The case to be put to the Parliamentary Ombudsman

EXECUTIVE SUMMARY

Complaints against Government departments in connection with maladministration of UK occupational final salary pension schemes, which has resulted in members of these schemes losing most or all of their promised pension.

COMPLAINTS

Department(s) Complained about	Summary of complaint
1. OPRA	Told trustees fully funded on MFR meant full funding for all liabilities on wind-up.
2. Treasury/DWP	Ignored actuaries' advice to tell members that full funding on MFR did ***not*** mean all liabilities could be met on wind-up.
3. DWP	Booklets told the public that final salary pension rights were safe and protected by law
4. FSA	Booklets told members their final salary pensions were 'guaranteed'
5. Treasury	Oversaw regulatory bodies which told members compensated for mis-selling to re-join company schemes, which later failed with loss of pension
6. DWP/Treasury/ OPRA	Agreed to relaxation of MFR rules, leading to worse funding of schemes. Failed to monitor adequacy of MFR funding level over time
7. Treasury/DWP/ OPRA	Failed to ensure bulk annuity market offers good value for members' pensions on wind-up
8. Inland Revenue/ NICO/DWP	Failed to ensure GMP for contracted-out members can be secured appropriately, partial buyouts permitted, deemed buyback not working adequately, lengthy reconciliation delays, confusion over equalisation

INDIVIDUALS AFFECTED

EVIDENCE WILL BE SUBMITTED TO THE PARLIAMENTARY OMBUDSMAN FROM MPs REPRESENTING ALL POLITICAL PARTIES. THERE WILL BE MANY INDIVIDUALS WHO WILL SUBMIT THEIR OWN CLAIMS, EXPLAINING WHY THEY BELIEVED THEIR PENSION WAS SAFE AND THE EFFECT OF THE LOSSES THEY HAVE SUFFERED. THESE INDIVIDUALS COME FROM MANY DIFFERENT SCHEMES, ALL OVER THE UK. THERE ARE SOME PARTICULAR GROUPS OF PEOPLE WHO HAVE BEEN WORST AFFECTED AND REPRESENTATIVE EXAMPLE CASES WILL BE SUBMITTED FOR THESE GROUPS.

1. Scheme trustees who relied on OPRA booklets and told members that their pensions were safe
2. Members who transferred money in from previous schemes and have now lost it all
3. Members who could have retired and had their pension secured, but stayed on and lost it
4. Members who will not even get their full GMP and would have been better off in SERPS
5. Members of small insured schemes
6. Members of schemes of solvent employer who have lost most of their pension
7. Members who transferred funds in from a personal pension
8. Members compensated for mis-selling, told to rejoin scheme and have now lost their pension
9. Members originally compelled to join their company scheme
10. Members who retired due to ill-health, did not take pension immediately, and have lost it

INTRODUCTION

We are asking the Parliamentary Ombudsman to investigate our claims of maladministration by the Government and its various departments – in particular H.M. Treasury, the Department for Work and Pensions (DWP) (formerly the Department for Social Security - DSS), the Occupational Pensions Regulatory Authority (OPRA) and possibly also the Inland Revenue and Financial Services Authority (FSA). These Governmental bodies did not take proper care when informing the public and members of final salary occupational schemes about the degree of security of their pensions in their employer's plan. The agencies did not check carefully enough what the true situation was and carelessly led members to believe their pensions were safe when, for many groups of people, this was not correct. If the law did not protect them, and their contributions were not actually safe, the Government should not negligently have lulled members into a false sense of security. Members were thereby denied any opportunity to protect their pensions and had no chance to consider other courses of action which may have secured their retirement income. This situation has caused enormous stress and suffering for many people: their health has suffered, some have had to sell their homes, others are in despair. They cannot understand how, after having done all that society asked of them, having tried to provide prudently for their own future security and having believed official bodies that their pensions were safe, they now find their retirement income is not there.

This is not a complaint about the law itself. It is a complaint about Government actions which amount to maladministration and which prevented members of employer pension schemes from protecting their retirement income. They have now suffered severe losses – in some cases all of their expected pension.

We have 8 principal complaints:

1. **Maladministration by OPRA – careless wording of its booklets told trustees that MFR funding was adequate to pay all pensions on wind-up.**
2. **Maladministration by Treasury and DWP(DSS) - ignored Actuaries' advice to warn members that being fully funded on MFR did not ensure enough money to pay pensions on wind-up.**
3. **Maladministration by DWP – careless wording of booklets told members their pensions were safe and protected by law**
4. **Maladministration by Treasury-appointed Regulator (FSA), carelessly describing final salary pensions as 'guaranteed', without mentioning or even considering any circumstances in which they might not be guaranteed.**
5. **Maladministration by Treasury, failing to oversee effectively actions of self-regulatory bodies and FSA. Personal pensions 'mis-selling' led to members being told to re-join schemes which then later failed.**
6. **Maladministration by Secretary of State for Work and Pensions, Treasury and OPRA – agreeing to relaxation of the Minimum Funding Requirement rules without thoroughly considering the effect on all classes of scheme members in case of wind-up.**
7. **Maladministration by OPRA, DWP and Treasury: Failure to investigate workings of annuity market with respect to bulk annuities, forcing scheme trustees to buy annuities from only one or two providers, resulting in poor value for some scheme members and increased loss for others.**
8. **Maladministration by Inland Revenue, DWP and National Insurance Contributions Office – NICO - with respect to Guaranteed Minimum Pensions (length of time taken to reconcile entitlements and acceptance of partial buyout of GMP) delaying deemed buyback and equalisation of GMPs.**

These actions have damaged the interests of scheme members. Careless, inaccurate and woolly statements by Government agencies incorrectly led members to believe their pension contributions were safe in their final salary scheme and failed to warn of the risks they were taking when contributing to their employer's pension plan or leaving retained benefits in the scheme after leaving service. Government promoted and encouraged them to join their employer's scheme; many members were originally compelled to join and, once in, Inland Revenue rules prevented them from contributing to any other pension at the same time.

