Ombudsman's Determination

Applicant	Mr S
Scheme	The Financial Assistance Scheme (**the FAS**)
Respondent	The Board of the Pension Protection Fund (**the Board**) (the FAS Manager)

Outcome

1. I do not uphold Mr S' appeal and no further action is required by the Board.

Appeal summary

2. Mr S' appeal concerns the level of FAS assistance that he is receiving.

Background information, including submissions from the parties

3. The relevant regulations are the Financial Assistance Scheme Regulations 2005 (SI2005/1986) (as amended) (**the FAS Regulations**). References to regulations and/or paragraphs below are to regulations and/or paragraphs contained in the FAS Regulations. Extracts from the FAS Regulations are provided in the Appendix.

4. In May 1992, Mr S became a deferred member of the BAC Limited Retirement Benefits Scheme (**the Scheme**).

5. The Scheme commenced winding-up on 6 December 2001.

6. In March 2008, the Trustee of the Scheme secured for Mr S, with his share of the Scheme's assets, a deferred annuity (to escalate in payment at 5% annually) with Legal & General.

7. Mr S subsequently chose to transfer. In August 2010, Legal & General paid the transfer value of Mr S' deferred annuity to Sun Life Financial of Canada. It was later incorporated into an annuity with Scottish Friendly Assurance Society (**MGM**).

8. In October 2010, the Scheme wound-up and transferred to the FAS.

9. Mr S started receiving FAS assistance from June 2016 - that is from his FAS normal retirement age (**NRA**) of 65.

10. In January 2019, Mr S' FAS assistance was reduced following a redetermination of his annual payment (in accordance with paragraph 2A of Schedule 2).

11. Mr S queried the matter and the PPF informed Mr S:

> "As your FAS assistance payments are based on your previous scheme service, which is all Pre-6 April 1997, no increases are applied to your expected pension. However, we were notified that the scheme purchased an annuity for you with Legal and General, and this is awarded with 5% increases each year. As the increases applied by Legal and General are higher than the increases awarded by FAS, your assistance payments have reduced, however your Expected Pension has remained the same. This means that the overall amount you are receiving between your annuity and your Assistance payments has remained the same."

12. Following subsequent reductions to his FAS assistance in 2020, 2021, 2022 and 2023, Mr S complained requesting a review of his FAS assistance.

13. In its stage one response, the PPF:-

- Informed Mr S:

  "In line with the legislation that governs us, we must calculate your FAS entitlement using the 'original' annuity at the date it was purchased by your former scheme, and not at the date it is paid to you. This means that we do not take into consideration any adjustments made to the original annuity from the date it was purchased for you (i.e. lump sum commutation and early retirement)."

- Incorrectly stated that Mr S' FAS NRA was 60.

14. In April 2023, Mr S requested a stage two review. In its stage two response the PPF:-

- Confirmed its position that Mr S' FAS assistance had to be calculated in line with relevant legislation and so his actual pension was based on the original annuity that the Trustee of the Scheme purchased for him with Legal & General.

- Notified Mr S that the first reduction to his FAS assistance should have been applied from January 2018, as the July 2017 increase that would have applied to his original annuity was missed. The result was that his FAS assistance would be reduced to account for it being a year out, but the accumulated overpayment of £622.26 was waived.

- Incorrectly stated that Mr S' FAS NRA was 60.

15. In May 2023, the PPF asked Legal & General to confirm the terms of Mr S' original annuity. Legal & General notified the PPF that if the annuity had not been transferred to Sunlife in 2010 it would have increased annually in payment at a fixed rate of 5% per annum.

Mr S' position

16. Mr S submits:-

- He does not understand the PPF's explanation for why his FAS assistance reduces annually. It is patently obvious that the calculation of his FAS assistance is based on assumptions rather than positive information. He does not understand the terms "expected pension" and "actual pension" or the significance of pensionable service before 6 April 1997.

- Why is the PPF using an expected pension from Legal & General? While he had no say in the winding up of the Scheme, he understood that he would receive a pension that was guaranteed to increase annually by 5%. His pension was transferred to Sun Life Financial of Canada and then incorporated into MGM, which "is on a sliding scale annuity basis".

The Board's position

17. The Board submits:-

- In May 2023, Legal & General confirmed to the PPF that if Mr S' annuity had not been transferred it would have increased annually at a fixed rate of 5%. So, Mr S' actual pension is deemed to annually increase by 5%. However, Mr S' expected pension does not increase as it relates to Mr S' pensionable service whilst an active member of the Scheme before 6 April 1997. Accordingly, the amount that the FAS pays to Mr S reduces each year. This is in accordance with the relevant legislation, as it is required to take account of the terms of the original annuity that the Scheme secured for Mr S when redetermining the amount of his FAS assistance each year.

- Mr S' NRA for the purposes of the FAS Regulations is 65. It apologises for the stage one and two responses incorrectly referring to Mr S' NRA as 60. Nonetheless, Mr S' FAS assistance has always been correctly calculated by reference to an NRA of 65.

