in a more joined-up way in the future?

Tom Josephs: As I say, the Department apologised for the fact that responsibilities were not made clear in the original fact sheet. That is something we would not want to repeat in future, and we would be careful to ensure the responsibilities were set out in any similar case.

In terms of the specific circumstances of this case—

- Q68 **Sir Geoffrey Clifton-Brown:** We are probably looking forward now. These pensioners were shunted from pillar to post, trying to get advice and trying to get appeals, and they got no satisfaction. Clearly, we never want that to happen again. How can Government bodies be streamlined to make sure that today's pensioners, if a similar thing were to happen, would get much swifter and clearer advice and satisfaction from their complaints?



HOUSE OF COMMONS

Tom Josephs: The point I was going to make, which I think is relevant, is that, as I mentioned earlier, the changes to the policy on privatisations and the transfer of pensions mean that the particular circumstances in this case are very unlikely to happen again because the pensions would remain in the public sector scheme.

One of the complications around this case was that it involved a transfer from public sector to private sector, and therefore there were a number of Departments involved. That would not be the case in the future.

Q69 **Sir Geoffrey Clifton-Brown:** You will be aware of the voluntary national insurance scheme, into which pensioners can pay to top up their pensions. If these pensioners, through the fact that they were contracted out, ended up making smaller contributions to their pensions and have a lower state pension as a result, will they now be eligible for this scheme so they at least are able to top up their state pension and get a full state pension?

Tom Josephs: In my understanding, that is not possible. I do not have full details on that.

Chair: Yes, we recognise that you are private sector pensions and this is state pensions.

Sir Geoffrey Clifton-Brown: Can you write to the Committee and set that out? It is very complicated. That would be very helpful. Thank you very much.

Q70 **Nick Smith:** Helpfully, some of my questions have already been addressed. Mr Banister, could I just go back a few steps? You talked earlier on about a small legislative tweak that would have allowed the ombudsman to look at this case and have oversight of the GAD. Would that help other pensioners in other places or has that possibility been overtaken by other legislation, other regulatory bodies and so on?

Karl Banister: The ombudsman had been thinking about this particular case and the issues raised in it, and he had seen that, for all sorts of complicated reasons, complaints could not be considered. That is what he was looking at. The tweak we had considered was specifically about this.

Q71 **Nick Smith:** This was a sort of sniper shot, you are suggesting.

Karl Banister: The reason we cannot investigate is that we are deliberately excluded from employment matters and so on. It was more that it was intended to be minimal interference with that exclusion to achieve something that—

Q72 **Chair:** Is this an employment matter or a financial matter? It is a bit of a grey area.

Karl Banister: It was related to an employment change. We were not taking an objection in principle to that. The point I am making is that, not



to interfere with that broader exclusion, it was intended to be a refinement to allow us to do it.

Q73 Nick Smith: Trying to take a broader view, every year, sometimes a number of times in a year, we see banks with pension scandals in one sector or another. I would be interested to hear from all of you, given that your experience is very wide ranging, what more can Government do to ensure they respond to pension complaints in a more joined-up way. To us as MPs, it is such a broad campus and so many people are affected in so many ways. Can Government do better at supporting pension consumers?

Karl Banister: From our perspective, when a new policy area or something new is created, it would be helpful for the Government to think about whether there was jurisdiction for an ombudsman to consider any issues, if necessary. If that was considered at a formative stage of policy, we think that would be helpful as a way of trying to avoid this in future.

Q74 Chair: Would that require a legal change? It could require a small legal change.

Karl Banister: I am thinking of situations where new legislation is created. If it is a big piece of legislation, it is a matter of routine to consider whether something should be added to schedule 2 of our Act, but this is about the smaller stuff and whether there is a consequential effect.

We are interested in consistent practice in complaints handling when things do go wrong. We have worked with Government Departments to produce Government complaints standards.

Nick Smith: I noticed an interesting article by Mr Behrens in the papers on the weekend. It is very helpful, given all his experience.

Karl Banister: Yes. We need consistency in our understanding about the complaints process and what it should deliver. The legislation affects a small number of things, but most complaints do not need it. Complainants are looking for a straightforward process where a complaint is understood, properly scoped and there is predictability about the way the Department will respond and so on. That is what we are intending to achieve with the complaints standards. We are working with, among others, DWP on that. We are getting towards potentially agreeing the approach there.

There is a theme—we are talking about it today—about better communication. Some of our broader investigations have really come down to communication of change. It is not the change itself. We cannot opine on whether legal changes are right or wrong. That is not for us. It is about just being clear when you are making changes. Communication is really important so that people can think about their options and so on.



HOUSE OF COMMONS

I do not know whether this is going beyond your question a little bit, but our legislation is really old. We have the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993, which is essentially the same legislation as the 1967 Act. Not much changed. We have a series of things that we need legislation for, which we would like to see.

