

Financial Assistance Scheme Consultation
Department for Work and Pensions
Private Pensions Policy
Adelphi
3rd Floor
1-11 John Adam Street
London
WC2N 6HT

22 March 2009

**Consultation on draft Regulations
The Financial Assistance Scheme (Miscellaneous Provisions) Regulations
2009**

Pensions Action Group Response

Dear Sir,

We are sending this response on behalf of the Pensions Action Group which represents the interests and views of its members who are among the estimated 140,000 people who lost some or all of their pensions following the wind-up of their company pension schemes prior to 2005. It has been prepared by an elected representative team and has been approved by the central PAG committee.

We believe that we should receive full compensation for the losses we have incurred, as recommended by the Parliamentary Ombudsman in her report "Trusting in the Pensions Promise". However, we recognise that this is a political issue and outside of the scope of this consultation and so we will restrict our comments here to the specific issues raised.

The Government's headline figure of 90% of Expected Pension is a bare minimum and must not be further reduced by the small print within this and earlier Consultation Documents. Already there are a number of areas where this has not and will not be achieved unless the draft regulations are amended. We will address these matters below. It should be remembered that savers in Icelandic banks (who had not been promised that their investments were safe), have already received 100% compensation.

The original Minister's statement in December 2007 said that we would receive 90% of our expected benefits. We expect that statement to be either honoured or openly retracted as untrue with a subsequent explanation to Parliament and MPs for their consideration.

Ministers and DWP/FAS are also quite often adamant that members within any scheme who receive an award should be treated consistently. If this is to be applied in a spirit of fairness, this should mean that everyone receives a similar percentage of their expected pension. It should NOT mean levelling down payments for administrative convenience.

The introduction to the Consultation speaks of protecting tax payers' interests, which given the way the Government are spending tax payers' money on rescues such as for the Royal Bank of Scotland and its pension scheme shows that the Government is applying that criterion very selectively, and to our disadvantage. Remember that the Government were found guilty by the High Court and by the Parliamentary Ombudsman – we regard this as compensation, not assistance, despite statements by Ministers to the contrary.

Indexation

This is the most important area for PAG; the one which gives members the greatest concern and which will continue to do so until the issue is resolved.

Why is it of concern?

Once a person has lost the ability to generate additional funds through work they are dependant upon their pensions and savings to maintain their living standards throughout the remainder of their and their spouse's life times.

Pensioners are exposed to more inflationary increases than the general working population.

We are seeking no more and no less than the level of indexation that was provided by our schemes.

Our concerns are growing because the Government, as predicted by several economic experts, is choosing a route leading to increased inflation to help solve the debt that the nation has recently amassed.

What should be done?

FAS provides only RPI indexation to a maximum of 2.5% pa and even that is only applicable to post-1997 (and pre-commencement of wind up) contributions and ignores the scheme basis. Where the scheme was contracted out it ignores the increases that the contracted out benefits would have received. The majority of schemes involved started wind up around year 2000, so a member will only receive indexation applicable to 3 years of his contribution period, which may have been as long as 40 years.

To take a simple example, consider a worker with 20 years of service, of which 3 years were post-1997, with an expected pension of £1,000 per year, where his annual contributions were constant and assuming 5% inflation. His annual pension will look like this:

Year	Expected	Actual + FAS	Proportion
1	£1,000	£900	90%
5	£1,216	£914	75%
10	£1,551	£934	60%
20	£2,527	£981	39%

It is completely misleading that Ministers and Government spokespeople continue to claim that “everyone will receive 90%” when it is quite clear even from this simple example that they will receive much less.

FAS should pay RPI increases each year in accordance with scheme rules, with no other imposed maximum and no limitation to qualifying contribution periods (i.e. payments resulting from pre-1997 contributions should also be indexed). We paid for this indexation and so we should receive it. Without it, the headline figure of 90% is eroded from day one of its payment.

Contracted-Out Benefits

It is ironic and scandalous that, having encouraged and made contracting out easier, the Government is now penalising contracted-out members by loss of 10% of their expected pension and the promised increases on those contracted-out benefits.

PPF

It is argued that, with respect to indexation, FAS is mirroring (and should mirror) the PPF, but we do not agree for the following reasons:

1. We believed that all of our pensions were safe and it was only our eventual awareness, mistreatment and subsequent actions that helped to bring about the introduction of the PPF and the awareness of other scheme members that their benefits were possibly not safe after all.
2. As each year passes since the introduction of the PPF in April 2005 and with each additional year of post-1997 contributions, PPF beneficiaries will receive a greater proportion of their benefits with escalation, whereas we can never be in that position and have never had the opportunity to plan for this eventuality

Impact of existing benefits on post-97 escalation

The consultation document refers to schemes where the trustees may have purchased a lower annuity with escalation from the scheme assets and comments that these people would receive more FAS benefits due to the FAS top up and the effect of escalation on the annuitised part.

