Ombudsman's Determination

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

Outcome

1. I do not uphold Mr R'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 concerns the calculation of Mr R's Notional Pension.

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 R became a pensioner member of the Hawtal Whiting Pension Fund (**the Fund**) when he retired in November 2000.

6. The Fund commenced winding up on 1 March 2002 (Date of Scheme Wind Up – **DOSW**).

7. Following the transfer of the Fund's assets in February 2014, the PPF (as Scheme Manager) assumed responsibility for paying all of Mr R's benefits in relation to his membership of the Fund.

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 calculated Mr R's Standard Assistance to be £2,776.47 per year.

13. Following the transfer of the Fund's assets to the FAS, the PPF were required to carry out a further calculation to establish Mr R's "Notional Pension" (regulation 27 of the FAS Regulations). The Notional Pension is the amount of annuity which could have been purchased with Mr R's share of the Fund'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 Fund's Trustees were required to obtain an actuarial valuation. The regulation 22 valuation showed Mr R's share of the Fund's assets to be £62,064. Using an annuity factor of 23.2033, provided by their in-house actuarial team, the PPF calculated Mr R's Notional Pension to be £2,674.79 per year.

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

16. Mr R says the PPF should calculate his Notional Pension by dividing his share of the Fund's assets at DOSW by the number of days of his life expectancy from 1 March 2002 to his 85th birthday (6,813 days) plus half the number days thereafter to his wife's 89th birthday (640 days) to calculate a daily rate and multiplying this figure by 365 to calculate an annual rate. That is his Notional Pension should be:

    (£62,064 / 7,453 days) x 365 = £3,039.50 per annum.

17. Mr R says the UK law controls what the FAS does. It assumes that pensioners are all the same and live in the UK. But his case is different because he lives in Canada and therefore never requires financial assistance from the UK government.

Adjudicator's Opinion

18. Mr R'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:

19. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R 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 R's behalf for completeness.

The Ombudsman's decision

20. Mr R says that £316.83 per year is being deducted from his Standard Assistance entitlement of £2,776.47. He says he should not have pay for someone's mistake.

21. The deduction by the PPF is to recover an overpayment of pension to Mr L. This is a separate matter from the appeal this office agreed to investigate, namely the PPF's calculation of Mr L's Notional Pension. It is also not a matter within my jurisdiction to consider, but may be considered by the Parliamentary and Health Service Ombudsman (**PHSO**). Mr R should contact the PHSO directly. Further details are available on the PHSO's website.

22. Turning now to the PPF's calculation of Mr R's Notional Pension. I am satisfied that the PPF have correctly calculated it, and Mr R's Standard Assistance of £2,776.47, in accordance with the FAS Regulations.

23. Therefore, I do not uphold Mr R’s appeal.

Anthony Arter
Pension Protection Fund Ombudsman
28 February 2017