

## GUIDE TO THE PARLIAMENTARY OMBUDSMAN'S REPORT

### *'TRUSTING IN THE PENSIONS PROMISE: GOVERNMENT BODIES AND THE SECURITY OF FINAL SALARY OCCUPATIONAL PENSIONS'*

#### Introduction

1. This is a guide to the report, *Trusting in the pensions promise: government bodies and the security of final salary occupational pensions* (HC984), which Ann Abraham, the Parliamentary Ombudsman, has laid before both Houses of Parliament and which was published on 15 March 2006.
2. The guide has been prepared by the Press Office of the Office of the Parliamentary and Health Service Ombudsman and aims to assist the readers of the Ombudsman's report by directing them to the answers to some key questions concerning the contents of the report. Cross-references are to the relevant chapters, sections or paragraphs of the report.
3. While every attempt has been made to ensure that this guide reflects the contents of the Ombudsman's report accurately, the reader of this guide should only have regard to the report itself when seeking to establish what it contains.
4. The guide has no status or purpose other than as described above and should not be relied upon as a substitute for reading the full report.

#### What does the report cover?

5. The report sets out the results of the Ombudsman's investigation into complaints from members and trustees of certain final salary occupational pension schemes which have wound-up without sufficient funds to enable the schemes to meet the 'pensions promise' to all their members.
6. The Ombudsman received more than 200 referrals of complaints by Members of Parliament of all parties. The complaints were made by people living in all parts of the UK. The Ombudsman also received more than 500 direct representations about the same matters from other people.
7. The complaints were directed against the Department for Work and Pensions, Her Majesty's Treasury, the former Occupational Pensions Regulatory Authority, and the National Insurance Contributions Office of Her Majesty's Revenue and Customs.
8. The Ombudsman announced her decision to conduct an investigation of these complaints in a letter to all Members on 16 November 2004.
9. The investigation used four individual complainants as representative of all those who complained to the Ombudsman. These complainants were chosen by the Ombudsman as they broadly represented the main categories of people who had made complaints to her.

## What is in the report?

10. The Ombudsman's report has eight chapters and five annexes:
- Chapter 1 provides an **introduction** to the report and to the role of the Ombudsman - and also sets out the **background** to the investigation.
  - Chapter 2 sets out the **detailed complaints** that have been investigated, the **Government's reply** to those complaints, and the **approach** taken by the Ombudsman to determine whether the complaints are justified.
  - Chapter 3 describes the **enquiries** that the Ombudsman made to assist her to better understand the complaints and the context in which the relevant events were placed.
  - Chapter 4 outlines the **evidence** from Government files, official publications and other documentary sources that the Ombudsman has reviewed.
  - Chapter 5 contains the Ombudsman's **findings** as to:
    - (i) whether maladministration occurred;
    - (ii) whether injustice has been suffered by individuals;
    - (iii) if so, whether any injustice suffered has been remedied already; and
    - (iv) if not, whether maladministration caused or contributed to the injustice suffered by individuals.
  - Chapter 6 sets out the Ombudsman's **recommendations** in the light of her findings.
  - Chapter 7 sets out the **Government's response** to the Ombudsman's findings and recommendations **and the Ombudsman's assessment** of that response.
  - Chapter 8 contains the Ombudsman's **conclusion**.
  - Annexes: annex A provides information about the **statutory and administrative context** to the complaints; annex B provides a summary of the **actuarial advice** received by the Ombudsman; annex C deals with **submissions made by the Government** during the investigation - and the **Ombudsman's assessment** of those submissions; annex D sets out the **Government's response** to the Ombudsman's report; and annex E sets out the **response from the advocate for complainants**, Dr Ros Altmann, to the Ombudsman's report.

## Who are the lead complainants?

11. It is the Ombudsman's practice to anonymise lead complainants in investigations such as this, in order to protect the identity of those individuals. It is a matter for them whether they wish to identify themselves to discuss their experience.
12. The circumstances of the four lead complainants - Mr J, Mr G, Mr D, and Mr B - is set out in paragraphs 2.4 to 2.32 of the report.

