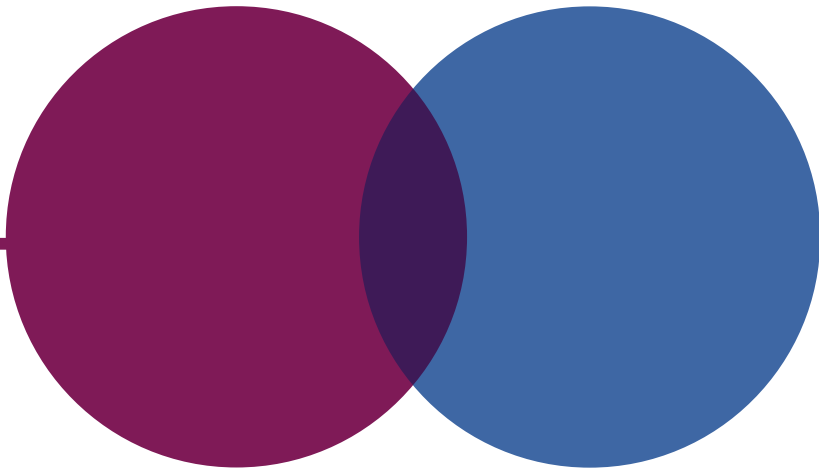




National Audit Office




REPORT

Pensions transferred to AEA Technology when it was privatised

Cross-government

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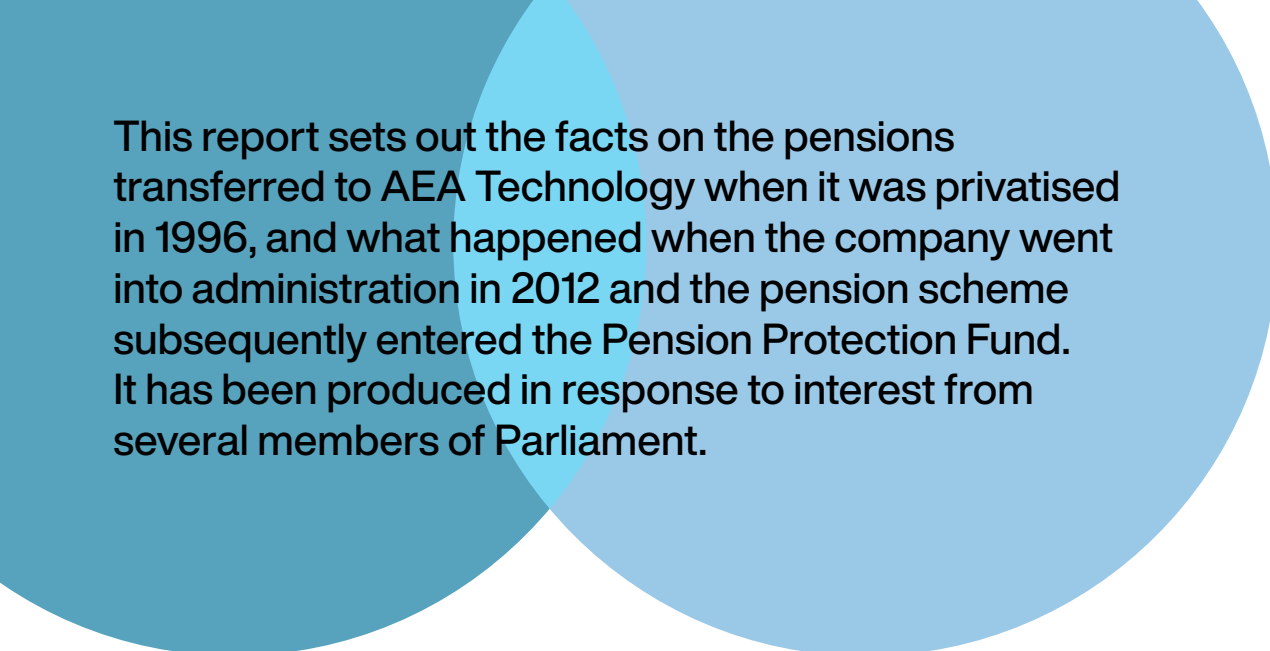
Report by the Comptroller and Auditor General

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of Commons in accordance with Section 9 of the Act

Gareth Davies
Comptroller and Auditor General
National Audit Office

23 February 2023



This report sets out the facts on the pensions transferred to AEA Technology when it was privatised in 1996, and what happened when the company went into administration in 2012 and the pension scheme subsequently entered the Pension Protection Fund. It has been produced in response to interest from several members of Parliament.

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What this report is about

1 The UK Atomic Energy Authority (UKAEA) is the government body responsible for research into nuclear fusion and related technologies. It was formed in 1954 to develop the UK's nuclear research programme. UKAEA offers a defined benefit pension scheme, which provides a guaranteed income to members in retirement based on how many years they have worked and the salary they have earned.

2 AEA Technology (AEAT) was formed in 1989 as the commercial arm of UKAEA, and later privatised in 1996. Employees who were transferred to AEAT joined the company's new pension scheme and had several options for what to do with the pension benefits they had already accrued in UKAEA. This included a special transfer offer to move their accrued pension to a closed section of the AEAT scheme, which would have equivalent benefits. This option was taken by nearly 90% of eligible members.

3 In 2012, AEAT went into administration and the pension scheme subsequently entered the Pension Protection Fund (PPF). This fund is a statutory compensation scheme designed to protect members of a defined benefit pension scheme where the sponsoring employer has become insolvent. However, the compensation it pays is typically lower than the original pension benefits. Many pension scheme members now have lower pension benefits than they would have had if they had kept their accrued benefits in UKAEA's public sector scheme.

4 Since then, scheme members have raised concerns with various parts of government – including departments, regulators and ombudsman services – about information provided to employees in 1996 that informed their decision to transfer their pensions, and about the impact of the company's administration in 2012. There have also been two parliamentary debates on the subject, in 2015 and 2016, where members of Parliament raised concerns on behalf of the pension scheme members.

5 In response to interest from members of Parliament, we have prepared this factual briefing. The report is primarily based on publicly available information and is also informed by documentation provided to us by scheme members and public bodies. It sets out the facts around:

- what the privatisation of AEAT in 1996 meant for its pension scheme, including the options and information available to scheme members;
- the subsequent changes to the AEAT pension scheme following the company going into administration in 2012 and the impact this had on scheme members; and
- the actions taken by scheme members to make complaints to, and seek redress from, government, and the responses they have received.

6 The report does not seek to examine and report on value for money, nor does it seek to examine the merits of actuarial decisions. The report also does not examine the adequacy of AEAT's privatisation or pension settlement.

Summary

Key findings

Transfer of pension benefits on privatisation in 1996

7 When AEAT was privatised in 1996, transferred employees joined the company's new pension scheme, which had similar benefits to the previous scheme.

