



Trust and Pensions Parliamentary Ombudsman Report

Briefing for Members of Parliament

11th July 2006

House of Commons



Parliamentary Ombudsman verdict

- Maladministration caused major injustices to your constituents
- Official information often incomplete, misleading, inaccurate – broke DWP own guidelines
- Policy decisions and framework also to blame for losses
- Government has not understood what it has done
- Compensation and damages should be paid
- FAS not appropriate remedy



What happens on wind up?

- Legal priority order overrides scheme rules and trustee discretion, takes money from one group, gives to another
 - Not fair sharing of assets as trustees would do
- Law says must buy full pensions with annuities for all pensioners first – including early retired Directors
- If no money left after this, even 64 year olds get nothing
- Irrespective of age, length of service, amount contributed or transferred in from other schemes
- Not even protection for contracted-out state pension rights – can lose SERPS and entire company pension



Changes after Maxwell

- Government policy to restore confidence in occupational pensions – essential to keep state pension spending low
- 1995 Act supposed to protect pensions – actually worse!
- MFR, Regulator, priority order, member trustees
- Original intention of MFR - on wind-up pensioners get full annuities, others get transfer value
 - Behind the scenes Government said only 50% chance
- Minister said at the time that the MFR 'should ensure that, irrespective of what happens to the sponsoring employer, the fund will have enough money to meet the value of members' accrued rights'



Government response unprecedented

- Rejection of findings and recommendations
 - Unprecedented challenge to Ombudsman's position
- Denying maladministration is just not sustainable
- Must talk about remedies, not denial
- How can MPs protect constituents in future?
- Government says it did not cause the schemes to wind-up
 - That is not the point
- Wind-up is the trigger, but losses lurking without warning and government is responsible for that



Losses not just caused by employer insolvency

- It is rules of wind-up that caused the worst losses
- Rules changed in 1997 - unfairness, no trustee discretion, not protect GMP - could not happen before 1997
- Other countries had proper protection, only the UK didn't
- Inadequate funding standards introduced, were supposed to ensure wind-up protection, but didn't... and weakened
- Government responsible for wind-up rules, priority order and scheme funding regime
- Pension losses with solvent employer wind-ups often caused directly by inadequate MFR level



Solvent employer wind ups

- DWP does not seem to understand these
- Government says solvent employers responsible for the members' pensions
- That is not right – they have met their legal obligations – Government ignored this when changing MFR
- Employer could legally wind-up and only owe MFR
- Some companies walked away from pension scheme yet money was returned to overseas shareholders
- Priority order and inadequate MFR were Government responsibility and have directly caused losses



Pensions are complex!

STATE PENSION:

BASIC STATE PENSION
(BSP)

ADDITIONAL PENSION
(SERPS/S2P)

- Can contract out to company scheme
- Before 1997, taken back into state scheme in full

COMPANY PENSION:

