

Ombudsman's Determination

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

Outcome

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

Appeal summary

2. Mr N's appeal concerns the level of FAS assistance that he is receiving. He believes the combined total of his FAS assistance and Wesleyan annuity should not decrease each year.

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**). Extracts from the FAS Regulations are provided in Appendix 1.
4. Mr N was a contracted-out member of the ASW Sheerness Steel Group Pension Fund (**the Fund**), a defined benefit occupational pension scheme.
5. On 18 July 2002, the Fund commenced winding-up (date of scheme wind-up, **DOSW**) with insufficient assets to secure members' benefits in full and Mr N became a deferred member.
6. On 26 October 2005, the Fund qualified for the FAS.
7. In May 2006, the trustees of the Fund secured a deferred annuity with Wesleyan for Mr N with his share of the Fund assets at DOSW, payable from his normal retirement date (**NRD**) in September 2011. The annuity of £10,330.85 per annum included a bridging pension to Mr N's State Pension Age (**SPA**), 65.
8. Approaching his NRD, Wesleyan offered Mr N a pension of £10,704 per annum or a reduced (commuted) pension of £8,200.08 per annum plus a pension commencement lump sum (**PCLS**). Mr N chose the latter option. Mr N received a PCLS of £54,667.07.
9. The Fund transferred to the FAS on 1 October 2011.

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10. The FAS is administered by the Pension Protection Fund (**the PPF**).
11. When the Fund transferred to the FAS, the PPF was provided with a breakdown of Mr N's benefits at his date of leaving (**DOL**)/DOSW (see Appendix 2).
12. Under regulation 17(2), Mr N is entitled to an annual FAS payment from his NRD.
13. As Mr N is in receipt of an annuity from Wesleyan, he is treated as a 'top-up member' for FAS assistance.
14. The basic methodology for calculating annual FAS assistance is contained within Schedule 2 of the FAS Regulations. Mr N was an active member of the Fund on the day before DOSW. His FAS assistance must be calculated in accordance with paragraph 4 of the FAS Regulations. This provides that the annual payment shall be:-
$$(\text{expected pension} \times 0.9) - \text{actual pension}$$
15. The "expected pension" is the annual rate of pension which Mr N would have been entitled to, under the Fund rules, if he had reached his NRD on 18 July 2002. There is no provision for commutation. The expected pension is then revalued as prescribed in Schedule 2. This is roughly in line with increases in prices over the relevant period (that is from DOL/DOSW to NRD). As all of a member's FAS assistance has to come into payment on the same day¹, an actuarial reduction factor was applied to the Guaranteed Minimum Pension (**GMP**) elements to reflect their early payment (from age 62 rather than 65).
16. The PPF calculated that 90% of Mr N's expected pension was £20,411.65 as of 1 January 2012 (see Appendix 3 for calculation).
17. The "actual pension" is calculated in accordance with paragraph 2(1) and 2(3)(d) of Schedule 2 of the FAS Regulations. It is the Wesleyan deferred annuity which was secured for Mr N with the Fund assets revalued to his NRD and an actuarial reduction factor applied to the GMP elements to reflect their early payment (the actual pension is determined on the basis that all elements are payable from Mr N's NRD).
18. The actual pension does not match the annuity payments that Mr N receives from the Wesleyan as, under the FAS Regulations, the calculation disregards that Mr N commuted part of his annuity for a PCLS.
19. Using annuity data provided by Wesleyan, the FAS calculated that Mr N's actual pension was £14,251.64 as of 1 January 2012 (see Appendix 4).
20. The PPF calculated Mr N's FAS assistance annual payment in January 2012 to be £6,160.61. That is, £20,411.65 - £14,251.64.
21. The PPF is required to redetermine each year the amount of FAS assistance to reflect increases to the expected pension and actual pension². The part of the

¹ Paragraph 4B of Schedule 2.

² Paragraph 2A of Schedule 2.

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expected pension which relates to post 1997 service increases each year by inflation capped at 2.5%. No increase applies to pre 1997 service. The increases applicable to Mr N's annuity with Wesleyan (RPI capped at 3% on the applicable GMP element and RPI capped at 6% on the applicable excess pension element) are applied to the corresponding elements of Mr N's actual pension.

