The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr L
Scheme	Financial Assistance Scheme (**FAS**)
Respondent	Pension Protection Fund (**PPF**)

Outcome

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

2. My reasons for reaching this decision are explained in more detail below.

Appeal summary

3. The appeal that this office has agreed to consider is the calculation of Mr L's FAS payments.

Background information, including submissions from the parties

4. 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.

5. Mr L became a pensioner member of the Platon Managed Pension Plan (**the Plan**) when he retired on 16 October 1992.

6. The Plan commenced winding up on 11 March 2002 (Date of Scheme Wind Up – **DOSW**).

7. Following the transfer of the Plan's assets in August 2015, the PPF (as Scheme Manager) assumed responsibility for paying all of Mr L's benefits in relation to his membership of the Plan.

8. Standard Assistance is the minimum amount that a member is entitled to under FAS. Paragraph 4(2) of schedule 2 of the FAS Regulations defines the amount as equal to: (expected pension x 0.9) – actual pension.

9. For a pensioner member at DOSW "expected pension" is the aggregate of their accrued pension at that date, revalued (at RPI capped at 5 per cent per year) to the later of the member's FAS normal retirement age, scheme wind-up, and the date FAS was established (14 May 2004), paragraph 3 of Schedule 2 of the FAS Regulations.

10. Broadly the "actual pension" is 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. – paragraph 2 of Schedule 2 of the FAS Regulations.

11. Paragraph 9 of Schedule 2 provides for annual increases to annual payments. Any increases are calculated by reference to the "appropriate percentage" of the "underlying rate". The "underlying rate" is calculated by reference to "so much of the expected pension as is attributable to post-1997 service". Post-1997 service is "pensionable service … which occurs on or after 6th April 1997".

12. The PPF originally calculated Mr L's Standard Assistance to be £2,517.30 per year.

13. Following the transfer of the Plan's assets to the FAS, the PPF were required to carry out a further calculation to establish Mr L's "Notional Pension" (regulation 27 of the FAS Regulations). The Notional Pension is the amount of annuity which could have been purchased with Mr L's share of the Plan's assets, including any survivor's benefits and annual increases. Where the asset share is not sufficient to provide these benefits in full, the PPF must apply them in a prescribed order; securing the member's pension first and then, if assets permit, the survivor's benefits and annual increases.

14. Under regulation 22 of the FAS Regulations, the Plan's Trustees were required to obtain an actuarial valuation. The regulation 22 valuation showed Mr L's share of the Plan's assets to be £55,505. Using an annuity factor of 23.303, provided by their in-house actuarial team, the PPF calculated Mr L's Notional Pension to be £2,381.86 per year.

15. FAS pays the higher of the Notional Pension and the Standard Assistance – in this case FAS is paying Mr L based on the Standard Assistance.

16. The PPF calculated the payments Mr L was entitled to for the period from DOSW to 21 July 2015 to be £33,351.53. They said that he had received £56,577.71 from the Plan. The PPF said that Mr L had therefore been overpaid by £23,226.18. The PPF said the overpayment spread over Mr L's future assistance for life had resulted in a net overpayment of £626.82.

17. Mr L complained to the PPF that they had incorrectly reduced his Standard Assistance to nil and requested repayment.

18. In their formal response to Mr L's appeal to the Pensions Ombudsman the PPF advised that due to an error by the Plan's previous administrators failing to update Mr L's guaranteed minimum pension (**GMP**) after a GMP reconciliation exercise, Mr L's Notional Pension and Standard Assistance had been understated. PPF respectively advised the revised amounts to be £2,551.85 and £2,705.66*. As a result the overpaid sum was reduced to £20,748.47, which spread over Mr L's future assistance for life meant that Mr L was now entitled to Standard Assistance of £429.67 per year.

*

	Amount at DOSW	Revaluation rate	NPA	90% Expected Pension at ED
GMP 06/04/1978 - 05/04/1988	£1,665.20	1.065205	65	£1,596.40
GMP 06/04/1988 - 16/05/1990	£522.74	1.065205	65	£501.14
GMP 17/05/1990 – End of Barber Window	£634.33	1.065205	60	£608.12
				£2,705.66

19. The PPF have encouraged Mr L to consider the legal defences which may be available (namely, hardship, change of position, estoppel and lapse of time by virtue of the Limitation Act 1980). To date Mr L has not completed and returned to the PPF the FAS 'Statement of Income & Expenditure Form' and Overpayment Questionnaire' that the PPF issued to him.