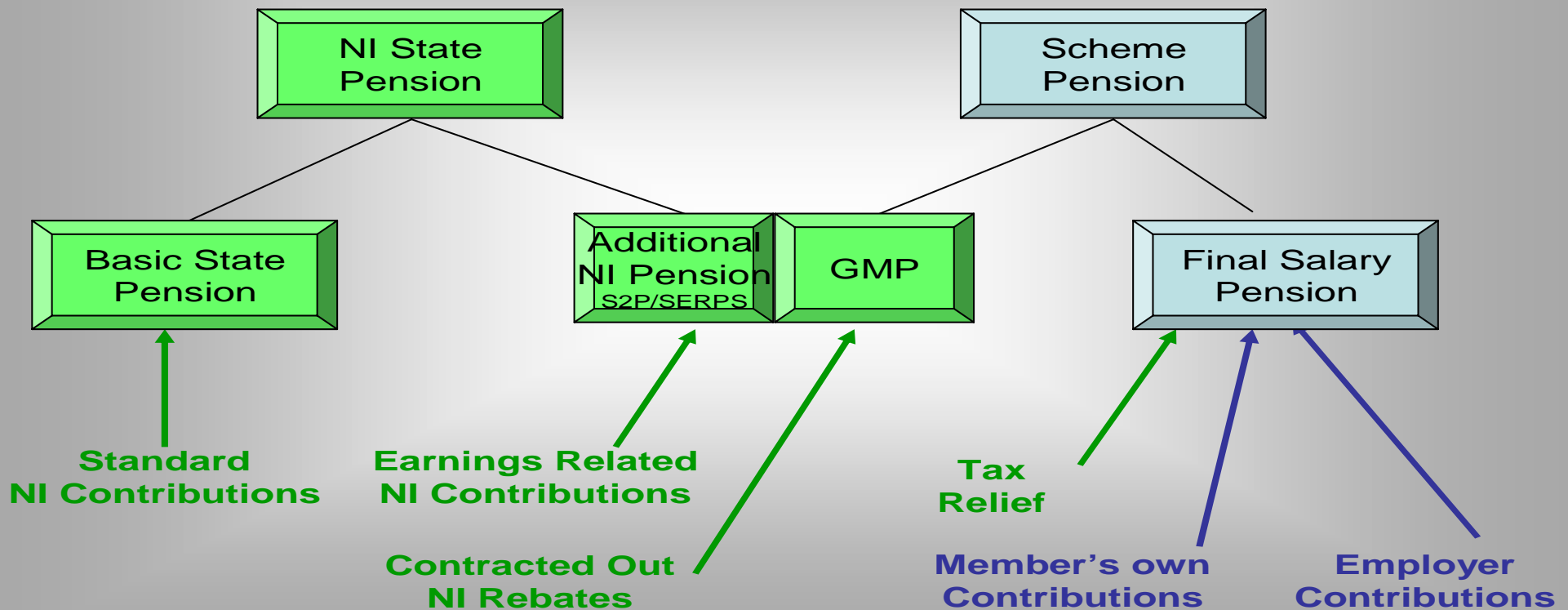
OWN CONTRIBUTIONS
(Company pension)

CONTRACT-OUT PENSION
(Gteed. Minimum Pension)

- GMP to replace SERPS
 - After 1997, only deemed buyback
- + ADDITIONAL VOL.
CONTRIBUTIONS (AVCs)

Some contracted out members have also lost state pension rights

Retirement Income for Final Salary Scheme Members





Stan Carpenter, age 66, no FAS yet 38 yrs in Perivan scheme

Scheme pension due: £86pw

Now getting: £17pw

Of this, GMP was £48pw

About one-third of GMP!

Occupational pension £38pw

No occupational pension at all!
No FAS yet either

State pension statement says £48pw is being deducted from his state entitlement because it should come from his company scheme. But it isn't!

If he had never put any money into his company scheme he would now be getting £31pw week more and would have had use of the 38 years' money he contributed to the company pension!



Effects of this injustice

- People better off throwing their money down the drain
 - Now lost SERPS as well as occupational pension
- Inland Revenue rules didn't allow another pension
- Did not know they might need alternative provision
 - Denied informed choice to protect family
- Relied on official information, believed Government assurances of safety
- Like forcing members to gamble on one share
 - Risk losing their money (and their job)
- Shock, outrage, distress, ill-health, sell home, death



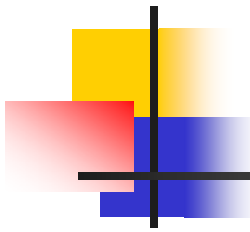
OPRA trustee handbook wrong!

- **Guide for Trustees in 1997 (subsequently changed):**
 - **The 1995 Act 'was intended to increase the security of members' benefits'**
 - **The MFR refers to the minimum amount of funds that should be in the scheme at anyone time in order to meet the scheme's liabilities if it were to be discontinued'**
 - **This is not true, but trustees relied on it!**



1996 DSS leaflet wrong

- 'The minimum funding requirement is intended to make sure that pensions are protected whatever happens to the employer. If the pension scheme has to wind up, there should be enough assets for pensions in payment to continue, and to provide all younger members with a cash value of their pension rights which can be transferred'



DWP leaflets 'Occupational pensions Your guide' misled (1998 to 2004)

- 'How do I know my money is safe?

