

## Pension Protection Fund Ombudsman's Determination

Applicant	Mr N
Scheme	Financial Assistance Scheme ( <b>the FAS</b> )
Respondent	The Board of the Pension Protection Fund ( <b>the Board</b> ) (as the scheme manager of the FAS)

### Outcome

1. I do not uphold Mr R'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.

### 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**). The FAS Regulations set out the conditions that must be met for a defined benefit scheme to qualify for the FAS and enable the PPF to make certain payments to qualifying members by reference to their share of scheme assets. Extracts from the FAS Regulations are provided in the Appendix.
4. Mr N was a member of the Bligh Holdings Limited Retirement and Death Benefits Plan (**the Scheme**). Under the Scheme, Mr N's Normal Retirement Age (**NRA**) was 65. His Normal Retirement Date (**NRD**) was in June 2009
5. In late October 1996, Mr N received a statement of benefits (**the 1996 Statement**). The 1996 Statement showed that he had accrued a pension of £1,333.63 per annum up to the date he left service in March 1994 and an estimated transfer value of £12,138 that was guaranteed for three months. In a covering letter, the Scheme's Independent Trustee said that the values were subject to the overall solvency of the Scheme.
6. In December 1997, the Independent Trustee, on behalf of the Scheme Trustees (**the Trustees**), issued a circular to members (**the 1997 Announcement**) which said:

“Hogg Robinson Consulting Group have carried out Actuarial Valuations as at 5 April 1996 (this is to meet the requirements of reports every 3 years) and as at 1 August 1997 to provide an up to date picture. Both reports indicate that the Scheme is able to meet it’s [sic] obligations in full, on an ongoing basis, but that they are based on accounts that have yet to be audited...It would also seem that it is likely that the Scheme will be solvent when it is wound up on the basis of providing cash equivalents, i.e. transfer values, but may not be so in terms of buying out members’ benefits into deferred annuities, i.e. individual insurance contracts.

The fund remains invested through the Scottish Equitable plc, the insurer of the Scheme, and continues to enjoy investment growth. Pensions are continuing to be paid and members coming up to retirement are able to take their pensions in the normal manner.

Once the Scheme is closer to wind up I will write to you again setting out the various options available, following which you should seek independent financial advice.”

7. The Scheme commenced wind up on 15 November 2000 (the date of scheme wind up) (**the DOSW**).
8. As part of the asset transfer process to the FAS, an actuarial valuation<sup>1</sup> of the Scheme’s assets (£1,979,901) and liabilities (£2,890,418) and members’ asset shares was completed at the DOSW.
9. On 30 July 2010, Xafinity Consulting wrote to Mr N enclosing a retirement pack. In the covering letter (**the 2010 Letter**) it said:

“Our records show that you are a member of the Scheme, and that you have not yet received your benefits. The reason that you have not received your benefits is that the Scheme has been in wind-up. In these circumstances there is a need to determine your share of the Scheme’s assets, in order to determine the level of benefit that the Scheme can afford to pay to you based on your share of the [S]cheme’s assets...

We are pleased to inform you that the Trustee of the Scheme is now in a position to commence your interim benefits. As there are insufficient monies in the Scheme to provide all members with their full benefits, unfortunately, your benefits have been reduced below their full level.

...

However I am pleased to confirm that the Scheme has been accepted by the Financial Assistance Scheme (FAS). This is a compensation scheme that has been

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<sup>1</sup> The valuation is prescribed under Regulation 22 of the FAS Regulations and guidance is issued by the Secretary of State for Work and Pensions under Regulation 23 (11) of the FAS Regulations.

established by the Government to compensate eligible members who have not received their benefits in full...

Your interim benefits from the Scheme are not guaranteed, and may be increased or decreased from time to time, depending on how your share of the Scheme's assets changes. One of the reasons why your benefits may change is because the Trustees are currently equalising benefits between males and females; once the position has been confirmed and if it affects your benefits we will write to you with a full explanation. However if you qualify for compensation from FAS, we would expect that any reduction to your interim benefit would be compensated by a corresponding increase in your benefits from FAS or vice-versa."

10. On 5 October 2011, the Scheme transferred to the FAS.
11. As a member of the FAS, the Board has calculated that Mr N is entitled to receive FAS assistance of £1,738.12 per annum from his FAS NRA (60).
12. To date Mr N has not taken his FAS assistance.
13. Following the complaint being referred to The Pensions Ombudsman, Mr N and the Board made further submissions that have been summarised below.

