



Department  
for Work &  
Pensions

**GUY OPPERMAN MP**  
**Minister for Pensions**

Sir Stephen Timms  
Chair of Work and Pensions Select Committee  
House of Commons  
London  
SW1A 0AA

29 June 2022

Dear Sir Stephen,

Thank you for your further letter of 25 May regarding the Financial Assistance Scheme (FAS).

The FAS is funded by the taxpayer. When it was introduced in 2004, the Government of the day chose to strike a balance between the interests of members of underfunded schemes and those of the taxpayers who support the scheme. The cap is one of the measures brought in to control the costs of the FAS, an important consideration in a publicly funded scheme. The FAS cap does not, and was never intended to, mitigate against moral hazard and has not been defended on that basis

The FAS helps members of eligible defined benefit pension schemes. It provides financial assistance to members of schemes that began to wind up, with insufficient funds to meet their liabilities, between 1 January 1997 and 5 April 2005. Initially, the FAS made limited payments to a restricted number of scheme members. The scheme has since been extended several times resulting in improvements in both the assistance payable and the number of scheme members covered. All changes were backdated and applied from the beginning of the scheme in May 2004, rather than (as is customary in the benefits system and in pension schemes) from the point that the legislation came into force. Further information is in the brief prepared for the House of Commons Library in March 2010 which can be found on Commons Library Parliament UK.

Many of these improvements followed the Young Review which focused on obtaining greater value for FAS members from the assets remaining in failed schemes. The Government at the time accepted the key recommendation of the review that rather than the FAS “topping-up” annuities purchased by the scheme so that all members received at least the level of FAS standard assistance, the assets of failed schemes would be transferred to the Treasury and the FAS would take responsibility for payments to scheme members. Members would then receive the greater of standard assistance or the amount generated by the member’s asset share in the underfunded scheme.

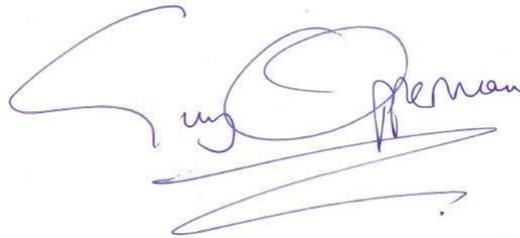
The remaining assets of failed schemes may indirectly contribute to the costs of the FAS, but it is worth noting that the Young Review identified only £1.7 billion as

available from residual scheme assets whereas provision of some £5 billion has been made for the FAS. More details can be found in the Department's annual report and accounts for 2020 to 2021 on GOV.UK.

I do not agree that the structure of the FAS as originally set up or as improved over the years gives rise to direct or indirect age discrimination.

I have noted the guidance in Managing Public Money about the payment of interest and will ask my officials to undertake further enquires. However, this should not be taken as an indication that there is likely to be any change in the original decision that no interest payments are due.

Finally, you have requested that I meet again with the Pensions Action Group. I do not believe that a further meeting with the Pensions Action Group would be productive as the government's position on the matters raised in your letter has not changed and is not likely to do so.

A handwritten signature in blue ink, appearing to read 'Guy Opperman', with a large, sweeping flourish underneath.

**Guy Opperman MP**  
**Minister for Pensions and Financial Inclusion**



## Work and Pensions Committee

House of Commons, London, SW1A 0AA  
Tel 020 7219 8976 Email [workpencom@parliament.uk](mailto:workpencom@parliament.uk)

Guy Opperman MP  
Minister for Pensions

25 May 2022

Dear Guy

### Financial Assistance Scheme

Thank you for your letter dated 26 April, responding to questions in my letter of 22 February about the different treatment of members of the Financial Assistance Scheme (FAS) and Pension Protection Fund (PPF) in terms of the compensation cap and payment of interest on arrears. I believe there are grounds for reconsidering the position on both points and would be grateful if you could do so.

### Compensation cap

You say the cap on financial assistance payments applies to all members irrespective of their age, is therefore not affected by the Court of Appeal judgment and is not being disapplied. However, I understand that some FAS members did in fact experience different treatment on ground of age. This can be seen, for example, from the [debate in Parliament in February 2008](#), when the then Pensions Minister, Mike O'Brien, explained that, previously, schemes were able to buy annuities for pensioner members, protecting their pension benefits in full, while active and deferred members entered the FAS and were subject to the cap.

Perhaps more fundamentally, the compensation cap, for which the High Court in [Hughes v PPF](#) found no reasonable grounds, has even less justification in the case of the FAS. The main argument put forward to justify the compensation cap – that it was needed to prevent moral hazard – is even more tenuous in the case of FAS schemes. Most FAS schemes started to wind up before 2003, when there was no suggestion that a compensation scheme would be set up. In 2003/04, only a very small number of people would have been both likely to be affected and in a position to influence the outcomes for the scheme. Almost 20 years on, this can apply to no-one.

You say that “while the assets of failed schemes were transferred to the Treasury, these assets are not for the purposes of payments under the FAS.” However, the transfer of FAS scheme assets to the Government was clearly linked to the increase in compensation levels implemented in 2008. In December 2007, the [Young Review](#) said that “if guaranteed assistance levels are appropriate, then we recommend that Government takes in the assets and pays the amounts to all FAS beneficiaries as they fall due.”