- Whilst it is sympathetic to Mr S and understands that the calculation of FAS assistance is complex and potentially confusing, Mr S' FAS assistance has been calculated correctly, and it has sought to explain to Mr S on several occasions why it has to have regard to the terms of his original Legal & General annuity when calculating / redetermining his annual payment entitlement.

Adjudicator's Opinion

18. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out below in paragraphs 19 to 30.

19. The PPF Ombudsman was appointed to hear appeals against review decisions. These may fall into one of the following categories:

- Member eligibility decisions;
- Member assessment decisions;
- Scheme beneficiaries decisions; and
- Scheme eligibility decisions.

20. Mr S' case fell into the second category because it related to a decision as to the amount of his FAS assistance.

21. The Adjudicator said their, or the PPF Ombudsman's, role in this matter was to look at whether the Board reached its decision correctly.

22. The Board could only pay FAS assistance in line with the FAS Regulations. The methodology for calculating FAS assistance was contained within Schedule 2.

23. Paragraph 4 of Schedule 2, provided that the annual payment shall be:

    "(expected pension x 0.9) – actual pension".

24. The "annual payment"[1] (FAS assistance) was the amount that a qualifying member was entitled to under the FAS.

25. In Mr S' case, the "expected pension" was the annual pension he accrued in the Scheme while he was an active member revalued to his NRA (as per paragraph 4(3) of Schedule 2) and the "actual pension" was the annual annuity that was originally secured for him with Legal & General while the Scheme was winding up (as per paragraph 2(1) of Schedule 2).

26. The PPF was required to redetermine each January the amount of a member's FAS assistance to reflect increases to the expected pension and the actual pension (as per paragraph 2A of Schedule 2). As applicable, the expected pension was split between pre-6 April 1997 and post 5 April 1997 pensionable service. While the element in respect of post 5 April 1997 pensionable service increased annually by inflation capped at 2.5%, no increase applied to pre-6 April 1997 pensionable service (as per paragraph 9 of Schedule 2).

27. As Mr S became a deferred member in the Scheme in 1992, all his pensionable service was pre-6 April 1997. So, no increase applied to the expected pension element in the calculation of his FAS assistance. If Mr S had not transferred his annuity from Legal & General, it would have increased annually at a fixed rate of 5%. So, the actual pension element of Mr S' FAS assistance correspondingly increased

[1] The "annual payment" means the amount payable to Mr S in respect of each year determined in accordance with regulation 17 and Schedule 2 of the FAS Regulations.

by 5% annually. The net result was that Mr S’ FAS assistance was decreasing annually.

28. Nonetheless, overall Mr S’ FAS assistance plus the Legal & General annuity (pre commutation) that he would have been receiving if he had not transferred remained at 90% of his expected pension in accordance with the FAS Regulations.

29. The Adjudicator said while they empathised with Mr S’ position, and understood that he would find this very disappointing, their view was that the Board had reached its decision correctly because the PPF had adjusted Mr S’ FAS assistance, in accordance with the FAS Regulations, to ensure that he received the correct annual payment.

30. The Adjudicator said as that was the extent to which they, or the PPF Ombudsman, could consider the matter, it was their opinion that Mr S’ appeal should not be upheld.

31. Mr S did not accept the Adjudicator’s Opinion and the appeal was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr S.

Mr S’ additional comments

32. Mr S says he is totally confused regarding his reducing FAS annual payment. He says:

> “The whole thing appears to be based upon pure speculation on how a pension scheme might be performing each year, plus the aspect of a 5% escalating annuity. I did not enjoy such a benefit from Legal and General, since I did not take out an annuity with them. Neither do I enjoy any such guarantee with any of my other pensions.”

Ombudsman’s decision

33. The FAS is a compensation scheme. The PPF pays members compensation (FAS assistance) when their pension scheme cannot pay the benefits promised, and the amount and the terms and conditions under which it is paid are set out in the FAS Regulations.

34. As the Adjudicator explained in their Opinion:-

- Paragraph 4 of Schedule 2 of the FAS Regulations provides that a member’s annual payment (FAS assistance) shall be:

  “(expected pension x 0.9) – actual pension”.

- Essentially, this formula is attempting to give a member 90% of the pension that they had accrued in the original scheme, while taking into account any annuity which “has been, can be or could have been” paid to the beneficiary “as a result of the purchase of an annuity with the assets available to discharge the liability of the [original] scheme".

- Therefore, in Mr S' case, the "expected pension" is the annual pension he accrued in the Scheme while he was an active member revalued to his NRA. The "actual pension" is the annual annuity that was originally secured for him with Legal & General while the Scheme was winding up (i.e. the "annuity which has been, can be or could have been" paid to the beneficiary "as a result of the purchase of an annuity with the assets available to discharge the liability of the [original] scheme" in Paragraph 2 of Schedule 2 of the FAS Regulations).

- However, these figures will change over time as pensions in payment increase by different rates and so, in order to keep the compensation level at the 90% level, there is a need to reconsider the calculation from time to time. As a result, the PPF is required to redetermine each January the amount of FAS assistance a member receives to reflect those increases to the "expected pension" and the "actual pension". As applicable, the expected pension is split between pre-6 April 1997 and post 5 April 1997 pensionable service. The element in respect of post 5 April 1997 pensionable service increases annually by inflation capped at 2.5%. However, no increase applies to pre-6 April 1997 pensionable service.

