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BRIEFING PAPER

Number CBP-07740, 24 April 2019

AEA Technology pensions

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1. Background

This note was originally prepared for a Westminster Hall debate on 26 October 2016 on the advice given to members of the UK Atomic Energy Authority (AEA) Pension Scheme but has been updated since.

1.1 Arrangements at privatisation

The AEA Technology (AEAT) pension scheme is a defined benefit final salary scheme, set up when AEA Technology (which was previously the commercial arm of the United Kingdom AEA was floated on the stock exchange in September 1996). AEA Technology had become a Government-owned company that April, although staff remained members of the UK AEA pension scheme until flotation. [1]

The *Atomic Energy Authority Act 1995* detailed the conditions for the privatisation of AEA Technology (AEAT) and included specific information regarding the pension arrangements for transferring staff.[2] Schedule 4, Section 6 (1) (b) of the 1995 Act required the UK AEA to satisfy itself that:

> […] the provisions of [the Scheme] (taken as a whole) confer benefits which, taking into account other benefits which [the Scheme member] will obtain as a result of his employment with the transferee are not less favourable than the benefits conferred by the provisions, as in force immediately before the coming into force of the transfer scheme of the Authority pension scheme in which he is the, or as the case requires, would be entitled to become a member.

Section 7 (1) (b) imposed a similar duty on AEAT. [3]

In November 1996 the Government Actuary's Department (GAD) issued a note outlining the choices available to members of the UK AEA scheme. These were to:

- Leave their preserved benefits in the UK AEA pension scheme (a public service pension scheme); [4]
- Transfer them to the AEAT scheme; or
- Purchase a personal pension.

[1] HC Deb 18 March 2015 c284WH
[2] See Library Research Paper 95/32 The Atomic Energy Authority Bill (March 1995)
[3] PO-4816 Determination by the Pensions Ombudsman, 30 January 2015
[4] UK AEA Pension Schemes. Combined Annual Accounts 2015-16, HC 368, July 2016

This note said it was unlikely that the Scheme would fail or that "the benefit promise made by either the UKAEA scheme or the AEAT scheme would ever be broken."[5]

The Pensions Ombudsman commented that the Scheme's post-privatisation survival, and hence scheme benefits, were not guaranteed:

> AEAT was a private sector company and so there was a risk of the company getting into financial difficulties or failing altogether.[6]

1.2 Pension Protection Fund

The companies which made up the AEA Technology group went into administration in November 2012. KPMG were appointed administrators.[7] The AEA Technology Pension Scheme entered a Pension Protection Fund (PPF) assessment period and transferred to the PPF in July 2016:

> The AEA Technology pension scheme went into the Pension Protection Fund in July 2016, and it is estimated that 3,000 people have been affected as a result. Affected individuals are now covered by Pension Protection Fund compensation arrangements. (PQ 6580, 7 September 2017)

Events leading up to the PPF assessment period

A 2015 determination by the Pensions Ombudsman (PO) explains the events that led up to this (para 5-15). The PO's determination related to a complaint from a scheme member (Mr Lee) that the trustees had failed to act in the best interests of scheme members and colluded with AEA Technology (AEAT) in putting the company intro administration and the Scheme into a PPF assessment period. The PO concluded that:

> 29. It was clear that AEAT was unable to pay its contributions to the Scheme. Early in the proceedings the trustee considered the available options and decided that its preferred solution was for AEAT to be restructured, with the Scheme being taken into the PPF. The trustee worked with AEAT, the Regulator and the PPF to achieve this outcome, and the Scheme received a higher amount as a result. The alternative was for the trustee to commence winding up the Scheme. Both solutions would lead to Mr Lee's benefits being reduced.
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> 30. I cannot interfere with a decision reasonably reached. The trustee had wide discretion as to how to behave in difficult circumstances. The test is whether its decision in this case is perverse, that is, a decision which no reasonable body, properly directing itself, could have reached. I have concluded that the trustee's decision to support the pre-pack sale of AEAT in administration, on the basis that the Scheme would receive more money, was easily within the bounds of reasonableness.

It did not uphold the complaint because:

> Whilst it is clear that Mr Lee feels very strongly that he has been let down by the combination of circumstances that have led to a reduction in the value of his pension, insofar as those circumstances are within my jurisdiction there has been no maladministration.

The purpose of an assessment period is for the PPF to determine whether it should take responsibility for the scheme. It only does so if the scheme cannot be rescued and is not in a position to secure benefits at least equal to PPF compensation levels.[8] If the PPF assumes responsibility for the scheme at the end of the assessment period, it will pay compensation to members in accordance with the *Pensions Act 2004* and regulations made thereunder. Effectively, the PPF rules apply, rather than the scheme rules apply.

