Written evidence from Dr Andrew Turner (PPF0041)

Written evidence submitted by Dr A D Turner on behalf of the AEA Technology Pension Campaign

Executive Summary

- AEA Technology plc (AEAT) was privatized from the UK Atomic Energy Authority in 1996. Public sector pension benefits were transferred to a new defined benefits pension scheme. AEAT had a short existence up to 2012, with many business units being sold off. The workforce reduced from ~3,500 to ~ 300. In 2012 the company went into a pre-pack administration. The business was bought by Ricardo plc. Since then, Ricardo Energy and Environment has operated profitably and grown significantly. The AEAT Pension Scheme (AEATPS) was wound up in 2012 as part of the pre-pack. In July 2016 the sizeable pension fund and its liabilities transferred into the Pension Protection Fund (PPF).
- In the pre-pack, AEAT used the bulk of the sale proceeds to settle secured and unsecured bank loans, leaving only a minimal amount to reduce the overall funding deficit of the Pension Scheme.
- As a result of the move to PPF, pension benefits for some 3000 pensioners are less than promised:- some cut by 10%; some capped. All index linking on service accrued before 1997 is lost. This particularly affects those with long past service in UKAEA transferred into AEAT. It affects women more than men because on average women live longer. Case studies suggest that scheme members lose 35% to 40% of their total pension value. Some will be better off and some worse than this.
- This submission summarises events leading to the default of the AEATPS and our efforts to obtain redress. We concentrate on issues relevant to the present Inquiry into Defined Benefit Pensions. Sections cover: (2) Defined Benefit pensions regulation by the Pensions Regulator, including the performance of relevant Ombusdmen, who should be part of an effective regulatory regime; (3) The Pension Protection Fund; (4) The role and powers of pension scheme trustees and (5) The relationships between TPR, PPF, trustees and sponsoring employer. We include appendices on guidance from UKAEA and GAD at the suggestion of my MP; and the Pensions Ombudsman.
- Our recommendations are set out at the end of each section of this submission under a heading “Recommendations”; they are in bold type.
- Our recommendations on The Pensions Regulator (Section 2.3 below) cover the need for better information for TPR, careful investigation of corporate transactions to ensure sustainability of pensions and vigilance against ploys to get out of pension liabilities. We include a recommendation for an investigation of the AEAT Pension Scheme, including advice given to scheme members, as this illustrates many of the issues addressed by the current Inquiry. We call for an Ombudsman who can investigate complaints like ours and a waiver by Government of time limitations on claims arising out of the AEAT privatisation.
- Our recommendations on the Pension Protection Fund (Section 3.3) are that PPF compensation should, as far as possible, match the promised pension benefits. This is important to government credibility when benefits were accrued in the public sector. We also recommend a review of all privatised DB schemes and a check that PPF will not be weakened by incorporating the Financial Assistance Scheme.
- We recommend that DB pension Trustees (Section 4.2) should have sufficient powers to ensure that any surplus is fairly allocated between beneficiaries and the employer and receive better guidance.
- Our recommendations on the relationships between TPR, PPF, Trustees and employers (Section 5.2) aim to prevent abuse of schemes to extract value from pension schemes.
- We welcome the present Inquiry. We feel that our painful experience gives evidence to support improvements to avert future pension scheme failures in which pensioners do not get the pensions they worked for. This submission is based on substantial documentation of a complex issue. We are ready to provide more explanation or supporting documentation if this will help.
1 Introduction

I was an employee and member of the pension scheme of UKAEA 1975 – 1996, and of AEA Technology plc (AEAT) 1996 – 2003. The AEA Technology Pension Campaign (APC) represents those members of the AEA Technology Pension Scheme (AEATPS) who we have been able to contact through personal links. APC were prevented from contacting the wider 3,000 other pension fund members because Capita Hartshead (scheme administrators) and ITS (acting for the AEAT Pension Scheme Trustees after insolvency) were not willing to forward a letter inviting them to join the campaign. AEAT went into insolvency on 8/11/12 and AEATPS transferred into the PPF on 7/7/2016. APC have been campaigning for four years from 2012 to get our promised pension benefits fully restored. An important part of this is the restoration of full cost-of-living (RPI) indexation on the entire pensionable service accrued as public service employees of UKAEA prior to 1996, which is lost under current PPF rules. Some 150 of us have the full support of our MPs (about 45) in this campaign.