AEAT's privatisation meant that scheme members were no longer eligible to pay into UKAEA's public sector defined benefit pension scheme, which was guaranteed by government. The Atomic Energy Authority Act 1995 facilitated the privatisation and outlined key conditions, such as pension arrangements. This required that the pension benefits within the new AEAT pension scheme must be "no less favourable" than the previous UKAEA scheme for transferred staff (paragraphs 1.3 and 1.5).

8 The Government Actuary's Department (GAD) provided advice to the then Department of Trade and Industry (DTI) on the terms and overall value of the AEAT scheme at the time of privatisation.

In September 1996, at the request of DTI, GAD conducted a comparative assessment of the UKAEA and AEAT pension schemes' benefits. It concluded that the new pension scheme was no less favourable for employees than their previous UKAEA scheme at the time of privatisation (paragraph 1.6).

9 GAD and AEAT provided information to pension scheme members on their options for the pension benefits they had already accrued.

In November 1996, AEAT and GAD provided information to scheme members outlining their pension options, which were to:

- leave their preserved pension benefits in the UKAEA pension scheme;
- transfer their benefits into a personal pension; or
- take a special transfer offer to transfer the benefits into the new AEAT pension scheme. This offer was only available for one month until December 1996 (paragraphs 1.7 and 1.8).

10 The information provided by GAD stated that the pension benefits promise was unlikely to ever be broken by either scheme. Information provided to members by AEAT suggested that, as a private company, it would be subject to the fluctuations of the market it occupied, and subject to specific laws regarding pensions management. GAD also provided a note to members to outline the main factors to take into consideration in deciding whether to transfer their accrued benefits. This said it was unlikely that the benefit promise made by either scheme would ever be broken. It also said that it is still more unlikely that both would be broken, which could be viewed as a reason to preserve the benefits in the old scheme where other factors are finely balanced. None of the information indicated that members' transferred benefits may be less secure due to the scheme not being guaranteed by government. Some other privatisations in the 1980s and 1990s did have a government guarantee for their pension schemes. Scheme members later learned from freedom of information requests that GAD had made changes to the note at the request of AEAT and UKAEA, including addressing concerns raised by AEAT that the way it was written would discourage members from transferring their pensions. These changes included amending the language used to describe the relative benefits and risks of the different pension options (paragraphs 1.6 and 1.8 to 1.12).

11 Nearly 90% of members transferred their pension benefits to the new scheme, which some attribute in part to the information from GAD. Almost 90% of members took the special transfer option and transferred their accrued benefits into the new AEAT pension scheme. Some scheme members have stated that their decisions were heavily influenced by the information note that GAD provided, which they regarded as a key piece of advice at the time (paragraph 1.13).

Pension scheme changes in 2012

12 After AEAT went into administration in 2012, the pension scheme was assessed for the PPF, which it subsequently transferred to in 2016. In the first few years after privatisation, AEAT's profits increased. However, in 2000-01 the company experienced a loss of £8.6 million. Around this time, AEAT began to sell the nuclear engineering and consulting areas of the business. By 2008, the pension scheme was significantly underfunded, with a shortfall of around £150 million between its assets and liabilities. The scheme's trustees agreed a recovery plan with AEAT to pay additional contributions to the scheme, which the Pensions Regulator reviewed and provided feedback on. However, by July 2012 the deficit had grown to around £165 million. In February 2012, the trustees and AEAT concluded that insolvency was inevitable. They decided that a pre-pack administration (whereby an insolvent company negotiates the sale of its assets before appointing an administrator) would be better than an unplanned insolvency for creditors, including scheme members. After AEAT's business and assets were sold in November 2012, the scheme entered an assessment period for the PPF, and transferred to it in July 2016 (paragraphs 2.2 to 2.5).

13 Compensation provided by the PPF is lower than pension scheme members' benefits, particularly for the benefits transferred in 1996. The PPF was set up to pay compensation to members of defined benefit pension schemes where the sponsoring employer has become insolvent and the scheme assets are not enough to pay at least PPF compensation levels. PPF compensation initially provides 100% of pension benefits for members who had already reached the scheme's normal pension age at the date of insolvency, or 90% for those who had not. However, the compensation is only increased to reflect inflation based on benefits accrued from April 1997, up to a maximum of 2.5% a year. For members who transferred their benefits at the time of AEAT's privatisation in 1996, their compensation reduces in real terms each year as it does not include rises for inflation (paragraphs 2.5 to 2.6).

Complaints made to government

14 Scheme members have raised a series of complaints with government since 2012, particularly that it did not tell members the new scheme had no government guarantee. The complaints cover a range of issues and involve several government organisations, including GAD, DTI (and its successor departments) and the Department for Work & Pensions (DWP). In these complaints, scheme members argued in particular:

- that the legal duty to ensure the benefits of the AEAT scheme were no less favourable than the previous pension should include an equivalent guarantee to the UKAEA scheme; and
- that the information provided by GAD in 1996 did not say that the new AEAT scheme was not guaranteed by government, which was therefore misleading as it failed to highlight the risk of transferring accrued benefits to the scheme (paragraphs 3.2 to 3.4).

15 The government has responded to the complaints, but scheme members have been dissatisfied with the responses. DWP produced a factsheet on behalf of itself and other parts of government in July 2013, which summarised the main complaints government had received and set out responses to each. The government's responses have explained that the benefits promise did not include any government guarantee, and that the information from GAD was not intended as advice and did not seek to compare levels of risk across different options. Following scheme members' dissatisfaction with these responses, the government advised that they should refer their complaints to ombudsman services for independent review (paragraphs 3.2 to 3.7).

16 Relevant ombudsman services have said they cannot review key aspects of scheme members' complaints because they fall outside their jurisdictions.

Ombudsman services are independent statutory organisations set up to make final decisions on complaints that cannot be resolved, such as complaints about a pension scheme by its members. Where they make a decision in favour of the complainant, they can typically award or recommend compensation or other redress. Some aspects of scheme members' complaints have been reviewed; for example, the Pensions Ombudsman observed that the Atomic Energy Authority Act 1995 did not provide statutory protection for the AEAT pension scheme, and that scheme trustees acted reasonably when managing the impact of AEAT's insolvency on the scheme in 2012. However, complaints regarding the information provided to help members make their decisions have not been reviewed. Both the Pensions Ombudsman and the Parliamentary and Health Service Ombudsman have said that they are unable to investigate the complaints about GAD, and that the information it provided in 1996 is outside their statutory jurisdictions (paragraphs 3.8 to 3.11).

Part One

Transfer of pension benefits on privatisation in 1996

1.1 This part sets out the events leading up to the privatisation of AEA Technology (AEAT) in 1996 and the implications for its employees' pensions. **Figure 1** provides a summarised timeline of key points.