The paper comments on consistency and standardisation for administration and cost efficiency. This is unacceptable to PAG and we suggest that the following approach is taken:

- All benefits pre- and post-97 should have escalation.
- If the scheme assets purchased GMP with escalation this should not be offset against post-97 increases.

Costs

PAG are aware that certain cost assumptions were made regarding the inclusion of escalation when the Young Review reported, and at the time we suggested that the figures did not reflect the actual costs of the very limited indexation which the Government is proposing. The figures should be re-assessed, the results published and a fresh independent assessment made.

Pre-retirement Revaluation

This is an area that causes confusion and concern for deferred pensioner members where the headline of 90% at NRA is not achieved in reality. There is already evidence that the actual percentage award is as low as 70% of original expectation at NRA.

We feel the problem largely surrounds the revaluation rates, where a member who has received a Leaving Service NRA projection statement showing his pension re-valued to NRA, actually finds that FAS benefits fall some way short of his expectation. The longer the period to NRA, the greater the shortfall.

Revaluation prior to NRA should be according to scheme rules.

Pre May 2004 service

It is wrong that FAS payments will not be backdated before May 2004. One example provided by FAS compared pre-2004 benefits backdated to NRA with post-NRA revaluation and in that case the difference was marginal but that is not true of all members.

For example, where the cap applies the FAS argument does not work, and if FAS believe there are very few people affected because of this revaluation basis then it should be a reason to allow it to be paid. Pre-2004 payments should however be paid ONLY if the benefit of doing so is greater than the revaluation basis.

We do not believe that either the cost or the number of members has been tested and this should be carried out on a sample group.

It should be noted that the date of May 2004 is only there because it was the date, after our lengthy campaign, that the Government was first persuaded to set up the FAS. It is not the date that maladministration first occurred. If the Government had done the right thing when the problem arose then pre-May 2004 payments would not now be an issue.

It is both odd and inconsistent that FAS will not recognise pre-2004 benefits but is proposing to use annuity factors that applied before that date.

Different Payment Ages

We are pleased that where there is a scheme-specific provision for an earlier retirement age without employer or trustee consent, this will be honoured.

However, if members are able to produce proof that financial provision was made by their scheme for early retirement with consent, then this is part of their entitlement and the FAS should treat this earlier age as the NRA.

Early Access Through Ill-Health

We are pleased with the progress made in connection with the three ill health categories although we wish to very strongly make the following observations:

- We still feel that the 5 year cut-off period from NRA is unfair and in fact discriminates against those with an NRA of 65. We believe a fairer way is to allow FAS awards to be paid from age 55 for those who are unable to work, with the appropriate actuarial reduction.
- Experience is already showing that members, particularly those who are seriously ill, are reluctant to take the benefit when they see the reduction for both themselves and their spouse/partner.
- There is also the interplay with state benefits which stops some claiming the benefits at an early stage.

- We have evidence of doctors being reluctant to inform their patients of their terminal life expectancy prognosis, as this would cause severe stress and could hasten the demise of the patient. Families and friends must be allowed to provide this evidence or the DWP should be able to obtain it direct from the doctor. Doctors need to be made aware by the DWP of this possible early provision of a pension, as the patient will be able to enjoy a better period of health if he or she has fewer financial worries and the associated stress.

Non Ill-Health Voluntary Early Retirement

We feel strongly that Voluntary Early Access should be available, albeit with appropriate actuarial pension reduction, from age 55 irrespective of health considerations and scheme NRA. This is a no-cost option for the government and is available under PPF rules. (See additional comments under Lump Sums).

Again the same reduction and interplay with state benefits may come into to effect but at least in the current economic climate the FAS would be giving people who are made redundant (and who frankly will probably not get any further employment) some hope and an option.

It may actually help reduce the number of benefit claimants and will increase the immediate spending power of FAS recipients to the benefit of the wider economy.

The argument put forward against this proposal is that, although it has no cost for the Treasury, it would bring forward expenditure. This is true, but the amount of expenditure is likely to be small, especially in relation to the £1.7 billion windfall which the Treasury will be receiving as it takes over the assets of schemes currently in wind-up, and the £23 billion it will receive from the Post Office pension fund. There is therefore no good reason for refusing this change.

Tranches

This is quite a complex area and one where we understand there are outstanding legal issues, but we feel strongly that if a member has some rights at different ages those rights must be paid from the date due WITHOUT ACTUARIAL REDUCTION.

