

Public Accounts Committee: AEA Technology Pension Case

Submission by Prospect

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Introduction

1. Prospect is a trade union representing over 155,000 employees and freelancers across the public and private sectors.
2. One of Prospect's predecessor trade unions, the Institute of Professionals, Managers and Specialists (IPMS), was the main trade union representing the staff who worked for UKAEA at the time of the creation, and subsequent privatisation, of AEA Technology.
3. Prospect continues to represent employees of various successor companies that still operate in areas that AEA Technology was active in.
4. Prospect also represents many retired members who receive compensation from the Pension Protection Fund (PPF) in relation to pension benefits that were transferred into, or accrued in, the AEA Technology Pension Scheme.
5. Both the above groups of members have suffered significant losses due to a combination of circumstances and events that resulted in the transfer of the AEA Technology Pension Scheme to the PPF.
6. There were approximately 4,000 employees of AEA Technology at the time of privatisation. By the time the pension scheme transferred to the PPF, there were about 3,000 scheme members affected.
7. The scale of the losses should not be underestimated. Many members will lose hundreds of thousands of pounds over the course of their retirement. Many are battling the current cost of living crisis with an income that is largely frozen in nominal terms. This has had a devastating impact on our members.
8. We welcome the committee's inquiry into this issue as well as the NAO's investigation. This submission reflects the strongly held views that our members have about the causes of their pension losses and the difficulties they have had in getting their complaints heard.

Summary

9. AEA Technology employees were misled by the information provided by UKAEA and the Government Actuary's Department (GAD) about the options they had in respect of past benefits accrued in the UKAEA's pension schemes after privatisation. This contributed to significant pension losses that have had a devastating impact on the retirement and future plans of thousands of people.
10. This impact was exacerbated by the calculation and payment of an inadequate bulk transfer value to the AEA Technology Pension Scheme in respect of past benefits that were transferred from the UKAEA's pension schemes.
11. Prospect is calling on the Public Accounts Committee to acknowledge the losses that these failures of public bodies have caused members of the AEA Technology Pension Scheme and to recommend that government legislate to allow the Parliamentary and Health Service Ombudsman to investigate this matter and recommend appropriate compensation.

Background – privatisation of AEA Technology and impact on pension scheme members

12. The committee is investigating the facts about the pension losses suffered by members of the AEA Technology Pension Scheme and the difficulties that members of this scheme have had in having their complaints properly investigated.
13. It is useful to understand the background to the creation and privatisation of AEA Technology to provide context to the current position.
14. AEA Technology was the division of UKAEA responsible for its commercial activities. Its customers were mostly within the UK government and wider public sector but also included a significant proportion from the private sector and overseas. Its main customers were from the nuclear industry, but a substantial proportion of the business related to non-nuclear activities.
15. The Atomic Energy Act 1995 provided for the privatisation of AEA Technology (which happened when the company was floated on the London Stock Exchange in September 1996).
16. At the time of privatisation, AEA Technology was a world-class business operating in an industry that the UK had led the world in for decades. Since privatisation, the companies that made up the AEA Technology group have gone into administration, as the various underlying businesses have not generally thrived in the way envisaged.
17. While the above issues are not directly in the scope of the committee's inquiry, they are relevant context to the related pension losses that the committee is investigating.
18. Schedule 4 of the Atomic Energy Act 1995 contained provisions for protecting the pensions of the employees transferring from UKAEA.
19. These protections were required because employees would not be able to retain membership of the UKAEA's public service pension schemes (then known as PNISS or ISS) after privatisation.
20. The Act placed a statutory duty on the vendor to be satisfied that employees could join a pension scheme after privatisation that was no less favourable than the UKAEA's schemes.
21. It was also government policy to allow employees to participate in a bulk transfer of their past service from the public service pension scheme they were in, to the relevant pension scheme after privatisation. The terms of the bulk transfer allowed members to preserve the link between their past service in the public service pension scheme and their final salary on retiring from AEA Technology. (These terms were more generous than would usually apply on a voluntary transfer between two such schemes.)
22. After privatisation, the funding of the AEA Technology Pension Scheme came under significant pressure. This had many impacts: future benefits in the scheme were cut back, parts of the company were sold off to generate cash to deal with

deficits, and ultimately what was left of the AEA Technology group of companies (the sponsor of the pension scheme) entered administration.

23. This resulted in the AEA Technology Pension Scheme being transferred into the PPF, with significant losses for all members.
24. The scale of the losses suffered by scheme members was significantly worse for those who chose to transfer their past pension.
25. The UKAEA and GAD were the public bodies that had the most impact on this process. AEA Technology Pension Scheme members feel they were misled by these organisations and suffered significant financial losses as a result. They want a full investigation by an independent body that has the power to order compensation if appropriate.