These losses could have been avoided, if members had been warned that their money was not safe. For example, many who could have retired under the rules of their scheme would never have stayed on if they had known that they could lose their pension, but would have taken their pension straightaway. Some members left because of ill-health, but did not take benefits because they were assured their pensions were safe. Others who transferred money in from previous employers' schemes (for example, from the schemes of public sector bodies) would have left their money in the previous schemes, if they had known that they could lose it all on wind-up. Furthermore, individuals who transferred funds from money purchase arrangements may have chosen not to do this, had they realised their entire pension could be lost. Members in their 50's, worried about the financial health of their employer, checked with Government agencies and were led to believe their pensions were safe in the employer scheme. They could have transferred their money out if they had known they could lose most of their expected pensions. Successive Governments denied all these people the chance to protect their retirement income, by encouraging them to join their employer's pension scheme, carelessly telling them that their pensions were safe and that accrued rights were protected by law. Even the Regulator, OPRA, worded its trustee booklets without due care, telling them a scheme which was fully funded on the statutory MFR basis would have sufficient assets on discontinuance. Trustees relayed this wrong information to members, and members understandably often relied on such reassurance.

To further compound the problems, Government departments are directly responsible for reducing scheme assets significantly, because computer problems have led to the process of agreeing entitlements to Guaranteed Minimum Pensions (GMPs) taking many years. During those years, bulk annuity rates have worsened significantly. Thus, when purchasing the annuities, much smaller pensions can be bought than if the schemes had wound up promptly. The Government has failed to take care to investigate the workings of the bulk annuity market and is not ensuring that members are able to obtain good value, reducing pensions further.

There are many pieces of evidence in this case, and the situation affects potentially over 100,000 people whose lives have been devastated. There are people with many different types of circumstances who have been affected in different ways, but who are all suffering from being denied the opportunity to protect their pensions, after being misleadingly assured by official bodies that their money was safe. These people's situations were not considered carefully enough and the maladministration has caused people to lose their pensions, with no warning and no chance to protect their money. It is our contention that the Government must, therefore, compensate the victims of this maladministration in full, to right this terrible wrong. Consideration should also be given to paying compensation for the terrible suffering and damage to health which the stress of this situation has caused to the victims and their families. They have said 'we believed the Government', 'we believed the booklets', 'we believed the trustees', 'why didn't they tell us the truth and give us a chance to protect our money?'

So far, the Government has agreed to set up a Trust Fund of £400 million (no more than £20 million a year for 20 years) to offer assistance to some of those who have lost out, but this fund is not designed to fully compensate members for the losses they have suffered. It may exclude many who have lost 90% of their pension and only plans to restore some of the pensions to some of the victims. Therefore, we are claiming that **<u>the Government has offered insufficient remedy to compensate for the damage done by its careless actions</u>** and by its inaction.

DETAILS

Please would you consider conducting an investigation into the Government's involvement in promoting occupational pensions. Evidence has come to light which indicates that the Treasury, DWP, OPRA, Inland Revenue and the FSA carelessly led the public to believe that final salary schemes were safe, guaranteed and protected by law. These departments failed properly to consider the interests of all the members of these schemes and their dependants. Indeed the Regulator OPRA assured scheme trustees that, if their scheme met the Government's Minimum Funding Standard (MFR), this meant there was enough money to pay out the pensions accrued to date, even on discontinuance. This careless wording of official documents was incorrect, but trustees relied upon it and relayed the information to members who were perhaps considering transferring out, or were concerned about the financial state of their employer. Some of these trustees will be lodging their own complaints, as will other members who have relied on official information and thus believed their pensions were safe, but have now lost them.

Successive Governments have consistently assured members of private sector final salary occupational pension schemes that their pension rights are safe and protected by the law. In particular, after the Maxwell scandal in 1992, the 1995 Pensions Act was introduced, with the express aim of improving security for employer pension schemes and ensuring adequate funding levels, so that members' pension rights were protected and employers could not raid pension fund assets in future, as Maxwell had done. A Regulator was set up (OPRA) and trustee boards were required to have member representation, so that the workings of pension scheme Boards were better regulated, with more direct input from members.

The 1995 Pensions Act was portrayed to the public as designed to protect members' pension rights and ensure adequate funding levels for employer schemes. In practice, the Act only offered possible protection to those already drawing a pension, which meant that the contributions of those not yet receiving a scheme pension could be used to buy annuities for other people, and leave the non-pensioner contributors with nothing. The 'interim' priority order (introduced in 1997 and designed to last 10 years) required scheme assets to be used first to buy index linked annuities for those already receiving a pension. After this, the pensions of those not yet retired, even if they were a few days away from retirement and had contributed to the scheme for decades, could disappear. The Government did not consider all classes of members and how they might be specifically affected, when referring to the protection offered. Thousands of members of employer schemes, who were relying totally on their employer's pension to fund their retirement, have suffered the loss of most or all of their pension when their scheme was wound up – either when their employer became insolvent or alternatively when their employer simply decided not to support the scheme any longer. The level of protection offered by the Minimum Funding Requirement (MFR) was not adequate to ensure accrued pension rights would be fully met. However, OPRA negligently told trustees that the MFR would deliver adequate funding for the scheme on discontinuance.

If a financial services company 'mis-sold' a product to a member of the public, it would be forced to compensate for any losses suffered. For example, the FSA is pursuing companies who described products as 'low-risk' where investors subsequently lost money and requires them to pay compensation. The actions of several Government bodies amount to careless mis-selling of employer pensions in an even worse manner. The employers' schemes were not described as 'low risk', they were described as 'no risk'! Yet members lost all their money. This surely demands full Government compensation for the losses suffered. The Government seems to have carelessly misled the public into believing schemes were safe, failed to put in any risk warnings, and failed to require anyone else to give any risk warnings as to what the true position was regarding safety of contributions. If these schemes were not safe, and if members' contributions were not fully protected in all circumstances, then Government and its agencies should have taken more care to ensure they did not mislead members with official information that was poorly worded. This deprived members of any chance to protect themselves against the wind-up of their scheme.

