CAS-53012-H6M5

# PPF Ombudsman's Determination

| | |
|---|---|
| Applicant | Mr G |
| Scheme | Pension Protection Fund (**PPF**) |
| Respondent | The Board Pension Protection Fund (the **Board**) |

## Outcome

1. I do not uphold Mr G's complaint and no further action is required by the PPF.

## Complaint summary

2. Mr G's complaint is that the Board has not applied annual increases to the part of his pension in payment in respect of his pre-6 April 1997 pensionable service. Mr G says this is unjust.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. Mr G is a former member of the AEA Technology Pension Scheme (the **AET Scheme**).

5. Mr G was a member of the Closed Section of the AET Scheme. As such he paid higher contributions for inflation protection for annual increases based on the Retail Prices Index for all pensionable service.

6. The AET Scheme commenced the payment of Mr G's pension on 1 September 2006.

7. On 8 November 2012, a qualifying insolvency event occurred in relation to the sponsoring employer, AEA Technology Plc, triggering a PPF assessment period for the AET Scheme.

8. In July 2016, the AET Scheme transferred to the PPF. From then on the Board paid Mr G PPF compensation in accordance with Schedule 7 of The Pensions Act 2004 (the **PA'04**).

9. Relevant extracts from the PA'04 are provided in the Appendix.

**Mr G's position**

10. Mr G says:-

- If the PPF is an insurance scheme, it should not be able to reduce pay-outs or unilaterally alter terms and conditions of pension promises made when the contract was first agreed.

- His retirement income does not maintain the purchasing power equivalent to 90% of what he would have received from the AET Scheme. This is because of inflation and the PPF rule that no inflation increases are given on pre-6 April 1997 pension contributions.

- The pension promise he worked and paid for should be honoured but, at the very least, indexation on his pre-6 April 1997 pension should be awarded.

- Schedule 7 of the PA'04 allows the Board to recommend that the Secretary of State change the PPF rules.

- Section 214, 2(d), states that the PPF Ombudsman has the "power to direct the Board to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of".

- His situation is unjust. The PPF Ombudsman has the power to correct his situation.

**The Board's position**

11. The Board says:-

- Once a scheme has transferred to the PPF, it is required to pay compensation in accordance with Schedule 7 of The Pensions Act 2004 (**PA'04**), regardless of the benefits provided by a scheme's trust deed and rules.

- Paragraph 28 of Schedule 7 of the PA'04 provides that pensionable service completed before 6 April 1997 will not be increased annually.

12. The Board has informed Mr G, while it cannot lobby the Government for changes to its governing legislation, the Chief Customer Officer has notified the DWP of a number of complaints it has received about this issue, but the DWP has given no indication that it plans to seek changes to the relevant legislation.

13. It has also been suggested that Mr G may wish to raise his concerns directly with his Member of Parliament, who could raise them with the Pensions Minister on his behalf.

## Adjudicator's Opinion

14. Mr G'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 as follows:-

- The PPF was brought into being by the PA'04. It was not, itself, a pension scheme; nor was it an insurance scheme. It was intended to provide compensation for the members of an occupational pension scheme which was unable to pay the benefits which had been promised to them. Briefly, the circumstances in which the PPF would accept a pension scheme were:
    - the pension scheme was a defined benefit arrangement and commenced winding-up after April 2005;
    - a qualifying insolvency event had occurred in relation to a sponsoring employer;
    - an insolvency practitioner had confirmed that a scheme rescue was not possible; and
    - the assets of the pension scheme were less than would be needed to provide benefits at or greater than the level of PPF compensation for the members.
- The above conditions applied in the case of the AET Scheme, and it transferred to the PPF in July 2016. At that point, the AET Scheme, effectively, ceased to exist and its members became eligible to receive compensation from the PPF.
- The amount of PPF compensation payable and the terms and conditions under which it was paid are set out in the PA'04 and The Pensions Protection Fund (Compensation) Regulations 2005 (the **Compensation Regulations**).
- Paragraph 28 of Schedule 7 of the PA'04 detailed the rate of indexation for pensions in payment. Namely, in line with inflation, up to 2.5%, in respect of post-5 April 1997 pensionable service. There was no requirement to pay indexation in respect of pre-6 April 1997 pensionable service.
- The Board was required to administer the PPF in accordance with the PA'04 and the Compensation Regulations. The Board had done that. Mr G was in receipt of compensation from the PPF, which replaced the pension he would otherwise have lost when the AET Scheme was wound-up in deficit.
- The Board had also raised the issue of Mr G's complaint with the DWP.
- Mr G had referred to my power to direct the Board to pay compensation. This power only arose when I found that a decision by the Board was not reached

correctly[1]. It was not a free-standing power to award compensation when this was not provided for in the PA’04 or the Compensation Regulations.

- As there were no grounds for me to interfere in this matter, the Adjudicator’s opinion was that Mr G’s complaint could not be upheld.

15. Mr G did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr G 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 G.

## Mr G’s further submissions

16. Mr G says:

- A December 2018 reply to his letter of complaint about PPF inflation to the Work and Pensions Select Committee stated that the “Labour Government set up the PPF to pay a meaningful level of compensation…” The PPF’s Stage One response to his maladministration complaint stated “The PPF pay increases in line with legislation set by the Government. The increases you’re eligible to receive must be in line with inflation, up to 2.5%, as per Government law.” So, the Government’s intention is clear. PPF compensation should be at a “meaningful level” and increases paid “in line with inflation, at present up to 2.5% per annum”.