2 The United Kingdom Atomic Energy Authority (UKAEA) was set up by Government in 1954. It was subsequently authorised to develop commercial outlets for its skills and resources from 1965 onwards. In 1995/6 AEA Technology plc was spun out from the former Commercial Division of the UKAEA, with staff compulsorily transferred on 31/3/1996. AEAT was wholly owned by the Secretary of State for Industry and Energy until it was privatised on 26 September 1996 and the AEA Technology Pension Scheme was set up.

3 Prior to privatization, existing employees were given strong assurances by DTI and UKAEA that their valuable pension benefits would be protected under the privatisation legislation - Atomic Energy Authority Act 1995. This Act imposed a statutory duty on the Secretary of State, as owner of AEA Technology plc, to be satisfied that AEAT plc would provide in the private sector a pension scheme conferring ‘no less favourable’ pension benefit entitlements than those provided by the UKAEA Scheme in which employees had previously participated. The Closed Section of the new AEAT Scheme, available only for existing employees, was specifically designed to provide the ‘no less favourable’ rights required under the Act including full cost-of-living (RPI) indexation on total accrued pensionable service.

4 During the privatization process, UKAEA commissioned the Government Actuary Department (GAD) to prepare a note to guide employees on the options available for their accrued UKAEA pensionable service following their transfer into the private sector. The information provided in this Note issued in November 1996 to the staff already employed in AEAT persuaded more than 90% of staff to transfer their accrued UKAEA benefits into the Closed Section of the AEATPS. Given the then recent history of privatizations (Amersham International, BT, BAe), this was assumed by many to be a similar Crown Guarantee for AEA Technology. The risks of such a transfer were never spelled out by UKAEA, AEAT Technology or GAD who provided the advisory note. In our view the 1996 GAD Note contravenes the Institute of Actuaries Professional Conduct code of practice, as well as advice given in subsequent GAD notes about pension comparability in privatizations. More details are given in Appendix I.

5 The following events occurred after privatization in 1996:

- The AEAT Pension Fund fell into deficit by 2002 (see figure below), which grew over subsequent years.
- The Closed Section was restructured with increased employee contributions in 2005
- The Scheme was closed to new members in 2009.
- The workforce reduced as a result of selling off many business units (approx. 3,000 staff in 2001 reduced to approx. 300 in 2010). The pension scheme still had to support a fund for 3,000 members, mostly deferred, with income from a much smaller workforce (~10%).
- AEAT transferred its corporate entity to Jersey in 2010 as AEA Technology Group plc.

1 Transfers from the UKAEA superannuation schemes to the AEA Technology pension scheme note by the Government Actuary’s Department on the options available in respect of accrued UKAEA benefits. Government Actuaries Department (13th November 1996)
• A Financial Restructuring statement (August 2012) confirmed that the Company was profitable with a healthy order book and was recruiting staff. However the financial liabilities and statutory obligations imposed on the Company’s UK Pension Scheme by the privatisation legislation had clearly become a burden.

• The Trustee (ITS), Pensions Regulator and the PPF were involved in the proposed solution to the Company’s financial problems by pre-pack administration; when on 8th November 2012, a pre-pack administration allowed AEAT to jettison its pension liability into the PPF.

• The business was bought by Ricardo plc and as Ricardo Energy and Environment has operated profitably and grown significantly since then.

• The pension scheme was wound up. This caused the pre-pack administration of AEA Technology Group plc and transfer of the sizeable pension fund and liabilities to the PPF (ultimately completed on 7/7/2016).