Complaint 1: Maladministration by OPRA – careless, incorrect wording of its booklets gave trustees wrong information.

Evidence:

OPRA Guide for Trustees, (page 28) sent out in 1998 states:
'The MFR refers to the minimum amount of funds that should be in the scheme at any one time in order to meet the schemes liabilities if it were to be discontinued'.

This statement is untrue and the careless wording of these booklets, sent to trustees who would naturally expect the information from the Regulator to be reliable, amounts to maladministration. The MFR was never designed to ensure that the assets of the scheme would be sufficient to meet liabilities on discontinuance. It was designed to be adequate only for meeting the liabilities of pensioners and to have a '50/50' chance of meeting the accrued pension liabilities of those not yet retired. Thus, the Regulator sent out a booklet to scheme trustees, which the trustees would have been reasonably expected to rely upon as being correct, and which led the trustees to believe 100% MFR funding meant adequate funds to pay the pensions on wind-up. The impact of priority orders and the costs of buyout were not mentioned in the OPRA booklet, yet they are significant in terms of members' benefits on discontinuance. The trustees, who would have been unaware that the information from the Regulator was not accurate, relied on it and passed on this incorrect information to members. OPRA did subsequently amend its booklets, but this maladministration was not brought to the attention of all trustees and the result is that members have lost their pensions, despite being assured by their trustees (who relied on OPRA information) that their accrued pensions were safe!

How this maladministration is responsible for the losses:

For example, the ASW Sheerness pension scheme was 102% funded on the MFR basis, and trustees thought that this meant the pensions could be paid in full and told members this. Members who asked whether the poor financial health of their company meant that their pensions were at risk were assured they were not. This was wrong. If these 50+ year old members had known that their pension was in jeopardy, they could have looked to take early retirement or transferred their money out, or sought another employer to transfer to. However, they were denied the chance to protect their pensions and take action to secure their retirement income, because they were never warned that there was any danger. Examples of trustees relying on this information can also be found in other schemes, such as BUSM (See case from Mr Bob Duncan, BUSM pension scheme, Hugh Ferguson, IFI/Richardson pension scheme)

Complaint 2: Maladministration by Treasury and DWP(DSS) - ignored Actuaries' advice and did not carefully consult, or properly consider the implications of failing to warn members of wind-up risks.

Evidence:

In 1999, the Treasury asked the Faculty and Institute of Actuaries to prepare a report which investigated the workings of the MFR. This report highlighted that scheme members and trustees generally believed the MFR offered them full protection, when this was not the case. The Actuaries' Report strongly recommended to the Government that it should, at the very least, tell all classes of members what would happen to their pensions if the scheme wound up. The Treasury and Department of Social Security consulted on the Actuaries' Report and its recommendations in September 2000. Indeed, the official Consultation Document ('Security for Occupational Pensions, A Consultation Document, September 2000) highlighted the strong advice from the Actuarial Profession about members' mistaken beliefs regarding the safety of their pensions.

The consultation document states that 'The Government wants to help people understand their pension rights and appreciate the value of saving for pensions' (p. 3). However, it did not do this properly, which is evidence of maladministration. It also states that, for defined benefit schemes, 'there is no intrinsic guarantee that the accumulated funds will be able to deliver members' pension rights.' The Document emphasises that one of the 'key conclusions' of the Actuarial Profession's report is the strong recommendation that 'the new MFR test should be coupled with much clearer disclosure of the real position regarding the security of members' benefits in the event of the scheme winding up, <u>for each class of member'</u>.

If it was really the case that the Government wanted to help people understand their pension rights, and if there was no guarantee that these rights would be delivered by their scheme, one would expect that the Treasury and DWP would be as careful as possible to ensure that scheme members were properly consulted and subsequently informed about the possible lack of security of their pensions. The Government's consultation stresses that 'the concerns identified by the Actuaries all deserve informed and thorough discussion among the various interest groups concerned'. However, the consultation process did not include meetings or discussions with members of schemes themselves, who are surely the most interested party of all. Thus, the Treasury and DWP failed properly to consider the true effects, in all possible circumstances, of the implications of failing to warn members. For example, they did not seem to take into account the possibility that someone who was age 64, and one day away from retirement, could lose their entire pension; or that someone who had the option to retire, but was asked to stay on by the company, would never have done sohad they known their pension was not safe; or someone considering transferring money in from another scheme would not have chosen to do this if they had been properly informed that the pension was not safe; and so on. This careless disregard for the effects on different classes of member has caused significant damage.

Having failed properly to consider all these circumstances, and having failed properly to consult with members themselves in the response to the consultation ('Security for Occupational Pensions, The Government's proposals' March 2001), the Treasury and DSS ignored the Actuaries' advice and failed to warn members, thus depriving them of the chance to protect their pensions. Having been clearly and strongly advised that members believed their money was safe when it wasn't, the Treasury and DWP failed properly to consult with the different classes of member, failed to warn the members themselves, and failed to require anyone else to warn them. This was directly against the Actuaries' advice and also directly contradicted the aims of the Consultation, which were 'to help people understand their pension rights'. We contend that the Tresaury and DSS did not thoroughly consider the effects of this on the security of the various different classes of member, nor the particularly pernicious effects, for example, on pension rights of non-retired groups. This amounts to a failure of administration and resulted in losses to many members, which could have been avoided if they had been fully informed by Treasury and DWP.