Complainants have to go through their MP. There is no problem with going through MPs, but some complainants do not want to do that or it can be seen as a barrier. We would like to see alternatives for them. We would like the ability, if we see a problem, to investigate it without a complaint. We have to have a complaint at the moment.

Instead of, on a consensual basis, looking at complaints standards and so on, we would like, as in Scotland, a Complaints Standards Authority power so we could have a bit more oomph when we are dealing with these things.

I have two more.

Chair: Use your moment to make your pitch.

Nick Smith: Yes, we have asked the question. Go on.

Karl Banister: The provisions about alternative legal remedy are quite complicated for us. Particularly in the NHS context, if something serious has happened to someone in the NHS, they have quite difficult decisions to make, and one of them is whether to litigate for negligence.

If they do that, it knocks out a lot of our jurisdiction straightaway. At the point they are making those decisions, they might not be thinking about the service improvement that might be achieved by coming to us. They think about that later and they want that, and then they are told, "We cannot look at care because you have already litigated." We want to remove that barrier. We want to have discretion there.

The last and most controversial thing is the safe space in HSIB. The Healthcare Safety Investigation Branch can access material on a confidential basis that we cannot look at. That is recent legislation. We have made it clear that we think that is a potential impediment to us being able to do our job, if we need to do it.

Nick Smith: Mr Clarke, is there anything you want to add? There was quite a list there.

Martin Clarke: Concentrating a little bit on the work my Department does, it is now extremely rare—I can barely think of an occasion—for us to be on what would be regarded as the front line of communications. At the present time the normal way of operating in anything like this particular scheme would be for our advice to be given directly to the employer or the pension scheme.



While we would help with the communications, we would not have the prominent position that occurred in 1996. There is a variety of reasons for that. Fundamentally, the nature of the relationship we have with clients is that the client commissions us, and they ought to be responsible for the whole communication package.

I still maintain that our professional advice is subject to regulation and discipline. In terms of finding holes, it seems to me that there is a Pensions

Ombudsman, which is the expert at investigating pensions claims. There are difficulties because pensions go on for a lot longer than the limitations within the Pensions Ombudsman's remit. If there is an opportunity to make changes as a result of this experience, I would have thought that was a more natural place to look to secure any change.

Tom Josephs: I was going to mention the Pensions Ombudsman. That is the main route for complaints to be raised in the pensions world. It does have significant powers. It is a strong ombudsman. It was able to look at some but not all aspects of this case.

The ombudsman is reviewed on a regular basis. The next review of the Pensions Ombudsman is later this year. There is an opportunity to look at the role of the ombudsman in the round through that review.

Q75 **Nick Smith:** Mr Josephs, how can financial advice in general be made more accessible?

Tom Josephs: Financial advice, I should say, is primarily overseen by the Financial Conduct Authority—the FCA. Where it relates to pensions, we and the Pensions Regulator work very closely with them on the provision of financial advice. I know the Committee is very well aware of the issues around British Steel and the financial advice that was provided there.

Nick Smith: Yes, very aware.

Tom Josephs: The FCA and the regulator, as a result of that, have taken a number of steps to try to strengthen the protections around that financial advice. There is a long set of reforms and work on the go on that issue. That is still being reviewed.

More generally on pensions—this is not just the UK; it is international—engagement with pensions from individuals is very low. It is difficult to get people to engage on their pension because it is complicated and it is far in the future. Therefore, thinking about how best to nudge people to seek financial guidance or financial advice when they really need it is an important part of the work we are doing at the moment in DWP. Advances in technology could help with that. One of our big programmes is to introduce a pensions dashboard.



HOUSE OF COMMONS

Q76 Nick Smith: Mr Josephs, hand on heart, we know lots about the British Steel pension scheme around this table, and we understand the difficulties of pensioners across the country, constituents of ours, but the answer to my question is really important. Can you write back with more information on better ways the Department is going to engage with supporting pensions across the country?

Chair: When is the dashboard going to be up and running?

Nick Smith: It is promised, but it is off in the middle distance.

Chair: Can you just update us on when the dashboard is coming?

Tom Josephs: We recently announced a delay to the dashboard project. I was about to come on to that. It is a very complicated, technical undertaking, but the Government are absolutely committed to delivering it. To your question, we think that could really be transformative.

Q77 Chair: Will it have visibility on fees for old pension pots?

Tom Josephs: The exact specification of the information that will be available is still being determined, but that kind of information is certainly the sort of thing we would envisage being on the dashboard. We hope that having information on all your pensions available in one place in an accessible way—

Nick Smith: We have high hopes for it. It just seems to go off into the middle distance.

Q78 Chair: We are also in the middle of the McCloud resolution for many public sector pension schemes, some of which, not all of which, will allow a decision at the end when someone retires. That is a lot of public sector pension schemes, which would be very much in DWP's wider remit. There are lots of challenges there. You have possible pension changes being announced this week by the Chancellor. There have been auto-enrolment issues. There have been many pension changes. The more you change in a generation, the more complex it becomes.