13. Information about the circumstances of some other complainants is provided in paragraphs 2.33 to 2.35 of the report and also in paragraphs 3.7 and 3.8.

**What were the complaints about?**

14. The maladministration alleged by complainants is set out in paragraph 2.36 of the report. In summary, the four heads of complaint were:
- (i) that information provided by the Department for Work and Pensions, the Occupational Pensions Regulatory Authority and other Government bodies was misleading in that it did not explain the security of the pension rights of members of final salary occupational schemes accurately, completely, clearly and consistently;
  - (ii) that the Department for Work and Pensions did not take action to warn scheme members of the risks to their pensions when the actuarial profession recommended in May 2000 that such warnings should be given as scheme members had no idea of the risks to their pensions if their scheme were to wind up;
  - (iii) that the Government weakened the security provided by the statutory Minimum Funding Requirement twice without regard to the impact that this would have on the security of pensions; and
  - (iv) that delays and error by the National Insurance Contributions Office had led to the process of winding-up schemes taking much longer than was necessary.
15. The injustice that complainants claimed to have suffered is described in paragraphs 2.38 to 2.51 of the report. In summary, the injustice claimed by individuals had four elements, which were:
- (i) lost opportunities to make informed choices when considering pensions and savings options or to take remedial action in relation to the funding position of their scheme to prevent wind-up or to ameliorate individual loss;
  - (ii) the financial loss of a considerable proportion (in some cases all) of the expected pension - once the wind-up of a scheme was triggered;
  - (iii) a sense of outrage - because the public bodies responsible for the framework of pensions law and regulation did not provide adequate protection through - or accurate information about the level of protection provided by - that framework; and
  - (iv) the distress, anxiety and uncertainty caused to individuals and their families - by the effects of the above.
16. The remedy sought by complainants is explained in paragraphs 2.53 to 2.55 of the report. In summary, the remedy sought had four aspects:
- (i) a full explanation of what had happened;

- (ii) the replacement of the core pension lost (including that deriving from additional voluntary contributions);
- (iii) the replacement of associated benefits that have been foregone - such as life cover, survivor benefits, and ill-health benefits; and
- (iv) a tangible recognition of the effects of the relevant events on complainants and their families.

#### **What was the Government's response to the complaints?**

17. The initial response of the Government to the complaints is set out in paragraphs 2.58 to 2.97 of the report. The Government did not accept that any of the complaints were well-founded or that the facts supported the allegations of maladministration made by complainants.

#### **What tests did the Ombudsman apply?**

18. The approach that the Ombudsman took to assessing whether the complaints were justified is described in paragraphs 2.101 to 2.106 of the report.

#### **How did the Ombudsman conduct her investigation?**

19. The Ombudsman considered an extensive documentary evidence base that principally covered the period from 24 January 1994 to 6 April 2005.
20. In addition to this and to considering the evidence supplied within the complaints made by individuals and in the Government's response to those complaints, the Ombudsman:
- (i) conducted a survey of complainants (see paragraphs 3.7 and 3.8);
  - (ii) received representations on behalf of complainants from their advocate, Dr Ros Altmann (see paragraphs 3.9 to 3.19 and 3.85 to 3.98);
  - (iii) sought evidence from the bodies under investigation (see paragraphs 3.21 to 3.84 and annex C);
  - (iv) interviewed representatives of independent trustees, responsible for winding-up some of the relevant schemes (see paragraphs 3.99 to 3.115);
  - (v) sought actuarial advice on the technical context of some of the complaints (see paragraphs 3.119 to 3.156 and annex B); and
  - (vi) obtained comments on aspects of the complaints or evidence from a range of interested parties, including from the actuarial profession, the Financial Services Authority, the Government Actuary, the Association of British Insurers, the National Association of Pension Funds, and Members of Parliament.