<u>How this maladministration caused the losses:</u>

Members were deprived of the chance to transfer out or retire on a pension from the scheme. Such action could have secured their own pension. There are examples of circumstances where members were asked to stay on longer to help the struggling employer and would not have done so if they had known this could result in losing their own pension. But Government's failure to consult directly with, or warn, members or to require anyone to disclose to them what the true position would be on winding up, led members to stay on past the date on which they could have retired, after which they subsequently lost their pension. Others transferred money in from previous employers (often Public Service), because they were unaware that the private sector employers' schemes were not actually safe. If such members had known the truth, they could have left their money in the previous scheme .

Complaint 3: Maladministration by DWP – careless wording of booklets continued to mislead members and failed to warn of the risks

Evidence:

Booklet produced by 'the Pension Service' (part of the DWP) called:
Occupational Pensions Your guide May 2002 (page 15)
How do I know my money is safe? You are protected by a number of laws...OPRA can act quickly to protect your interests'.

Once again, the assurances of safety are carelessly worded and misleading, and there is no consideration given to the risk that the employer's scheme could be wound up and members could thus lose the whole of, or most of, their pension. The production of these booklets for release to the general public was not carried out with proper, or sufficient, care or consideration regarding the important elements which members needed to know.

Evidence:

Booklet produced by the Pension Service (part of the DWP) called:
Occupational Pensions Your guide October 2003 (page 15)
'Is my money protected?' the assets of the pension scheme belong to the scheme, not to your employer. As a scheme member, you are protected by a number of laws designed to make sure schemes are run properly and to make sure funds are used properly'.

Evidence:

Pensions Green Paper issued by DWP called:
'Simplicity, Security and Choice' December 2002, Technical annex (page 55)
'Accrued rights are clearly protected under pensions legislation and this will remain the case'.

Letter from Malcolm Wicks, Minister of State for Work and Pensions, sent August 2003:
'The Government will continue to promote occupational pensions.......the Government has promoted these schemes and encouraged and supported employers and individuals to make private provision for retirement.'

This evidence demonstrates the maladministration. The DWP showed carelessness in its choice of wording for its booklets sent to the public by incorrectly assuring scheme members that their pensions were safe and protected by law. Even though the DWP was encouraging and promoting joining such schemes, it did not take enough care to ensure the accuracy of its booklets sent out for members and prospective members. The DWP does not seem to have sufficiently considered the impact of these incorrect assurances of safety on all the various classes of member, and in particular they failed to take into account how the loss of pension could so dreadfully affect the lives of those quite close to retirement age, who had been relying on and contributing loyally to their employer's pension, with no other retirement provision because they were told their money would be safe. The DWP used woolly wording in its booklets and failed to ensure members were properly informed of what the risks were, and continued to tell them their money was protected by the law and that their accrued rights were safe. This denied them the opportunity to take alternative action to secure their pensions.

How this maladministration caused losses:

Such DWP booklets (which were still being issued up to end 2003) thus deprived members of the chance to protect their money and lulled them into a false sense of security about the safety of their pensions and their contributions. Members could have transferred elsewhere, taken early retirement, moved employers and so on, but nobody told them to even consider this. Even if the DWP did not have a duty to provide such booklets, the fact that they did provide them and the information contained in them was inadequate, is evidence of maladministration, and members who relied on these were denied any opportunity to protect their pensions.

The Government cannot simply say that members voluntarily decided to join their employers' schemes and that these are, therefore, just private arrangements. The law interfered with these arrangements (many members were originally compelled to join anyway) and the DWP incorrectly and carelessly explained the law to the public in its general information booklets. If it had taken more care over the use of wording (and these booklets have subsequently been revised) members may have had more chance to protect their retirement income. It is therefore not acceptable for the Government to suggest it has no responsibility here. That is because, firstly, some members were compelled to join, but more importantly the Government's agencies told them they were safe, continued to promote and encourage joining of the schemes, did not allow members to belong to any other scheme if they were in their employer's scheme, and failed to warn of the risks involved in deciding to contribute to, or stay in, the scheme of an employer who may fail, or who may wind up the scheme. By claiming that the pension was safe, the DWP prevented the members from looking after their own interests. This constitutes maladministration and misleading the public

Complaint 4: Maladministration by Treasury-appointed Regulator (FSA), carelessly describing final salary pensions as 'guaranteed', without mentioning or considering circumstances in which they might not be guaranteed.

We understand that there is some doubt about whether the Parliamentary Ombudsman has jurisdiction over the FSA. The issue revolves around whether or not they were acting on behalf of the Treasury. If they were, then their actions can be investigated. The FSA has confirmed to me that it was acting as an agent of the Treasury from January 1st 2000 until 'N2' (I believe that was November 2002) in relation to insurance business. The reason for including the FSA in this complaint, therefore, is that many insurance companies run and manage and are responsible for defined benefit occupational pension schemes on behalf of large numbers of small employers. These 'insured schemes' offered the usual type of final salary benefits, but hundreds of them have wound up with members losing most or all of their pensions, in the same way as other company scheme members have been affected. Many of these members will also have relied on information received from Government sources, which told them their pensions were guaranteed and safe. However, this was not the case and the Treasury's agent, the FSA, issued material which claimed that final salary schemes were offering 'guaranteed' pensions.

Evidence:

FSA guide to the risks of opting out of your employer's pension scheme (page 5)
'Some types of employers' schemes (the ones called 'final salary' or 'defined benefit' schemes) give you a guaranteed pension. The amount of pension you get from a personal pension is unpredictable'.

FSA guide to the risks of opting out of your employer's pension scheme (page 9)
'Others, called 'defined benefit' schemes (for example, 'final salary schemes') are different and offer guaranteed benefits.'

FSA guide to the risks of pension transfers (page 7)
'Defined benefit or final salary scheme: You are guaranteed a certain level of pension when you retire, as well as other benefits'

FSA guide to the risks of pension transfers (page 9)
'If you transfer from a final salary scheme to a money purchase scheme run by a new employer or to a personal pension, you give up the promise of a guaranteed pension. What you get instead is a pension whose value depends on how well the invested money grows.'

