

**Works and Pensions Select Committee  
Inquiry into the Pensions Regulator and Pension Protection Fund  
May 2016**

*Submission from:*

**The Pensions Action Group (PAG)**

**‘STILL STRIPPED OF OUR PENSIONS’**



We very much welcome the opportunity to make a submission to the Committee and our submission reflects the impact on our members, which surely is what protection should be all about.

We would remind the Committee that the Labour Government did not set up the PPF as part of a well developed and considered strategy, but as a reaction in 2003 to the pressure exerted by this organisation and others seeking legal remedies in the UK and European Courts, as well as marching on Whitehall,

demonstrating at Party Conferences and holding an all night vigil opposite Downing Street in our “Stripped Of Our Pensions” campaign, which is still running-

As a consequence, the setting up of the FAS in advance of the PPF was ill considered and totally unjust to those 150,000 workers and their families still trapped in it.

Lessons for the future should be based on the experience of the past, but because politics comes into play, it seems that successive Governments can't learn from these experiences and the Civil Service want to protect their positions, budgets and interests with little thought about the consequences to the individuals who will be affected.

Knee jerk reaction to the Maxwell scandal led to the 1995 Pensions Act, and to the Priority Order and Minimum Funding Requirement, which were supposed to protect everyone's pensions, but in fact helped to create the problems of under funding of pension schemes. We consider that this was the first “moral hazard” in this whole sorry story, as it allowed companies to reduce the funding necessary to pay all pensions in full in the event of scheme wind up, for whatever reason.

It is very easy to sit back and consider the financial and moral hazard risks surrounding the sustainability of the PPF, and to produce a carefully considered review of what is required to address those problems, but then to forget why those considerations are necessary.

### **WORKERS AND THEIR FAMILIES, and the effect upon their lives.**

Members of the BHS and TATA pension funds will be wondering what their financial future is going to be, and will want to know that quickly. In all likelihood they will be able to find out and to be reassured because of the PPF, but those members from pre 2005 scheme failures, now in FAS, thought their pensions were safe and are still waiting after more than a decade for certainty of their benefits. We have seen examples of workers in their 60's, 70's and even 80's being told, through no fault of their own, that they now have to pay money back to FAS, or suffer reductions in their future FAS payments, not just until any overpayment has been re-paid, but for as long as they live, maybe even paying it back two or three times!

In the meantime these workers and their families have had to endure severe stress and subsequently some pensioners have lost their health, their partners, their homes and their futures, therefore it is proper that this Committee should not only be considering the stronger protection of people in the future, but surely it must also consider those left behind from the weaker protection in the past.

There are many individual personal stories that can be told, like Brian Wilson of the Hill & Tyler pension scheme who after 30 years of contributions in 2003 almost lost his house, had a stroke in 2005, and is now living on a very restricted budget. John Benson of ASW Cardiff was a nervous wreck when told he had lost his pension, Alan Marnes of Samuel Jones felt like committing suicide, Terry Monk of Bradstock had to tell his wife that they would have to sell their house and keep on working beyond 70, and Peter Humphrey of Dexion, who in 2003 with six months to go before retirement lost his pension, and then worked so hard over the following four years with PAG to get justice for the lost pensions that he became seriously ill with

Acute Renal Failure and Sepsis, spending time in Intensive Care on life support. Sadly we can also inform the Committee of two suicides directly attributable to the loss of a future pension.

We think that the legal funding requirements within the Pensions Act are not sufficiently prescriptive in either time or value, and that its weakness is the flexibility that is allowed over prescription.

The Pensions Regulator has the ability to negotiate different length recovery plans without being accountable, possibly until now, to any authority and can bend its own rules at will. There has to be much closer monitoring of contribution levels, recovery plans and the financial viability of at risk companies

Not that this ability is limited to the Pension Regulator. The Pension Ombudsman found in her document "Trusting in the Pension Promise", published in 2006, that the DWP was guilty of maladministration and should make restitution to the active and deferred pensioners affected. The Government rejected the Ombudsman's report, defeating the object of having it. This rejection was investigated by the Public Administration Select Committee who found against the Government, and in favour of the PO. There was then a Judicial Review which agreed with the PASC, but the Government responded by taking this finding to an Appeal, which it subsequently lost in the High Court.

*BUT STILL FULL RESTITUTION HAS NOT BEEN MADE!*

The point that we are making, therefore, is that while we believe in our statement in the following paragraph, we have fought and partially won battles for full restitution with Government departments over the past 13 years but still do not have our full pensions, so what system can be put in place to control the actions of the Regulator?

In our opinion the regulatory powers are not sufficiently prescriptive, combined with the lack of a mechanism to ensure that the Regulator enforces the rules at a time that might affect the outcome, and should become more interventionist with companies at high risk, as closing the stable door after the horse has bolted does not help workers who have already lost their pensions.