#### **Mr N's position**

14. Mr N submits:-
  - The 1996 Statement confirmed the value of the pension he would receive and the transfer value. It also confirmed that his pension would be index linked, which FAS is refuting, and include a widow's pension, which FAS has only recently agreed to.
  - The 1997 Announcement confirmed that the Scheme was able to meet its full obligation and that the fund remained invested through Scottish Equitable and was continuing to grow. This conflicts with the much-reduced value that the FAS, for more than 10 years, has tried to force him to accept before it will release and pay his pension.
  - The 2010 Letter informed him that his pension had been transferred to the FAS and, amongst other things, advised that the value of his "pension pot" could possibly increase or decrease depending on an equalisation exercise that was in hand. It assured that if his pension pot was adversely affected by this exercise he would be compensated by the FAS. There was no mention of any significant erosion or deterioration of any other benefits.
  - In November 2011, the FAS wrote to him advising his "pension pot" value and the value of his pension. He duly queried why the fund value was 30% less than the value advised in the 1996 Statement.
  - For the past 12 years, in more than 20 letters, he has repeatedly asked the FAS to explain this deficit, which it has declined to do.

- If he had been allowed to transfer his “pension pot” to a commercial fund it would have grown in size and could have been paid to him for the last 20 years.
- This saga has been extremely stressful. He has been denied his rightful pension, which has placed considerable strain on him and his family’s finances, and will no doubt lead to taxation complications arising from the back payment of his pension if and when this matter is finally resolved.

### **The Board’s position**

#### 15. The Board submits:-

- 15.1. The key reason why Mr N’s transfer value, quoted in the 1996 Statement, is greater than his share of assets at DOSW is that the transfer value was based on his full accrued benefits under the Scheme rules; while Mr N’s share of the Scheme’s assets is based on his adjusted accrued benefits, cut back in accordance with the statutory order of priorities to reflect the Scheme’s deficit at the DOSW.
- 15.2. Mr N’s complaint is founded on a misconception of how the law and the FAS operate in circumstances where there is a sponsoring employer insolvency in relation to a defined benefit pension scheme which qualifies for FAS assistance.
- 15.3. Mr N repeatedly refers to his “pension pot” in correspondence with the PPF. There is an apparent misunderstanding that the transfer value of £12,138, shown in the 1996 Statement, is a pot of money that should be available to him and that it should not have diminished in value. However, in a defined benefit scheme each member does not have a separate pot of money, rather there is a pool of assets to fund benefits for all the members of the scheme. At any given time, the value of the pooled assets may be more or less than the amount needed to pay members’ benefits in full. That was the case when the sponsoring employer of the Scheme entered receivership.
- 15.4. FAS was established to provide financial assistance to members of defined benefit pension schemes who had lost some or all of their pension when their employer’s scheme commenced wind up between 1 January 1997 and 5 April 2005. It was never intended to replicate in full the benefits that would have been payable from qualifying schemes. The PPF is required by law to provide FAS assistance to eligible beneficiaries in accordance with the FAS Regulations. It can only make payments to the extent set out in the relevant legislation.
- 15.5. Under the legislation Mr N is entitled to the higher of a notional pension and standard assistance.
- 15.6. Mr N’s notional pension is based on his share of the Scheme’s assets. This

was calculated in accordance with the statutory order of priorities at the DOSW. Mr N's asset share was £9,234. The percentage coverage within the Scheme at the date of the valuation was 46.45% of Mr N's contracted-out benefits and nil of his remaining benefits. So, there were insufficient assets to pay Mr N the pension that he was originally entitled to under the Scheme. From Mr N's asset share, his notional pension, which is broadly the amount of pension that could have been secured for him from his FAS NRA using his share of the Scheme assets, was calculated to be £438.87 per annum.

- 15.7. Standard assistance is calculated as 90% of Mr N's expected pension. The expected pension is the pension Mr N accrued before the Scheme commenced wind-up, revalued in accordance with the FAS Regulations to Mr N's FAS NRA. Mr N's expected pension is £1,931.24 per annum. So, Mr N's standard assistance is £1,738.12 per annum (that is £1,931.24 x 0.9) payable from his FAS NRA.
- 15.8. Mr N is currently not in receipt of his FAS assistance. This does not change his expected pension as the FAS Regulations do not apply late retirement factors to any entitlement not claimed. Since all of Mr N's pension was accrued prior to 6 April 1997 no inflationary increases apply under the FAS legislation to Mr N's FAS assistance once in payment.
- 15.9. Once Mr N claims his FAS assistance, he will be paid the arrears from his FAS NRA.
- 15.10. The 1997 Announcement and the 2010 Letter are not relevant for the purposes of administering the FAS and determining the amount of FAS assistance that M N is entitled to receive. It is for the PPF to determine Mr N's level of FAS assistance in accordance with the FAS legislation.
- 15.11. It would have been open to Mr N to transfer to another arrangement before the Scheme qualified for the FAS. Once the Scheme qualified for the FAS, the Trustees would only have been able to transfer his benefits to another arrangement with the approval of the Board. Prior to the Scheme's transfer to the FAS, it is not aware that the Trustees approached it for approval to make a transfer for Mr N. Following the Scheme's transfer to the FAS, it was no longer possible for Mr N to transfer to another arrangement, as there is no facility to permit a transfer from the FAS under its legislation.
- 15.12. The PPF has sought to deal with Mr N's queries in a timely manner. The PPF would be pleased to put Mr N's FAS assistance, including arrears, into payment at the earliest opportunity but currently it does not have any bank details from Mr N or other information that it requires to pay his benefits.
- 15.13. In summary, Mr N's entitlement to FAS assistance has been calculated

correctly. The amount of the transfer value in the 1996 Statement has no bearing on the level of FAS assistance that is payable to Mr N. The PPF has made extensive efforts to explain the position to Mr N.