The Press Release which the FSA issued to announce the launch of these booklets (Press Release 1999 FSA/PN/067/1999) proudly proclaims that these booklets are 'free guides to safer pension choices'. It claims that the FSA 'has a duty to protect consumers and these guides are designed to help people make better financial decisions for their future'. It also claims that they have won 'Clear English Standard' awards for their high standard of clarity and that the booklets 'have also been made available to consumer advice agencies, Citizens Advice Bureaux and public libraries, as well as to all MPs for use with their constituents'. It also states, with respect to these guides, that as of 1999, they had 'provided over 50,000 booklets to consumers'.

The careless and incorrect wording of these booklets gave a misleading impression to the public. There is no information provided about the risk that the employer may choose to wind up the scheme or that insolvency could cause pension rights to be lost, which meant that the pension was not 'guaranteed' at all. It mentions no circumstances in which the final salary pension would not be guaranteed. The FSA has admitted that this wording was misleading and changed its booklets in December 2002. The Regulator was not required to give such information to the public but, having done so, it should have taken proper care to ensure that it described the full situation and not a partial, misleading view. Members of the public could not be expected to know that the FSA would be so imprecise in its description of final salary scheme security. Independent Financial Advisers and life offices, who mis-sold personal pensions, were judged retrospectively. Most people who received compensation were forced to put this back into their employer's scheme and have subsequently lost both the pension and the compensation. The Regulator was therefore careless in not considering the possibility of scheme insolvency.

Evidence:

Letter from the Treasury to a scheme member, March 2004
'I was somewhat concerned at your comments that your pension entitlement was promoted to you as 'guaranteed'.'

This Treasury official expresses surprise at members being told their pension was 'guaranteed', which suggests lack of care by the Treasury, as their own appointed Regulator used this very description.

How this maladministration caused the losses:

The members had no chance to protect their money and Government has not offered to make up their losses. If the Treasury is concerned that the member's pension entitlement was promoted to him as 'guaranteed', then it should surely be equally concerned that the Treasury-appointed Regulator (in the form of the FSA, which was acting on behalf of the Treasury in the conduct of insurance business) itself called these schemes 'guaranteed'!

In the context of insurance business, many insurance companies were running final salary pension schemes and these have been wound up with significant losses to many members. Again, these members were carelessly assured by the FSA that their pensions were 'guaranteed'. The FSA has stated that it was acting as an agent of the Treasury in respect of insurance business. Relying on such FSA booklets denied members the chance to protect their pensions.

Complaint 5: Maladministration by Treasury, failing to oversee effectively actions of self-regulatory bodies and FSA. Personal pensions 'mis-selling' compensation was required to be put back into schemes which then failed.

Evidence:

Many members transferred out of their employer's scheme after being sold personal pensions in the 1980's and 1990's. In some cases, these members were told they had been 'mis-sold' the personal pensions and they received compensation. Some of the members who received compensation for the apparent 'mis-selling' were required by the Government-appointed regulators to re-join their employer's scheme. Having done this, some employers subsequently failed and these members ended up losing their entire pension. It is our contention that the self-regulatory bodies and FSA failed to consider carefully enough whether this situation could arise. The Treasury should have overseen these bodies to ensure that their actions were appropriate.

The Treasury allowed members to be forced to re-join the schemes they had left, without any consideration as to whether the scheme might wind up. Government carelessly promoted final salary schemes to everyone as completely safe, despite there being no proper safeguards, either before or after 2000, to ensure that non-pensioner members' accrued rights really were safe, or that members would be properly informed about the risks, in some circumstances, of investing their money in their employers' schemes. If a financial services company operated in this manner, it would be required by the Regulator to pay full compensation for any losses suffered. Surely the same rules should apply to the Government and FSA, who have 'mis-sold' employer pension schemes to the members, by telling them they were safe, while failing to warn of the risks. These schemes were not promoted as 'low risk', they were promoted as 'no risk'!

<u>How this maladministration caused the losses:</u>

These members would have been better off not transferring back in to their employer's scheme. However, they were not given the option, in many cases, of not re-joining and were mis-directed by the official regulators to re-join their company pension plan. They were never told to consider the financial strength of their employer or the possibility of scheme wind-up. The Government-appointed regulators did not carefully enough consider the circumstances of defined benefit schemes and used inaccurate and misleading statements to wrongly assure members they were safe. Such statements lulled members into a false sense of security about their pensions. The Government created a myth that people should not transfer out into a personal pension (even though, for those close to retirement, that may have been the best thing for them to do) and failed to warn that there might be circumstances, if the employer were not committed to the scheme, or might become insolvent, in which case the members should definitely have considered transferring out. Members relying on the incomplete and misleading information were denied any opportunity to protect their pensions.

Complaint 6: Maladministration by Secretary of State for Work and Pensions, Treasury and OPRA – agreeing to relaxation of the Minimum Funding Requirement rules without thoroughly considering the effect on all classes of scheme members in case of wind-up.

<u>Evidence:</u>

Before the 1995 Pensions Act provisions came into effect in April 1997, contracted-out final salary pension schemes were required to obtain actuarial certification that the assets in the scheme were sufficient to buy out all Guaranteed Minimum Pension benefits with insured annuities. In other words, schemes had to prove that they could buy out members' GMP in full. When the MFR was introduced, annuity rates were much higher than they are today and it may have been that 100% MFR funding would have ensured that there were sufficient funds to buy out GMPs for all members via annuities. However, no certification was required and the funding level of final salary schemes was determined by the new Minimum Funding Requirement (MFR). The MFR thus provided a new 'floor' to the funding level of schemes and any scheme which was underfunded on this measure had to ensure plans to bring funding up to 100% within prescribed timescales. The assumptions used to calculate the MFR are set out in actuarial guidance notes, which must be approved by the Secretary of State for Work and Pensions. These actuarial guidance notes can be challenged and updated by the DWP. Since 1997, the rules for calculating the MFR have been relaxed at least twice.