The privatisation of AEAT

1.2 The government formed the UK Atomic Energy Authority (UKAEA) in 1954 to oversee the UK's nuclear research programme and later to provide commercial services for industry. UKAEA is the government body responsible for research into nuclear fusion and related technologies.

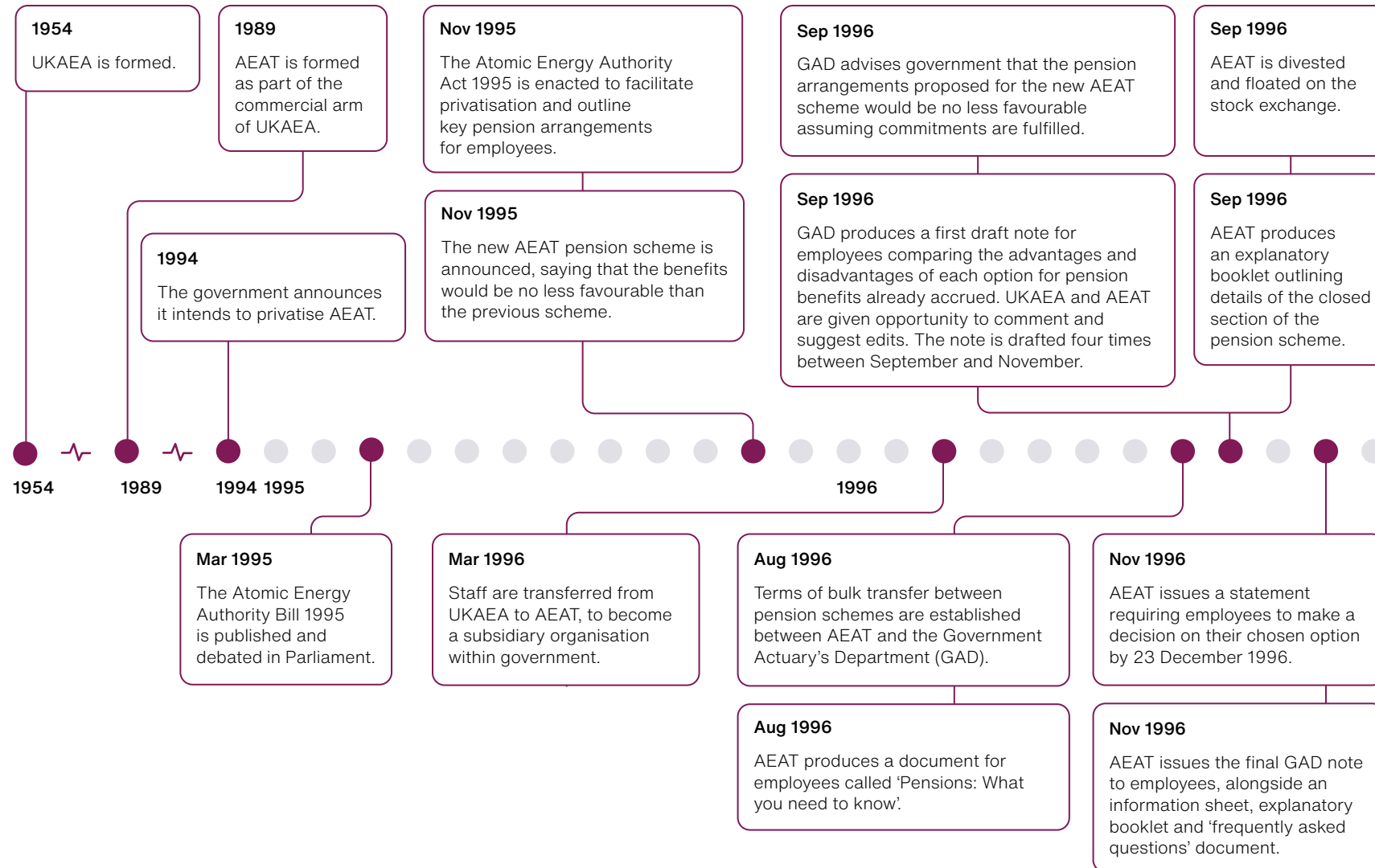
1.3 Like much of the civil service, UKAEA offers its employees a 'defined benefit' pension, which provides a guaranteed income to members in retirement based on how many years they have worked and the salary they have earned. This differs from 'defined contribution' schemes, in which members contribute to a pension fund but the amount later paid out in retirement depends on how much money that fund has made in the intervening years. As a public sector pension, the pension benefits (in particular, the amount paid out to retirees) are underwritten by government. This means that, unless Parliament approves a change to the terms and conditions, the benefits are guaranteed to be paid in full.

1.4 In 1989, the government created AEAT to act as UKAEA's commercial arm, earning money by providing services to industry. It initially remained part of UKAEA, and its staff were members of the organisation's pension scheme.

Figure 1

Timeline of events relating to the privatisation of AEA Technology (AEAT) in 1996 and the transfer of pension benefits

AEAT was formed as the commercial arm of the UK Atomic Energy Authority (UKAEA). It was later privatised and employees were required to choose between pension options



Source: National Audit Office review of publicly available information

1.5 In 1994, the government announced that it intended to privatise AEAT. It developed the Atomic Energy Authority Act 1995 (the Act) to facilitate the privatisation, which took place in 1996. During parliamentary debates before the Act was passed into law, ministers stated that the government had “no intention of selling employees short, and I am sure that the House will welcome the statutory reassurance that we are proposing”, and that the “terms and conditions and pension rights will be fully protected”. The Act outlined specific conditions of privatisation, including future pension arrangements. Employees transferring to the new company would no longer be eligible to pay into UKAEA’s public sector pension scheme and would become members of a new AEAT pension scheme, which was also a defined benefit scheme. The Act became law in November 1995 and required that the terms of the AEAT pension scheme were to be “no less favourable” than the previous UKAEA pension scheme:

“[...] the Authority shall [...] satisfy themselves that in his case the provisions of that scheme (taken as a whole) confer benefits which, taking into account other benefits which he will obtain as a result of his employment by the transferee, are no 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 then or, as the case requires, would be entitled to become, a participant.”

[Source: Atomic Energy Authority Act 1995]

1.6 The Government Actuary’s Department (GAD) provides actuarial support to government to facilitate effective decision-making that considers financial risk and certainty. GAD was involved in the privatisation process in three separate ways:

- The Department of Trade and Industry (DTI)¹, as the UKAEA’s sponsor department in government at the time, appointed GAD to conduct a comparative assessment of UKAEA and AEAT pension scheme benefits. In September 1996, GAD advised DTI that the AEAT scheme benefits were no less favourable than the previous pension scheme at the time of privatisation, based on the assumption that AEAT would fulfil its commitments and undertakings. This assessment was not made available to scheme members.
- On behalf of government, GAD determined the amount of money to be transferred from the UKAEA scheme to the AEAT scheme to ensure it could fund the accrued benefits.
- At UKAEA’s request, GAD also produced an information note for the employees being transferred, which outlined the options regarding their benefits previously accrued in the UKAEA pension scheme. The facts around this information note are set out in paragraphs 1.8 to 1.12.

