THE FINANCIAL ASSISTANCE SCHEME (APPEALS) REGULATIONS 2005 APPEAL TO PENSION PROTECTION FUND OMBUDSMAN DETERMINATION BY THE PENSION PROTECTION FUND OMBUDSMAN

Applicant	**:**	Mr M Wood
Scheme	**:**	The Financial Assistance Scheme (**FAS**)
Respondent	**:**	The Pension Protection Fund (**PPF**) (Scheme Manager)

1. The Pension Protection Fund Ombudsman has received an appeal from a member assessment decision made by the PPF under the FAS Internal Review Regulations on 5 April 2013. The appeal concerns the assessment of Mr Wood's annual payment under the FAS.

Material Facts

2. Mr Wood was a deferred member of the Independent Insurance Company Limited Pension Scheme. The Company went into administration in 2001 and the Scheme commenced winding up on 1 September 2001. Mr Wood reached his FAS normal retirement date (**FNRD**) in September 2009. He says he contacted the FAS in May/June 2008 to ask if he could have an indication of the pension he might expect to receive at NRA. Mr Wood says that he did not receive anything until September 2009 when the FAS informed him that they could not trace his details. He says that, following further enquiries and the involvement of his MP, the FAS informed him that he was not entitled to a FAS payment. Mr Wood asked for a review and the FAS confirmed, in August 2010, that he was not entitled to a payment.

3. Mr Wood says that he then received an unexpected payment of £93.29 in November 2010. The FAS wrote to Mr Wood, in April 2011, following correspondence from his MP. They explained that they were working with the Scheme's trustee to gather information about the members and to ascertain entitlement to payments. The FAS explained that the Scheme continued to be managed by the trustee, but they would make 'initial payments' to ensure that the members received a minimum level of payment. They explained that these payments were based on the information they received from the trustee. The FAS said that that they would inform Mr Wood of his 'annual payments' when they received the

final data from the trustee. They provided Mr Wood with a schedule showing how his payments had been calculated. The FAS also said that they understood that the Scheme had transferred £41,925.91 to Legal & General in respect of Mr Wood.

4. Mr Wood's initial payments continued to be paid monthly until December 2011. On 16 February 2012, the FAS notified Mr Wood that there had been an error and that he had been overpaid. They said that they had not taken into account annuity payments he was receiving from Legal & General (**L&G**) on behalf of the Scheme. The FAS said that there had been an overpayment of £8,249.73 and Mr Wood's annual payments had been reduced to nil. The overpayment from the FAS amounted to £3,280.50 (gross). They requested repayment of £2,624.50 (net) and offered the option of a repayment plan.

5. Mr Wood says that he had asked the FAS for information in January 2012, but did not receive a response. He contacted the PPFO on 7 September 2012. The FAS acknowledged Mr Wood's complaint, on 21 September 2012, and apologised for the way in which it had been handled. They explained that they were working on his FAS calculations, but needed to validate data.

6. The FAS wrote to Mr Wood, on 11 October 2012, saying that his annual payment had increased to £1,136.70 per annum with effect from 21 September 2012 as a result of revised data from the Scheme trustee. The FAS also calculated that Mr Woods was owed £666.19 (gross) for the period September 2009 to September 2012. They explained that they had taken two partial transfers from the Scheme (£41,425.91 and £4,692.24) into account by converting them into notional annuities.

7. Mr Wood asked the following questions:

- Was the FAS notional annuity value based on market values?
- How had the FAS calculated his final pension value?
- Were they taking account of a separate private pension paid by Legal & General which was not connected to the Scheme?

8. The FAS offered to review Mr Wood's FAS payments. On 9 November 2012, they wrote to Mr Wood's MP setting out the calculation of his FAS payments. The FAS explained that they had been provided with incorrect data for the Scheme as a whole and that, as a result of the recalculation of his payments, there had been no overpayment as previously advised. Mr Wood's FAS payments were calculated as follows:

Initial payment

100% expected annual pension	£6,674.92
90% expected annual pension	£6,007.43
Annuity secured with L&G	£1,592.81
Less 1st partial transfer £41,425.91	£3,016.75
Less 2nd partial transfer £4,692.24	£0.00
FAS payment	£1,397.87

Annual payment

100% expected annual pension	£6,799.27
90% expected annual pension	£6,119.34
Annuity secured with L&G	£1,640.76
Less 1st partial transfer £41,425.91	£3,016.75
Less 2nd partial transfer £4,692.24	£325.30
FAS payment	£1,136.70

9. The partial transfers were converted into notional annuities using factors provided by the Government Actuary's Department (**GAD**). The 2nd transfer was not taken until after Mr Wood's FNRD and is not deducted from the expected pension until its date of payment.