## What does the evidence say about the role of Government?

21. The Ombudsman came to six conclusions from the evidence she had reviewed about the role of Government in occupational pension provision during the relevant period. These conclusions are set out in paragraphs 5.5 to 5.28 of the report.
22. These were:
- (i) that the public bodies under investigation had responsibilities in relation to aspects of final salary occupational pension provision, which included setting (and revising) the funding framework for final salary schemes and devising the regulatory framework (see annex A);
  - (ii) that the Government saw itself as acting - and told the public that it was doing so - in partnership with others both to promote the benefits of membership of occupational pension schemes and to remind individuals that, where they could, they had an obligation to save for their retirement (see, for example, paragraphs 4.122-3, 4.133, 4.136, 4.139, 4.146-7, 4.394-5, 4.479-83);
  - (iii) that the Government recognised throughout the relevant period that pensions were complex and often not a topic that was generally understood and that, consequently, there was a need for greater financial education, for improved awareness of pensions, and for clearer information about the various savings options (see, for example, paragraphs 4.77-9, 4.118-23, 4.136, 4.145-50, 4.175-7, and 4.408);
  - (iv) that the Government saw itself as having a key role in promoting such better education, awareness and information about pensions and saving for retirement - and told the public that it would do so (see, for example, paragraphs 4.147-50, 4.273-6, 4.308, 4.479-83, and 4.577-86);
  - (v) that the Government said at the relevant time that the information leaflets and other official publications issued by public bodies were an integral component of the promotion of the benefits of saving for retirement and aimed to assist people to make informed choices about various pensions options (see, for example, paragraphs 4.123, 4.136, 4.139-40, 4.201, 4.479-82, 4.502, 4.504-6, and 4.512-4); and
  - (vi) that the Government accepted at the relevant time that it had certain obligations in relation to its publications - that these should be accurate and should contain no significant omissions (see paragraphs 1.24-5, 4.442-9, and 5.19-28).

## What does the evidence say about what happened?

23. In relation to the heads of complaint about alleged deficiencies in the information provided to the public about the security of final salary pensions and a decision by

the Department for Work and Pensions not to undertake disclosure of the risks to scheme members, the evidence considered by the Ombudsman showed:

- that the then Government chose in November 1995 to instruct the actuarial profession to devise a basis for the Minimum Funding Requirement that would keep pensions in payment but would only provide non-pensioner members with an 'even chance' of receiving a cash equivalent transfer value that would, following investment, produce a pension equivalent to that which would have been provided by the relevant scheme (see paragraph 4.64).
- that the actuarial profession had been warning Government from as early as March 1995 that scheme members might be misled as to the security of their pensions by the terminology used in relation to scheme funding or by the existence of signed actuarial funding certificates (see paragraphs 4.24-7).
- that, in addition to the role that the Government played in the relevant events which is described in paragraph 22 above, Government had also recognised at the time that it was important to explain the Minimum Funding Requirement carefully to scheme members (see paragraph 4.26).
- that, in spite of the above, official information on these matters was:
  - (i) **inaccurate** - by telling scheme members that they would receive the full value of their accrued rights if their scheme wound up and/or that the Minimum Funding Requirement was designed to ensure that schemes had enough assets to meet their liabilities in full (see paragraphs 4.37, 4.42, 4.44, 4.47, 4.54-5, 4.57, 4.66-7, 4.70, 4.141, 4.181, 4.330, 4.332, and 4.362);
  - (ii) **incomplete** - by omitting to mention the most highly significant factors - such as that a pension was only as secure as the employer sponsoring the scheme - when answering specific questions about pension security that such information chose to pose (see paragraphs 4.365-70, 4.454-9, and 4.546-56);
  - (iii) **unclear** - by using expressions such as 'fair value' to indicate the Government's settled intention that non-pensioner members would have only an even chance of receiving their pensions (see paragraphs 6 to 10 and 31 to 35 of annex C); and
  - (iv) **inconsistent** - from September 2000, some official statements and publications - especially those aimed at the general public - continued not to mention risk and to give a misleading impression as to the security of pension rights, while others began to explain the true position (see, for example, paragraphs 4.265, 4.306, 4.400, 4.568, 4.595, and 4.599 for more appropriate disclosure).