1 DTI’s functions are currently part of the Department for Business, Energy & Industrial Strategy.

Implications for pension benefits already accrued

1.7 While AEAT employees could no longer accrue further pension benefits from the UKAEA scheme, they had three options for the benefits they had already accrued while they were UKAEA employees. These were to:

- leave their preserved pension benefits in the UKAEA pension scheme;
- transfer their benefits into a personal pension; or
- take a special transfer offer to transfer the benefits into the new AEAT pension scheme, which was only available for one month until December 1996.

Information provided to scheme members

1.8 In November 1996, AEAT sent all pension scheme members an estimate of their accrued UKAEA benefits, the information note produced by GAD outlining their options and the main factors to take into consideration when deciding between them, and a transfer option form that needed to be completed by the end of December 1996. The company also provided members with an information sheet, an explanatory booklet detailing the arrangements of the new pension scheme, and a ‘frequently asked questions’ (FAQ) document.

1.9 The FAQ document noted that the company would be subject to the markets it operates within, but that pension scheme assets are protected in law:

“What happens to the pension scheme if AEA Technology fails or is taken over?”

AEAT, like any private company, will be subject to the fluctuations of the markets it occupies. The pension scheme assets are, however, protected under pensions law and the Employer cannot use the pension fund to support the business. The scheme’s assets will be managed by a Trustee Company whose existence is not subject to the status of AEAT. The Trustees are legally responsible for the proper management of the scheme, including making appropriate arrangements for future benefits if AEAT ceases to exist.”

[Source: AEAT Pensions Office Human Resources Group, *Answers to some Commonly Asked Questions*, September 1996]

1.10 None of the information from UKAEA, AEAT or GAD explained that, as a private company, AEAT’s pension scheme did not have the same protections as the public sector UKAEA scheme as it would not be underwritten by government. Some other privatisations in the 1980s and 1990s did have a government guarantee for their pension schemes. Later publications by GAD, including a 2006 information note, explain the differences between public service and private sector pension schemes including security of benefits. This was not available to scheme members at the time of their decision.

1.11 The information note produced by GAD in 1996 was provided to outline the main factors to take into consideration in deciding whether or not to transfer accrued benefits. It said:

“This note is not intended to suggest that any one course of action is better than any other. This would depend on individual circumstances, and if you are unsure of the most suitable course of action you should seek Independent Financial Advice which would take into account your particular circumstances”.

[Source: Government Actuary’s Department, *Note on the options available in respect of accrued UKAEA benefits*, November 1996]

The note explained the relative advantages of either keeping the benefits in the old scheme or transferring to the new one. It stated that it was unlikely that the pension benefits promise would ever be broken for either scheme:

“Whilst it is unlikely that the benefit promise made by either the UKAEA Scheme or the AEAT Scheme would ever be broken, it is still more unlikely that both promises would be broken, and this could be viewed as a reason to opt for preservation. However, this consideration should not normally outweigh those in relation to salary and inflation, although it might be taken into account where the other relevant factors were very finely balanced.”

[Source: Government Actuary’s Department, *Note on the options available in respect of accrued UKAEA benefits*, November 1996]

1.12 Scheme members later obtained information through freedom of information requests which indicated that GAD had made changes to the note at the request of AEAT and UKAEA. This addressed concerns raised by AEAT that the general tone of the way the note was written was likely to discourage members from transferring their pensions. It included changes to the order with which information was presented, and the removal of specific language regarding the relative benefits and risks of each scheme. For example, the same paragraph in GAD’s earlier draft of the note included a more detailed explanation of why someone may prefer to keep their accrued benefits in the previous scheme:

“It is unlikely that the benefit promise made by either the UKAEA Scheme or the AEATPS would ever be broken. Nevertheless, some people rest easier with the feeling “that the eggs are not all in one basket”. Preserving the past UKAEA scheme benefits whilst joining the AEATPS for the future has the effect of “keeping the eggs in different baskets”. The argument is that whilst it is very unlikely that either promise would be broken, it is still more unlikely that both promises would be broken. By itself, this argument is unlikely to be strong enough to persuade someone to preserve their UKAEA Scheme benefits. It might, however, clinch the decision in borderline cases.”

[Source: Government Actuary’s Department, *Note on the options available in respect of accrued UKAEA benefits, draft version one*, November 1996]

Scheme members' decisions

1.13 By December 1996, nearly 90% of members had chosen the special transfer offer and transferred their accrued benefits into the new AEAT pension scheme. Scheme members have stated that they regarded the information note produced by GAD as a key piece of advice that influenced their decision to transfer. This was due to GAD's role as a professional body independent of the pension scheme, and the stated intention of the note to "outline the main factors to take into consideration in deciding whether or not to transfer". 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.

Part Two

Pension scheme changes in 2012

2.1 This part sets out the events leading up to AEA Technology (AEAT) going into administration in 2012, the pension scheme subsequently entering the Pension Protection Fund (PPF) and the impact on pension scheme members. **Figure 2** provides a summarised timeline of key points.

AEAT's financial difficulty before 2012

2.2 AEAT's profits increased in the first few years after privatisation, but it later faced financial difficulty. Share prices for AEAT rose from £2.80 at the point of privatisation in 1996, to £6.18 in February 1998. In 2000-01, the company experienced a loss of £8.6 million and decided to sell the nuclear engineering and consulting areas of the business.

2.3 The financial difficulties affected AEAT's pension scheme. To be sustainable, a pension scheme needs to have sufficient assets (typically in the form of money and investments) to be able to pay its liabilities (the pension benefits owed to current and future retirees). As AEAT's stock value fell, its pension liabilities began to outweigh its assets. By 2008, the AEAT defined benefit pension scheme was significantly underfunded, with a shortfall of around £150 million.²

2.4 The Pensions Regulator (TPR) provides oversight and support to pension scheme trustees and uses its regulatory role to ensure they comply with their obligations. In 2009, AEAT decided to protect its pension liabilities by closing the scheme to future accruals. This meant that scheme members could no longer make new contributions to the pension, and the amount owed to future retirees would be frozen. AEAT and the scheme trustees also agreed a schedule of further contributions that the company would make, which TPR reviewed and provided feedback on. This was aimed at eliminating the shortfall between assets and liabilities over 20 years. However, by July 2012 the shortfall had grown to a deficit of around £165 million.³