6 AEAT pension scheme members feel very aggrieved. Despite complaints to DBIS, DECC, UKAEA, DWP, PPF, GAD and the Trustees (ITS) we have failed to receive a fair hearing or to seek any clarity on who is responsible for the loss of pension benefits to former UKAEA employees resulting from administration and subsequently entering the PPF. Responses to the complaints included trying to rewrite history, pretending that protective legislation (Atomic Energy Authority Act 1995) had never existed, obscuring the issues, delaying replying and failing to answer the questions asked, not giving a straight answer and passing responsibility elsewhere. The DWP “Fact Sheet” issued in July 2013 was a typical example of this. The PHSO has since ruled that this was unclear – causing confusion and inconvenience” when they partly upheld our complaint about it. Subsequent complaints to PHSO on the recommendation of the then Pensions Minister (Steve Webb) and to the PO (on the recommendation of George Russell Manager of pensions teams, GAD) have also failed to achieve any investigation of our complaint. This has been justified by obscure or confusing explanations that it was not within their remit and legal technicalities such as the privatization being more than 15 years ago invoking the Limitations Act 1980. This is not consistent with the Financial Ombudsman who does not apply such limitations to long term financial products under the FCA’s complaints procedure. (See Appendix II for more details). Government should waive any time limitations on claims arising out of the AEAT Pension Scheme failure, which took place 15 years after the privatization.

7 Members of the AEATPS are now looking to the Select Committee as a truly independent body to initiate an investigation of the administration of the AEAT Pension Scheme. This recommendation is set out in more detail in Section 2.3 of this submission. We would also welcome any help they can give to obtain a fair and just resolution to our claim for restoration of the pensions promised us in 1996.

2 The Pensions Regulator (TPR)

2.1 The Objectives of TPR

The objectives of TPR are:

• to improve confidence in work-based pensions by protecting the benefits of scheme members;
• to reduce the risk of situations arising that may lead to claims for compensation from the Pension Protection Fund (PPF);
• to promote good administration of work-based pension schemes and
• to maximise employer compliance with employer duties and with certain employment safeguards.

2.2 Summary of events

The Pensions Regulator failed in all of these objectives to ensure that the progressively worsening Pension Fund Deficit was dealt with appropriately. Ultimately this led to the AEAT Pension Scheme entering the PPF.

2 PHSO Summary 992/August 2015 Confusion over DWP’s factsheet on insolvent occupational pension scheme
10 AEAT sold off businesses in 2001. This meant that the pension scheme had to provide cash transfer payments that it had not planned; as a relatively immature scheme it had invested in equities for the long term. By 2001, due to Stock Exchange falls, these has decreased in value, as shown in the figure below (blue line). In addition, the environment of low interest rates, Bank of England Quantitative Easing, increasing life expectancy, the 1997 abolition of Advanced Corporation tax relief on dividends from stock market investment in pension funds and restricted Pension Fund investment policy all compounded to increase the fund requirements (purple line) and hence the deficit (red line) at a time when trading conditions for AEAT were very challenging, even though AEAT increased its contributions (green line).

11 The 2010 Review of the AEAT Scheme states: 'In accordance with the Pensions Act 1995, the Trustee and the Company have agreed a schedule of contributions designed to eliminate, over 20 years, all of the shortfall revealed by the 2008 valuation. This agreement has been reviewed by the Pensions Regulator. The Scheme Actuary has certified the schedule.' As part of the Scheme’s recovery plan, from July 2010, AEAT agreed to pay a £200,000 monthly contribution until June 2012. From July 2012 until April 2029, AEAT agreed to pay £500,000 every month. This represented the impossible target of ~£20k per active employee. The Committee has already questioned the wisdom of the TPR agreeing in 2012 to a similarly lengthy period for the recovery plan of the ailing BHS Scheme.

12 The Augmentation cost of the AEAT Early Release Exercise in 1999 was £10 million – comprising £3.8 million from the (then) scheme surplus with the remaining £6.2 million from an interest free loan from the scheme fund repaid over three years by an increase of 2.5% in the Employer’s contribution rate.

13 Progressive business divestments left only 300 staff supporting a pension fund designed for 3,000.

14 TPR specific failures included:-

- Not being able to recognise the instability of the scheme caused by the 2001 sell offs and the need to make unplanned transfer payments
- TPR did not intervene in the steadily declining AEAT Pension Fund deficit situation; and insist on more realistic scheme recovery plans through greater oversight of the DB pension fund.
• Failure to supervise the trustee of the AEAT Pension scheme from 2005 onwards, although the scheme deficit was increasing year on year.

• Not using its extensive Moral Hazard Powers to take control of AEAT and the trustee to secure additional funding for the AEAT pension scheme.

