

Ombudsman's Determination

Applicant	Mr N
Scheme	Imperial Home Decor Pension Scheme (the Scheme)
Respondent	Pension Protection Fund (PPF)

Outcome

1. I do not uphold Mr N's appeal and no further action is required by the PPF.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has appealed the decision of the Board of the PPF (**the Board**) to reduce his Financial Assistance Scheme (**FAS**) benefits going forward. He also does not believe that his asset share was correctly calculated by FAS and that some elements of his pension benefits were omitted from the calculation.

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. The Scheme commenced winding up on 15 October 2003. Mr N was a pensioner member at the time as he had taken early retirement on 30 June 1995, at age 52.
6. On 9 October 2015, the Trustees of the Scheme wrote to Mr N and informed him of the progress that had been made in relation to completing the transfer of members to FAS. The letter explained that the Trustees had secured an annuity with an alternative company to cover the payment of pensions for members whose pensions were derived wholly or in part from Additional Voluntary Contributions (**AVC**), or Money Purchase contributions. The letter also explained that those elements of the member's pension would not be transferred to FAS.

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7. The letter explained that "...members with Final Salary derived pensions (or part Final Salary pensions), payments of this element will continue to be paid by the Scheme and then taken over by the FAS when wind up completes."
8. On 29 January 2016 the Scheme Administrators wrote to Mr N and explained that:

"Under the Financial Assistance Scheme's (FAS) Rules, AVC and Money Purchase benefits must be discharged prior to the transfer to the FAS. Therefore, it is the Trustee's intention to split out these benefits so that they are paid directly to you by an alternative company... The payment of your increased Money Purchase Pension will be made by the alternative company. You will continue to receive the Defined Benefit portion of your pension, at its present level from the Scheme until the transfer to the FAS...After the transfer to FAS your Defined Benefit pension will be reviewed and adjusted to reflect the final funding position of the Scheme, based on the valuation results. Your final Defined Benefit pension may be higher or lower than your current level."
9. On March 2017, FAS wrote to Mr N informing him that his Scheme benefits had been transferred to FAS. Therefore, he would be paid a FAS Annual Payment instead of being paid a pension by the Scheme. The letter confirmed what Mr N's Annual Payment would be and it also informed him that he had received an overpayment of benefits, which needed to be repaid.
10. In April 2017, Mr N appealed the FAS' determination regarding the overpayment.
11. On 13 July 2017, FAS replied to Mr N's appeal. It provided a background to how his asset share was calculated and explained how the overpayment had occurred. The letter also explained that FAS had discretion to waive the overpayments and, it explained the circumstances that could result in the overpayment being waived.

Grounds for appeal

12. Mr N's submission is summarised below:-
 - The Trustees confirmed to FAS that his pension was split into two elements. He has enquired why his pension only has two elements and no mention of AVCs, despite it previously being confirmed that he had AVCs.
 - He does not consider that the Trustees' calculation of his asset share represents the payments made towards his pension while he was employed.
 - The letters from FAS contain different calculation dates. It has kindly waived the overpayment but it still appears as a debt. He and his wife are over 70 and were extremely distressed to find that they owed a debt, which they never knowingly had.

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- He contributed to Money Purchase Schemes and AVCs and believes that his contributions may not have been correctly recorded which has resulted in him receiving a lower asset share.

Adjudicator's Opinion

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

- Regulation 17 (8) (g) requires the Board to determine whether the "notional pension" calculated by reference to Mr N's share of the Scheme assets, is higher or lower than the annual FAS payment he might receive; referred to as "standard assistance" by the Board.
- Regulation 22 (1) of the FAS Regulations requires that the Board obtains a valuation of the Scheme's assets and liabilities at the calculation date. Regulation 22 (2)(a) of the Regulations required that the Board obtain a valuation of Mr N's asset share within the Scheme. This resulted in the Scheme's assets being sufficient to cover Mr N's defined final salary benefits within the Scheme.
- Mr N's asset share was calculated as £103,209. On this basis, the Board calculated that Mr N's notional pension at the date the Scheme entered wind up was £3,477.58 per annum. Mr N did not agree with the calculation of his asset share.
- The basic methodology for calculating FAS payments is contained within schedule 2 of the FAS Regulations. Mr N was in receipt of a pension from the Scheme at the time that the Scheme commenced winding up proceedings. His FAS payments must be calculated in accordance with paragraph 3 of schedule 2 of the FAS Regulations.
- Paragraph 3 provides that the annual payment shall be:-
(expected pension x 0.9) – actual pension.
- The "expected pension" was the defined final salary pension Mr N was entitled to receive from the Scheme, revalued between the date the Scheme commenced winding up proceedings and his 65th birthday.
- The FAS calculation of Mr N's benefits was based on the information it received from the Trustee/Administrator at the date that the Scheme transferred to the FAS. Only the defined benefit element of Mr N's pension was transferred to the FAS. Therefore, FAS would not have included any AVC or Money Purchase benefits in the calculation of Mr N's asset share.

- The letters from the Trustee and Administrator, respectively, dated 9 October 2015 and 29 January 2016, informed Mr N that the benefits in his AVC and Money Purchase arrangements would be paid by an alternative company, not FAS.
 - Mr N had confirmed that he was in receipt of an annuity from another provider. Therefore, if Mr N considered that some AVC / Money Purchase elements of his pension had not been included, he might wish to discuss the matter with the Scheme's previous Administrator.
 - FAS had waived the overpayment but going forward the FAS had reduced Mr N's pension to his correct entitlement in accordance with FAS Regulations.
14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his 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 by Mr N for completeness.

Ombudsman's decision

15. My jurisdiction in this matter is restricted to considering Mr N's appeal regarding the calculation of his FAS payments.
16. Mr N has raised several points, including requesting data pertaining to his asset share calculation, by the Scheme's previous Administrator. However, this is not within my jurisdiction to consider.
17. As the Adjudicator said, the FAS calculation of Mr N's benefits was based on the information it had received from the Scheme's previous Trustee/Administrator.
18. I am satisfied that the PPF has correctly calculated Mr N's FAS payments in accordance with the FAS Regulations.
19. Therefore, I do not uphold Mr N's appeal.

Anthony Arter

Pension Protection Fund Ombudsman
31 July 2018