

A guide to Parliamentary Ombudsman report's findings and recommendations

The Report finds the Government guilty of causing the injustices and financial losses suffered. It must pay full compensation, plus damages, must apologise for its actions and must replace the Financial Assistance Scheme with a proper compensation arrangement.

The recommendations of the report are as follows:

1. Pensions must be fully restored to all those whose scheme started wind-up since April 1997
2. All other scheme benefits must also be restored – including tax free lump sums, life cover, ill-health cover and survivor benefits
3. Consolatory payments (damages) should be offered, as a tangible recognition of the distress, outrage, inconvenience and uncertainty suffered
4. Government should apologise to scheme trustees for the effects of the maladministration on their ability to perform their duties
5. Government should conduct an urgent review to speed up scheme wind-ups
6. The Financial Assistance Scheme must be fundamentally changed or replaced, since it is causing further injustices
7. Pension language should be clarified and the industry should take care over the language it uses in future. Phrases such as 'guaranteed' and 'fully funded' should not be used if they will mislead members.
8. Any members who have suffered other losses – such as those who have been forced to sell their homes because they did not get the pensions they were relying on – should claim compensation from the DWP compensation scheme

The cost implications

Headline costs of these recommendations would be many billions of pounds. At least £5billion. However, pensions are paid over many years and if the pensions are paid out on an ongoing basis, rather than capitalising the sum immediately, the costs should average around £120million a year for 40 years. Further delays will only mean extra burdens on taxpayers in the end. Using unclaimed assets is another possible route, but the Government has so far refused to use them for this purpose. Of course, if unclaimed assets are used, taxpayer costs could be minimised.

Summary of Parliamentary Ombudsman verdict on what Government did wrong

1. Failed to tell Parliament or public that the MFR only gave a 50/50 chance of non-pensioner members getting their accrued pensions.
2. Removed ACT relief from pension funds, leaving them with lower income immediately undermining the MFR.
3. Decided to produce official materials to encourage membership of occupational pensions.
4. Told the public its leaflets were designed to be accurate, unbiased and public trusted this.
5. But official information only portrayed positives – no risk warnings. This broke DSS own rules.
6. Weakened the MFR twice and failed to strengthen it when advised to do so.
7. Failed to check annuity rates and to take proper account of the impact of the MFR on security for members' pension rights if solvent employers decided to wind-up scheme.
8. Ignored warnings that members were unaware their pensions were at risk.
9. Failed to recognise its own role in this injustice and refused to compensate those whose trust was betrayed and who were denied any chance to protect themselves and families
10. Financial Assistance Scheme has given false hope, compounded the injustice, excludes most of those affected and results in even less pension for most of the 85,000 victims.

Brief summary events outlined in Parliamentary Ombudsman's report

1995 Pensions Act introduced official Minimum Funding Requirement (MFR) after Maxwell scandal, to restore confidence and ensure final salary schemes properly funded.

Parliament and public were told MFR meant pensions safe whatever happened to the employer, not told that MFR calculation would only give 50/50 chance of members getting their pensions.

Labour removed ACT relief on pensions in July 1997 – undermined MFR calculation.

MFR was weakened in 1998 – (pension transfer values had become 100% secure and were only meant to be 50% secure!)

Government policy decision to encourage membership of occupational pension schemes.

Government said the public did not know who to trust after Maxwell scandal (not employers or trustees?) and pension mis-selling (not financial advisers?), so it would be issuing its own leaflets to inform the public.

Alistair Darling said Government literature must be accurate and comprehensive and DSS guidelines would be introduced to make sure leaflets were checked before being issued.

1999/2000 Actuaries said MFR needed to be strengthened, Government ignored this advice.

DSS and FSA 'information' leaflets said schemes were safe, protected by law and 'guaranteed'.

Actuaries advised Government to tell members MFR did not mean their pensions were secure. Fearing that warning of the risks of wind-up would reveal the MFR was only designed to deliver a 50/50 chance of getting the pension, Government ignored this advice and did not tell them.