• Failure to make a Financial Directive against AEAT to secure pension funds from the company.

• Failure to appoint a PR Case Team to supervise the AEAT pension scheme until it was so late that nothing could be done (Case Team appointed in 2010, it should have been done in 2001 or 2005).

• Allowing the trustee to agree to unsustainable recovery plans that broke TPR’s own rules on timescale and sustainability.

• Failure to replace AEAT trustee with its own personnel to seek to recover more assets from AEAT.

• Failure to meet its own Statutory Objectives (To minimise the need for schemes to be taken into the PPF).

15 The Pensions Regulator was involved in the pre-pack negotiations of AEA Technology Group plc in 2012. When members of our action group approached the TPR to ask about its involvement in the pre-pack negotiations, we were met with a very defensive reaction. We were told that this is ‘restricted information’ that cannot be disclosed to us. Despite repeated questions it has never given a satisfactory explanation of its actions to pensioners.

2.3 Recommendations

16 Under Section 11 of the 2004 Pensions Act the Pensions Regulator is required to submit an annual report to the Secretary of State. There would appear to be no requirement to closely monitor and report annually on the financial health of all pension schemes providing protected benefits for public service employees following their compulsory transfer into the private sector. Employers are finding it increasingly difficult to meet the high cost of those inherited public service benefits and might be tempted to offload them onto the PPF in order to remain profitable and save jobs. There should be a mandatory requirement to provide additional reports to TPR on pension schemes providing benefits for public service employees compulsorily transferred into the private sector which would act as an early warning signal for the Regulator and help protect the investment of taxpayers’ money.

17 Trustees must treat a late payment of contributions to the pension scheme as a notifiable event to the Pensions Regulator. However, it would appear that an ‘employer contribution holiday’ agreed by the Trustee is not classified as a ‘notifiable event’, despite the scheme having a large deficit. There should be a requirement to include an ‘employer contribution holiday’ as a ‘notifiable event’ so as to alert the Regulator to a potential problem.

18 In the instance of a corporate sale (as for AEAT subsidiary businesses), TPR should look at the pension scheme implications, such that the remaining scheme does not retain unjustified liabilities. The pension liabilities should be transferred with the staff of the business being sold.

19 Additionally any corporate transaction involving the transfer of a significant number of members of a DB pension scheme to another employer should be notifiable to the regulator to enable a check on the health of the pension funds of those transferring and those left in the old employer.

20 In some cases, including that of AEAT, insolvency can dump pension liabilities into the PPF, thus allowing businesses to be sold as going concerns and preserving jobs. The Pension Regulator should have sufficient powers and resources to exercise continued vigilance to diagnose and prevent arrangements to rid businesses of pension liabilities.

21 The Accountancy and Actuarial Discipline Board (AADB) has launched an investigation into the way in which actuaries from the Government Actuary’s Department (GAD) advised the regulators of Equitable Life. An investigation should be carried out into the behaviour and performance of GAD with

3 ‘The Actuary’ published on 29 January 2009
relation to the advice given to AEAT employees by their former employer, UKAEA, transferred on privatization. More information about this will be found in Appendix I.

22 As an example of the transfer of a Public Sector Defined Benefit Pension Scheme into the private sector, there should be a full investigation into the AEAT Pension Scheme from the start of the privatization process up to its winding up. Such an investigation should cover the management of the funding liability associated with the guaranteed Closed Section benefits (supported by £147.5 million of taxpayers’ money transferred at the time of privatisation), the role of the Pensions Regulator and the Trustees in overseeing the scheme’s assets and liabilities and the pre-pack administration and the resulting transfer to the PPF. This should aim to identify any additional regulatory actions and powers that could have averted the failure of the AEAT Pension Scheme.

23 Government should waive any time limitations on claims arising out of the AEAT Pension Scheme failure, which took place 15 years after the privatization.

24 Appendix II gives some information about our experience with the Pensions Ombudsman. An effective Ombudsman, who can identify corrective actions, can be part of an effective regulatory regime. There should also be an investigation into the way the AEAT Pension Scheme members have been treated by various Government Departments and Ombudsmen since failure of the scheme. This should lead to the creation of an Ombudsman capable of and willing to investigate complaints such as those arising from the failure of the AEAT Pension Scheme. We support the establishment of an integrated Ombudsman service.