They were first relaxed in 1998, when the effective standard was weakened by around 10%. The particular change was made to the 'Market Value Adjustment' used to value non-pensioner members' liabilities, with the equity dividend adjustment factor being reduced from 4.25% to 3.25%. For younger members (i.e. those more than 10 years from retirement age) this implied a reduction in the value placed on their benefits of about 10%, although for older members there was a taper effect. The result of the changes was to make MFR funding levels about 10% higher than before, so a scheme which was only 95% funded on the old basis, would now be 105% funded and the employer would not need to put in any extra money. This change also applied to the calculations required when a scheme winds up –either through insolvency of the employer or simply because the employer no longer wanted to support the scheme. This again meant that the debt on the employer obligations were lowered by around 10%. This meant that an employer could wind up the scheme much more cheaply, since they had to put in less funds to meet the MFR. These moves were approved by the DWP to be effective from 15th June 1998.

The MFR was again reduced by about 8% on 7th March 2002. (The equity dividend adjustment factor was reduced from 3.25% to 3.0%) In addition, the time required to make the funding up to 100% of MFR was extended. We challenge the prudence with which these Government bodies decided to allow a further weakening of the MFR, as they seemed to have bowed to pressure from employers and bodies such as the National Association of Pension Funds, without taking into proper consideration the pension interests of all scheme members.

The financial assumptions used to calculate benefit liabilities for non-pensioner members were changed to reduce the cost of non-pensioners' benefits. Also, employers were given longer to make up any shortfalls in deficits. This was after the Consultation process conducted by the Treasury and DWP in September 2000 (this document and its response are referred to in Complaint 2 – 'Security for Occupational Pensions, Consultation Document' September 2000 and 'Security for Occupational Pensions, The Government's proposals' March 2001.) We believe the DWP and Treasury are guilty of maladministration by relaxing the MFR, without taking full cognisance of the effect this relaxation would have on non-pensioner scheme members in a wind-up situation. The weakening of the MFR meant that security of members' benefits on winding up was reduced, however members were not told of this and Government appears not to have considered carefully enough what the effect would be on the benefits of all classes of member. Particularly as interest rates were falling sharply at this time, the consequences of a weaker MFR were that pensions purchased on wind-up would be much lower than before. This directly led to much lower pensions being secured for members of winding up schemes.

The DWP and Treasury were warned that the MFR was believed by members to provide full protection for their accrued benefits when, in practice, this was not the case. The Actuarial Profession strongly advised at the very least telling members what the true position was, but the Treasury and DWP ignored this advice. There was a further relaxation of the MFR, which resulted in even less protection for members. It seems that the Treasury and DWP did not consider carefully enough the effects on all groups of members. In particular, those whose schemes wound up were left without their full GMP and, in many cases, with no other scheme pension, despite having received many years of National Insurance rebates and having made their own contributions for decades.

This complaint also includes OPRA, as the Regulator is supposed to look after members' interests. Yet it did nothing to ensure that the funding levels of schemes remained adequate over time, nor did it warn members, or even trustees, that their scheme funding had weakened in the event of winding up. The Regulator was seeing cases of winding up schemes, yet did not act to prevent further members losing their pensions.

In March 2001, the Treasury and DWP announced that they would be replacing the MFR with a 'Scheme Specific Funding Requirement' and suggested that this would improve member security. However, they did not announce how this new requirement would work. In the meantime, annuity rates were falling sharply, interest rates were declining, longevity forecasts were rising, but the OPRA and the DWP failed to update any of the assumptions used in calculating the MFR. Until any new Scheme Specific Funding Standard was introduced, it should have been clear that the existing MFR would be used and that this measure should be updated and monitored regularly, as long as no new funding measure was yet in place. However, this was not done. This was negligent on the part of the authorities, because it effectively meant that schemes were being funded less and less adequately, but no-one was really taking any notice of the need to change the MFR assumptions and take into account the worsening annuity rates.

Meanwhile, all this time, the DWP and official Government documents were still telling members that their pensions were safe and protected by the law, while OPRA was requiring trustees to ensure that their schemes had enough assets only to meet the weaker and weaker MFR tests. We contend that these Government bodies should have taken far more care to consider the consequences of their actions when overseeing the operation of the MFR, and should have considered more carefully the effect that winding up would have on all the categories of members (i.e. those already drawing a pension and those not yet drawing pension). Employers' interests were considered, but those of the various classes of member – particularly those not yet drawing a pension – were not properly thought about. There was no consultation with scheme members or trustees before changing the MFR rules, and the authorities did not pay proper attention to the market for bulk annuities, nor to the need to consider revising the MFR assumptions to keep them adequate in the face of changing market circumstances.

How this maladministration caused the losses:

If members had known that the changes in the bulk annuity market would lead to the possibility of losing their entire pension, they may have had a chance to put pressure on the employer to increase scheme funding. However, trustees and members were told that their schemes were fully funded and, therefore, they could not force employers to put any more money into schemes, even though they were becoming less and less adequately funded over time. However, the various Government departments failed to consider the drastic damage that the increasing inadequacy of the MFR funding levels would have on members' pensions, and still continued to encourage and promote membership of occupational schemes and tell members that final salary schemes were safe. Members who were told their scheme was 'fully funded' would have had the 'reasonable expectation' that this meant there was sufficient funding to pay the promised pensions. Any reasonable person would draw that conclusion, especially combined with all the other official material which referred to the safety and protection of final salary schemes.

Complaint 7: Maladministration by OPRA, DWP and Treasury: Failure to investigate workings of annuity market with respect to bulk annuities, forcing scheme trustees to buy annuities from only one or two providers, resulting in poor value for scheme members.