The MFR weakened a second time in 2002, after the 9/11 market falls, and employers were given longer to get back to full funding, but Government leaflets continued to say pensions were safe and not mention risks of wind-ups.

Malcolm Wicks assured Parliament that measures were in place to protect pensions.

2002/2003 Official leaflets revised to try to encourage members to join occupational schemes. Still told the public that final salary pensions were safe, no warning of wind-up risks.

Malcolm Wicks said the Government had merely followed actuarial advice in weakening the MFR. Did not mention that they failed to follow the advice to strengthen it.

85,000 members of various schemes lost their pensions, some also lost their state 'Guaranteed Minimum Pension' rights, but Government denied any responsibility.

2004 Government changed leaflets and eventually changed the law, but has consistently refused to compensate those who relied on Government assurances of safety. The Financial Assistance Scheme will never help most of those affected. Their lives are in ruins, despite doing everything Government told them to do. We as a nation should not allow this injustice to stand. When Governments make mistakes, they must correct them.

The Parliamentary Ombudsman's verdict

What injustices have occurred?

The Parliamentary Ombudsman finds that the injustice is much more than just the financial losses. It includes:

- a. financial loss (lost pension, tax free lump sum, life insurance, forced sale of house)
- b. sense of outrage and distress
- c. uncertainty
- d. loss of self respect
- e. impact on health and families
- f. lack of informed choice
- g. lost opportunities to take remedial action etc, etc,

Did maladministration cause the injustices?

This is the crucial question and the Parliamentary Ombudsman's study of all the evidence concludes that maladministration was the direct cause of all the non-financial injustices. She finds that maladministration itself was also one of the factors which caused the financial losses and, importantly, the other factors which caused the financial losses were the responsibility of Government as well. Thus, Government has been found guilty of causing the members to lose their pensions and also of causing the other injustices they have suffered. Her analysis shows that the financial losses were caused by:

- a. maladministration
- b. the legal framework for occupational pensions
- c. government policy decisions
- d. wind-up delays
- e. *some* employer actions

Apart from the maladministration, it was Government policy decisions which allowed employers to walk away from their pension promises. Government kept the law unchanged, even after warnings of lack of security, but continuously reassured the public that members' accrued pension rights were safe. In 1999 Stephen Timms said Government would try to speed up wind-ups but he *still* has not done so.

In addition, the financial losses were contributed to by other factors as well: These are not all maladministration, but were Government responsibility

- removal of ACT dividend tax relief – (Government decision)
- Government did not require disclosure of security to members – (Government decision)
- Employers were allowed to take contribution holidays – (employers, actuaries, Government)
- Inland Revenue decision to tax surpluses in 'over-funded' schemes – (Government decision)
- Statutory priority order – (Government decision)
- Pensions were unsecured creditors on wind-up – (Government decision)
- MFR was weakened twice – (Government decision)
- solvent employer windups only required to pay full MFR, not buyout – (Government and employers)
- Employers were allowed several years to get to 100% - (Government decision)
- Government then extended time for returning to 100% further in 2002 – (Government decision)
- 100% MFR was never enough to protect the pensions anyway, ignored annuity costs – (Government decision)

The Government appears, over the years, to have consistently claimed to be doing things which it did not actually do. It seems to have said one thing, but done another.

WHAT GOVERNMENT SAID:

In 1995 Government said 'the MFR will mean that members can be confident that the value of their accrued rights is secure, especially in the event of the scheme or the employer company winding up. It is only right that the members' investment and their accrued occupational pension rights, should be properly protected'.

In 1997 after removing the dividend tax credit from pension funds, Labour's first consultation on pensions said it aimed to 'build a sustainable consensus for the long-term future of pensions...People need to have confidence in pensions and be sure their pensions are secure'.