- All of Mr S' 'expected pension' relates to pre-6 April 1997 pensionable service. As a result, no increase applies to the 'expected pension' element in his FAS assistance.

- In contrast, the annuity purchased with the assets of the original Scheme, in this case with Legal & General, would have increased annually at a fixed rate of 5%. The PPF contacted Legal & General to confirm this was the case. So, the 'actual pension' element of his FAS assistance, for the purposes of his compensation calculation, increases by 5% annually.

- The net result, when fed into the compensation calculation, is that Mr S' FAS assistance is decreasing annually. Nonetheless, overall Mr S' FAS assistance, plus the Legal & General annuity (pre commutation) that he would have been receiving if he had not transferred, remains at 90% of his expected pension in accordance with the FAS Regulations.

35. While Mr S is not receiving an annuity from Legal & General, under the FAS Regulations the PPF is required to have regard to the terms of the original Legal & General annuity that the Trustees secured for him in the calculation of his annual payment.

36. The Board is obligated to administer the FAS in accordance with the FAS Regulations. I find that the Board has done that. Mr S is in receipt of the FAS assistance to which he is entitled.

37. I do not uphold Mr S' appeal and no further action is required by the Board.

Dominic Harris

Pensions Protection Fund Ombudsman
8 January 2026

Appendix

The Financial Assistance Scheme Regulations 2005 (SI2005/1986)

As relevant, regulation 17, 'Annual payment', provides:

"(8) … where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—

(a) Schedule 2…"

Extracts from Schedule 2, 'Determination of Annual and Initial Payments'

As relevant, paragraph 2, 'Actual pension', provides:

"(1) In this Schedule, **"actual pension"** means, subject to sub-paragraphs (3) to (4) and paragraph 2A, the annual rate of annuity which has been, can be or could have been, paid to the beneficiary as at the later of—

(a) the day from which the beneficiary is entitled to an annual payment; or

(b) the day on which the qualifying pension scheme began to be wound up,

as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had, been determined.

…

(3) The annual rate of annuity which has been, can be or could have been purchased for the beneficiary for the purposes of sub-paragraph (1) or, as the case may be, paragraph 2A, as a result of the purchase of an annuity with the assets referred to in that sub-paragraph, shall be determined (or, as the case may be, redetermined)—

(a) where the beneficiary was an active or a deferred member of the qualifying pension scheme on the day before the day on which the qualifying pension scheme began to be wound up, on the basis that the sum which will be, or has been, used to discharge the liability of the scheme to him will only be, or has only been, used to purchase an annuity when the qualifying member attains, or attained, his normal retirement age;

…

(d) on the basis that there has been no commutation of benefits deriving from the scheme after the day on which the scheme began to be wound up."

Paragraph 2A, 'Annual redetermination', provides:

“(1) This paragraph applies where—

(a) on the first indexation date following the date on which the beneficiary first became entitled to an annual payment; and

(b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been paid to the beneficiary as at that indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with paragraph 2.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an annual payment under sub-paragraph (2), the actual pension for the purposes of paragraph…4(2) shall be the annual rate of annuity which has been or could have been paid to the beneficiary as at the indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3).

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.
…”

As relevant paragraph 4, ‘Active and deferred members’, provides:

“(1) This paragraph applies in respect of a qualifying member of a qualifying pension scheme who was an active member or a deferred member of that scheme on the day before the day on which the qualifying pension scheme began to be wound up.

(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

- (expected pension x 0.9) – actual pension.

(3) In sub-paragraph (2), “expected pension” means, subject to sub-paragraphs (3A) and (4) and paragraphs 4A and 4B, the aggregate of—

(a) the annual rate of the pension to which the qualifying member would have been entitled in accordance with the scheme rules had he attained his normal retirement age when the pensionable service relating to the pension ended;

(b) the revaluation amount for the first revaluation period (see sub-paragraphs (5) and (6));

(c) the revaluation amount for the second revaluation period (see sub-paragraphs (7) to (10) and (11)) and

(ca) in any case where the day—

(i) on which the qualifying member attains normal retirement age;…

is on or after 31st March 2011, the revaluation amount for the third revaluation period (see sub-paragraphs (10A) and (11));"

As relevant paragraph 9, 'Annual increase to an annual payment', provides:

"(1) Except where there is no percentage increase in the general level of prices for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with **paragraphs 2A to 5B** shall be entitled, on the indexation date, to an increase of—

(a) the appropriate percentage of the amount of the underlying rate immediately before that date, or

(b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

"**appropriate percentage**" means the lesser of—

(a) the percentage increase in the general level of prices for the period of 12 months ending with the 31st May last falling before the indexation date; and

(b) 2.5%;

"**underlying rate**" means—

(a) the aggregate of—

(i) the product of X multiplied by so much of the expected pension as is attributable to post-1997 service;..."

"**post-1997 service**" means—

a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997;

…

"**X**" means—

(a) 0.9, where the beneficiary is the qualifying member;…"