'Although your employer pays into the scheme and may be a trustee, the assets of the pension scheme belong to the scheme, not to your employer...you are protected by a number of laws...Opra can act quickly to protect your interests'

'If an insolvent (bankrupt) employer has removed your pension scheme's assets dishonestly, the Pensions compensation Board can compensate you'

No mention of risk – anyone reading this would believe their pension was safe



Government's defence

- Total denial
- Government says it is not responsible for any of this!
- Says official information not misleading, but accurate, comprehensive, appropriate general guides
- Claims no-one should have trusted the information
- Should have checked elsewhere, not rely on Government
- Even if people had been warned, they could not have protected themselves – this is not true!



“Material fit for intended audience not meant to be read by members”

- NOT true
- This is what the leaflets said:
 - ‘You will find this guide helpful if you are working for an employer who runs a pension scheme **and you are a member** of the scheme or are thinking of joining’
- Did not warn of risk of wind-up, even after it knew people were completely unaware of the risk
- Clearly incomplete and misleading



“Members should not have relied on Government information”

- Government says official materials all contained clear message that people needed to take proper advice
- This is absolutely NOT true
- Just referred readers to employers, trustees or unions for more information – NOT told to get other advice
 - Nothing mentioned the risks of windup
- Readers were also referred to other official leaflets
 - Which had same reassurances of safety
- Members were told this was ‘impartial information’ - believed it would tell them the truth about schemes



“The material said it was not a complete statement of the law”

- No-one would expect it to be!
- But not mentioning possible risks which Government itself had created on wind-up makes them incomplete
- Priority order and lack of protection even if 100% MFR were such serious issues for long-serving members
- Should have included general mention e.g. ‘you might not get your full pension if the scheme winds up’
- Do not need details of MFR or priority order, but should have alerted them to the serious risks



“The material said it was for general guidance only”

- That is why people were guided by it
- Even ‘general guidance’ should be complete enough to tell people the right questions to consider
- Even general guides should mention the serious risk of wind-up – especially after schemes started failing
- Either Government did not realise what was happening or deliberately did not want to tell the public
- Government said the material would explain the ‘benefits and risks’ but it left out the risks
- More like advertising material to encourage joining



Government says 1996 DSS leaflet not wrong or maladministrative

- MFR will 'make sure that pensions are protected whatever happens to the employer. If the pension scheme has to wind up, there should be enough assets'
- Government says this meant fraud – that can't be true
- If so, it would surely say 'whatever the employer does' not 'whatever happens to the employer'
- And it talks about compensation for fraud elsewhere
- This is wrong and therefore maladministration
- Even if it did mean fraud, then the sentence is confusing and that is still maladministrative



“Leaflets did not need to mention wind up”

- Government says wind-up problems only occurred on insolvency- this was very rare, so did not need mentioning
- Again, this is NOT true
- Ignores the fact that solvent employer schemes wound up too and members lose all their pension
- Does Government not understand?
- Anyway, insolvency not so rare – 1 in 100 members lost pensions
- And leaflets did refer to insolvent employers...



But leaflets **do** mention insolvency

- Twice
- But don't mention the fact that insolvent employer scheme would have to wind up and risks to pensions
- E.g. Leaflets said:
 - 'If an insolvent (bankrupt) employer has removed a pension scheme's assets dishonestly, the Pensions Compensation Board can compensate you'
- Does not talk about wind-up and effect of priority order
- This is misleading, people think they will be compensated if employer goes bust and not enough money in scheme



Government says actuarial warnings were for trustees only

- In 2000, Actuarial profession asked Treasury and DWP to ensure members understood risks of wind-up
- DWP now says the actuarial advice referred to trustees, not Government, this is NOT true
- But report said: 'Need to promote better understanding of these issues among members of the public... The actuarial profession is keen to work with Government, employers and pension organisations'
- Government still did not think to change its official leaflets, kept assuring members their money was safe
- Was not just for trustees – clear maladministration again



“Trustees were responsible for member security”

- Trustees were misled by incorrect OPRA handbook
- Actuaries report said trustees and employers were unaware of the risks of wind-up: priority order, MFR
- These were risks Government itself had created, but hid
- 2000 Jeff Rooker said ‘if **we** cannot protect members interests they have no-one else to look to’
- Government said members were protected by laws, but 1997 changes reduced protection for many members
- Anyway, Government put in disclosure rules and could have required trustees to mention wind-up risks



What Government said at the time:

- 'We published a new series of DSS pension leaflets ... providing clear and unbiased information...promoting awareness of the benefits and risks' – *1998 Green Paper*
- 'Governments should be honest...Whatever else they do, they should not put people in a position in which they do not have adequate pension cover'
- 'There is a clear responsibility to ensure the information that Departments provide is accurate and complete'
- 'We have already tightened up procedures for checking leaflets and guidance' – *2000 Alistair Darling in Parliament*



DWP commitment to ensure accurate information

- After inherited SERPS inquiry, DWP guidelines changed
- Inherited SERPS parallels – same disclaimers, misled public, denied chance to make provision for spouse
- DWP own standards - ALL information and advice (both general and specific) must be accurate and complete
- ‘where we choose to give information it is incumbent on us to ensure it is accurate, complete and can be relied on’
 - DWP legal advice after inherited SERPS
- Therefore, Government’s denials of maladministration do not fit in with what it said at the time



Maladministration is clear

- Tony Wright PASC 'nobody... could possibly doubt that there was maladministration here'
- Government encouraged people to join, informed them about benefits, no mention of risks, no disclosure
- Government put in the rules of wind up and priority order which created risks of such losses
- Government oversaw MFR (50% chance weakened) – other countries funded for solvency, we chose not to
- Oversight of MFR ignored relevant factors – in particular ignored member security on wind-up!



Causal connection

- These were quasi-Government schemes – official controls
- If Government had not told members they were safe, even if employer failed, they would not have thought so
- Members relied on Government assurances
- If known about priority order, could have retired
- Could have left scheme, saved elsewhere, not put in additional voluntary contributions, encouraged more employer funding, not transferred in etc
- Solvent employers schemes could have had enough to pay pensions



Government says too expensive to compensate

- £15billion figure to frighten MPs
- Net present value is about £3billion – still overestimate
- Does not account for tax paid and benefits not paid
- Turner and Treasury say cash costs not appropriate as inflates figures
- Actual cost around £100-£150million a year – can come from taxpayers or other sources
- Government not tried to find rescue package – just FAS
 - Worse than Maxwell!



FAS spin, not substance

- Government says Financial Assistance Scheme recognises it has a 'moral responsibility'
- Government says it helping those in most urgent need
 - Again, not true
- Only 100 people paid - thousands are past pension age
- Less than 1000 to be paid by end 2006
- Your constituents need help now



FAS not giving much help

- Government has not been honest about the FAS
- Will not give 80% of 'expected pension'
- Many of those in 80% band will get just over half their expected pension in retirement
- In 65% band, will only get about 45%
- In 50% band, will only get $\frac{1}{4}$ to $\frac{1}{3}$ of pension
- This is a miserable response to people's losses



FAS cost overstated

- Government says extension means FAS will cost £2.3bn
- But again this is the 'cash cost' - over about 45 years
- The net present value is only **£540m**
- This still takes no account of tax paid on FAS benefits and of means tested benefits not paid, so will cost even less
- Still leads to huge loss of pension
- Extension of scheme entails no Government spending for years – smoke and mirrors, but not real help



Injustices of FAS

- Wait till 65 even if scheme age 60
- Wait till scheme wind-up finished
- No inflation linking on any payments
- No tax free lump sum – all payments taxable
- £12,000 cap
- Cap not indexed (in 15 years worth about £8000)
- No life assurance and widows benefits much lower
- If aims to get help to those in urgent need – failed!



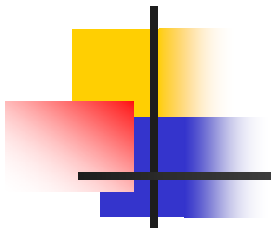
Alternative remedies

- Government not seriously looked to organise rescue
- Cost of compensation £100-£150million indexed a year
- Not all from taxpayer – unclaimed assets, pursue employers, pay back tax taken on insolvency etc.
- Compare: Pensions tax relief > £20 billion a year
- Contracted out rebates > £11 billion a year
- £1.5m lifetime limit changes to cost £hundred millions



Summary

- Parliamentary Ombudsman verdict unequivocal
- Parliamentary democracy and justice for constituents
- These people will not go away – EU court case, judicial review, PASC
- If they are not compensated, how can anyone ever trust Government on pensions future?
- White Paper to encourage personal responsibility and savings culture - cannot succeed if this left unresolved
- Confidence and Trust



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