The UKAEA's pension schemes

26. Prior to privatisation, nearly all the transferring employees were members of one of the UKAEA's pension schemes.
27. These were statutory, public service pension schemes (established under the Atomic Energy Authority Act 1954). They were unfunded, which means that member and employer contributions were used to pay current pensioner benefits rather than invested in assets that could be used to pay active members' own benefits in retirement.
28. If contributions were not enough to meet the payment of scheme benefits, the deficit was paid from the Consolidated Fund (similarly any surplus of contributions over payments was surrendered to the Consolidated Fund).
29. The way that these pension schemes were established and operated effectively meant that members' benefits were guaranteed by Treasury. This was a much higher level of security than is generally available to members of similar pension schemes operating in the private sector.

Establishment of the AEA Technology Pension Scheme

30. As mentioned above, the Atomic Energy Act 1995 effectively required the operator of AEA Technology to provide employees with membership of a pension scheme that was "no less favourable" than the UKAEA's schemes after privatisation.
31. This formalised the government's policy at the time to require privatised employers to provide pension benefits that were equivalent to the benefits that employees were entitled to as members of public service pension schemes.
32. GAD was responsible for certifying that any new pension scheme satisfied this requirement.
33. It should be noted that the assessment was considered to relate to the level of benefits payable by each scheme and not, for example, to the security of those benefits (as no private sector scheme was likely to be able to offer benefits that were as secure as those effectively underwritten by government).

34. At the time of privatisation, the AEA Technology Pension Scheme was deemed to be “no less favourable” (considering overall benefits) than the UKAEA’s schemes and transferring employees could earn future benefits in this scheme.
35. For the avoidance of doubt, Prospect members are not generally complaining about the certification of the AEA Technology Pension Scheme as “no less favourable”. They are also not complaining about information around the impact of joining this pension scheme for future accrual (this was the only option available).
36. For completeness, it may be worth noting that the protection in the Atomic Energy Act 1995 applied at the point of privatisation and not afterwards. Hence, when the scheme experienced funding pressures after privatisation, a series of detrimental changes to future benefits were implemented to control costs. Again, for the avoidance of doubt, Prospect members are not complaining about the impact of these detrimental changes on their retirement income.

Transfer of service to the AEA Technology Pension Scheme

37. After privatisation, there was a window of time during which employees could make choices in relation to the benefits they had built up in the UKAEA’s schemes.
38. It was government policy to offer such a choice. The intention was to protect members against the impact of losing the link between the pension they had built up before privatisation and future salary growth (including potential promotional increases) after privatisation.
39. Many Prospect members feel that they were significantly misled when they made this decision. They feel that the UKAEA and GAD were responsible for this. Almost everyone who decided to transfer their past service to the AEA Technology Pension Scheme will have lost significant sums as a result. Prospect members feel that their complaints have not been properly investigated.
40. The main ways that Prospect members feel they were misled are summarised in the following table (further details are provided below). These complaints are in relation to the note from GAD, to employees who were employed by AEA Technology at the time it was privatised, about the choices available in relation to the past benefits they had accrued in the UKAEA’s schemes.

Complaints about mis-selling in relation to choice to transfer past service in the UKAEA’s pension schemes to the AEA Technology Pension Scheme	
1.	Section 2.2 of the note states that members who opt to transfer these benefits to the AEA Technology Pension Scheme will receive total benefits that are “identical (or very close)” to those they would have received if they had been able to remain in the UKAEA’s pension schemes. This overlooked the possibility that the sponsor of the AEA Technology Pension Scheme could fail at a point when there was a substantial shortfall in assets needed to meet these pension promises.
2.	Section 3.2.2 of the note states that “it is unlikely that the benefit promise made by either the UKAEA Scheme or the AEAT Scheme would ever be broken”. This clearly underestimated the possibility that AEA Technology would be unable to meet any future shortfall in assets required to meet the pension promises in that scheme. It also inappropriately drew an equivalence between the sponsor risk in the UKAEA’s schemes (which were government backed) and the AEA Technology Pension Scheme (which had no such guarantee, and which did not have substantial assets that could be used to meet these promises). This section continued to

explicitly say that considerations about sponsor risk “should not normally outweigh those in relation to salary and inflation”. Anyone relying on this advice almost certainly suffered significant losses.

3. The drafting of the note was the subject of discussions between UKAEA, AEA Technology (and their advisors) and GAD. In particular, a Freedom of Information request has revealed comments from AEA Technology on 31 October 1996 about an earlier draft of the note. This note stated that AEA Technology “believe the general tone of this note is likely to discourage people from transferring to the AEAT Scheme... [we] have suggested a few places where the tone could be modified.” It is unclear what the motivation of those suggesting changes to make it more likely members would transfer benefits was, but the changes likely achieved their aim. It was inappropriate for GAD and the UKAEA to allow such considerations affect the wording of this note.