With regard to the implications of the regulatory approach for company behaviour, without prescriptive requirements on funding it creates a "moral hazard" in that if the choice for trustees is to keep the money in the company to keep it solvent or to put it into the pension fund, then the company could win every time as it doesn't currently matter to what percentage a scheme is under-funded, and the rules on the pay out of pensions is the same. So paying more into a pension fund of a company that is at risk only reduces the PPF's exposure, and does not increase the pensions of the scheme members.

The issue of the sustainability of the PPF is rather circular. We have been told that the PPF thinks that it will be in a stable situation where assets will balance liabilities by 2030, based on the investment of retained pension scheme residual assets and the levy being paid between now and then, and that it will only require a maintenance levy thereafter. We estimate that by then the PPF will probably be the largest pension fund in the country and we wonder how it will be able to outperform all the existing pension

funds that are under funded. It could of course bet on equities or high-risk ventures and then we would be on the merry-go-round again, but this time with a Government department.

The funding of FAS is an interesting example of how Government can work by paying out from current accounts without accruing liabilities. The following information is from the PPF Annual Accounts, and written Parliamentary questions and answers tabled on 27<sup>th</sup> April 2016 by Mr Stephen Doughty, MP.

The Treasury has received, but not invested, £1.7bn in residual assets from failed schemes eligible for FAS, and from the inception of FAS to the year ending 2015 a total of £612.47m has been paid out, so FAS is not costing the billions of public money that the Government claim, in fact to date the Treasury have gained over a billion pounds to add to their current account.

Reality must come in to play in that no matter how good the PPF are at investing the residual assets of closed schemes, at some future date pensions being paid out are likely to outstrip assets. As more schemes join the PPF there will be fewer schemes remaining to contribute, and increasing the levy will more than likely push schemes into the PPF, which as a consequence will therefore fail. The only way to stop this happening is to produce a regulatory regime now that allows companies to continue in business, stop company pre-pack sales with pension liabilities dropping into the PPF, and not allow solvent companies to back away from closed schemes with outstanding liabilities.

The other option that will no doubt be proffered by the pension professionals will be that at some time in the future PPF annual pension benefits will have to be reduced, which will make the maths work. But what about the people?

Meanwhile pensioners in FAS have the value of their pensions annihilated because there is no provision for any inflation increases on contributions made prior to 1997, which for most is the majority of their pensionable service. Under the PPF the amount of post 1997 service is a much larger proportion of the member's pensionable service.

If inflation was only 2% pa then FAS members have lost 46% of their original pension value since 1997, and some 36% since FAS started paying benefits in May 2004.

This comparison also ignores the gap that still exists for a handful of members whose retirement date was before May 2004 when FAS commenced. This issue was raised with Mark Harper MP in an adjournment debate in 2015 and he stated that the PPF was affected in the same way, but despite us challenging this a number of times the DWP have failed to answer our questions. This, among other issues, is why the 90% figure relating to FAS awards remains simply, and cynically, a Government myth.

Communications with eligible current and future FAS recipients are so very important and PAG have worked closely with the PPF (FAS) to help and improve these. We have also identified some unnecessary costs caused by complex legislation, but have been refused the opportunity to discuss this with officials in the DWP.

We thank the Committee for this opportunity to explain the background to our position, to be able to give brief examples of the personal suffering and to help future workers who will suffer from company failures.

*In summary:*

1. The powers of the Regulator need an urgent review and resources should be made available to try and prevent future pension scheme failures.
2. Scheme member communications must be clear regarding the risks of scheme failures and the limitations to the benefits provided by the PPF (see our comments above concerning the FAS 90% myth, which is still being incorrectly used to promote the value of the PPF compensation scheme).
3. The providers of covenant reviews should be held to account if they are seen to be misleading.
4. Companies at risk need closer monitoring.
5. Trustees must be held responsible where correct reviews have not taken place.
6. Actuarial assumption must reflect the current and future position, by being pro-active and not, as in the case of increasing mortality rates, suddenly realising that longevity has changed. It must also reflect current and changing financial circumstances.
7. **Finally, TRUST in the Government's ability to protect pensions savings must be restored.**

We would like to remind the Committee of the following quote from the current Prime Minister during his 2015 election campaign:

*'To the pensioner who put money aside for decades – we are with you. This is the point, the purpose, the whole reason for the Conservative Party .... This is a generation that stands for one word above any other: duty ... and we must always do our duty by them'.*

We are willing to provide oral evidence.

Pensions Action Group  
May 2016. The 12<sup>th</sup> anniversary of the introduction of FAS.