22. The calculation of Mr N's FAS assistance for years 2012 to 2022 is provided in Appendix 5.

Mr N's position

23. Mr N submits:-

- As a pensioner the PPF has deducted more from his FAS assistance than Wesleyan has increased his annuity over the past few years. Consequently, the total sum he is receiving from the FAS and Wesleyan is decreasing each year.
- He cannot ascertain what his full pension would have been each year since his retirement in 2011.
- While the PPF has provided its calculations which he cannot verify, Wesleyan has not. So, he is at a loss as to whether the PPF is deducting too much from his FAS assistance, or Wesleyan is not paying him enough.
- It has always been his understanding that the PPF is supposed to top-up a retiree's annuity to 90% of the expected pension. So, he does not understand what difference it makes whether he had the full pension or the reduced pension, and as pensions are index linked why the combined amount (FAS assistance and Wesleyan annuity) is decreasing.
- While he has been in contact with both parties and the PPF has provided its calculations, which he cannot verify, Wesleyan has not provided an elemental breakdown of its payments of his annuity. So, he does not know if the PPF is deducting too much from his FAS assistance or Wesleyan underpaying his annuity. As a pensioner, he should not be getting poorer each year.

The Board's position

24. The Board submits:-

- The PPF is required to provide FAS assistance in accordance with the FAS Regulations. Mr N is receiving the FAS assistance he is entitled to under the FAS Regulations.
- Any change to the financial assistance to be provided by the FAS (as set out in the FAS Regulations) is a matter for the Department for Work and Pensions (DWP), the Government and for Parliament.

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- The calculation of FAS assistance is complex. It has provided as much information as possible to help Mr N understand how it has calculated his FAS assistance.
- Wesleyan has confirmed that the annuity data secured for Mr N on the Fund's wind-up matches the data the PPF hold and has used in its calculations.
- The reason why Mr N's yearly FAS assistance has reduced by more than his Wesleyan annuity has increased is because the increases prescribed under the FAS Regulations to the expected pension are less than those applicable to his Wesleyan annuity which correspondingly apply to the actual pension.
- The reason why the combined value of Mr N's FAS assistance and Wesleyan annuity has reduced each year is because the yearly calculation of his FAS assistance assumes he has received annual increases on his pre-commutation annuity, rather than the actual increases he has received from the Wesleyan on his reduced (post commutation) annuity. Nonetheless, the calculation of Mr N's PCLS would have accounted for the increases he would have received on the commuted part of his annuity if he had not taken a PCLS. So, Mr N received the benefit of these increases upfront.
- It is unable to comment on Mr N's statement that Wesleyan has not provided an elemental breakdown of his annuity payments over the years. It is a matter outside of its control / power.

Adjudicator's Opinion

25. Mr N'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 set out below:-

- The Adjudicator set aside Mr N's comment that Wesleyan had not provided its calculation for his annuity, and he was unsure if Wesleyan was paying him enough, as both matters were not part of the appeal against the review decision of the Board that had been accepted for investigation.
- The PPF Ombudsman has been appointed to hear appeals against review decisions. These may fall into one of the following categories:-
 1. Member eligibility decisions.
 2. Member assessment decisions.
 3. Scheme beneficiaries' decisions.
 4. Scheme eligibility decisions.

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- Mr N's appeal falls into the second category because it relates to a decision as to the amount of his annual FAS assistance.
- The relevant regulations, which the PPF must apply in calculating Mr N's FAS assistance, are the FAS Regulations. The PPF has no discretion in this matter.
- Mr N's FAS assistance is calculated as 90% of his expected pension minus the actual pension. The deduction recognises that the trustees of the Fund purchased the Wesleyan annuity for Mr N of £10,330.85, payable from his NRD.
- Each year Mr N's FAS assistance is redetermined to take account of the change to the amount of the Wesleyan annuity he would have received if he had not commuted part of it for a PCLS. This is to ensure that his FAS assistance plus Wesleyan annuity equate to 90% of his expected pension.
- Mr N's annuity has been increasing in payment at a faster rate than his FAS assistance. This is because the annual increases applicable to his Wesleyan annuity (which are applied to the actual pension for the annual redetermination of his FAS assistance) are greater than the annual increases applicable to his expected pension (paragraph 9 of Schedule 2 only provides for the PPF to increase that part of Mr N's expected pension which is attributable to pensionable service on or after 6 April 1997).
- Nonetheless, overall Mr N's FAS assistance plus Wesleyan annuity (pre commutation) has remained at 90% of his expected pension.

Ombudsman's decision

26. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has not provided any further comments.
27. Having reviewed the FAS Regulations and the information provided by the Board and Mr N, I am satisfied that the Board has complied with the FAS Regulations in calculating Mr N's FAS assistance.
28. I do not uphold Mr N's appeal.