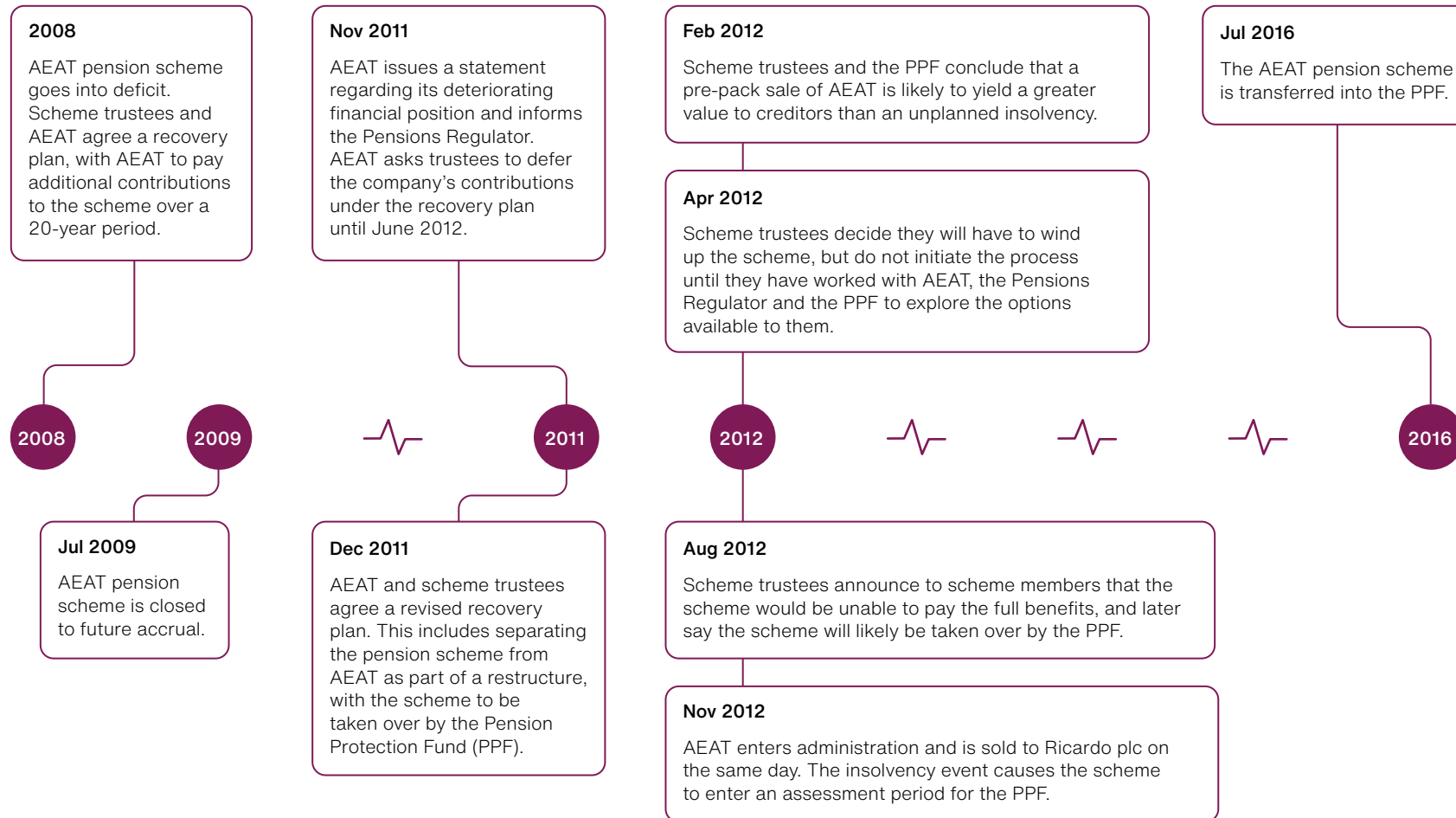
² The £150 million deficit is as set out in a 2009 AEA Technology Pension Scheme report covering the 2008-09 financial year.

³ The £165 million deficit is as set out in a 2015 Parliamentary and Health Service Ombudsman report regarding complaints raised about the AEAT pension scheme.

Figure 2

Timeline of events relating to AEA Technology's (AEAT's) pension scheme changes in 2012

The deteriorating financial position of AEAT's pension scheme led to its trustees winding up the scheme, which subsequently entered the Pension Protection Fund



Note

- 1 The PPF assessment period is when the PPF determines whether it should take responsibility of a defined benefit pension 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. 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.

Source: National Audit Office review of publicly available information

Changes to the pension scheme and impact on members' pensions

2.5 In February 2012, scheme trustees and AEAT concluded it was inevitable that AEAT would become insolvent. They decided that a pre-pack administration (whereby an insolvent company negotiates the sale of its assets before appointing an administrator) was likely to yield greater value than an unplanned insolvency for creditors, including scheme members. In November 2012, AEAT entered administration and its business and assets were sold. The pension scheme entered an assessment period for the Pension Protection Fund (PPF) and transferred to the PPF in July 2016. The PPF was set up under the 2004 Pensions Act. It pays compensation to members of pension schemes where the sponsoring employer has become insolvent and the pension scheme assets are not enough to pay at least PPF compensation levels.

2.6 For members who transferred their benefits at the time of AEAT's privatisation in 1996, their compensation reduces in real terms each year as it does not include rises for inflation. PPF compensation provides members 100% of their pension if they had already reached the scheme's normal pension age at the time of insolvency, or 90% for those who had not. Compensation on pensions earned after 6 April 1997 increases each year in line with inflation, up to a maximum of 2.5%. However, benefits accrued before 6 April 1997 are not increased. Calculating individual levels of loss for scheme members is complex and generally done by actuaries. However, the PPF's compensation rules mean that many of the members who transferred their accrued pension benefits to the AEAT pension scheme now receive a smaller pension than they would have if they had preserved their benefits within the UK Atomic Energy Authority pension scheme in 1996, and the difference grows each year.

Part Three

Complaints made to government

3.1 This part sets out the complaints that members of the AEA Technology (AEAT) pension scheme have made to government and ombudsman services since 2012, and the responses they have received. **Figure 3** on pages 20 and 21 provides a summarised timeline of key points.