4. Examples of the drafting changes mentioned above include:
 - a. The advantages of transferring benefits to the AEA Technology Pension Scheme were put ahead of the advantages of preserving benefits in the UKAEA’s schemes instead of after.
 - b. A change was made to the section about financial advice (Section 1.1.3 of the final version) which changed from “decisions would best be taken after receiving Independent Financial Advice” to “if you are unsure of the most suitable course of action you should seek Independent Financial Advice”. The rest of the note would have left many members sure that transferring their past benefits was in their interests, so this change will have made it less likely they would seek Independent Financial Advice.
 - c. In what became section 2.2.5 a qualification of a potential disadvantage of not transferring benefits (“The circumstances where this course of action is advisable are relatively rare.”) was removed.
 - d. An additional advantage of opting for a transfer (Section 3.1.2) was added to the final draft of the note.
 - e. The main benefit of preserving benefits in the UKAEA’s schemes (in what became Section 3.2.3 of the final draft) was downplayed from the initial version. It was moved from the first advantage of preserving benefits that was listed to the last. Wording in the original draft that might have made people consider this factor more was removed (such as “some people rest easier with the feeling that ‘their eggs are not all in one basket’”).

41. People employed by AEA Technology at the time of privatisation largely relied on GAD’s note in making decisions about whether to transfer past benefits in the UKAEA’s pension schemes to the AEA Technology Pension Scheme.
42. This note explicitly stated that considerations of sponsor risk “should not normally outweigh” the fact that salary growth would normally be expected to outpace inflation (which would make transferring benefits more valuable). This is despite the fact that the regulatory regime at the time meant that the potential losses that members could suffer as a result of sponsor risk were much greater than applied when the scheme was transferred to the PPF.

43. The note also stated that Independent Financial Advice was only necessary “if you are unsure”, which few would have been after the unambiguous nature of the advice referred to above.

Calculation of the bulk transfer payment

44. A further issue is the calculation of the bulk transfer payment from the UKAEA’s pension schemes to the AEA Technology Pension Scheme in respect of benefits that members decided to transfer.
45. This amount quickly proved to be inadequate to meet the associated pension promises and, shortly after the transfer, large deficits started to emerge in the AEA Technology Pension Scheme.
46. This had the impact of increasing the funding pressure on the scheme and worsening the financial position of the AEA Technology group of companies.
47. This contributed to the entry of AEA Technology into administration and therefore the transfer of the AEA Technology Pension Scheme to the PPF.
48. This may also have made it more difficult, or less palatable, for some members to transfer their benefits out of the AEA Technology Pension Scheme before the funding pressures and transfer to the PPF greatly reduced their value.
49. Any investigation of the losses suffered by these members should cover the basis for calculating and negotiating the bulk transfer payment.

Losses

50. The AEA Technology Pension Scheme went into a PPF assessment period when the AEA Technology group entered administration in November 2012, and the scheme transferred to the PPF in July 2016.
51. The losses that members incurred were due to the difference in benefits payable from the AEA Technology Pension Scheme and under the rules of the PPF.
52. At the time that PPF rules first applied, this involved a 10% haircut on benefits for most members who had not retired (subject to a cap on overall compensation) as well as greatly reduced inflation protection (with no increases at all for compensation in respect of accruals before April 1997, which covered all benefits transferred from the UKAEA’s schemes).
53. Since that time, the level of compensation payable has slightly improved as a result of litigation.
54. However, the minimum requirement that PPF compensation needs to comply with is that compensation is no less than 50% of the value of the benefits that scheme members had accrued. Clearly, this implies that members’ losses could be up to 50% of the value of their benefits.

Investigation

55. Prospect members have been hugely frustrated by the lack of appropriate investigation of the circumstances and events outlined above.
56. Their losses have been raised by MPs in Westminster Hall debates, adjournment debates and at oral questions.
57. The most appropriate body to investigate their complaints is the Parliamentary and Health Service Ombudsman (PHSO). Unfortunately, the PHSO’s scope in relation

to GAD does not cover the advice provided to employees of AEA Technology at the time of privatisation.

58. Sir Oliver Letwin MP drafted an amendment to a proposed Bill to create a single public service ombudsman (the Draft Public Service Ombudsman Bill), that would enable the Ombudsman to consider these complaints. The government never proceeded with this Bill.
59. Baron Vaizey of Didcot and David Johnston MP both presented Private Member's Bills to Parliament which would "make provision to enable a Parliamentary and Health Service Ombudsman to investigate advice given by the Secretary of State and Government Actuary relating to the transfer of pensions from the United Kingdom Atomic Energy Authority pension scheme to the AEA Technology pension scheme; and for connected purposes." Neither of these Bills ("United Kingdom Atomic Energy Authority Pension Transfers (Parliamentary and Health Service Ombudsman Investigation) Bill") progressed beyond second reading.
60. Prospect is calling on the committee to acknowledge the impact that misleading information has had on these members and to recommend that government legislate to allow the Parliamentary and Health Service Ombudsman to investigate this matter and recommend appropriate compensation.