3 Pension Protection Fund

3.1 PPF Compensation

25 Pensions are deferred pay. This pay is for work the pensioners have done for their employers in full expectation that the employers’ pension promises will be honoured. Where the pensioners worked in the public sector these promises are effectively promises of the government of the day. If today’s government does not honour past governments’ pension promises its own promises will lack credibility.

26 Therefore as far as possible the compensation paid by the PPF should match the entitlements from the failed pension schemes. This is particularly so for entitlements accrued in the public sector.

27 The PPF is the UK’s mechanism to comply with the 1980 EU Insolvency Directive (Council Directive 80/987) updated in 2008 as Directive 2008/84. This requires member states to protect the pension interests of employees of insolvent businesses. It does not define exactly what “protect” means; it does not necessarily mean full protection £ for £.

28 We understand and agree with the reason for the cap on PPF compensation, to prevent an abuse where senior managers of failing businesses award themselves large pensions that will be paid by the PPF. However the cap is far too stringent, cutting the pensions of pensioners who either have served their employers in long careers or who have provided exceptional value in better paid managerial or specialist posts. The cap rules should be made more specific so as only to prevent the abuse mentioned above.

29 We welcome the recently announced consultation on increasing the cap, a promise made by the then Pensions Minister, Steve Webb MP, to Prospect in March 2013. This follows recent parliamentary questions raised by Ed Vaizey MP. However the proposed improvement is not sufficient and in our view the cap should be removed except insofar as needed to prevent abuse.

30 We understand that the lack of indexation of PPF compensation for pension accrued before 1997 is justified by the lack of a statutory requirement for pension schemes to provide indexation on pensions accrued before 1997. We do not agree with this; pensions accrued with a promise of indexation should be honoured in full. The present PPF rule discriminates against women who on average live longer than men and so suffer a greater detriment than men when their pre-1997 pensions are not indexed.
31 The members of the Closed Section (former Public Service) of the AEATPS paid higher contributions (7.5%) than those of the Open Section (5.75%). This is not recognized in PPF payments.

32 The loss of pre-1997 inflation proofing on public sector UKAEA pension benefits that were transferred into AEAT is the most significant problem for a generation of older workers and their dependents affected by the failure of the AEAT Pension Scheme. If we knew then what we have discovered now, we would never have transferred accrued UKAEA pension (and other accrued public sector pensions) to AEAT – instead preserving our benefits in the Treasury-backed UKAEA Pension.

33 Members of the AEATPS are differently affected by the PPF compensation being less than the promised pensions. Estimates of the shortfall depend on assumptions including about future inflation. Case studies suggest that losses of 35% to 40% of the total pension value are typical; obviously some cases will be better or worse off than this. As stated above the loss of pre-1997 indexation affects women more than men.

3.2 PPF Funding

34 Vulnerability of PPF funding through defined pension contributions is a concern as fewer schemes are in good health. The funding of the PPF appears to be becoming more unstable, with the funding ratio falling from 97% in 2014 to 81.5% in May 2016 of total liabilities of £1590.4Bn. We are concerned that this will worsen in September 2016 when the PPF is forced to take on the previously Government guaranteed Financial Assistance Scheme. We hope that this will not have an adverse impact will this have on pensioners who have already lost out once by the failure of their pension schemes.

3.3 Recommendations.

35 PPF compensation should, as far as possible, match the promised pension benefits. This is particularly important to government credibility when the pensions were accrued in the public sector

36 The PPF compensation cap should be removed except insofar as is needed to prevent abuse.

37 PPF compensation should include indexation as promised by pension schemes, including for pension accrued before 1997.

38 The 10% reduction in PPF compensation for pensions not started at an insolvency should be removed.

39 Undertake a detailed review of all Privatized DB pension schemes.

40 There should be a check that incorporating the Financial Assistance Scheme into the PPF will not weaken PPF’s ability to pay compensation.

4 The role and powers of pension scheme trustees

4.1 Summary

41 The Trustees were given the role of ensuring that that the scheme assets were sufficient to meet the guaranteed defined benefit entitlements accrued.