This is what the scheme would have provided for and if bought out would have paid, and the only adjustment needed (as with any benefits) is if the pension due is actually deferred to a later date.

We understand PPF does pay benefits in tranches so why should FAS not do the same?

It is very unfair to penalise people who rightly had an earlier pensions expectation on perhaps a major portion of their benefits

Bridging Pension

Bridging pensions were designed to protect members benefits during the period before state benefits commenced and we feel the best way to accommodate this is to provide 90% of the step-up for the period of the step-up. Thereafter it will fall away and 100% of the state benefits will then be paid

Assistance Calculation

See also comments under pre-retirement revaluation

Reference is made in this section to annuity rates and we feel the impact of a rapidly changing market must be kept under review, with the ultimate objective of members actually getting 90% of what they expected

Members often took decisions based on information at a time before FAS existed (before May 2004) and they should not be penalised by FAS if current assumed rates mean a lower result. It seems odd and inconsistent that FAS will not recognise pre-2004 benefits but will use annuity factors that applied before that date.

As we have said our objective is to protect the 90% headline and not to see it eroded.

The Cap

We feel strongly that the cap is unfair, in that it means some people get a lower percentage of their expected pensions than others, and in particular it penalises long-service members and takes no account of whether an individual has other pension provisions. Members who have lengthy service and have had no other pension provision because of their service are penalised and this is certainly not consistent with the ECJ decision and the PO recommendation and erodes the often-claimed 90%. We feel therefore that, if the cap has to be retained, it should be increased, especially for those with long service.

In the December 2007 announcement, the then Minister promised to protect the value of the cap. This has been done in word only, as the cap is applied only once, at NRA. Thereafter, the capped payments are reduced every year in real terms by the trivial indexation applied to the payments in progress. The value of the cap is therefore NOT protected beyond NRA. If the announcement is to be

honoured in spirit, then the revalued cap should also be applied to payments past NRA until the capped pension reaches 90% of the expected pension. It should be noted that the operation of the cap is likely to result in some individuals falling below the 50% of their expected pension which the judges in the ECJ determined was unacceptable. The regulations should contain a catchall provision that the actual payments received by any individual will not be permitted to fall below an agreed figure (greater than 50%) and that this provision will take precedence over the limits imposed by indexation and the cap.

If there is a period of deflation the cap should not be reduced.

Assistance for Survivors

There may be people who are in the position of benefiting from this welcome change but whose scheme rules have not been amended due to the timing of the insolvency event and changes to their own circumstances in the interim period up to this amendment.

We would wish to see FAS recognise this, with the final regulations reflecting current best practice.

Scheme Members with High Asset Shares

It is vital that any members currently, or in the future, receiving benefits higher than FAS (either initially or as a result of scheme indexation) must not have their benefits reduced.

There is a question of how FAS treats someone on say, 85% with full service escalation. Will they get a top up according to scheme rules until their increased benefits exceed the FAS level of compensation of 90% plus post 1997 escalation?

This would not be a problem if FAS paid escalation on the whole contribution period.

Tax Free Lump Sums

We welcome the decision to allow the GMP value to be commuted. We do have serious concerns, however, for members who were depending on a lump sum to repay loans and who do not have the sufficient scheme share of assets to allow this.

We expect the option of a 25% tax free lump sum and reduced pension to be made available to all members, irrespective of their scheme funding position. This is after all a no cost option for government, and was available in most, if not

all, schemes. Many people are relying on this lump sum to pay off their mortgages, and they do not have sufficient time to accumulate alternative funding. Without the 25% lump sum it may mean that they have to continue working past their NRA. Although the government has argued about the adverse cash flow effect it should remember, as noted earlier, that it is about to receive an influx of about £1.7 billion from our schemes.

The tax-free lump sum was bought out of contributions and is therefore equivalent to any other form of saving. Why should foreign savers in Northern Rock have their savings 100% protected and guaranteed using tax-payers' money, but not us?

Death before NRA

Many schemes made provision for a guarantee of 5 years' payment and the return of contributions if a member died either before or shortly after his NRA, which was very important in helping the surviving family deal with immediate post-death costs. This should be incorporated into the FAS where it was present in a member's original scheme.

Summary

We and our members are very concerned about the erosion of the 90% headline figure, as the recent demonstration in Cardiff has shown, and we are determined that our views should be recognised following this consultation exercise. We have felt in the past that consultation did not mean consultation but merely provided a smokescreen, after which the Government went on to do what it had originally intended.

We believe that "90%" should mean 90% of expected benefits, with no reductions, and we will continue to campaign to the next General Election and beyond, if necessary, to achieve this.

Yours faithfully

On behalf of the Pensions Action Group