In 1998 DSS said it would work with the FSA to improve pension information, including promoting the awareness of the benefits and risks. 'Government and financial Regulators have a central role to play in developing the long-term framework...People should be encouraged to join their employer's scheme, but will only do so if they believe their pension rights are properly protected'.

In 2000 the Actuarial Profession recommended that the MFR should be strengthened. Officials told the Pensions Minister, Malcolm Wicks, that this would restore the MFR to its original strength, but added 'if we introduce these changes ...we are likely to come under pressure to similarly change the assumptions used in the calculation of (contracting-out) rebates which would make them more expensive to Government. We do not have Treasury agreement to this.'

In 2000, Alistair Darling said 'The public rely on Government information and they are entitled to be reassured that leaflets are accurate and comprehensive.' 'It is important that Governments should be honest about what they do... Whatever else they do, they should not put people in a position in which they do not have adequate pension cover.' Malcolm Wicks told Parliament 'we are aware of the importance of protecting members' rights. If we cannot do that, they have no-one else to look to.'

In 2000, Alistair Darling said 'The giving of wrong information by a department is inexcusable.' 'We have already tightened up procedures for checking leaflets and guidance'.

DWP evidence to the Parliamentary select committee in 2002 said 'The Department is actively promoting a pension education publicity campaign that is supported by a range of simple, impartial guides. The purpose of the campaign

WHAT GOVERNMENT DID:

Behind closed doors it told the Actuarial Profession to design the MFR to give only a 50/50 chance of non-pensioner members getting their full accrued pension.

It weakened the MFR in 1998, as pensions were 100% secure and only meant to be 50% secure! (Removal of ACT relief and market moves had undermined the calculation basis of the MFR.)

DSS and FSA issued information leaflets only stressing the benefits of final salary schemes, but not mentioning any risks. The FSA said these pensions were 'guaranteed' which makes it 'easier to plan for retirement'. People relied on this information and believed there was no risk.

Government ignored Actuarial Profession and decided not to strengthen the MFR. It said it would wait for a forthcoming review of contracting-out rebates and of the MFR itself which it had asked the Actuarial Profession to carry out.

In 2000, the Actuarial Profession report told Government the public thought the MFR fully protected their pension rights, and that they should be told that it does not. A DSS official wrote to the Minister that informing the public about security of benefits would require careful handling since this would highlight the fact that the objectives of the MFR mean that non-pensioners only have a 'reasonable expectation of receiving their benefits.'

DSS leaflets were issued which failed to mention the risks to final salary scheme members' pensions on wind-up and told members that their pensions were 'safe', thus giving a totally biased picture.

DWP put out new leaflets e.g. one saying this guide tells you how occupational pensions work. It looks at some of the questions you may need to think about'. These leaflets

is... encouraging people to save.' Its Green Paper that year said 'if they are to join schemes, prospective scheme members will want to have confidence that the pension they are promised will actually be delivered'.

In 2001, the Chancellor said he was determined to protect the long-term security of pensioners and other pension scheme members in occupational schemes'.

In 2004, Government announced a £400million Financial Assistance Scheme claiming 'this represents significant help to those who have lost the most'.

said nothing about asking questions on risks of scheme wind-up or MFR funding and just assured members their final salary pensions were safe.

In 2002, the MFR was weakened a second time and in 2003, the Government ignored actuarial profession's advice that the MFR had become much too weak and needed to be strengthened urgently.

The FAS has been set up in such a cumbersome way that still only about 20 of the 85,000 people affected have had any money at all. Even those who are terminally ill, or already in their late60's have not yet received anything. Meanwhile, their money is sitting in a bank, but Government has refused to allow the trustees to pay pensions from those assets, to those in most urgent need immediately.