42 The role of the Trustees of the AEAT Scheme appear to have been faced with the impossible task of balancing investment policy, company and staff contributions to provide sufficient funds for meeting increasing benefit requirements, while the company was reducing staff numbers contributing to the fund.

43 ITS has stated that ‘The Scheme’s legal advisors confirmed to the Trustee that the Principal Employer had sole power of the decision of how to use any surplus and the Trustee had no power to interfere with this decision’. This is something the Committee should rectify if it truly aims to protect benefit entitlements for which members have made a significant financial contribution, as company fortunes can be reversed as was the case for AEAT with surpluses becoming underfunding.
4.2 Recommendation

44 Trustees of DB pension schemes should have sufficient powers to ensure that any surplus in the scheme is fairly allocated between beneficiaries and the employer.

45 Given the difficult investment environment, the trustees had a difficult task in balancing the responsibilities of supporting pensioners and the health of the company in being able to continue to contribute to the Pension Fund. **Guidance should be provided to Trustees as to the balance between continued company health and pension scheme funding, where closure would have prevented worsening underfunding.**

46 While a late payment of contributions to the pension scheme is a notifiable event (TPR), it would appear that an ‘employer contribution holiday’ agreed by the Trustee is not classified as such, despite the scheme having a large deficit. **There should be a requirement to include an ‘employer contribution holiday’ as a ‘notifiable event’ so as to alert the Regulator to a potential problem.** (This recommendation also appears in Section 2.3.)

5 Relationships between TPR, PPF, Trustees and employers

5.1 Summary

47 A Financial Restructuring statement issued by AEAT on 8/8/2012⁴ confirms that “the Company was profitable and operationally successful”. However, the “longstanding balance sheet liability of the UK Pension Scheme deficit dating back to privatization in 1996 was resulting in a difficult to manage cash call in the light of increasing life expectancy and decreasing investment yields”. This statement also confirms that the Trustee, Pensions Regulator and the PPF were involved in the proposed solution to the Company’s financial problems.

48 After an options study carried out by KPMG, it became obvious that a solvent solution was not possible and on 8th November 2012, AEA Technology directors filed for pre-pack administration⁵. As part of this process, the pension scheme trustees had to wind-up the scheme and invoice AEA Technology for the full buy-out costs. The argument for entering a pre-pack administration was that it would maximise the company’s value, and hence the scheme’s value for its members. That later turned out to be false. The money put into the scheme from the sale of the company was negligible in comparison with the losses caused by winding the scheme up and payment of other secured (£5M) and unsecured debts. However, it allowed AEAT to transfer its pension liability to the PPF (ultimately completed on 7/7/2016), with significantly reduced benefits for all scheme members. At the same time, the business was bought by Ricardo plc and as Ricardo Energy and Environment has operated profitably and grown significantly since then. The trustees and the Pensions Regulator were both involved in this decision.

49 Pre-pack administrations were designed with the intention of being for the benefit of creditors. The PPF was set up as a safety net for company pension schemes that run into trouble. The Pensions Regulator has a duty to protect pension scheme members’ best interests, as have the trustees. Yet in the case of AEA Technology, it appears that all those parties got together to help the company financially, at the expense of those they were supposed to protect—the pension scheme members.

50 This raises the concern as to whether pre-pack administrations are being abused. The implications of defaulting on pensions for commercial reasons need to be understood and controlled if the Government are to be successful in promoting saving for retirement and in introducing a unified, simplified pension system into which transfers are the norm.

51 A result of the relationship between TPR, the PPF, the Trustees and the employer was that pension benefit entitlements conferred under by the Atomic Energy Authority Act 1995 were lost when the scheme entered the PPF.

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⁵ KPMG Statement of Administrator’s Proposals for Robin A Realisations plc (formerly AEA Technology plc) 12/12/2012
5.2 Recommendations

52 Means of removing value from Pension Schemes by “Milking and Dumping”\textsuperscript{6} should be prevented by Legislation.

53 This series of events raises the concern as to whether pre-pack administrations are being abused. The implications of defaulting on pensions for commercial reasons need to be understood and controlled if the Government are to be successful in promoting saving for retirement and in introducing a unified, simplified pension system into which transfers are the norm.