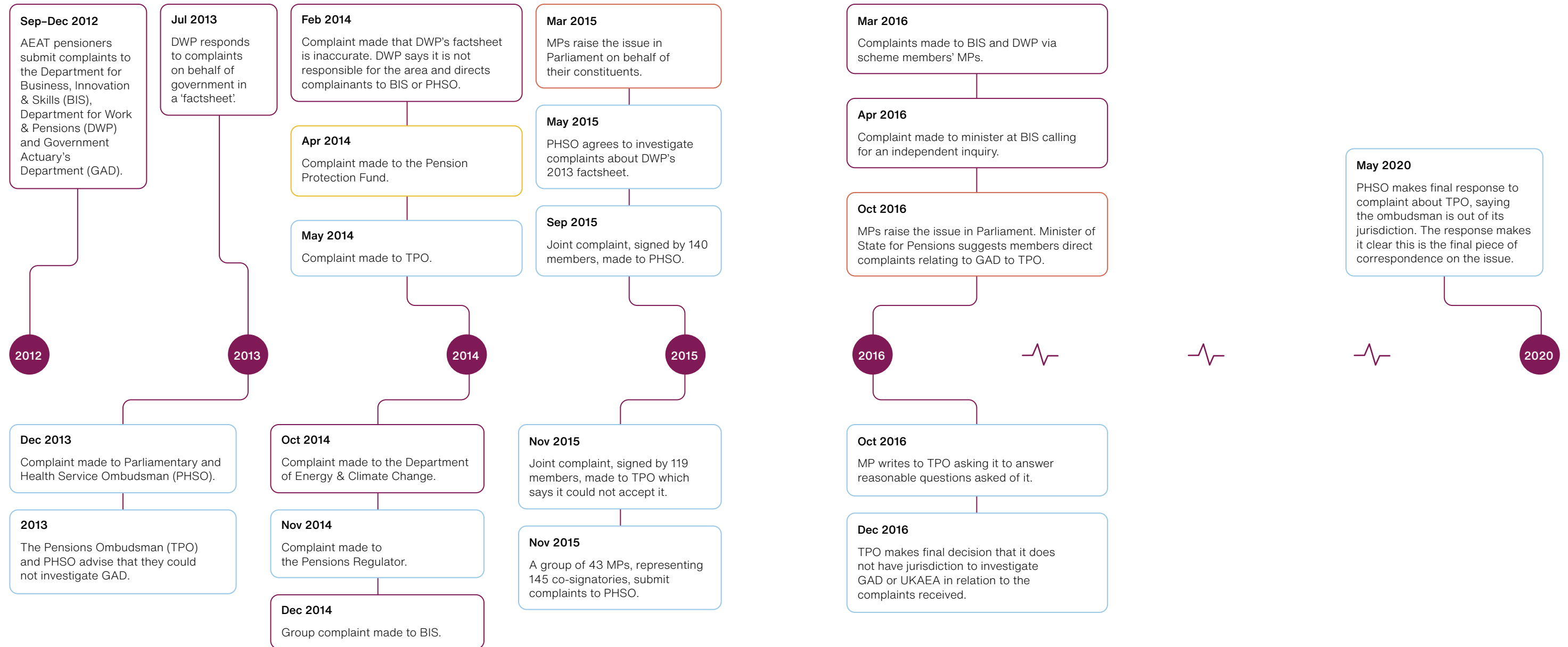
Complaints to government

3.2 Following the insolvency of AEAT and the impact on their pensions, members of the AEAT pension scheme have raised complaints with several parts of government. These complaints cover a range of issues, including the original privatisation deal, the information members received from the Government Actuary's Department (GAD), the Pensions Regulator's involvement with AEAT's pension scheme changes, and the levels of compensation now paid from the Pension Protection Fund (PPF). Appendix Two illustrates the range of issues these complaints have covered, and the public bodies involved. In July 2013, the Department for Work & Pensions (DWP) produced a factsheet that summarised the complaints it and several other parts of government had received, and a response to each on behalf of the government.

3.3 Scheme members first raised complaints with DWP and the Department of Trade and Industry's successor, the Department for Business, Innovation & Skills (BIS), regarding the conditions of the Atomic Energy Authority Act 1995 (the Act). In particular, the complaints argued that the legal duty to ensure the benefits of the AEAT scheme were no less favourable than the previous UK Atomic Energy Authority (UKAEA) pension scheme should include an equivalent to its government guarantee. Through its factsheet, DWP responded on behalf of government that the Act did not provide any guarantee to underwrite the pension scheme, only assurance that, at the time of transfer, the design of the scheme's pension benefits would be of equal or better value than the previous scheme. During Parliamentary debates in 2015 and 2016, the then Ministers of State for Pensions provided the same response. This position was consistent with the comparative assessment that GAD produced at the time of privatisation (paragraph 1.6). However, this information had not been given to scheme members at the time they were making their decisions.

Figure 3
Timeline of complaints made to government by members of the AEA Technology (AEAT) pension scheme since 2012

Scheme members raised complaints to a range of government departments, ombudsman services and members of Parliament (MPs) following AEAT's restructure in 2012



○ Government departments ○ Regulators and ombudsmen ○ Parliamentary debate ○ Pension Protection Fund

Source: National Audit Office review of publicly available information and additional documents provided by members of the AEA Technology pension scheme

3.4 Scheme members also raised complaints that the information provided to them by GAD in 1996 had not indicated that the new scheme would not be guaranteed by government. They argued that it failed to highlight the risk of transferring accrued benefits to the AEAT pension scheme and had therefore misled them into transferring their benefits. By comparison, GAD's note did set out some risks of transferring the benefits to a personal pension, although not in relation to the security of the pension provider. In particular, their complaints argued that GAD's note to scheme members – intended to help them choose between the options available – did not explain that the new scheme was not underwritten by government and therefore had an inherently higher level of risk than their previous public sector pension. The government has responded that:

- while GAD's note did not say that the AEAT scheme was at greater risk than the UKAEA one, it was not intended as advice and did not seek to compare levels of risk across the different options, and it therefore could not have misled members;
- GAD's note could not have covered every possibility, and including every caveat would render it meaningless; and
- the assertion in GAD's note that the benefit promise made by the AEAT pension scheme was unlikely to ever be broken had been a reasonable assumption, considering the company's profitability at the time.

3.5 Scheme members later raised complaints that the changes made by GAD to the wording of the note, at the request of UKAEA and AEAT, contradicted GAD's position as a body independent of the pension scheme. GAD responded to explain that it is standard practice when producing such documents to allow the stakeholders involved to comment on the drafting.

3.6 Scheme members were dissatisfied with the responses they had received. They continued to correspond with a range of government bodies, raising further complaints and highlighting what in their view were inaccuracies within the responses received. While DWP had initially provided a summarised response on behalf of government because of the number of complaints it had received by 2013, it sent scheme members a further letter in February 2014 explaining that it was not responsible for the case. DWP's letter suggested that scheme members refer any further complaints to BIS (as the government department responsible for overseeing the 2012 changes to AEAT's pension scheme) or to the Parliamentary and Health Service Ombudsman if they were not satisfied with the outcome of their complaints to DWP.

3.7 Members have corresponded with BIS and later its successor, the Department for Business, Energy & Industrial Strategy (BEIS). During this time, BEIS's responses have reiterated the position that DWP had originally set out, and it has advised members to refer any complaints to the Pensions Ombudsman.