### Interest

On the question interest payments, you state that there is no legal basis to pay interest to FAS members, drawing a distinction with the PPF where regulations require interest in arrears. You go on

to say that “discretionary payments outside of the legal framework are only considered where there is maladministration by the Department. This is not the case here.”

However, my point was that Treasury guidance on [Managing Public Money](#) appears to provide discretion do so. Paragraph 4.7.3 says that “if there has been a lapse of time, for example caused by legal action to establish the correct position, it may be appropriate to consider paying interest.”

**I would be grateful if you could reconsider the question of interest on arrears and the application of the compensation cap for FAS members and if you would agree to meet the Pensions Action Group.**

Kind regards

A handwritten signature in black ink, appearing to read "Stephen Timms". The signature is written in a cursive style with a horizontal line above the name.

**Rt Hon Stephen Timms MP**

Chair, Work and Pensions Committee



Department  
for Work &  
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**GUY OPPERMAN MP**  
**Minister for Pensions**

Stephen Timms MP  
Chair of the Work and Pensions Select  
Committee  
House of Commons  
London  
SW1A 0AA

26 April 2022

Dear Stephen,

I refer to your further letter of 23 February. The Government has finalised its approach to the Court of Appeal judgment.

The PPF is now making payment of the arrears due under the Hampshire European court judgment, which were originally stayed, pending the Court of Appeal ruling. With regard to the payment of interest on the arrears payable to members of the FAS, I can only repeat that there is no legal basis on which to pay such interest. Regulation 17 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 requires the PPF to award interest on underpaid compensation but there are no corresponding regulations in respect of the FAS. Discretionary payments outside of the legal framework are only considered where there is maladministration by the Department. This is not the case here. The FAS payments were correctly paid under the law as it was understood at the time. The Department's position is explained further in the [publicly available staff guidance](#).

In respect of the cap applied to FAS payments, again I can only reiterate that the FAS cap was not the subject of legal action. The cap on financial assistance payments applies to all members irrespective of their age. Thus, it is not affected by the Court of Appeal judgment and it is not being disapplied.

It is correct that the FAS is funded from general taxation and thus a balance has to be struck between the interests of members of schemes, which are unable to meet their liabilities, and the wider taxpayer. While the assets of failed schemes were transferred to the Treasury, these assets are not for the purposes of payments under the FAS.

Having been asked to, I agreed to meet with members of the Pensions Action Group (PAG) on 16 June last year along with former members of the Allied Steel and Wire pension scheme. I made it clear before, at the meeting and thereafter that the position of this Government and the position of previous Governments of different political persuasions had not changed. I wrote to the PAG setting out the Government's

position on the matter raised. I do not believe that a further meeting would be productive as the position has not changed.

A handwritten signature in blue ink, appearing to read "Guy Opperman". The signature is stylized with large, sweeping loops and a horizontal line underneath.

**Guy Opperman MP**  
**Minister for Pensions and Financial Inclusion**



## Work and Pensions Committee

House of Commons, London, SW1A 0AA  
Tel 020 7219 8976 Email [workpencom@parliament.uk](mailto:workpencom@parliament.uk)

Guy Opperman MP  
Minister for Pensions and Financial Inclusion  
Department for Work and Pensions

23 February 2022

Dear Guy

### **Financial Assistance Scheme**

Thank you for your letter of 25 January about the different approach in the payment of arrears due to Pension Protection Fund (PPF) and Financial Assistance Scheme (FAS) members, following the Court of Appeal (CoA) ruling.

Your letter did not directly answer the second half of our question about whether or not the Department is still in the process of finalising its approach to this case. You say that the compensation cap was unaffected by the Court of Appeal judgement and that there is no legal basis for paying interest on arrears. However, on both points, it is surely within the Government's power to change the regulations to bring them into line with PPF regulations. Are you still considering this?

For interest payments, an alternative approach could be to use your discretion under HM Treasury's guidance on [Managing Public Money](#), which says:

4.7.3 Where an organisation discovers an underpayment, the deficit should be made good as soon as is practicable and in full. If there has been a lapse of time, for example caused by legal action to establish the correct position, it may be appropriate to consider paying interest, depending on the nature of the commitment to the payee and taking into account the reputation of the organisation and value for money for the Exchequer as a whole.

You say that the FAS is funded entirely from the public purse and therefore the Secretary of State has a duty to consider the interests of the taxpayers who fund the Scheme. However, I understand that the numbers of people affected are small (94) and the FAS was part-funded by the assets of affected schemes, transferred to the Government following the Young Review in 2007.

Other aspects of the court rulings have applied equally to FAS and PPF members. The difference in treatment - with regard to both interest payments and the compensation cap - is hard to explain, and I would be grateful for a detailed explanation of the approach you have taken.

In addition, I would be grateful if you would consider meeting representatives of the Pensions Action Group. I wrote to you on this point in November 2020. At that point you were concerned that the issue was before the courts, which is not the case now.

Yours sincerely,

A handwritten signature in black ink that reads "Stephen Timms". The signature is written in a cursive style with a horizontal line above the name.

**Rt Hon Stephen Timms MP**  
Chair, Work and Pensions Committee