54 The Pension Regulator should have sufficient powers and resources to exercise continued vigilance to diagnose and prevent schemes to rid businesses of pension liabilities.

\textit{September 2016}

Appendix I Guidance from UKAEA and GAD

During the privatization process, UKAEA commissioned the Government Actuary Department (GAD) to prepare a Note of pension Options to guide employees whose employment was being compulsorily transferred from UKAEA into AEA Technology. This focused on the likelihood of salary and career progression outstripping inflation, and that these considerations were of greater significance than the possibility that pension promises would be broken. The risks of such a transfer were not spelled out by UKAEA, AEA Technology or GAD who provided the advisory note.

In this appendix we compare this note with the standards that we believe it should have satisfied and with later GAD advice on privatisations. In our view this note understates the risks of transferring past service from the UKAEA pension scheme to the AEAT one, leading to losses now sustained by AEAT pensioners.

I.1 Actuaries professional Conduct
The standards expected from an Actuary can be found in the prevailing Memorandum of Actuaries’ Professional Conduct, point 9 states:

Although advice is primarily directed to the client a member needs to bear in mind that his advice may be made available to third parties who can reasonably be expected to rely on it.

In Point 10, a member should bear in mind that, as a matter of law, his duty of care can extend to persons or organisations whom he can reasonably expect to rely on the advice or the information that he gives.

Under the section on Independence (section 13):- For a member in a particular situation to describe the advice he offers as independent he must be free, and must be seen to be free, of any influence which might affect his advice or limit its scope. In a Freedom of Information request, it has been discovered that the text of the GAD note supplied to employees was modified in the light of suggestions/requests by UKAEA to encourage transfer of pension benefits. The 1996 GAD note did not acknowledge the influence of the UKAEA on its wording. Instead, it gave the impression of independence.

I.2 GAD Statement of Practice
A GAD Statement of Practice issued in 1999, discusses comparability of pension rights between Public and Private Schemes, as measured against Value, Contributions, Benefits, Membership, Security and Type of Scheme (essentially on defined benefit schemes). “Broad comparability” is a weaker protection than “no less favourable” required by the Atomic Energy Act 1995. Nevertheless the guidance is instructive.

As to value, we were promised that our benefits would be “no less favourable” than the UKAEA Pension Scheme. In the section on Security it recognized that the security of a private sector scheme cannot be provided in the same form as that applying in the public sector. This was not made clear in the communications to transferring UKAEA staff in 1996. It would have been a material factor in their decision as to transfer their accrued UKAEA benefit to the new AEA Technology Pension Scheme (which was misleadingly described as having protection under the privatization legislation). In the section on certification, it states that firstly the onus is on the current employer (the Government owned AEAT at that time) to ensure that the pension promises made by the prospective employer (privatised AEAT) are delivered for the staff concerned - implying that the Government has responsibility for making sure our pensions are not devalued. Secondly, that the certificate will be in a

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7 November 1996 “Transfers from the UKAEA Superannuation Schemes to the AEA Technology Pension Scheme. Note by the Government Actuary’s Department on the Options Available in Respect of Accrued UKAEA Benefits
8 Faculty and Institute of Actuaries Memorandum on Professional Conduct MPC v5.1. (23.05.1996)
10 Pensions – what you need to know August 1996 AEA Human Resources Group
form which can be distributed to the employees and their representatives. The certificate in existence in September 1996 was not distributed to prospective members.

I.3 GAD note on pension fund security

63 A subsequent GAD note in 2006 states that for Public Service Schemes (including UKAEA)

“Public service pension schemes are normally established under an Act of Parliament and are underwritten by the government. The benefits and contributions for each public service scheme are normally set out in regulations or rules approved by Parliament. This means that the benefits are guaranteed to be paid in full”. Whereas for Private Sector Schemes “many of the laws governing the way in which schemes operate are intended to provide security to members, although it must be recognised that the level of security offered by these rules is lower than that implied by a government guarantee.”

