

The Pensions Action Group
www.pensionstheft.org

FAS Overpayments and Underpayments – a guide to help you.

Introduction:

When FAS was originally set up in 2004 any member of a qualifying scheme would have started to receive payments from FAS, and/or their scheme. This was to make up your 'award' to the equivalent of 90% of your expected pension at the start of the wind up of your scheme.

If you retired after your scheme commenced wind up your 90% would have been revalued each year until your normal retirement date by the annual inflation rate in September of each year to a maximum of 5%pa (using RPI until March 2011 and CPI afterwards).

If your scheme had already been paying you a reduced amount of pension, FAS would make up the difference, or if you were not getting any payment from your scheme, then FAS would pay it all. This should then have continued unchanged, apart from some relatively minor annual indexation increases.

Your scheme would have started to wind up at the point when your company failed or stopped paying any contributions. The winding up of your scheme, however, could take many years to complete, and some schemes have still not completely wound up even after 15 years.

Once the scheme has finally wound up it's assets would then be transferred to The Treasury, and FAS would then take total control of all your payments, unless some of your benefits are being provided by an annuity purchased by your old scheme trustees.

The original calculations to determine the 90% figure, and your monthly FAS payments were done by your scheme trustees, in conjunction with the scheme administrators, the scheme actuaries and FAS, the administration of which is now handled by the Pension Protection Fund (PPF). You would have been paid an 'interim' monthly payment based on the information that was available at the time you retired, or when your scheme entered FAS.

On the transfer of the remaining scheme funds to Government an audit and update is carried out by FAS and in some cases it has been found that this 'interim' payment was incorrect, due to a mis-calculation by your trustees, the actuaries or the FAS, it's agent Capita, or a combination of these bodies. The DWP have a duty to collect any past overpayment, or pay out any underpayment, because part of the money used within FAS is taxpayer's money.

Likewise this could equally apply if individual scheme providers have completed wind-up, and through this, re-valued upwards your previous level of pension with an additional lump sum payment to cover any payments received from day one, up to wind up, mainly because more assets were made available following wind up completion. This adjustment would also affect individual interim payments and therefore FAS payments previously awarded will be classed as an overpayment.

If you have been underpaid you should receive a lump sum from FAS. This will be taxed as normal, but if the sum is very large and therefore puts you into a higher tax bracket in the tax year that you receive it, you should challenge this, and present the details to the HMRC (Tax Office) and ask for the payment to be treated as if it had been split over the number of years involved since your FAS payments started. FAS should be able to give you a year by year breakdown of this.

Please note that the period of back spreading of tax is limited to 6 years.

You may need to send a copy of the 'Underpayment' letter you will have received from FAS, as evidence of the tax treatment, and it may be necessary to ask FAS for a break down of the payment over the years involved.

You can see more information about this tax situation here:

http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/FAS_tax_flyer.pdf

If, however, you have been Overpaid according to FAS, they will ask you to repay the amount of the overpayment in one of two ways:

- 1) Repay the amount completely and immediately. This will then be a one off payment. Your on-going monthly payments may also be reduced. There is also a tax implication here as they may ask you to repay more than you received after the tax was originally deducted. We have raised this with FAS and if you are affected you should ask FAS and/or HMRC for guidance on how to reclaim this money.
- 2) Repay the amount by reduced on-going FAS monthly payments. FAS may actually do this for you without warning, but if you do not want to pay in this way you should contact them immediately and ask to either challenge the figures, or offer to pay by a one off payment. FAS describe the reduced ongoing payments method as a 'Lifetime annual reduction'. This means that they will reduce your monthly FAS payment for as long as you live, which will mean that if you die before the overpayment has been repaid your estate will not be charged with any outstanding debt, but if you live after the overpayment has been effectively re-paid, then you could

end up paying substantially more than the amount of the overpayment. FAS claims that any excess tax paid on the overpayment will be offset over your remaining lifetime by the reduced amount of tax you will pay on your lower ongoing payments, although we believe that an individual's taxation circumstances may question this. Once again you should seek clarification of these tax implications from FAS and/or HMRC.

If you die and you have survivor benefits these benefits should be at 50% of the original monthly FAS rate for as long as you are receiving them.

What can I do if I have been told that I have received an overpayment and must re-pay it?