Is DWP really all over that? In the end, some of these decisions, as you highlighted at the beginning, are Treasury matters. They are announcements made at a Budget that have an impact for a generation on a group of pensioners, who almost have things done to them. How is DWP balancing its role in getting advice to people and helping people to find the right advice with these other changes that are happening? The one we are talking about today may be 27 years old, but it is a classic example of that.

Tom Josephs: We work very closely with the Treasury on this, and the Pensions Regulator works very closely with the FCA. The big change that has happened in the pensions world is the move away from defined benefits to defined contribution and the introduction of automatic enrolment.



HOUSE OF COMMONS

We have not really talked about that for obvious reasons, but a big focus of our work is on thinking about how we support people who are saving through defined contribution to ensure they can get good returns and an adequate pension, and how we help people manage the financial risk that has now shifted from employers on to individuals.

We recently consulted on a value-for-money framework, which is about ensuring that pension schemes provide fuller information on their costs, on returns and on the service they provide, to allow better comparison across schemes. We are also looking at giving powers to the Pensions Regulator to potentially wind down poor-performing schemes. That is all about protecting savers.

We are also looking at other ways of building on the DC system to support risk sharing across pension savers. We also issued a consultation on collective defined contribution pensions, which is a way of structuring pension schemes to share risk across members more effectively.

Chair: That gives us a taste of what perhaps might be coming. We will pick up on that, no doubt, in our Report.



Q79 Sir Geoffrey Clifton-Brown: Mr Josephs, if the Government wanted to provide some sort of restitution in the case of AEAT, could it use the mechanism that was used in the Equitable Life situation? The ombudsman's ruling was followed post facto and, because it ruled on the damage that had been done to the pensioners, it was not regarded as retrospective. The scheme was implemented and many Equitable Life pensioners benefited as a result.

I should make it very clear, before we get every single Equitable Life pensioner writing to us, that this is only in relation to the advice given by the regulator, not the element of Equitable Life involving the scheme's administrators.

In the same speech to which I referred earlier—this is the case I am talking about; it is exactly the same—Oliver Letwin said, "The ombudsman could rule ex post—not retrospectively but simply with a ruling about what occurred. That ruling would undoubtedly be followed by the Exchequer in constructing a proportionate scheme".

If we wanted to find some restitution for these pensioners, who, after all, have lost a great deal of money, is that a method that could be used?

Tom Josephs: I am sorry. I cannot answer that because I have not seen the full details of the documents you are referring to there. In this episode, it is the case that the Pension Protection Fund has provided the members with compensation. We understand they have not received the full pension benefits they were expecting.

Chair: To be clear, it is less and it is not index-linked.

Tom Josephs: It is index-linked post-1997, not pre-1997. That is the mechanism that the Government set up from the mid-2000s onwards to provide compensation in cases like these, where a company cannot support a pension scheme.

Q80 Sir Geoffrey Clifton-Brown: What is different today for people who transfer into new schemes? How would you provide better information now?

Tom Josephs: Do you mean transfers generally or transfers from the public sector to the private sector?

Sir Geoffrey Clifton-Brown: I mean public sector to private sector transfers, if we ever got another privatisation or whatever.

Tom Josephs: I mentioned this earlier. That is a Treasury policy. In October 2013, they introduced a new approach called new Fair Deal, which essentially states that employees will generally remain in the public sector scheme rather than being transferred into a private sector scheme. I do not know whether Martin may want to say more on that.

Martin Clarke: To a certain extent, the situation we have been talking about all afternoon is most unlikely to happen in the future because past



HOUSE OF COMMONS

service will not be transferred. More generally, in not just the public sector but the private sector too, exercises of this kind have benefited enormously from the experience that everybody has had over the years.

In the ones I have been most recently involved in, which have been public and private sector, all parties—the receiving scheme, the donating scheme and the employers—have been much more careful to address issues of this complexity and reflect modern conditions. The industry in general is learning as it goes in terms of what good engagement and good communication look like.

If we compare today with what would have passed for normal practice 27 years ago, there will be marked differences. The expectation now is that there would be more involved consultation, more engagement and more opportunity to ask questions than would have been the case 20-odd years ago.

Chair: Can I thank our witnesses very much for their time? This is a knotty issue. The passage of time makes it harder to find any resolution.

I have to say this honestly to the pensioners involved. This Committee is not necessarily empowered to find a resolution to the situation you find yourselves in. I am really pleased that the National Audit Office and the Comptroller and Auditor General have agreed to look into the facts of the issue. As we have heard today, there are many lessons that can be learned for the future. I wish the pensioners all the best of luck as we progress.

The transcript of this session will be available on the website uncorrected in the next couple of days—thank you to our colleagues at Hansard. We will be producing a Report on this, which is now likely to be published at some point after the parliamentary Easter recess. Thank you very much indeed.