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5 PO-4816 Determination by the Pensions Ombudsman, 30 January 2015

6 Ibid, para 28

7 KPMG press release, 8 11 2012, 'Pre-pack' administration saves over 750 jobs at AEA Technology companies; Jack Jones, AEA £165m deficit triggers pre-pack insolvency, *Professional Pensions*, 9 November 2012

8 PPF Trustee Guidance – Overview of the Assessment Period

The PPF provides two levels of compensation. In broad terms:

- 100% to people who have reached pension age or are in receipt of an ill-health or survivors' pension at the time the scheme enters the PPF assessment period; and
- in other cases, 90% subject to a cap.[9]

In addition, the PPF only provides indexation on pension benefits built up since 1997. For more detail see, Library Briefing Paper SN-03917 Pension Protection Fund (October 2016).

1.3 Debates in Parliament

Two Westminster Hall debates on the issue – on 18 March 2015 and 26 October 2016 have debated the following key issues:

- The nature of the advice given to scheme members at the time of privatisation by the Government Actuary's Department (GAD) and whether the Government has an ongoing duty of care in light of this;
- Whether complaints on this should be within the scope of the Parliamentary and Health Service Ombudsman.

Advice given by GAD

Concerns were raised in a Westminster Hall in March 2015 by Conservative MP Geoffrey Clifton-Brown. He argued that the nature of the advice given to scheme members at privatisation meant that the Government had an ongoing duty of care:

> Once part of the new scheme, members were encouraged to transfer all accrued pension service from the UK AEA scheme, by a leaflet presented as impartial advice from the Government Actuary's Department; it has recently been found that the leaflet was changed several times at the request of the UK AEA to remove references to risks involved in the transfer […] People had not been warned of the risks by the official leaflets that they received. The AEA Technology pension scheme received an initial injection of cash from its mother scheme, the UK AEA scheme, based on the accrued service and pension entitlements of the transferred members. The mother scheme was operating with a notional surplus at the time, but none of that surplus was passed to the new scheme, giving the Treasury an increased windfall. Since the AEA Technology pension scheme ran into deficit because of changes in actuarial valuations, it has now become apparent that insufficient funds were transferred into it when it was set up. Moreover, no written agreements appear to have been made to cover such an eventuality. In other words, either the Government have a continuing moral, and possibly legal, duty to those transferred members or they cannot have fully discharged their responsibility under the *Atomic Energy Authority Act*. [10]

He said that scheme members would be disadvantaged by a transfer to the PPF, which does not provide uprating on pension rights accrued before 1997 (which would cover all pre-privatisation service).[11]

The then Pensions Minister Steve Webb responded that on privatisation a scheme was set up to provide benefits on a 'no less favourable' basis. From that point on, it was the trustees who were responsible for ensuring the scheme was sufficiently well-funded to pay scheme benefits:

> Let me go through the points my hon. Friend raised and respond to them as best as I can. The first is the issue of what the legislation meant when it said that the value of

[9] HC Deb 6 January 2014 c42-3W
[10] HC 18 March 2015 c287WH
[11] Ibid c287WH

> accruals in the new scheme had to be "no less favourable." The scheme people came out of was essentially a civil service-type scheme. That meant the new scheme had to enable people to go on building up benefits that were no less favourable; it did not mean that what was then a private company had its pension deficit, for example, underwritten by the taxpayer indefinitely—it could not have meant that
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> Let us suppose that the trustees of a hypothetical privatised new scheme invested recklessly and generated a huge deficit, resulting in insolvency. Would the taxpayer be responsible for the trustees' actions? Similarly, if investment returns went badly for that private company or other private companies, would the taxpayer be indefinitely on the hook for any deficit? Clearly, that is not what the law meant, and it is not our understanding of what it meant; indeed, the more one thinks about it, the more one sees that it could not have been what the law meant. The law was quite clear that people transferring across had to build up benefits on the same—no less favourable—basis as under the scheme they had left. That was the scheme that was set up, which complied with the legislation.[12]

If the Government made an exception for AEAT, there would be pressure to do the same for other schemes:

> If AEA Technology were to be declared a special case, the pension funds of all the people who used to work for BT or British Airways and all the privatised companies would have to have special arrangements, too, with huge cost implications.[13]

He denied that people had been encouraged to transfer to the new scheme:

> People could leave the money where it was, transfer it across to the AEA scheme or take a personal pension transfer. The note [from the Government Actuary's Department] was explicit from the start that it was not designed to lead people down a particular route. In a sense, from the Government's point of view it did not matter. The Government were going to transfer across the cash value of the rights built up, so they did not care whether people transferred across. There would have been no reason for GAD to write a note designed to lead people to a particular outcome. It would cost the Government the same either way.[14]