Evidence:

Over the years, the market for bulk annuities has dwindled and there is a particular shortage of suppliers. For a scheme in wind-up, trustees would normally look to buyout the liabilities in bulk with an insurance company. There are now only two providers of bulk annuities. These are the Prudential and Legal and General. However, even worse in the case of deferred annuities – which are the type of annuity that must be bought to secure benefits for those not yet drawing a pension – there is only one provider most of the time! It is quite clear, therefore, that this is not a market subject to the normal competitive forces and that suppliers have significant opportunity to exploit their monopoly power, against the interests of the customers; in other words, the pensions provided to members in a bulk buyout may not be offering good value.

The rates for bulk buyouts have worsened significantly in recent years. In particular, bulk deferred index-linked annuities have become hugely more expensive. This may be due to a variety of factors. Firstly, interest rates have fallen. Secondly, there is a shortage of index-linked gilts – particularly of long maturity. Thirdly, longevity forecasts are being revised upwards. Fourthly, insurance companies' previous expectations were incorrect and they are now making up for the previous errors. Fifthly, with only two providers, or only one provider, the opportunity to make higher profits in this area is enormous. Sixthly, the complications of offering bulk annuities are enormous, particularly for buying out GMPs, so that there are huge barriers to entry which prevent competitors from coming in.

I have tried to alert OPRA and the DWP to these potential problems, but they seem to have failed to conduct any thorough investigation of the workings of the bulk annuity market. Governments have consciously opted to reduce State pension provision and encourage private occupational schemes, but they have not ensured that any orderly market exists which allows appropriate accommodation of retirement savings. The lack of reasonably priced annuities is, to a significant extent, due to the shortage of long-dated gilts, long-dated index-linked gilts and absence of long-dated LPI-linked or longevity-linked Government bonds. This means that the insurance companies issuing annuities have to build in extra safety margins to cover the risks of not having sufficient matching assets to back their annuity guarantees.

When buying out annuities in bulk for winding up schemes, trustees have no control over how poor the value is, because there is no possibility to shop around, and this is leading to too much of the scheme assets being wasted on buying annuities for those already retired, leaving very little over for the non-pensioner members. However, without guidance from the Government or OPRA, trustees are usually unable to do anything other than buy the annuities and, if there is only one provider, then they have to buy from that company!

In addition to this, trustees often buy annuities for members who they have not even traced. This is to cover themselves against legal action if these people subsequently turn up and claim their pension. However, it is a waste of scheme assets and, if the members are never traced and do not claim their pension, then the insurance companies simply pocket the money. This is another waste of scheme assets and will further reduce the amount available for non-pensioners.

Further evidence to support the case against buying annuities is that the Government's proposals for the Pension Protection Fund specifically mention that the funds will be run on an ongoing basis and <u>not</u> buy annuities. The Government's analysis recognises that purchase of annuities will take more money than necessary and that it is much better value to run the scheme on and pay out pensions over time on a cashflow basis.

<u>How this maladministration has caused the losses:</u>

The significant deterioration in rates available for bulk annuities has led directly to the reduction in pensions received by all members of winding up schemes which purchase the annuities. Despite being urged to investigate this, the DWP, Treasury and OPRA have failed to take due care of the interests of scheme members – in particular, they seem to have failed to be concerned about the interests of those who are not yet drawing a pension. The worsening of annuity rates has led directly to loss of pension by scheme members. If the annuities had been bought a few years ago, there may have been enough money to secure the full pension, but the effect of the worsening rates has been so significant that members who might have secured 2/3 of their pension in 2000, may get only 10% (or even less) if annuities are bought in 2004!
The delays in purchasing annuities and the reduced competition in the market for bulk annuities, have not been properly dealt with by the Government and this maladministration and careless disregard for what is happening to annuity rates is causing further and further reductions in the pension entitlements of members of schemes in wind-up. At the very least, a thorough investigation of the effect of this situation on non-pensioner members is long overdue. Just how expensive do annuities have to become before the authorities finally do something? In any other area, a market with only one or two dominant players would be investigated on

competition grounds. This area is a hugely vital part of so many individuals' lives. Yet the Government forces trustees to buy annuities for winding up schemes and, once the annuities are purchased, the member is locked into it for life, so they can never remedy a bad purchase. Given all this, it is surely negligent of the authorities to ignore what is happening to bulk annuity rates.

Complaint 8: Maladministration by Inland Revenue and DWP and National Insurance Contributions Office – NICO with respect to Guaranteed Minimum Pensions (length of time taken to reconcile entitlements and acceptance of partial buyout of GMP)

Evidence:

Trustees have all confirmed to me that one of the most difficult, time-consuming and costly parts of winding up any final salary scheme is reconciling the GMP entitlements of all members with the National Insurance Contribution Office (part of Inland Revenue) records. The computer systems used (I believe they may take data from the DWP) have not been functioning properly and it has been taking many, many years to agree GMP entitlements. The delays caused by slow official handling of these reconciliations has caused many schemes to be in wind-up for much longer than necessary. The Government recently hailed as a success its achievement of reducing the *average* time taken to agree GMPs from nearly 7 years to just over 6 years! During that time, the annuity market has worsened substantially and scheme assets have been used to pay fees to independent trustees to do the reconciliations. The issue of equalisation of GMPs is also causing particular problems, and adding to the costs due to the extra work required and legal advice taken by trustees when trying to complete the wind-up of contracted out pension schemes. There is a difference of views between lawyers as to whether, in the absence of direction from Government, it is safe either not to equalise the GMP, or to adopt a more pragmatic solution. OPRA has failed to issue any firm guidance in this area, thus causing additional costs to pension schemes and thereby reducing the eventual pensions they can pay out.