10. Mr Wood requested a further review. The FAS wrote to him, on 5 April 2013, confirming that their calculations were correct and providing a break-down. Mr Wood's pension (at date of leaving) is made up of:

Guaranteed Minimum Pension (GMP)	£553.43
Excess over GMP	£3,379.76
Total	£3,933.19

11. Under the Scheme rules, the GMP was revalued by 7.5% per annum, whilst the excess over GMP was revalued in accordance with Section 52 orders. This revaluation was applied from the date Mr Wood left pensionable employment to the date the Scheme commenced winding up. Between the date the Scheme commenced winding up and Mr Wood's FAS NRD, his benefits were revalued in line with increases in the Retail Prices Index capped at 5% per annum. Allowance was made for the fact that part of Mr Wood's pension had to be revalued by reference to a normal retirement age of 60. This was done by applying a late payment uplift. The FAS also explained that, following an increase in Mr Wood's annuity in January 2013, his FAS payment had decreased so that he continued to receive a combined total of 90% of his expected pension.

Mr Wood's Position

12. Mr Wood submits:

- He asked an actuary to calculate his pension value on three different bases. All of his and the actuary's calculations arrived at a pension value around £8,000. The FAS have arrived at £6,119.
- He did not receive a transfer of £41,425 in 2004. This went to Legal & General who converted it into an annuity in 2008. The second transfer also went to Legal & General in 2010 and was converted into an annuity.
- He believes the FAS are correct in deducting the two annuity values, but cannot reconcile the third deduction of £1,640.59. If this was added to his FAS payment, he would be receiving £2,776 a year, which would give him a total pension of £8,895 a year as he expected.

The PPF's Response

13. The PPF submit:

- The delays in paying Mr Wood were the result of them receiving incorrect data from the Scheme's administrators. Mr Wood received arrears of payments when they recalculated the amounts due to him.

- The incorrect data also lead to the revisions in the figures supplied to Mr Wood. In particular, they were not advised that there had been a 2nd partial transfer in respect of Mr Wood's Scheme benefits and the amount of annuity he was receiving from the Scheme (Legal & General) also changed.

- Mr Wood believes he should be receiving a combined total in the region of £8,000. They believe this view may be based on receipt of 100% of his expected pension when the FAS is designed to provide a top up to 90% of the expected pension. They have provided detailed calculations showing how Mr Wood's FAS payments have been calculated. These are based on a deferred pension of £3,880.52 as at 29 May 1992 when Mr Wood became a deferred member of the Scheme. They point out that Mr Wood has not disputed this figure and they have no reason to think it is incorrect.

- Mr Wood has used a different revaluation method to arrive at his pension value to that used by the FAS. It is not possible for them to use any method of revaluation other than that set out in the relevant legislation.

- Mr Wood has explained that the partial transfers went to Legal & General. They were, however, used to secure annuities for him. The Legal & General policies are in Mr Wood's name and, therefore, they do not have access to the actual amounts paid. They have been converted into notional annuities in line with the relevant legislation.

- Mr Wood has queried the amount of £1,640.59. This amount represents the value (as at 21 September 2012) of Mr Wood's annual annuity from Legal & General, which has been in payment since his FNRD. This annuity was secured for Mr Wood from the proceeds of winding up the Scheme and is separate from the two partial transfers.

Conclusions

14. The FAS have calculated Mr Wood's annual payment on the basis that the combined total of his payments in respect of his membership of the Scheme (now provided in the form of annuities paid by Legal & General) and his payment from the FAS should equal 90% of his "expected pension". Paragraph 4 of Schedule 2 to the Financial Assistance Scheme Regulations 2005 (SI2005/1986) (as amended) provides that the annual payment due to a qualifying member shall be 90% of his expected pension less his actual pension. The FAS have, therefore, taken the correct approach in calculating Mr Wood's annual payment.

15. Mr Wood's actual pension falls to be calculated in accordance with Paragraph 2 of Schedule 2 and is the annual rate of any annuity purchased out of the assets of the pension scheme for his benefit. Paragraph 2 then provides for the Scheme Manager to determine how the actual pension is to be calculated, including how the value of any annuities should be determined. The FAS have taken the approach that they will determine a notional annuity in respect of the two transfer payments on the basis of factors provided by GAD. They have, however, taken the actual annuity value for the third segment of Mr Wood's Scheme benefits. Paragraph 2 allows the PPF (as FAS Scheme Manager) to determine the value of any annuities for which they do not have information about the annual rate on the basis of the amount needed to discharge the liability. They are, therefore, able to utilise actuarial factors provided by GAD for those cases, such as Mr Wood's, where they do not have information about the annual rates for annuities secured elsewhere.

16. The FAS have calculated Mr Wood's expected pension by applying revaluation to the value of his pension at the date he became a deferred member. The revaluation falls to be applied in respect of two periods: the date of leaving to the date the Scheme commenced winding up, and the date the Scheme commenced winding up to the earliest of Mr Wood's Scheme NRD or his FNRD. For the first revaluation period, the pension must be revalued in line with the Scheme Rules. For the second

revaluation period, the pension must be revalued in line with the percentage increase in the general level of prices during that period up to a maximum of 5%. This is the method adopted by the FAS.

17. I find that the PPF (as FAS manager) have calculated Mr Wood's annual payment in accordance with the FAS Regulations and I do not uphold his appeal.

18. Mr Wood has referred to other matters, such as the delay in answering requests for information, which do not fall within my remit to consider as part of an appeal. I have, therefore, made no finding in respect of these matters.

Tony King
Pension Protection Fund Ombudsman

21 January 2014