The first thing to do is to examine any figures that FAS have sent to you. Unless you are certain that their figures are correct, or if you do not understand them our advice is to contact FAS by telephone as soon as possible. Their contact details are given below.

Explain your circumstances and ask them for a complete breakdown of the calculations and information they have used to assess your FAS payments, and the overpayment.

Once you receive this information you should examine it, and challenge it again if you still think that their information or calculations are incorrect.

You should involve your MP and his Parliamentary staff at an early stage as an MP's involvement demands a proper investigation.

If you believe that the figures are correct, but that you can show that you simply cannot afford to repay the amount demanded, either by reduced monthly payments, or by a lump sum, then the FAS/DWP have the authority to waiver the demand, if your circumstances allow them to.

We have seen a number of successful challenges by our members so you are advised to read the following link and the information given very carefully, as this gives you the background to the circumstances that allow them to waive your overpayment:

http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/FAS_Overpayments_Guidance.pdf

FAS (PPF administration) have the authority to waiver a demand up to a gross amount of about £10000. If the amount is higher than that then they must refer the case to the DWP, where two separate assessors will decide whether the amount can be waived.

We have recently seen several substantial demands being waived successfully. These were primarily when the claimant was able to show that a significant change in life circumstances had been made on the assumption that the 'interim' payments were correct, and that they had no reason to suspect that they were not. Examples of this would include ill health, changing circumstances, taking out a loan or a mortgage, or paying for grandchildren's school or university fees, etc. The lack of full indexation on your FAS payments would have exaggerated this hardship.

Changes to health requiring more income are also grounds to ask for a waiver.

This is not a matter of simply filling a form in or sending a simple short email. You will need to show evidence that will substantiate your claim for a waiver.

You should be very determined in your approach to FAS and the DWP.

If it is refused then the next stage would be to approach the Independent Case Examiner. Details can be found here:

www.gov.uk/government/organisations/independent-case-examiner

Please be aware that there are some time limitations on these claims for waiver. The FAS should reply within 8 weeks of you demanding satisfactory answers, after that you have 6 months to present your case to the Independent Case Examiner after you have received a final answer from FAS.

If you want to complain about any matters regarding the law, or maladministration, you should first approach the FAS/PPF. If you are not satisfied with their reply you should direct your complaint to the Parliamentary Ombudsman.

A further route would be to consider a claim under the Human Rights Act, as your pension was part of your property and to remove it would be a breach of the Act. We have not taken this route as yet, although several members have certainly threatened to use it. To go down this route would involve a Human Rights lawyer, and a great deal of patience and potential expense.

We, as PAG, are campaigning for all these overpayment demands to be written off, as has happened with MP's pension overpayments. We are in constant discussion with the DWP but do not rely on us being successful in your case. You should write to the FAS, and involve your MP, and do not give up!

Our view is that the member was not responsible for the initial calculations, and the mistakes were out of his or her control, so they should not be held

accountable. The DWP, FAS, Capita, the actuaries and trustees should be made to take the responsibility and to pay for their mistakes.

We are not able to produce a template letter for you to use as the circumstances are unique to your case, and you need to express your individual views and evidence, and present it in a way that will make an impact on the officer assessing it.

We urge you to keep all your previous scheme correspondence and personal employment information. Many errors are caused by incorrect information being provided by scheme administrators.

Because of the individual circumstances, and limited amount of resources we are unfortunately unable to get involved with each individual case. Please let us know, however, of any problems in accessing the correct information from FAS, any excessive time delays, and any success or rebuttals received after challenging the FAS figures, so that we can help pass the reasons given to other subsequent PAG members.

Some contact details you may need are:

FAS Operations Team
Financial Assistance Scheme
PO Box 234
Mowden Hall
Darlington
DL1 9GL

Telephone: 0845 604 4585
Email: members@fasonline.org.uk

Our advice is to telephone the FAS team in the first instance, as generally they are quite helpful. They are not able to change the rules, but they may well be of assistance to you. Make a note of the person's name, and any comments that they may have made, as these may help you in the future.

The Parliamentary Ombudsman should be approached by letter, via your MP.

The Parliamentary and Health Service Ombudsman
Millbank Tower,
London
SW1P 4QP

This guide is produced simply to help you with any claim for overpayments. It is not a fully comprehensive guide and your circumstances may mean that different action may be necessary. We have produced this guide in good faith but cannot be held responsible for any errors or subsequent changes to the procedures involved.

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