Ombudsman's Determination

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

Outcome

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

Appeal summary

2. Mr R is appealing the calculation of his FAS payment. In particular, he disagrees with the way in which annual increases are applied.

Background information, including submissions from the parties

Background

3. Mr R was a member of the ASW Sheerness Steel Group Pension Fund (the **ASW Fund**). When the ASW Fund was wound up, the trustees were not able to secure annuities for the members at the level of the pensions they would otherwise have been due to receive. The ASW Fund was subsequently determined to be a "qualifying scheme" under The Financial Assistance Scheme Regulations 2005 (SI2005/1986) (as amended) (the **FAS Regulations**). It transferred to the FAS in October 2011.

4. Extracts from the FAS Regulations are provided in the Appendix.

5. Mr R began receiving FAS payments in 2012. He is also in receipt of an annuity paid by Wesleyan Assurance Society (**Wesleyan**), which had been secured for him by the ASW Fund trustees.

6. In June 2019, he contacted the Board to query the amount of FAS assistance he was receiving. Mr R said his combined annuity and FAS payments had decreased between 2015 and 2019.

7. The Board issued a response on 21 June 2019. It said:-

   7.1 Mr R had indicated that he was expecting an increase of 2.5% each year; whereas his FAS payments were decreasing.

   7.2 Annual increases to FAS assistance were applied each January by reference to the Consumer Prices Index (**CPI**) up to a maximum of 2.5%. This was not a fixed increase.

   7.3 Mr R's FAS payment topped up what he received from his annuity provider to 90% of his expected pension. When the value of his annuity increased more than his expected pension, his FAS payment would go down.

   7.4 It performed its annual increase exercise in each January and made any necessary adjustments at that time. It might be that annuity increases were applied at a different time of year and the FAS assistance decreased at a different time to the annuity increase. However, it was required to undertake this exercise at the same time for all FAS members; rather than on an individual basis.

   7.5 If Mr R's annuity was due to come into payment at a different date from his FAS payment date, the amount might not match the amount he was actually receiving. This was because it had been actuarially calculated to provide him with the same overall benefit during his lifetime.

8. Mr R submitted an appeal on 24 June 2019. The Board issued a response on 14 November 2019. It said:-

   8.1 In order to calculate Mr R's FAS entitlement, it first calculated his "**expected pension**" amount. This was, broadly, the amount of pension he had built up in the ASW Fund prior to winding up, revalued to his FAS normal retirement age. This was then reduced to 90% in line with the FAS legislation.

   8.2 It then subtracted the value of Mr R's Wesleyan annuity (referred to as an "annuity in payment") and an annual value of the lump sum he had taken when he retired.

   8.3 Any part of Mr R's FAS assistance which related to service before 6 April 1997 was not subject to annual increases. But any of his FAS assistance which related to service after 6 April 1997 was subject to annual increases.

   8.4 It apologised for errors it had noticed in its previous correspondence with Mr R but confirmed that these had not affected the amount of his FAS payments.

   8.5 Wesleyan had confirmed that the total amount of Mr R's benefits as at the date he left the ASW Fund was the same as the amount it had on record.

   8.6 Its Technical Team had manually calculated each element of Mr R's benefits, including revaluing Mr R's annuity in the same way as Wesleyan would. This had confirmed that Mr R was in receipt of the correct FAS payment.

8.7 In 2012, Mr R had been in receipt of a bridging pension, which would have been paid between ages 62 and 65. The bridging pension was included in Mr R's annuity. It ceased to be paid in 2015.

8.8 Mr R's FAS entitlement was re-assessed when his bridging pension ceased. His expected pension and annuity in payment amounts decreased. It apologised for having told Mr R, in 2015, that his FAS assistance had increased as a result.

8.9 The annuity figure it used was higher than the amount Mr R actually received because it was the annuity amount before he commuted some of his benefit for a lump sum on retirement.

8.10 Each year, it increased Mr R's expected pension in line with inflation up to a maximum of 2.5%. It then looked at any increases to the annuity Mr R was receiving from Wesleyan. If Mr R's annuity increased at a higher rate than his FAS payments, his FAS payments would be reduced so that they did not exceed 90% of his revalued expected pension. The amount of the annuity it used included an amount representing the lump sum Mr R had taken. This was also increased.