10 STEPS TO DISASTER – THE PROBLEMS CAUSED BY THE MFR

1. 1995 Pensions Act introduced Minimum Funding Requirement, assuring the public that pensions would be safe in future and have enough money to pay the pensions.
2. Behind the scenes, though, officials decided that the MFR should only be designed to give a 50/50 chance of actually delivering pensions.
3. Gordon Brown removed tax relief from pension funds' dividend income in 1997, which undermined the MFR calculation.
4. MFR was first weakened in 1998. Part of the reason for the weakening was that pensions had become 100% secure and were only supposed to be 50% secure!
5. In 1999, the Actuarial Profession recommended that MFR was too weak and should be strengthened.
6. In 2000, Government decided to ignore this recommendation, partly for fear of having to increase contracting out rebates.
7. In 2001, Gordon Brown announced the MFR would be abolished and replaced with Scheme Specific Funding, saying 'Government is determined to protect the long-term security of pensioners and other pension scheme members in occupational schemes'.
8. In 2002, MFR was weakened a second time and employers allowed to extend the time taken to remove MFR deficits. Government ignored actuarial advice to warn members of the lack of protection offered by the MFR.
9. In 2003, the Actuarial Profession again recommended MFR must be strengthened, even before its abolition, since it was much weaker than intended. It also again warned members should be told about the risks they faced Government ignored these recommendations.
10. Malcolm Wicks misled Commons, in 2003 and 2004, by stating that there had only been two recommendations from the Actuarial Profession, both to weaken the MFR and both were accepted. Actually there had been four and the Government had ignored the two which recommended strengthening it.

10 STEPS TO DISASTER – THE ERRORS IN OFFICIAL INFORMATION

1. 1996: DSS leaflets tell public that MFR will ensure proper protection for pensions in future.
2. 1998: Green Paper on pension reform stated Government policy would encourage people to join occupational pension schemes and DSS and FSA would issue information about the benefits and risks. Government said members will not join unless they believe their pensions are safe.
3. 1999: FSA issued leaflets saying that final salary schemes give a 'guaranteed' pension, which makes it easier to plan for retirement.
4. 2000: Government committed itself to making sure all its public information leaflets in future would be thoroughly checked, accurate and complete. Alistair Darling said 'the public rely on Government information and they are entitled to be reassured that leaflets are accurate and comprehensive'.
5. 2000: After deciding to ignore Actuarial recommendations to strengthen the MFR, Ministers also ignore advice to tell the public the truth about extent of security it provided, because disclosure to members would highlight the fact that the objectives of the MFR were only to give a 50/50 chance of getting their pensions.
6. 2001: DWP issues revised pensions information leaflets which still failed to mention any risks of wind-up.
7. 2002: More DWP leaflets telling members their 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 and not to your employer. As a scheme member, you are protected by a number of laws'. Again, no mention of the possibility of not getting the full pension on wind-up.
8. 2002: DWP evidence to a Parliamentary Select Committee said 'The Department is actively promoting a pension education publicity campaign that is supported by a range of simple, impartial guides.'
9. 2003: DWP again revises public information leaflets, adding a new section 'What do I need to do now?' which said 'If your employer offers access to an occupational scheme it is usually worth joining' but still failing to mention the risks of wind-up.
10. 2004: DWP finally revises its public leaflets to mention wind-up risks.

Quotes from individual complainants explaining how they feel:

'What was the legislation after Maxwell for, if it was not to make our pensions safe?'

'If you can't trust the government, who can you trust?'

'Those responsible for the leaflets which misled me and for the law and policy which created this mess still have their pensions intact and guaranteed – is this right?'

'There is my own pension now not worth the paper the promises were made on – promised to me as safe, secure and guaranteed by the very people who take their pensions from the taxes I pay.'

'The whole thrust of the material I saw was that the role of Government and the law was to protect our pension rights against employers who did not fulfill their obligations. Now I am told that it is not the role of Government to ensure that my employer, who chose to close the scheme, should make good his promise.'

Important quotes from the Report indicating Government culpability:

1996 DSS leaflet summarising 1995 Pensions Act: 'Changes were needed as the Government wanted to remove any worries people had about the safety of their occupational pension following the Maxwell affair'. 'The MFR is intended to make sure that pensions are protected whatever happens to the employer.'