Dominic Harris

Pension Protection Fund Ombudsman
3 January 2024

Appendix 1

The Financial Assistance Scheme Regulations 2005 (SI 2005/1986) - extracts from Schedule 2, 'Determination of Annual and Initial Payments'

1. As relevant, paragraph 2, 'Actual Pension', provides:

"(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) or, ..., 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)

...

(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."

2. 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));”

3. 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—

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

Appendix 2

Breakdown of Mr N's benefits when the Fund transferred to the FAS:

Element	SPA (65) NRA (62)	Amount (£) at DOL - 18/7/02	End Date
Quasi GMP	65	18.24	n/a
GMP pre 6/4/88	65	1995.24	n/a
GMP post 5/4/88	65	1395.68	n/a
Excess pre 6/4/97	62	8204.60	n/a
Excess post 5/4/97	62	2485.07	n/a
Excess pre 6/4/97 – Bridging Pension	62	2646.09	16/9/14
Excess post 5/4/97 – Bridging Pension	62	524.00	16/9/14
Total		17,268.92	

Appendix 3

Calculation of Expected Pension (EP):

Element	Amount (£) at 15/7/02	Revaluation rate	Actuarial factor	90% EP (£) at 16/9/11	Increase applied at 1/1/12	90% EP (£) at 1/1/12
Quasi GMP	18.24	1.328129	0.938	20.45	1	20.45
GMP pre 6/4/88	1,995.24	1.328129	0.938	2,237.08	1	2,237.08
GMP post 5/4/88	1,395.68	1.328129	0.938	1,564.85	1	1,564.85
Excess pre 6/4/97	8,204.60	1.328129	1	9,807.09	1	9,807.09
Excess post 5/4/97	2,485.07	1.328129	1	2,970.44	1.00625	2,989.01
Excess pre 6/4/97 – Bridging	2,646.09	1.328129	1	3,162.91	1	3,162.91
Excess post 5/4/97 – Bridging	524.00	1.328129	1	626.35	1.00625	630.26
Total	17,268.92			20,389.17		20,411.65

Appendix 4

Calculation of actual pension (AP) – based on Mr N’s deferred annuity secured by the trustees of the Fund with Wesleyan:

Annuity Elements		Amount (£) at DOL - 18/7/02	AP (£) at NRD - 16/9/11	AP (£) at 1/1/12
Element 1	Pre 6/4/88 GMP	1,281.88		1,831.64
Element 2	Post 5/4/88 GMP	781.84		1,117.15
Element 3	Post 5/4/88 GMP non-increasing^	126.56		180.84
Element 4	Aux GMP as excess	868.53	1,290.72	1,290.12
Element 5		615.48	914.66	914.16
Element 6	Excess pre & post '97 combined	4,945.62	6,624.79	6,624.79
Element 7	Post 5/4/97 Excess non-increasing^	222.44	297.66	297.66
Element 8	Bridging Pension (BP) (pre & post '97 combined)	1,441.60	1,931.06	1,931.06
Element 9	BP post '97 non-increasing^	46.90	62.82	62.82
	Total	10,330.85	11,122.01	14,251.64

^ non-increasing in payment.

Appendix 5 – Summary of annual FAS assistance paid:

Year	90% Expected Pension (EP) – paid for life	90% EP – Bridging Pension	90% Total EP (A)	Actual Pension (B)	FAS assistance paid to Mr N (A - B)
2012	£16,618.48	£3,793.17	£20,411.65	£14,251.64	£6,160.01
2013	£16,693.21	£3,808.93	£20,502.14	£14,493.42	£6,008.72
2014	£16,769.80	£3,825.08	£20,594.88	£14,876.02	£5,718.86
2015	£16,817.62	-	£16,817.62	£10,672.83	£6,144.79
2016	£16,820.81	-	£16,820.81	£10,769.83	£6,050.98
2017	£16,830.37	-	£16,830.37	£10,872.38	£5,957.99
2018	£16,910.39	-	£16,910.39	£11,134.44	£5,775.95
2019	£16,989.13	-	£16,989.13	£11,445.33	£5,543.80
2020	£17,056.32	-	£17,056.32	£11,678.67	£5,377.65
2021	£17,073.45	-	£17,073.45	£11,908.40	£5,165.05
2022	£17,145.77	-	£17,145.77	£12,036.67	£5,109.10