- that the Department for Work and Pensions failed to consider the effects of this inaccurate, incomplete, unclear and inconsistent information when they were informed again in 2000 by the actuarial profession that scheme members had no idea of the risks to their pensions (see paragraphs 4.287-8 for the profession's recommendation and paragraphs 4.347-54 for the Government's response).
24. In relation to the head of complaint related to decisions concerning the basis for the Minimum Funding Requirement, the evidence considered by the Ombudsman showed:
- that Government set the policy which underpinned the detailed funding framework for all schemes (see, for example, paragraphs 4.14-27, 4.63-4, 4.69-73, 4.223, 4.247, and annex A);
  - that Government never properly informed the public about its policy and about the fundamental effects that its policy would have on pension security (none of the publications described, for example, in paragraphs 4.365-70, 4.454-9, and 4.546-56 did so);
  - that, in response to recommendations made by the actuarial profession on four occasions, the Department for Work and Pensions decided to weaken the Minimum Funding Requirement - which relieved the burden on sponsoring employers - twice, but decided not to strengthen it - and thus increase the protection it afforded to scheme members - twice (see paragraphs 4.106-10, 4.320, 4.371-2, and 4.545 for the four recommendations - and paragraphs 4.111-4, 4.352-4, 4.420, and 5.101 for the Government's decisions); and
  - that the decision-making approach that the Department for Work and Pensions took to the four recommendations - from the same source, with the same aim, and in the same context - was inconsistent, once it had been decided to replace the Minimum Funding Requirement (see paragraphs 5.102-11).
25. The evidence considered by the Ombudsman in relation to the head of complaint related to the delays and alleged errors by the National Insurance Contributions Office in the process of winding-up final salary schemes is set out at paragraphs 3.56 to 3.84 of the report.

### What were the Ombudsman's findings?

26. The Ombudsman made the following three findings of maladministration:
- first, that official information - about the security that members of final salary occupational pension schemes could expect from the Minimum Funding Requirement provided by the bodies under investigation - was sometimes inaccurate, often incomplete, largely inconsistent and therefore potentially misleading, which was contrary to the Department for Work and Pensions' own standards and also to principles of good administration (paragraphs 5.36 to 5.74);

- secondly, that the response by the Department for Work and Pensions to the actuarial profession's recommendation that disclosure should be made to pension scheme members of the risks of wind-up - in the light of the fact that scheme members and member-nominated trustees did not know the risks to their accrued pension rights - had no regard to the role that its own deficient information had played in creating the position in which scheme members were unaware of risk, which thereby ignored a relevant consideration (paragraphs 5.82 to 5.94); and
  - thirdly, that, in relation to the decision in 2002 by the Department for Work and Pensions to approve a change to the Minimum Funding Requirement basis, there was insufficient documentary evidence to explain the rationale for that decision - and that the Department for Work and Pensions appeared to have relied on professional advice which could not be sufficient in itself to enable the Department to come to a decision, as it should have done, that took account of all relevant considerations and which ignored irrelevant ones (paragraphs 5.95 to 5.150).
27. The Ombudsman found no evidence that the decision in 1998 to change the Minimum Funding Requirement basis had been taken with maladministration (paragraphs 5.77 to 5.81). Furthermore, while she found that the time taken to wind-up final salary schemes was routinely very lengthy, these delays could not be laid at the door of the National Insurance Contributions Office alone (paragraphs 5.151 to 5.163).