9. The Board provided the following figures to illustrate how it had arrived at the amount of FAS assistance Mr R should be paid:-

Expected pension at date of leaving	£8,368.74
Expected pension in 2012 x 90%	£11,000.76
Expected pension in 2019 x 90%	£8,845.90
Annuity at date of leaving	£4,592.48
Annuity in 2012	£7,772.15
Annuity in 2019	£6,061.12

10. Mr R's FAS payment was calculated as follows:-

90% x expected pension (£8,845.90) – annuity in payment (£6,061.12)

£2,784.78 – notional annuity (£5.82[1]) = £2,778.96

11. Mr R applied to the PPF Ombudsman on 23 December 2019[2].

[1] The notional annuity related to an overpayment which is being recovered.
[2] Received on 30 December 2019.

Mr R's grounds for appeal

12. Mr R submits:-

  12.1 Under the rules of the ASW Fund, he was entitled to an annual increase of 6% per annum compound or the rate of increase in the Retail Price Index (**RPI**), whichever was the lesser[3].

  12.2 The FAS is compensating him for his ASW Fund pension but, when he gets an increase on his annuity, his FAS payment decreases. As a result, his pension remains the same and he receives no annual increases. If the FAS is compensating him for his ASW Fund pension, he should get an annual increase from it too.

  12.3 The FAS agreed to compensate him up to 90% of what his original pension would be worth. Assuming his compensation was correct in 2015, he is now getting only around 80% and this will continue to decrease every time he gets an increase on his annuity.

13. Mr R has provided a comparison between the amounts he has received from the FAS and his annuity, and the amounts he considers he should have received as follows:-

<u>2015/16</u>

Annuity	£3,774.15	
FAS	£3,119.00	
Total	£6,893.15	

<u>2016/17</u>

Annuity	£3,794.88	Should be
FAS	£3,060.34	£6,893.15 + 2.5% (£172.32)
Total	£6,855.22	£7,065.47

<u>2017/18</u>

Annuity	£3,858.96	Should be
FAS	£2,997.54	£7,065.47 + 2.5% (£176.63)
Total	£6,856.50	£7,242.10

<u>2018/19</u>

Annuity	£3,958.20	Should be

[3] Taken from the ASW Fund member leaflet.

FAS	£2,889.85	£7,242.10 + 2.5% (£181.05)
Total	£6,848.05	£7,423.15

Written representation by the Board

14. In addition to the responses it issued on 21 June and 14 November 2019, the Board submits:-

    14.1 It is required to provide FAS assistance to eligible beneficiaries in accordance with the FAS Regulations. Therefore, a beneficiary's entitlement to FAS assistance is prescribed by legislation.

    14.2 Schedule 2, the FAS Regulations, sets out how the amount of a FAS annual payment is determined. This is 90% of the expected pension less the "**actual pension**". The actual pension is the value of any annuity bought for the person by their former pension scheme. Calculations have to be based upon the original annuity amount at the date of purchase. Any subsequent transfers, lump sum commutation or early retirement would not be taken into account.

    14.3 Mr R commuted part of his annuity for a lump sum, but the actual pension used in the calculation of his FAS payment is the pre-commutation amount.

    14.4 Paragraph 9 of Schedule 2 provides that the part of the expected pension which is attributable to pensionable service on or after 6 April 1997 will be increased annually in line with inflation up to a maximum of 2.5%.

    14.5 A person's FAS assistance is re-determined each year to take account of any changes in the amount of the actual pension. If Mr R's pre-commutation annuity increases by more than his expected pension, his FAS payment will decrease because he is only entitled to 90% of his expected pension from the FAS and annuity combined.

    14.6 The amount it deducts by way of annuity is higher than the amount Mr R actually receives because it includes an amount for the lump sum he opted to take at retirement. This is in accordance with paragraph 2(3) of Schedule 2.

Adjudicator's Opinion

15. Mr R's appeal was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are summarised below:-

    15.1 This was an appeal to the PPF Ombudsman of a review decision by the Board in its role as scheme manager for the FAS. The review decision related to the determination, by the Board, of the amount of annual FAS payment payable to Mr R. In particular, it related to the application of annual increases.