As regards the amount the Government had transferred to the new scheme, this had been based on a valuation done on a "prudent basis."[15]

Opening another Westminster Hall debate on 26 October 2016, Sir Oliver Letwin explained that at privatisation, individuals had been given a choice to remain in the existing scheme (the UK Atomic Energy Authority scheme) or transfer to the AEA Technology pension scheme. He said GAD had been under a clear duty to "bring out the difference in risk" between the two schemes but had not done so:

> The Government Actuary's Department now has a statement of practice, but at the time it issued that advice it did not. It issued a paper, a copy of which I have in my hand, that discussed transfers from the UKAEA superannuation scheme to the AEA Technology pension scheme. In section 3 of that paper, particularly in subsection 3.2, the Government Actuary's Department listed what it describes on the contents page as "Advantages of preserving", which means the advantages of remaining in the UKAEA scheme. Another section describes
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> "advantages of taking a special transfer value"—
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> namely, the advantages of moving from the UKAEA scheme to the AEA Technology scheme.

[12] Ibid c289WH
[13] Ibid c290WH
[14] Ibid c290WH
[15] Ibid c298WH

> The first strange thing about that is, in section 3, in which the Government Actuary's Department lists the
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> "Factors to consider in making the decision",
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> and was in particular describing the advantages of preserving the UKAEA scheme benefits—looking at what might influence the employees to remain with the public sector scheme—it said:
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> "Whilst it is unlikely that the benefit promise made by either the UKAEA Scheme or the AEAT Scheme would ever be broken—",
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> and it went on to say that it is even more unlikely that both promises would be broken.
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> The important point is that not just any old person but the Government Actuary's Department said it was unlikely that the benefit promise would be broken by either the Government-backed scheme, UKAEA, which is undoubtedly true, or the AEA Technology scheme. I have no doubt that, so far as it went, that statement was accurate, if looked at from the perspective of the date on which the Government Actuary's Department wrote that it was "unlikely" that the benefit promise would be broken by AEA Technology. Incidentally, I hope the Minister and others will trust me; I am sure the Minister has read the whole thing because I know he has been assiduously preparing for the debate.
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> What is clear is that nowhere in the rest of the document does the Government Actuary's Department say what was also patently true—that the risk of the pensioners losing a large part of the value of their pensions if they remained with their accrued rights in the UKAEA scheme was zero, or as near to zero as human beings get. A triple A-rated guarantee from HM Government attended that scheme. No such security was available under the AEA Technology scheme. Commercially-backed schemes do not have a triple A-rated Government-backed guarantee that pensioners will get their money as promised. That is a material difference between the two schemes, and the Government Actuary's Department, in offering advice to pensioners, had a clear duty to bring out that difference in risk. It did not, and that is the starting point for the compelling argument I will make.[16]

The then SNP Pensions spokesperson Ian Blackford said it was "clear from its conduct that the UK Government Actuary's Department has ducked its responsibility to the AEAT pension scheme members." He said there should be a "concerted effort to establish a thorough and independent investigation to determine accountability and all avenues that can be explored to protect pension rights."[17]

Shadow Pensions Minister Alex Cunningham said that "if the advice given to the pensioners was flawed, someone needs to take responsibility for the members' losses." He said the Minister should "agree to consult scheme members to explore all avenues for redress" and should look at the arrangements to protect defined benefit pension benefits more generally.[18]

Responding, the then Pensions Minister, Richard Harrington, said that the Government did not accept that "the loss of pensions" was its fault and did not believe it should "compensate members of the AEA Technology pension scheme above what is being provided by the Pension Protection Fund."[19] The GAD note had not suggested one option was better than the other:

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16 HC Deb 26 October 2016 c163WH
17 Ibid c173WH
18 Ibid c175WH
19 Ibid c175WH

> The note specifically and explicitly said that it did not intend to suggest that one course of action was better than another, and that if anyone was in doubt, they should seek independent financial advice.[20]

Role of the Ombudsman

In the October 2016 debate, Sir Oliver Letwin suggested the Parliamentary and Health Service Ombudsman (PHSO) should be able to rule on whether there had been maladministration:

> It is well established in the case law surrounding the ombudsman that if a Government Department misleads people, that is a form of maladministration, and if it causes them loss, that is a form of maladministration that the ombudsman can rule requires remedy. That is a perfectly well established chain of thought. We might think, therefore, that the Parliamentary and Health Service Ombudsman would be able to rule on whether I am right in asserting that the Government Actuary's Department misled these pensioners and therefore engaged in an act of maladministration.[21]