Complaints taken to ombudsman services

3.8 Ombudsman services are independent statutory organisations set up to make final decisions on complaints that cannot be resolved, such as complaints about a pension scheme by its members. Where they make a decision in favour of the complainant, they can typically award or recommend compensation or other redress. The Pensions Ombudsman (TPO) has powers to investigate and determine disputes about occupational and personal pension schemes. The Parliamentary and Health Service Ombudsman (PHSO) has powers to handle complaints about the NHS in England, UK government departments and some other public bodies.

3.9 Following the responses received from government departments, scheme members referred various complaints to the two ombudsman services. The ombudsmen reviewed some aspects of these complaints and provided final decisions.

- In January 2015, TPO published a determination on a scheme member's complaint, following an investigation regarding the pension benefits promise in the 1995 Act, and on the handling of the changes to the AEAT pension scheme in 2012. TPO observed that the Act did not provide a government guarantee for the AEAT pension schemes benefits and determined that scheme trustees' decision to support the pre-pack sale of AEAT in administration was reasonable. The ombudsman also commented that TPO could not investigate some aspects of the complaint, such as the Pension Regulator's involvement with the scheme during its pre-pack administration in 2012, as they were outside of TPO's jurisdiction.
- In May 2015, PHSO agreed to investigate scheme members' complaint that DWP's 2013 factsheet included misinformation. It partially upheld this complaint, finding that, while the factsheet was clear and accurately represented the government's position, it was incomplete because it failed to set out the roles and responsibilities of DWP and other organisations involved. It found that the factsheet should have provided clearer information about the complaints process, an omission that had caused unnecessary confusion for complainants.

3.10 However, both ombudsman services have said they cannot review scheme members' complaints about the information that government provided in 1996 because the complaints fall outside their jurisdictions.

- PHSO responded that its statutory remit means it can only investigate GAD's work if it relates to the regulation of insurance companies. Therefore, members' complaints about the information GAD originally provided in 1996 regarding their pension options are outside PHSO's jurisdiction. A private members' bill was first presented to Parliament in June 2019 that would amend PHSO's jurisdiction in a way that would allow it to investigate the case. The bill was presented again to the new Parliament in July 2021. It was initially due to have its second reading in the House of Commons in December 2021, which was later changed to May 2022. However, this did not happen, and the bill has not received a further update since then.
- PHSO also said that it could not investigate on the grounds that it concerned public sector pensions, which had a different route for appeal. However, scheme members found that this other route was not available because, at the time of the GAD note in 1996, they were already in the private sector.
- Despite government's responses indicating that scheme members could refer complaints to TPO, the ombudsman said that it was not able to accept these complaints for investigation. TPO responded that its investigatory remit, as set out in legislation, allows it to investigate the employer, administrator, trustee or pension scheme manager of an occupational or personal pension, but that it has no remit over the information that was provided by GAD or the Department of Trade and Industry.

3.11 Scheme members have also tried referring a complaint to TPO about UKAEA, which the ombudsman said it was also unable to investigate. As the outgoing employer, UKAEA does fall within TPO's remit. The complaint argued that UKAEA had provided misleading information to members regarding their pension options. However, under regulations governing TPO's jurisdiction, Parliament has set a time limit of three years between when the complainant first becomes aware of the issue and when they refer the complaint to TPO. TPO ruled that more than three years had passed, and it therefore could not review the complaint. Scheme members disputed this timescale. However, TPO also said that, as the acts which the complaints were about had occurred more than 15 years ago, even if it were to investigate the complaint, it would not be able to provide any remedy to the complainant due to the Limitations Act 1980. TPO also said that it could not investigate complaints where a decision may negatively affect other pension scheme members, as it did not have powers to do so. It argued that if it reviewed the complaint and found that UKAEA should provide compensation, this could have a negative effect on other members of the scheme.

Appendix One

Our approach to this briefing

Scope

1 In response to interest from members of Parliament, we developed a factual briefing into the pensions transferred to AEA Technology (AEAT) when it was privatised. The briefing covers:

- what the privatisation of AEAT in 1996 meant for its pension scheme, including the options and information available to scheme members;
- the subsequent changes to the AEAT pension scheme following the company going into administration in 2012 and the impact this had on scheme members; and
- the actions taken by scheme members to make complaints to, and seek redress from, government, and the responses they have received.

2 The briefing does not seek to examine and report on value for money. It does not seek to examine the merits of actuarial decisions, nor does it seek to examine the adequacy of AEAT's privatisation or pension settlement.

Methods

3 To set out the facts in this briefing, we reviewed a range of publicly available documents, many of which we were directed to by the campaign group run by some AEAT pension scheme members. These included:

- a published dossier which includes scheme members' accounts of the events of the privatisation, restructure and complaints processes;
- information provided to scheme members at the time of privatisation;
- government documents that scheme members obtained through freedom of information requests; and
- correspondence between scheme members, members of Parliament and a range of government bodies regarding members' complaints.

4 We also drew on other public documents, including transcripts of parliamentary debates, parliamentary research papers, and decision notices published by relevant ombudsman services.

5 We reviewed a small number of unpublished documents or correspondences provided by scheme members or public bodies, to ensure that our descriptions of the facts were accurate. However, we did not conduct an overall review of unpublished documents for the purpose of this briefing, due to the availability of public information. Where possible, we have triangulated scheme members' personal accounts with documentary evidence.

6 Where financial figures have been quoted, these have not been adjusted for inflation.

Appendix Two

Summary of scheme members' complaints

1 Since 2012, members who transferred their pension benefits to the AEA Technology (AEAT) pension scheme in 1996 have raised a series of complaints with government regarding their pensions. These complaints cover a range of issues, including: the original privatisation deal; the information members received from the Government Actuary's Department at the time; the Pension Regulator's involvement with the changes to the AEAT pension scheme in 2012; the levels of compensation now paid from the Pension Protection Fund; and the government's handling of complaints since 2012. **Figure 4** on pages 28 to 30 illustrates the range of issues covered within members' complaints and the public bodies involved.