15.2 The methodology for calculating FAS payments, including the application of annual increases, was contained in Schedule 2, the FAS Regulations. The Board was required to apply the methodology as it was set out in Schedule 2. It had no discretion in this. The role of the PPF Ombudsman, on appeal, was to determine whether the Board's decision, in the matter of Mr R's annual FAS payment, had been reached correctly[4]. He must do so by reference to Schedule 2.

15.3 As provided for in Schedule 2, the basic calculation of Mr R's FAS payment was: 90% of his expected pension less his actual pension. The expected pension was, broadly speaking, the pension he had been entitled to under the ASW Fund rules at the date his pensionable service ceased plus revaluation up to his normal retirement age. The actual pension was the annual rate of any annuity which had been, can be or could have been, paid to Mr R in relation to the assets of the ASW Fund; that is, the annuity Mr R received from Wesleyan. Paragraph 2(3)(d) of Schedule 2 provided that the annual rate of Mr R's annuity had to be determined on the basis that there had been no commutation of benefits. In other words, it was the rate of the annuity before Mr R had opted to take some of his benefit in the form of a lump sum.

15.4 Where, on any indexation date, an annuity was higher as a result of indexation or revaluation than the annual rate first determined, the Board was required to redetermine Mr R's annual FAS payment. The indexation date was the 1 January. When redetermining Mr R's annual FAS payment, the Board had to apply the rate of his annuity as if he had not taken a lump sum[5]. This did mean that the amount of the annuity which the Board used in its calculation of Mr R's FAS payment was now higher than the amount of annuity he was receiving.

15.5 Because Paragraph 2A of Schedule 2 required the Board to <u>redetermine</u> Mr R's annual FAS payment as at each indexation date, it could not apply the annual increase in the way in which Mr R had suggested. The Board was required to ensure that the FAS payment did not exceed the basic formula of: (expected pension x 90%) – actual pension. However, at the date of redetermination, the values of the expected pension and actual pension were the current values. In other words, the annual increase provided for in the FAS Regulations was applied to the expected pension and the actual pension was the revalued annuity, but included the part commuted for a lump sum.

15.6 Where the actual pension was increasing at a faster rate than the expected pension, the result would be a reduction in the FAS annual payment. For example, Mr R's expected pension as at his date of leaving the ASW Fund had been £8,368.74 and in 2019 it had been £9,828.78. This represented an increase of 18%. In contrast, his annuity as at his date of leaving had been £4,592.48 and in 2019 it had been £6,061.12. This represented an increase of

[4] Regulation 23, The Financial Assistance Scheme (Appeals) Regulations 2005 (SI2005/3273) (as amended)
[5] Paragraph 2A(3)

32%. As explained in paragraph 15.5 above, the annuity figures included the amount Mr R had taken as a lump sum.

15.7 The Adjudicator said she could understand why Mr R considered the methodology used by the Board not to be fair when he saw his FAS payments reduced. He also did not actually see the benefit of the increases applied to that part of his annuity which he took as a lump sum. However, the FAS payment was intended to ‘top up’ Mr R’s pension income so that overall, when it was added to his annuity, he received approximately 90% of what he might have received from the ASW Fund. If the FAS Regulations did not take Mr R’s lump sum into account, he would be better off than someone with the same amount of annuity who had not taken a lump sum. The lump sum was treated, effectively, as annuity taken in advance.

15.8 Mr R’s suggested methodology for increasing his FAS payments also did not take account of the fact that the FAS Regulations only provided for annual increases on “so much of the expected pension as is attributable to post-1997 service”.

15.9 The Adjudicator noted Mr R’s reference to the annual increases provided under the ASW Fund rules. However, the FAS was not required to replicate the provisions of the ASW Fund. It was an entirely separate scheme and, as discussed, subject to its own regulations.

16. Mr R did not accept the Adjudicator’s Opinion and the appeal was passed to me to consider. Mr R provided further comments which are summarised below. I have considered Mr R’s comments but I find that they do not change the outcome, I agree with the Adjudicator’s Opinion.

Mr R’s further comments

17. Mr R says:-

17.1 He did not have much hope of getting a resolution to his appeal or the monies he considers he has been robbed of.

17.2 He gathers that it is the Government’s rules which are being applied, so he has put his case to his local MP.

17.3 He has not had a cost of living increase on his total pension for seven years. The figures bear this out, despite him having taken a lump sum.

