



Ombudsman's Determination

Applicant	Mr L
Scheme	Financial Assistance Scheme (FAS)
Respondent	The Board of the Pension Protection Fund (the Board) (as scheme manager to the FAS)

Appeal summary

1. Mr L is appealing against the Board's decision not to pay him a lump sum.

Background information, including submissions from the parties

2. The relevant regulations are the Financial Assistance Scheme Regulations 2005 (SI2005/1986) (as amended) (the **FAS Regulations**). Unless otherwise specified, references to regulations and/or paragraphs below are to regulations and/or paragraphs contained in the FAS Regulations.
3. Mr L was a member of the Allenwest Pension & Life Assurance Scheme (**the Scheme**). He retired on 31 December 2009. On 15 December 2009, the Scheme's administrators wrote to Mr L setting out details of the annual pension he would be receiving (£5,531.76). The letter contained a statement to the effect that Mr L's benefits might be adjusted once winding up of the Scheme had been completed. Mr L was told the benefits which were being paid to him were "provisional benefits". The letter went on to state,

“... depending on the funding level of the Scheme upon completion of the Wind Up, you may be eligible to receive payment of a Tax Free Cash Sum at that time ...”
4. A transfer notice in respect of the Scheme was issued on 24 December 2012.
5. In response to a complaint by Mr L, the FAS wrote to him, on 3 September 2014, explaining that he was not eligible for a tax free cash sum because he had been paid from the Scheme prior to its transfer to the FAS. The FAS acknowledged that FAS

were entitled to exchange part of their annual assistance for a tax free lump sum but said this was dependent upon HMRC rules and the FAS Regulations. The FAS said one of the restrictions was that the member should not have commenced receiving any scheme payments prior to its transfer. The FAS said it had carried out a reconciliation exercise when the Scheme transferred and confirmed that Mr L had received the full amount he was entitled to.

6. The Board reviewed its decision and issued a review decision on 26 November 2014. It concluded:-

- When the FAS was first set up, there was no provision for the payment of lump sums. The FAS Regulations were amended, with effect from 2 April 2010, to allow the payment of lump sums.
- Regulation 17D contained a number of conditions which had to be met if a lump sum was to be paid. Condition (1)(d) provided the member “was not receiving a present payment under scheme rules before the day on which the transfer notice was given”.
- Mr L was in receipt of payments from the Scheme prior to the date the transfer notice was issued. He did not meet condition (1)(d).
- The letter Mr L had received from the Scheme administrators did raise the possibility that he might receive a lump sum at a later date. However, this was not a definitive statement and could not override the FAS Regulations.

Mr L's submission

7. Mr L's submission is summarised below.

- The FAS and the Scheme were in discussion and working closely together prior to the transfer.
- He received a letter from the Scheme administrators, on 15 December 2009, stating he would receive a provisional benefit. He was not given the option to take a tax free cash sum with a reduced pension or to delay taking his benefits until the new regulations came into force in April 2010.
- The FAS knew about and failed to communicate the fact that new regulations would come into force approximately 12 weeks after his retirement. This amounts to maladministration.

Written representation by the Board

8. The Board's written representation is summarised below.

- It must administer the FAS in accordance with the FAS Regulations.
- The FAS Regulations were amended by the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 (SI20101149) (the **Amending Regulations**).
- The Amending Regulations inserted a new regulation 17D into the FAS Regulations. This provided for the payment of lump sums.
- Regulation 17D(1)(d) states the regulation only applies where the member was not receiving a present payment under scheme rules before the day on which the transfer notice was given.
- Mr L does not dispute that he is not entitled to a lump sum payment under the FAS Regulations. He states the Scheme and the Board knew, in December 2009, that the Amending Regulations would come into force shortly and failed to communicate this to him.
- Alleged maladministration is not a matter on which the Board can issue a reviewable determination or a review decision. The scope of an appeal to the PPF Ombudsman is whether Mr L is entitled to a lump sum payment under the FAS Regulations.
- In any event, the Board was not under any duty to advise a member of a pension scheme, prior to a transfer notice being issued, to delay taking benefits on the grounds that legislation might come into force in the next few months which would allow the member to alter the shape of those benefits.

Adjudicator's Opinion

9. Mr L'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 summarised briefly below.

- The Ombudsman could only consider whether the Board's review decision, dated 26 November 2014, correctly reflected the FAS Regulations.
- The Board had applied the FAS Regulations correctly.

10. Mr L did not accept the Adjudicator's opinion and the complaint was passed to me to consider. I agree with the Adjudicator's opinion, summarised above. My further comments follow below.

The Ombudsman's decision

11. Regulation 2 of the Financial Assistance Scheme (Internal Review) Regulations 2005 (SI2005/1994) (as amended) contains a list of "reviewable determinations". These are decisions by the Board which a FAS member may ask to be reviewed (regulation 3). "The amount of an annual payment payable to a qualifying member of a qualifying pension scheme" is a reviewable determination.

12. The Financial Assistance Scheme (Appeals) Regulations (SI2005/3273) provide for me to consider appeals against review decisions. I do not have jurisdiction to consider complaints of maladministration.

13. I am satisfied that the Board has correctly calculated Mr L's FAS payments in accordance with the FAS Regulations.

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

Anthony Arter

Pension Protection Fund Ombudsman

6 March 2017