## **Adjudicator's Opinion**

16. 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 in paragraphs 17 to 31.
17. The PPF Ombudsman was appointed to hear appeals against review decisions. These fell into one of the following categories:-
  - Member eligibility decisions.
  - Member assessment decisions.
  - Scheme beneficiaries' decisions.
  - Scheme eligibility decisions.
18. Mr N's appeal fell into the second category because it related to a decision as to the amount of his annual FAS assistance.
19. Mr N said the 1996 Statement confirmed the value of the pension he would receive, that it would be index-linked, and the transfer value. But the pension was based on the Scheme Rules and legislation and Mr N did not opt to take the transfer, which was guaranteed for three months.
20. Mr N said the 1997 Announcement confirmed that the Scheme was able to meet its full obligation and that the fund was continuing to grow. He said this conflicted with the much-reduced value that the FAS would pay him. But the 1997 Announcement said that the Scheme may not be able to buy-out members' benefits in deferred annuities.
21. Indeed, the 2010 Letter from Xafinity Consulting advised that there were insufficient monies in the Scheme to provide all members with their full benefits and that Mr N's benefits had been reduced below their full level.
22. Mr N said if he had been allowed to transfer it would have grown in size and he could have been paid a pension for the last 20 years. But he did not opt to transfer prior to the Scheme qualifying for the FAS and the Board was not aware of the Trustees requesting a transfer for Mr N prior to the Scheme's transfer to the FAS. Once the Scheme transferred to the FAS, there was no provision in the FAS legislation to permit a transfer.

23. Mr N referred to his “pension pot”. But, as the Board had explained, in a defined benefit scheme each member does not have a separate pot of money, rather there is a pool of assets to fund benefits for all the members.
24. Before the Scheme’s assets transferred to the FAS, an actuarial valuation of the Scheme’s assets, liabilities, and asset shares for qualifying members at DOSW was required.
25. The actuarial valuation determined that the Scheme was underfunded, and that Mr N’s share of the Scheme assets was only sufficient to secure part of his pension benefits in accordance with the statutory priority order<sup>2</sup> at the DOSW.
26. When the Scheme’s assets transferred to the FAS, the relevant regulations, which the PPF must apply in calculating Mr N’s FAS assistance, were the FAS Regulations and the PPF had no discretion in this matter.
27. As explained in paragraph 15 above, the Board had calculated Mr N’s annual payment to be £1,7318.92 (that was 90% of his expected pension), which was greater than the notional pension which could have been secured using his share of the Scheme’s assets.
28. Once in payment no increases applied to Mr N’s FAS assistance, as his pensionable service under the Scheme was all pre-6 April 1997. Under the FAS Regulations, indexation only applied to post 5 April 1997 pensionable service.
29. The Adjudicator said, having reviewed the FAS Regulations and the information provided by the Board and Mr N, it was his opinion that the Board had complied with the FAS Regulations and legislation in calculating Mr N’s FAS assistance.
30. Mr N had commented that the arrears payment of his FAS assistance may cause tax complications. Nonetheless, the FAS was required to pay the backdated sum once Mr N decided to take his FAS assistance. It had been Mr N’s decision not to claim his FAS assistance to date. Mr N could have claimed his FAS assistance while making his complaint to the PPF. Doing so would not have affected the outcome.
31. If Mr N now wished his FAS assistance to commence, he should contact the PPF directly.
32. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N has submitted no further comments. I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

33. The FAS is a compensation scheme. The PPF pays members compensation (FAS assistance) when their pension scheme cannot pay the benefits promised, and the

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<sup>2</sup> Section 73, ‘Preferential liabilities on winding up’, of the Pensions Act 1995

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amount and the terms and conditions under which it is paid are set out in the FAS Regulations. The Scheme transferred to the FAS for this reason.

34. I am satisfied that Mr N's FAS assistance has been calculated in accordance with the FAS Regulations.

35. I do not uphold Mr N's appeal.

**Anthony Arter CBE**

Deputy Pension Protection Fund Ombudsman  
24 July 2024



## Appendix

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

1. 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<sup>[3]</sup>.

(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));"

2. 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,

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<sup>3</sup> Mr N's actual pension is nil as the Scheme bought no annuity for the member or paid out any benefits on his behalf.

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—

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