1997 Labour's first Consultation on Pensions. Government's aim is 'to build a sustainable consensus for the long-term future of pensions.' 'People need to have confidence in pensions and be sure their pensions are secure. We need to find a balance which provides an appropriate level of security, minimises the scope for abuse and does not impose an undue burden on providers'

1998 Green Paper on non-state pension reform said 'The Government and the financial regulators have the central role to play in developing the long-term framework and for driving forward the specific initiatives needed to improve pensions information' 'The concept behind the MFR is a straightforward one – that is, people who have built up pension rights should be able to draw their pensions in full, even if the employer is no longer there to pay extra contributions'. 'People should be encouraged to join *their* employers scheme, but will only do so if they believe their pension rights are properly protected. Security is of paramount importance'.

January 2000: DSS officials report on recommendations from Actuarial Profession to strengthen MFR: 'there are strong arguments for incorporating these changes to the MFR...These changes are technical amendments and are simply restoring the strength of the MFR level to the level intended when the requirement was first introduced.' Then it also said 'if we introduce these changes to the MFR we are likely to come under pressure to similarly change the assumptions used in the calculations of (contracting-out) rebates which would be to make them more expensive to government. We do not have Treasury agreement to this'.

April 2000: Malcolm Wicks said 'we are aware of the importance of protecting members' rights. If we cannot do that, they have no-one else to look to'.

May 2000: After the Actuarial Profession recommended members should be told their pension are not secure on wind-up, officials told the Pensions Minister that telling the public will require careful handling, since disclosure to members would highlight the fact that the objectives of the MFR mean that non-pensioners only have a 'reasonable expectation' of receiving their benefits.

January 2001: OPRA response to DWP consultation on security of occupational pensions said: 'Scheme members should have access to a realistic assessment of the extent to which the pension rights which they have built up are secure. On balance, it is better that members are provided with such a realistic assessment, even if it does give rise to member concerns'.

7 March 2001: Government response to MFR consultation decided not to strengthen MFR and Gordon Brown formally announced abolition of MFR. He said 'Government is determined to protect the long-term security of pensioners and other pension scheme members in occupational schemes'.

8 November 2001: Pensions Minister Ian McCartney said in the Commons 'Our pension education campaign has been driving home the message that those who can afford to save have an obligation to do so'.

March 2002: Actuarial Profession press release welcomes MFR changes as 'helpful easing of the burdens on employers'. But also warned 'the government's task is not an easy one – it is not possible to bolster member protection in occupational pensions schemes and at the same time reduce the cash burdens on employers. These are conflicting objectives'

March 2002: DWP legal advice confirmed earlier advice which said 'where we choose to give information, it is incumbent on us to ensure it is accurate, complete and can be relied on'

18 March 2002: Malcolm Wicks to Colin Pickthall MPs question on how Government would stop wind-ups and increase member protection, Wicks said 'the legislation that is in place is to ensure that the pension rights that individuals have already built up in schemes are protected'.

May 2002: DWP published leaflet 'occupational pensions: your guide' said 'this guide tells you how occupational pensions work. It looks at some of the questions you may need to think about and it tells you where you can find more information...' contained a section 'how do I know my money is safe?' which said 'although your employer pays into the scheme and may be a trustee, the assets of the pension scheme belong to the scheme and not to your employer. As a scheme member, you are protected by a number of laws'

September 2002: DSS Executive Team agreed a departmental objective on accuracy 'all information provided to customers by any part of the DSS, by any method, should be accurate and up-to-date, with no significant omissions'.

October 2002: DWP evidence to Parliamentary Select committee 'The Department is actively promoting a pension education publicity campaign that is supported by a range of simple, impartial guides.'

17 December 2002: Another Green Paper on pensions said 'the current government awareness campaign, supported by a series of pensions information guides, has been running since January 2001...providing simple and impartial information on pension options'. With respect to security it said 'if they are to join schemes, prospective pension scheme members will want to have confidence that the pension they are promised will actually be delivered...We are determined to act to increase protection for scheme members. We will increase security but we will aim to ensure that in doing so we do not increase the overall burden on employers providing pensions'.