However, GAD was included within the PHSO's scope only in relation to the exercise of its 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."[22]

An amendment to the legislation would enable the Ombudsman to consider complaints on this issue.[23]

In response, Richard Harrington said that the Parliamentary and Health Service Ombudsman had decided not to investigate a complaint on the issue because it was "not about the actions of a Government Department in relation to a citizen" but about "information provided in relation to employees and employees' pension rights."[24] The current Pensions Ombudsman had decided not to investigate complaints on the issue but this was not on the ground that GAD was outside its remit. Its decisions could be challenged in the courts.[25]

Pensions Minister Guy Opperman went into more detail in a letter to chair of the Work and Pensions Committee, Rt Hon Frank Field, in March 2018:

> […] there is nothing to stop GAD being named as a party to a case considered by the Pensions Ombudsman. The Pensions Ombudsman looks at maladministration: for example, when a trustee or a manager has been given incorrect advice or information. The *Pensions Act 2004* broadened the scope of the Ombudsman's powers to include the investigation of persons or bodies that have carried out an administrative function on behalf of the scheme. This could include GAD, but it is for the Ombudsman to consider whether the issues raised in a specific case fall within his jurisdiction. For the avoidance of any doubt, Government does not see any reason why the Pensions Ombudsman could not investigate a case involving the GAD. The PHSO is also able to investigate cases brought against GAD in certain circumstances related to the exercise of its administrative functions.
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> In the Westminster Hall debate, Richard Harrington explained that the PHSO had decided not to investigate the complaints against GAD in relation to the AEA Technology Scheme. This decision was made on the basis that the complaints were

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20 Ibid c176WH
21 Ibid c167WH
22 Ibid, c167WH; Parliamentary Commissioner Act 1967, Sch 2;
23 Ibid c168WH
24 Ibid c177WH
25 Ibid c178WH

> not about the actions of a government department in relation to a citizen, which is what the PHSO service is for, but were regarding the information provided by that department in relation to employees and employees' pension rights. As is the case for the independent Pensions Ombudsman, it is for the independent PHSO to consider cases on an individual basis and decide if they fall within his remit.[26]

On 28 March 2018, Layla Moran MP asked when legislation on reforms to the Parliamentary and Health Service Ombudsman would be brought before Parliament:

> My constituents are desperate for this Bill to be debated as it pertains to the AEA Technology pensions debacle.[27]

Relevant to this, the Government published a draft Bill in 2016, which would abolish the existing Parliamentary and Health Service Ombudsman (PHSO), Local Government Ombudsman (LGO), merging their responsibilities into a single PSO.[28]

On 14 September 2018, the then BEIS Minister Sam Gyimah said that the Secretary of State had "no plans to make a statement on this matter."[29]

On 11 June 2019, Ed Vaizey presented a Private Member's Bill to Parliament under the 10 Minute Rule Bill procedure which would "make provision to enable a Parliamentary and Health Service Ombudsman to investigate advice given by the Secretary of State and the Government Actuary relating to transfers of pensions from the United Kingdom Atomic Energy Authority pension scheme to the AEA Technology pension scheme; and for connected purposes."[30]

1.4 The AEAT pension campaign

The AEAT Pension Campaign was set up with the aim of achieving "the reinstatement of pension rights as promised by the government at the time of privatisation." It explains:

> **Why does AEAT pension campaign believe members should feel aggrieved?**
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> There are several reasons including the following.
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> AEA Technology was allowed to enter a pre-pack administration and default on its pension liabilities, despite it being an apparently profitable company and actively recruiting. The transfer of service at the time of privatisation was said to be secure and the government does not intending to honour this promise.
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> The AEAT pension scheme was set up to be at least equivalent to the UKAEA one, but the government is not intending to fulfil this statutory requirement.
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> **What does the AEAT pension campaign hope to achieve?**
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> The reinstatement of pension rights as promised by the government at the time of privatisation. A thorough investigation into the pre-pack insolvency of AEA Technology, including the roles of various interested parties, including the pensions regulator, the PPF and the trustees.[31]

Prospect and the AEAT Pensions Campaign have compiled an AEA Technology pensions dossier to support the campaign.

[26] Letter from Guy Opperman to Rt Hon Frank Field, March 2018
[27] HC Deb 28 March 2018 c746
[28] For more detail, see Library Briefing Paper CBP -7496 The Parliamentary Ombudsman: role and proposal for reform (June 2018)
[29] PQ167344, 14 September 2018
[30] HC Deb 11 June 2019 c570
[31] AEAT pension campaign/info