17.4 The ASW Fund would have paid an annual increase. The lump sum would have decreased his annuity fund; thus decreasing the amount of pension he received in the first year. The amount should then increase by reference to the cost of living.

17.5 He can understand his FAS assistance does not increase but he does not agree that the increase on his annuity should be taken into account. He received 90% of his pension in the first year, but now only gets about 60%.

Ombudsman’s decision

18. Mr R has appealed a decision by the Board in the matter of the calculation of his FAS annual payments.

19. Mr R’s FAS payments are ‘correct’ if they have been calculated in accordance with the FAS Regulations. The basic calculation of Mr R’s FAS annual payment is 90% of his expected pension less his actual pension. Mr R’s expected pension is based upon what he might have been paid from the ASW Fund if it had not been wound up. His actual pension is the annuity which the trustees of the ASW Fund were able to secure for him with Wesleyan from the assets of the ASW Fund when it was wound up. Mr R’s FAS payment acts as a top-up to provide that, in combination with his Wesleyan annuity, he receives roughly 90% of the pension he might otherwise have received from the ASW Fund.

20. Each year, the Board is required to redetermine Mr R’s FAS payment to ensure that the 90% threshold is maintained. When it does so, it must take into account the fact that Mr R’s annuity is subject to increases. Annual increases to FAS payments are also provided for in the FAS Regulations, but only in respect of that part of an expected pension which is attributable to post-1997 service.

21. In Mr R’s case, there is also the matter of the lump sum which he took when he retired. Mr R took part of his Wesleyan annuity in the form of a lump sum. In effect, Mr R took that part of his annuity as an advance. When the Board comes to redetermine Mr R’s FAS payment, it must ignore the fact that part of the annuity has been taken in the form of a lump sum and it must apply any annual increases to the original annuity amount. This is set out in Paragraph 2(3)(d) of Schedule 2. This means that the actual pension which is deducted from Mr R’s expected pension to calculate his FAS payment is now higher than the annual annuity he is receiving from Wesleyan.

22. Mr R has referred to the fact that the ASW Fund would have provided annual increases to his pension by reference to increases in the cost of living. However, the FAS is not required to replicate the ASW Fund rules in full. It was introduced to provide financial assistance for members of an occupational pension scheme who had lost some or all of their benefits when the scheme had been wound up. It has its own rules as set out in the FAS Regulations. It is the FAS Regulations which govern the amount of financial assistance to which Mr R is entitled.

23. I am not unsympathetic to Mr R’s concern that, on the basis of the figures he has calculated, he is not seeing an increase on his total pension; that is, his Wesleyan annuity and his FAS annual payment combined. However, the question for me is

whether the Board's decision in the matter of Mr R's FAS payments was reached correctly; that is, has the Board applied the FAS Regulations correctly.

24. I find that the Board has calculated Mr R's FAS payments in accordance with the FAS Regulations. I do not uphold Mr R's appeal.

Anthony Arter
Pension Protection Fund Ombudsman

11 April 2022

Appendix

The Financial Assistance Scheme Regulations 2005 (SI2005/1986) (as amended)

25. Schedule 2 contains the methodology for calculating FAS payments. The basic calculation for an annual FAS payment for a person who was an active or deferred member as at the date the former pension scheme wound up is set out in Paragraph 4(2) as:

    “(expected pension x 0.9) – actual pension”

26. “Expected pension” is defined as: “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” plus revaluation as set out in subsequent paragraphs.

27. “Actual pension” is defined in Paragraph 2 as:

    “(1) In this Schedule, “actual pension” means … 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) … 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;

    (b) …

(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 ...”

28. Paragraph 2A sets out the requirement for an annual redetermination of an annual payment as follows:

“(1) This paragraph applies where -

(a) on the first indexation date[6] 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 3(2) or 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) …”

29. Annual increases to annual payments are set out in Paragraph 9 as follows:

“(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, …

(2) In this paragraph -

[6] 1 January

"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; …

(iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; …

"post-1997 service" means -

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

(b) where the annual payment is payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

…

"X" means -

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

…"