Quotes from Alistair Darling in Parliament in 2000, indicating Government must accept its responsibility!:
'The giving of wrong information by a Department is inexcusable. There is a clear responsibility to ensure that the information that Departments provide is accurate and complete. We shall also provide redress for those people who were wrongly informed and who, had they known the true position, might have made different arrangements.'

'The public rely on Government information and they are entitled to be reassured that leaflets are accurate and comprehensive.'

'As a matter of principle, when someone loses out because they were given the wrong information by a Department, they are entitled to expect the Government to put it right.'

'I want to ensure that, in future, people are told about changes in pension policy, so that they can plan for their retirement in full knowledge of their position.'

'It is important that Governments should be honest about what they do ... Whatever else they do, they should not put people in a position in which they do not have adequate pension cover.'

'Political responsibility must lie with the Government in office at the time. I accept responsibility for anything that happens during the term of this Labour Government, including the time I have been Secretary of State.'

Despite the Ombudsman's verdict and all the evidence, Government denies responsibility!

The Government has not disputed the evidence, facts or conclusions about the official information. However, it is refusing to accept responsibility for paying compensation, appearing to try to blame everyone else, but not itself. This attitude is shameful and indefensible. For example Government says:

1. **The public should not have relied on the Government's leaflets**
(But the Government said the leaflets had been produced in order to help people understand their pension rights and the pension system in a clear and unbiased way, so that people *could* rely on them! Having publicly stated this as the aim of the leaflets, how can the Government then criticise people for relying on them! Indeed, Alistair Darling assured the Commons that all public information from his department would in future be accurate and complete.)
2. **Government never gave individual advice about joining a particular scheme** – (people only have one employer, so encouraging them to join their occupational scheme is individual advice.)
3. **Government says it does not believe members did actually read or rely on their leaflets and that there is no evidence they would have acted differently even if they had.** (There cannot be any evidence here because the members were NOT warned, so they did not have any opportunity to do anything different! The Parliamentary Ombudsman concludes that 'it is highly probable that any reasonable individual would have acted differently had they known the true position about the risks to their pension rights.)
4. **Government also says that accurate information on scheme security might have 'intimidated' members and led them to decide to transfer out, which would have left them worse off if the scheme did not subsequently wind up!** (Government can't have it both ways – if Government claims that members would not have acted differently had they been warned, it cannot also try to defend itself by saying it did not warn them in case they were intimidated into taking action!)
5. **The changes in the MFR were in line with GAD and Actuarial Profession advice, therefore this cannot be maladministration** (but, of course, the Government did not follow the advice to strengthen the MFR, and just chose which advice it wanted to follow.)
6. **The trustees were responsible for ensuring schemes were properly funded and pensions were paid** – (trustees could only look after the assets they had and could only operate within the MFR regime. They could not force employers to put in any more money.)
7. **The employers took contribution holidays and didn't fund the schemes properly and it was the employers who 'guaranteed' the pensions, so it's not Government's fault** – (but it was Government that allowed employers to fund like this, while consistently endorsing the employers' promises by telling members their pensions were protected and never mentioning they could lose their pension.)
8. **Government says it is 'wholly speculative' to suggest that accurate information on scheme security might have led to different action by employers and also that any remedial action that trustees or members may have tried to demand may not have had any effect anyway.** (Of course they would have tried to protect themselves if they had known the truth. However, the point is that they were denied the information they would have needed to have had the opportunity to try to do so. There are many courses of action members could have taken, if they had known the truth. For example, they could have retired, instead of staying on at the employers' request and then losing their pension because the priority order put in by law only protected pensioners, they could have saved elsewhere, rather than relying totally on one source of retirement income, they could have taken out separate life insurance, they could have changed jobs etc.)