#### **Did this maladministration cause injustice?**

28. The Ombudsman has found that maladministration caused injustice in the forms of a sense of outrage, lost opportunities to make informed choices or to take remedial action, and distress, anxiety and uncertainty.
29. She has also found that maladministration was a significant contributory factor in the creation of the financial losses suffered by individuals, along with other systemic factors. A further consequence of maladministration was financial injustice - the distortion of the reality facing scheme members so that they were wholly unaware that their pension rights were dependent on the ongoing security of their employer.
30. The report discusses the links between maladministration and injustice in paragraphs 5.165 to 5.246.

#### **What has the Ombudsman recommended should happen?**

31. The Ombudsman has made five recommendations. They cover those individuals:
- (i) who are or were a member of a final salary scheme which commenced wind-up from 6 April 1997 to 31 March 2004; where

- (ii) their scheme wound-up with insufficient assets to secure pensions in payment and to pay cash equivalent transfer values in respect of full accrued pension rights to all non-pensioner members or to secure the full liabilities for each non-pensioner in other ways; and where
- (iii) the scheme is not eligible for the statutory pensions compensation scheme - because it has not suffered losses wholly attributable to fraud or other unlawful behaviour; and where
- (iv) the individual has incurred an actual financial loss because of a shortfall in the pension promised in respect of any or all of the following:
  - the contributions made by them and/or their employer to the scheme (that is, the scheme pension); and/or
  - contracted-out national insurance contributions that were rebated to the scheme (that is the 'Guaranteed Minimum Pension' and similar provision - which, despite its different provenance, was due to be paid with the scheme pension); and/or
  - other benefits due (such as survivor benefits and life cover).

32. The Ombudsman's five recommendations are:

- that the Government should consider whether it should make arrangements for the restoration of the core pension and non-core benefits to those scheme members covered by her recommendations - by whichever means is most appropriate, including if necessary by payment from public funds, to replace the full amount lost (paragraphs 6.14 to 6.22);
- that the Government should consider whether it should provide for the payment of consolatory payments to scheme members covered by her recommendations as a tangible recognition of the outrage, distress, inconvenience and uncertainty that they have endured (paragraph 6.24);
- that the Government should consider whether it should apologise to scheme trustees for the distress that they have suffered due to its maladministration (paragraphs 6.25-6);
- that the Government should consider whether those who have lost a significant proportion of their expected pensions - but whose scheme began wind-up between 1 April 2004 and 31 March 2005 and who are thus not fully covered by the Ombudsman's recommendations - should be treated in the same manner as those fully covered by the Ombudsman's recommendations (paragraphs 6.27 to 6.32); and
- that the Government should conduct a review - with the pensions industry and other key stakeholders - to establish what can be done to improve the time taken to wind up final salary schemes (paragraphs 6.33 to 6.37).

### What was the Government's response to the Ombudsman's report?

33. The Government's response is set out in annex D to the report and in paragraphs 7.7 to 7.24 and 7.116-7 of the report.
34. The Government has said that it is not minded to accept the Ombudsman's findings of maladministration nor to implement her recommendations, with the exception of the recommendation concerning the review of the time taken in the process of scheme wind-up.
35. The Ombudsman's assessment of that response is set out in paragraphs 7.25 to 7.114 of the report and also in paragraphs 7.118 to 7.133.
36. Nothing in the Government's response to her findings and recommendations has persuaded the Ombudsman that those findings and recommendations are unsound or unreasonable.

### What was the response to the report from the advocate for complainants?

37. The response from Dr Ros Altmann to the Ombudsman's report is set out in annex E to the report. Dr Altmann acted on behalf of complainants throughout the investigation at their request.

### What happens next?

38. The Ombudsman has laid the report before Parliament using the power to do so provided in section 10(3) of the Parliamentary Commissioner Act 1967. This denotes that, at the time she published the report, she is not satisfied that the injustice that she has found was a consequence of maladministration has been remedied or will be remedied in the future.
39. The Government has said that it will respond to the Ombudsman's report following publication.