On the wind-up of the AEA Technology Pension Scheme, the PPF refused to recognise any protected status of the “Closed Section” for members who had transferred from the Public Sector UKAEA Scheme. However this would seem to be contrary to the advice given in the 2006 GAD note, where it states “The private sector scheme must provide for greater than statutory protection of ex-public service employee benefits in the event of scheme wind up…”

I.4 Summary

64 All these principles must have been known in 1996, when GAD prepared the initial note for UKAEA.

65 If it was thought necessary later to provide that very clear guidance on the risks associated with a private sector pension scheme for later transfers, as set out in the 1999 and 2006 GAD notes, then it is implicit that the information given for the AEAT transfer in 1996 was inadequate and the limited scope of the information meant that employees were unable to reasonably rely on it when making such a major decision. This might be regarded as a breach of professional conduct and a failure of a duty of care.

66 It is clear that GAD regarded UKAEA as the client, making scheme members persons who an Actuary ‘can reasonably expect to rely on the advice or the information that he gives’ (paragraph 10 of the Memorandum) and for whom his legal duty of care can extend. We could reasonably be expected to rely on that information because we believed it safe to trust the integrity and professionalism of the GAD. It should be noted that this note was attached to the transfer form sent to all employees bearing the UKAEA logo and the wording “UKAEA Pension Scheme”.

67 Employees were also misled by the absence in the GAD note of any risk assessment relating to the transfer of pension benefits from UKAEA to AEAT for Closed Scheme (ex-public sector) members. This was revealed in a subsequent FoI request. Risk assessment is the primary duty of an actuary. Failure to mention risks associated with a financial product is a breach of the Actuary’s code of conduct.

68 In summary, GAD played 3 roles in the privatisation process, which might have introduced a conflict of interest:

- Acted as auditor of the pension fund provisions and reported back to the Secretary of State, and made AEAT sign that they would set up the fund accordingly. Here they were acting for the DTI.
- Wrote the Note on Options, sent to scheme members. Unbeknown to the scheme members it was designed not for them but for UKAEA, who proposed modifications to encourage transfer of pension benefits. It understated the risks of transferring past service to the AEAT PS.
- Negotiated the capital amount to be transferred to the scheme against the AEAT actuary, hence working for the Treasury.

Appendix II The Pensions Ombudsman

11 Security of pension benefits differences between public service and private sector schemes (GAD October 2006)
Complaints have been made to the Pensions Ombudsman and PHSO by a group of former AEA Technology Pension Fund Members.

Despite lengthy correspondence involving over 119 cosignatories, the Pensions Ombudsman have refused to investigate our complaints comprising:-

- Misinformed by UKAEA with concealment of risks in transferring UKAEA Pension Benefits to AEAT Pension
- GAD Options note has been influenced by UKAEA to encourage transfer to AEAT and had not properly highlighted the difference in security between the UKAEA (treasury-backed) and AEAT Pension Schemes.
- Minimum funds were transferred by UKAEA to AEAT Pension Fund, inadequate for Private Sector Scheme.

A complaint was also made to the PHSO against DTI (now BEIS) and UKAEA by a comparable number about similar matters, as well as evasive, unprofessional behaviour in handling our complaint. Refusal to investigate was given on the basis that they cannot investigate Public Sector Pensions, despite the fact that we had been already transferred into the private sector at the time the GAD note was issued and the decision to transfer benefits from UKAEA to a private pension scheme had to be made.

In addition to these complaints individual scheme members have complained to the Pensions Ombudsman and the PHSO. In all cases the ombudsman refused to investigate.

The Financial Ombudsman can only help with complaints about the sale of pensions, or the suitability of specific pension’s advice – specifically in the private sector. Our complaint therefore seems to fall between gaps in the Ombudsmen service. We support the establishment of an integrated Ombudsman service. (This recommendation appears in Section 2.3.)

After correction of basic errors in understanding by the Pensions Ombudsman of the details of our complaint, Section 14b of the Limitations Act (1980) has been cited to exclude our complaint on the basis that more than 15 years had elapsed since the privatization. They disregarded the fact that the pensions promise was only broken on 8/11/2012 and that we discovered this shortly afterwards. The decision not to investigate our complaint has been stated to be final, with no further rights of appeal with the Ombudsman, instead suggesting recourse to legal proceedings.

We request that Government waive time limitations as a defence, as does the Financial Ombudsman. (This recommendation appears in Section 2.3.)