20. Among other things, Mr L' representative says:-

- The PPF "unilaterally ceased and breached the pension terms, they stopped all payments, they demanded money with menace, the[y] have left all benefits and provisions at large."

- The PPF refused to reinstate Mr L's Standard Assistance saying the matter of calculation of entitlement must be reviewed. The review took nearly a year.

- The PPF's final decision letter reiterates their position offering "headline figures, without any evidence, breakdowns, schedules to back them up."

- The decision to deprive Mr L of his pension is wrong and has brought Mr L immense distress.

21. The PPF have apologised for the time it took to deal with Mr L's review and the subsequent delays that have occurred. Among other things the PPF say:-

- FAS assistance is not intended to replicate exactly the benefits provided by a pension scheme.

- The assistance paid by FAS is calculated in accordance with the FAS Regulations. The Board has no discretion to calculate Mr L's benefits differently.

Adjudicator's Opinion

22. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by the PPF. The Adjudicator's findings are summarised briefly below:-

- The PPF were required to calculate Mr L's payments in accordance with the FAS Regulations.

- Mr L was already in receipt of a pension from the Plan when it transferred to the FAS. Therefore, the PPF were required to compare the amount of Standard Assistance which could be paid to him with a Notional Pension derived from his share of the Plan's assets.

- Standard Assistance is the minimum amount that a member is entitled to under FAS. It amounts to 90 per cent of Mr L's Expected Pension. The Expected Pension is Mr L's accrued pension at the start of the Plan's wind-up revalued to 14 May 2004 (the date that FAS was established).

- The Notional Pension is determined by the PPF in accordance with regulation 27(1). It is the annual annuity which could have been secured with Mr L's share of the Plan's assets when the Plan began to wind-up.

- The PPF had confirmed Mr L's corrected Standard Assistance to be £2,705.67. This was more than his corrected Notional Pension of £2,551.85 and, therefore, it was the Standard Assistance which was payable.

- Under the FAS Regulations, increases are paid on Standard Assistance where it relates to a pension derived from pensionable service after 6 April 1997. Since

Mr L left pensionable service in relation to the Plan in 1992, he had no post-1997 pensionable service.

- The FAS Regulations had not in any way changed the provisions of the Plan. The two schemes were entirely separate. Mr L's entitlement under the terms of the Plan had not changed but the Plan was not funded sufficiently to provide them. This situation crystallised once the Plan commenced winding up.

- The PFF have complied with the FAS Regulations.

- Mr L's complaint about the recovery of the overpayment was not within the jurisdiction of the Pensions Ombudsman to consider. It was a matter for the Parliamentary Ombudsman to consider.

- The Adjudicator encouraged Mr L to complete the forms the PPF had previously sent him so that they could decide whether the overpayment should be waived, either wholly or partly.

23. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The representative for Mr L has provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made on Mr L's behalf for completeness.

The Ombudsman's decision

24. My jurisdiction in this matter is restricted to considering Mr L's appeal about the calculation of his FAS payments.

25. Mr L's representative has raised a number of matters, including requesting data, which pertain to the recovery of an overpayment of Mr L's pension by the PPF. This is not within my jurisdiction to consider, but may be considered by the Parliamentary and Health Service Ombudsman (**PHSO)**. Mr L should contact the PHSO directly. Further details are available on the PHSO's website.

26. Mr L's representative says the Adjudicator failed to deal with widow pension entitlement, retirement benefits, death benefits and any other provisions and that the Plan refers to pension payments continuing in instalments in advance for life and increases in GMP will be provided at least at 5 per cent.

27. As the Adjudicator said in his Opinion, the FAS Regulations have not changed the provisions of the Plan. The two schemes are entirely separate. Mr L's entitlement under the terms of the Plan have not changed but the Plan was not funded sufficiently to provide them, hence its transfer to the FAS. The FAS may not cover all

the benefits that were available to Mr L under the Plan. In general, a surviving spouse will receive 50 per cent of the member's FAS entitlement.

28. I am satisfied that the PPF have correctly calculated Mr L's FAS payments in accordance with the FAS Regulations.

29. Therefore, I do not uphold Mr L's appeal.

Anthony Arter

Pension Protection Fund Ombudsman
28 February 2017