Evidence:

Inland Revenue newsletter (Issue 1 May 2004) confirmed that trustees are permitted to discharge their liabilities for Guaranteed Minimum Pensions with only a partial buyout of the GMP with an insurance company annuity. Individuals who contracted out of the State pension system received National Insurance rebates from successive Governments to persuade them to leave the State pension, and were promised by the State that their contracting-out rebates would be invested in their company pension and would give them an amount at least equal to the 'Guaranteed Minimum Pension' (GMP) which would have been paid by the State scheme. However, many individuals who contracted out of the State scheme, in exchange for rebates which were supposed to provide at least the GMP, find that this Guaranteed Minimum Pension is neither Guaranteed, nor a Minimum! Indeed, for many schemes, the non-retired members will receive only a fraction of their full GMP. This means they would actually have been better off never having contracted out of the State pension system and would have a bigger pension if they had not put a penny of their money into their company plan. They have lost their own contributions and lost the opportunity to make any alternative provision for their retirement. Schemes such as Dexion, Blyth and Blyth, Albert Fisher, Lister and many others do not have sufficient funds to pay out the GMP in full to their non-pensioner members.

How this maladministration caused the loss

Delays in agreeing GMP entitlement: The result of such huge delays in agreeing GMPs is that winding up of schemes has been terribly slow, has been delayed by several years and has cost huge amounts of money. In some cases, the costs of winding up can take out 20% of the assets, as these are used to pay the independent trustees and their advisers, without any control over the costs involved. The time taken and complication of agreeing GMP entitlements has cost most schemes huge amounts of money, but trustees cannot wind up schemes without doing this.

Since the costs of the independent trustees and their advisers have first call on all scheme assets, it is often the case that significant proportions of scheme assets have been used up in the exercise of GMP reconciliations. This obviously leaves far less money available actually to go to members and the size of eventual pensions received has therefore been reduced in two ways: firstly, by the loss of money in costs to trustees and advisers; secondly, by the worsening of annuity rates that has occurred over the years, because the delays have been so long. The failure to give any guidance for trustees on how to deal with equalisation of GMP problems has also resulted in additional costs to scheme assets and this obviously results in lower pensions ultimately being received, particularly by the non-retired members.

Failure to receive full GMP: By permitting the trustees to buy out annuities for non-pensioner members which only partly give them the promised GMP, these members now find that they will not even receive as much pension as they would have done if they had never been in their company scheme. Both their own and their companies' contributions have been wasted and they will not be reinstated into the State scheme. It would surely be helpful if the DWP, Treasury and OPRA looked into the workings of the annuity market and identify why buying out contracted-out rights and GMP benefits has become so expensive in recent years. Individuals were contracted-out of the state scheme on the understanding that they would receive at least as much from their private pension as they would have done from the State. This has turned out not to be the case.

Examples of case studies showing how maladministration caused the losses of pension and how the losses may not have been suffered, if members had not been misled by careless and incorrect Government information.

The losses suffered are in many cases significant, both in monetary terms and also in terms of the distress and human suffering that the loss of a lifetime's pension savings has caused to decent, proud people who have always done what society asked of them and just wanted to look after their own futures. The continued refusal of Government to provide proper redress has caused yet further suffering and prolonged the agony of this situation for many thousands of people. We urge the Parliamentary Ombudsman to investigate this as urgently as possible and to require the Government to end these people's suffering.

Example 1: Trustees who relied on the OPRA booklets and relayed the information to members that their pensions were safe, if the scheme was 100% funded on MFR. Members and trustees themselves were therefore denied the chance of protecting their pensions.

Example 2: Members who transferred money in from other schemes and then lost that money, along with their scheme pension, whereas at least the previous employer pension would have been safe if it had not been transferred in.

Example 3: Members who could have retired some time ago, but the company asked them to stay on to help with their particular skills. If they had retired when they originally could have done, their pension would have been secure and first in the priority order, but they ended up losing their pension by staying on. Had they been told this could happen, they would have retired when they first could have done.

Example 4: Members who contributed for several decades to their scheme, were very close to retirement, but may not even get the full 'GMP'. This is the 'Guaranteed Minimum Pension' (which Government told members would be paid in return for their contracting out of the State scheme), but has turned out to be neither 'guaranteed' nor a 'minimum'. Members would have been better off staying in the State scheme rather than contributing to their company scheme.

Example 5: Member of a small insured scheme who has lost most of the promised pension. These are small final salary schemes, run by insurance companies, which have often been wound up without members receiving the pensions they were promised, despite assurances from the FSA and Government that their pensions in such schemes were guaranteed.

Example 6: Members of schemes whose sponsoring employer was solvent when the scheme wound up, but who have still lost the majority of their pension. The employer complied with the law and only had to make up the funding to the MFR level, which was wholly inadequate to provide the promised pensions to those not yet retired. But, of course, trustees and members had been told by OPRA that the MFR level was adequate to meet the liabilities and non-pensioner members were completely unaware that they could lose most of their pension.

Example 7: Members who transferred money in from money purchase schemes to their final salary schemes, because they were told these pensions were guaranteed and safe, yet find they have lost all their money, or almost all. If they had not transferred from their former money purchase scheme, but had simply stopped paying in, at least they would have had a pot of money earmarked for them and would have benefited from some diversification of their pension assets. The effect of the transfer was to give added years of service, often based on very conservative actuarial assumptions, and the money transferred in from a previous scheme was all or mostly subsequently lost.

Example 8: Members who had transferred out of their employers' scheme, then subsequently were paid compensation for having been wrongly advised and, as part of the acceptance of the compensation, they were required to re-join the company scheme. The company subsequently failed and they then lost their pensions along with the compensation!

Example 9: Members who were compelled to join their company scheme and stayed in, believing they were safe. They were denied any opportunity to realise they should consider diversifying their pension savings or transferring out of their company scheme, especially when close to retirement.

Example 10: Members who left scheme on the grounds of ill-health, but did not take their benefits immediately and then lost the pension.