Figure 4

Complaints raised with government since 2012 by AEA Technology (AEAT) pension scheme members

Pension scheme members have raised complaints on a range of issues to various government bodies and ombudsman services

Members' complaints	Government's response	Ombudsman involvement
Complaints about the privatisation deal		
The details of the Atomic Energy Authority Act 1995 (the Act) should provide the AEAT pension scheme with a government guarantee.	The Act did not provide a government guarantee for the AEAT pension scheme benefits, it only ensured that the benefits were no less favourable than the previous UK Atomic Energy Authority (UKAEA) scheme at the time of privatisation.	The Pensions Ombudsman (TPO) observed that the Act did not provide a government guarantee for the AEAT pension scheme benefits. The Parliamentary and Health Service Ombudsman (PHSO) said this was outside of its jurisdiction and that the Department for Business, Innovation & Skills (BIS) was the body responsible for complaints.
The transfer payment that government made for the AEAT pension scheme was underfunded.	The amount transferred from government to AEAT was agreed between the two parties. GAD calculated the transfer amount using financial assumptions agreed at the time.	PHSO said it could not investigate GAD because the complaint was not within its jurisdiction.
Complaints about the information provided to scheme members in 1996		
Information provided to scheme members by UKAEA, AEAT and the Department of Trade and Industry (DTI) failed to make it clear that the new pension scheme would not be covered by a government guarantee.	When responding to complaints about the information provided to scheme members, government has only referred to the note provided by the Government Actuary's Department (GAD) and not to any other bodies.	TPO said it could not investigate DTI or its successors as it was a government department and therefore outside of its jurisdiction. TPO could not investigate AEAT as it no longer existed. TPO said it could not investigate UKAEA because more than three years had passed since the complainant first became aware of the issue. Scheme members disputed this. However, TPO said that, as the acts which the complaints were about had occurred more than fifteen years ago, even if it were to investigate it would not be able to provide any remedy to the complainant due to the Limitations Act 1980. TPO also said it could not investigate UKAEA because a determination may have had a detrimental effect on other scheme members. PHSO said it could not investigate on the grounds that it concerned public sector pensions, which had a different route for appeal. However, scheme members found that this other route was not available because, at the time of the GAD note in 1996, they were already in the private sector.
The note provided to scheme members by GAD in 1996 failed to outline the risk of transferring to the AEAT pension scheme, which did not have a government guarantee. It therefore misled them into transferring their benefits. By comparison, the note did set out some risks of transferring the benefits to a personal pension, although not in relation to the security of the pension provider.	GAD's note did not constitute advice, and its statement that the benefits of each scheme were equivalent was based on the point of transfer only. While the note did not say if the AEAT scheme had greater risk than the previous UKAEA scheme, information provided to scheme members acknowledged that the AEAT scheme could fail. The note also could not have covered every possibility and including every caveat would render it meaningless.	TPO and PHSO said they could not investigate GAD because the complaint was not within their jurisdictions.

Figure 4 *continued*

Complaints raised with government since 2012 by AEA Technology (AEAT) pension scheme members

Members' complaints	Government's response	Ombudsman involvement
Complaints about the information provided to scheme members in 1996 <i>continued</i>		
The 1996 GAD note was not independent as it was changed at the request of AEAT and UKAEA, contravening the Memorandum on Professional Conduct issued by the Faculty and Institute of Actuaries. ¹	It was standard practice to offer stakeholders such as the employer the opportunity to comment on drafts of information such as GAD's note.	TPO and PHSO said they could not investigate GAD because the complaint was not within their jurisdictions.
GAD did not conduct a full assessment of risk, even though its note was intended to help support decisions relating to the transfer of accrued pension benefits.	GAD's note did not seek to compare levels of risk across the different options, and its assertion that the AEAT pension scheme was unlikely to fail had been a reasonable assumption considering the company's profitability at the time.	TPO and PHSO said they could not investigate GAD because the complaint was not within their jurisdictions.
Complaints about the changes to the AEAT pension scheme in 2012		
Trustees of the pension scheme did not act in the best interests of members.	It would be inappropriate for the government to comment on the management decisions of trustees, and members should raise complaints directly.	TPO found that trustees had not acted perversely at the time of pre-pack administration. PHSO said it could not investigate the scheme trustees as they were not within its remit.
The Pensions Regulator (TPR) failed to adequately regulate the scheme and approved trustees' actions that were not in the members' best interest.	TPR does not have power to approve actions of trustees or to advise them, and it cannot explain actions taken in respect of the scheme as this would include restricted information.	N/A
Complaints about the compensation provided by the Pension Protection Fund (PPF)		
The figures used by the PPF to calculate the scheme's eligibility are incorrect and the levels of PPF compensation are too low considering the pension promise within the Act.	The PPF's determination of the scheme's eligibility followed established regulations. The Act did not provide AEAT with a government guarantee. The PPF is limited by statute in the compensation it is allowed to provide.	The PPF ombudsman said that the only part of the referral within its jurisdiction was PPF's funding determination. It found that the PPF's calculation of the scheme's assets and liabilities complied with regulations.
The PPF rule that no compensation based on benefits accrued before 1997 would receive inflation protection is age discrimination.	The government does not believe the PPF rules discriminate based on age.	N/A
Complaints about government's handling of complaints		
Government departments handled complaints about the AEAT pension scheme poorly.	N/A	This issue was not within the scope of PHSO's investigation in 2015.
The Department for Work & Pensions' (DWP's) 2013 factsheet failed to address scheme members' complaints adequately and contained inaccuracies.	The factsheet was a summary of the positions of various government departments that had been involved in setting up the pension scheme.	PHSO investigated DWP's administration in producing the factsheet and partially upheld this complaint. It deemed that the factsheet accurately represented the government's position but failed to outline DWP's role or the complaints procedures, which caused unnecessary confusion. PHSO's report did not investigate the underlying complaints referred to in the factsheet about GAD, BIS or the PPF.

Figure 4 *continued*

Complaints raised with government since 2012 by AEA Technology (AEAT) pension scheme members

Members' complaints	Government's response	Ombudsman involvement
Complaints about government's handling of complaints <i>continued</i>		
The Minister of State for Pensions suggested in Parliament in October 2016 that scheme members could complain to TPO about the 1996 GAD note, despite TPO already having suggested in 2013 that legislation prevented it from investigating the complaints about GAD.	The 2013 TPO suggestion that it could not investigate was contained in an opinion issued by a TPO adjudicator, not a decision made by the ombudsman, or a statutory limit on its remit.	TPO initially suggested in 2013 that it could not investigate a complaint about GAD because it is not an administrator of the scheme. The ombudsman later made a final decision not to investigate further in December 2016.
The Department for Business, Energy & Industrial Strategy (BEIS) was slow to respond to freedom of information requests regarding the government's claims that a thorough investigation into the case had been conducted.	Scheme members say the Information Commissioner's Office (ICO) found that BEIS's response was late and incomplete. However, the ICO has not been able to confirm this because its policy is to retain case documentation for two years only.	N/A

Notes

- 1 Pension scheme members may also have raised complaints relating to the GAD note with the Institute and Faculty of Actuaries, which is the chartered professional body for actuaries, but any such complaints would be confidential.
- 2 This table provides an overview of complaints raised with government by members who transferred their pension benefits to AEAT in 1996, and the responses they received from government. It is not an exhaustive list of all relevant complaints.
- 3 Some complaints may have been made in different ways, at different times and to a range of government bodies. Some of the responses may therefore have come from several different parts of government.

Source: National Audit Office review of publicly available information and additional documents provided by members of the AEA Technology pension scheme

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