- His total PPF compensation is not at a meaningful level and increases are not in line with inflation up to 2.5% per annum. Two-thirds of his pension contributions were paid before 1997. His PPF payments are now 23% below the promised pension he earned before 6 April 1997. He has suffered a significant and cumulative loss. How can he be suffering this and yet still be receiving a meaningful level of compensation?

- At the time of the Parliamentary debates on the PA’04, Andrew Smith MP, the then Secretary of State for Work and Pensions, stated that “the PPF is an insurance scheme for pensions, so it should obey the same rules as private sector insurance schemes”.

- The PPF call their payments ‘compensation’. Compensation should return the insured party to the position that they were originally in.

- The PPF does not maintain a retirement income that is 90% of the promised pension because of the poor inflation protection in the PPF. Here again the PPF rules do not meet the Government’s intentions. The PPF Ombudsman’s remit gives him the power to correct this injustice.

- In April 2010, Pensions Minister Steve Webb said:

[1] Regulation 14, The Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) Regulations 2005 (SI2005/2025) (as amended).

> "We are very clear that all accrued rights should be honoured: a pension promise made should be a pension promise kept. Therefore, we would not make any changes to pension rights that have already been built up. I have confirmed that I regard accrued index-linked rights as protected."

- This statement is directly contradicted by the PPF rule that no inflation updates are given on pension contributions made before 1997.
- The PPF rule means that those who paid for inflation protection before 1997 now receive a much lower proportion of their earned pension than the less prudent. Or, putting it another way, the pre-97 rule obliges the prudent to subsidise the PPF compensation of the less prudent. This is perverse, unfair, and unjust.
- Why is the PPF Ombudsman not exercising his power to correct this injustice?
- The sections from Schedule 7 of the PA'04, provided in the Appendix of the Adjudicator's Opinion, refer to the determination of the annual increase in periodic compensation. There is no mention how a compensation award that was unjust, when first awarded, can be corrected. So, the sections provided do not relate to his case.
- The PPF's assets have increased by £900 million this year and could correct his unjust situation if the PPF wanted to.
- Section 214(d) of the PA'04, gives the PPF Ombudsman power to direct the Board to pay compensation to a PPF member who has been treated unjustly, like himself.
- The PA'04, enables the Board to ask the Government for a rule change, when there is obvious injustice.

## PPF Ombudsman's decision

17. Mr G says that the PPF is an insurance scheme. He bases this on a statement made during the PA'04 debates by Andrew Smith MP, then the Secretary of State for Works and Pensions, that "the PPF is an insurance scheme for pensions…" But Mr Smith was using the word insurance in a wider context. Unlike an insurance scheme, the PPF pays neither a sum insured, nor a sum assured.

18. The PPF is a compensation scheme. As the Adjudicator explained, the PPF pays members compensation 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 PA'04 and the Compensation Regulations.

19. The largest part of Mr G's pension was accrued in respect of pensionable service completed before 6 April 1997. So, annual increases do not apply to this part of his pension in payment.

20. Mr G says this is perverse, unfair, and unjust. Nonetheless, Mr G is receiving PPF compensation in accordance with the prevailing legislation.

21. Mr G says I have the power to direct the Board to pay compensation to a PPF member who has been treated unjustly, like himself. But this power only arises where I find a decision by the Board has not been reached correctly. That is not the case here.

22. I do not uphold Mr G's complaint.

**Anthony Arter**

Pension Protection Fund Ombudsman
14 December 2021

## Appendix

### Schedule 7 of The Pensions Act 2004

23. As relevant paragraph 28, 'Annual increase in periodic compensation', states:

"(1) This paragraph provides for the increases mentioned in sub-paragraph (3)(b)[[2]] of paragraphs 3[[3]]…

(2) Where a person is entitled to periodic compensation…, he is entitled, on the indexation date, to an increase under this paragraph of—

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

(3) In sub-paragraph (2)—

- "appropriate percentage" means the lesser of—
  - (a) the percentage increase in the general level of prices in Great Britain for the period of 12 months ending with the 31st May last falling before the indexation date, and
  - (b) 2.5%;
- "indexation date" means—
  - (a) the 1st January next falling after a person first becomes entitled to the periodic compensation, and
  - (b) each subsequent 1st January during his lifetime;
- "underlying rate" means, in the case of periodic compensation under paragraph 3…, the aggregate of—
  - (a) so much of the amount mentioned in sub-paragraph (3)(a) of the paragraph in question as is attributable to post-1997 service, and
  - (b) the amount within sub-paragraph (3)(b) of that paragraph immediately before the indexation date.

…

(3A) For the purposes of paragraph (a) of the definition of "appropriate percentage" in sub-paragraph (3), the Secretary of State may (from time to time) decide, as the Secretary of State thinks fit, the manner in which percentage increases in the general level of prices in Great Britain are to be determined.

(3B) The Secretary of State must publish any decision made under sub-paragraph (3A).

[2] Sub-paragraph 3(b) states: "any increases under paragraph 28 (annual increases in periodic compensation)."

[3] Pensions in payment.