Department for Work & Pensions

Laura Trott MBE MP
Minister for Pensions

Sir Stephen Timms MP
Chair
Work and Pension Select Committee
House of Commons
SW1A 0AA

9th January 2023

Dear Stephen,

Thank you for your letter on wider issues affecting pensions. I look forward to working closely with you and the wider Committee in my new role.

State Pension age review

You asked for an assurance that the reports from the Independent Reviewer and the Government Actuary will be published. Baroness Neville-Rolfe submitted her report to the Secretary of State on 16 September and the Government Actuary's report was submitted on 5 October. They will both be published in due course.

Both Baroness Neville-Rolfe's independent report and the Government Actuary's report are being considered as part of the wide range of evidence that will inform the second Government review of State Pension age. In the recent Autumn Statement, the Chancellor of the Exchequer stated that the Government would conclude the second Government review of State Pension age in early 2023.

Pension Protection Fund and Financial Assistance Scheme

The Court of Appeal judgment in the Hughes case found the cap on Pension Protection Fund (PPF) compensation payments to be age-discriminatory and therefore unlawful. The PPF is identifying affected members, disapplying the cap and paying outstanding arrears. The cap on Financial Assistance Scheme (FAS) payments was not the subject of legal action. The FAS cap applies to all FAS members irrespective of age, therefore it was not affected by the Court of Appeal judgment. There is no justification for its disapplication.

Since the FAS was established, it has been extended and improved several times. This means that the financial help is more generous and encompasses more schemes and members. While these improvements have brought the FAS and PPF closer in terms of the compensation they offer, they are still two separate compensation

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schemes. The PPF is funded primarily by a levy on eligible defined benefit pension schemes; investment returns; and the recovery of assets, whereas the FAS is funded from general taxation. Therefore, a balance must be struck between the interests of members of failed schemes and the wider taxpayer.

Your letter mentioned that the remaining assets of failed schemes were transferred to the Government. While scheme assets were recovered and transferred to HM Treasury, these assets are not ring-fenced for the purposes of payments under the FAS. Although HM Treasury has received £1.7 billion from the residual assets of FAS schemes, the Government has made further provisions for FAS liabilities well in excess of that amount. In the Department for Work and Pensions' Annual Reports and Accounts (2021-2022), provision has been made for FAS liabilities of approximately £6.3 billion.

The FAS indexation rules are generally in line with the legal requirements placed on pension schemes, i.e., that compensation based on benefits accrued after 6 April 1997 is increased in line with prices, capped at 2.5 per cent. Although DWP keeps its legislation under review, there are no plans to change the FAS indexation legislation. I sympathise with members potentially receiving less than expected in retirement due to the FAS cap and FAS indexation rules, however, we must not forget that the FAS is a compensation scheme. As such, the intention was not to replicate the benefits of schemes which were unable to secure their liabilities.

Thank you for drawing our attention to paragraph 4.7.3 of HM Treasury's guidance on Managing Public Money. I have considered the guidance carefully and note that this paragraph cannot be read in isolation. As is often the case, the guidance needs to be considered in its broader context.

The award of interest is one of several remedies available for redress in the event a service failure. No service failure has been identified in the payment of arrears arising from the Hampshire judgment handed down by the Court of Justice of the European Union in September 2018. The arrears arose because of a European Court judgment and were paid in good time to the affected FAS members once the domestic litigation concluded.

Having considered the guidance in Managing Public Money and our wider obligations to protect the Exchequer, I remain of the view that the payment of interest is not appropriate in these cases. The FAS is funded by the taxpayer, so we must strike a balance between protecting members' interests and managing public money.

Guaranteed Minimum Pensions – factsheet

Guy Opperman's letter of 29 June provided a detailed reply to concerns you raised in your letter of 11 May about the way the changes to the Guaranteed Minimum Pension were communicated.

I understand you have written again on this issue partly because of representations made by someone affected by the introduction of the new State Pension in 2016. One of the consequences of the reform was that the in-effect price protection of GMPs, in certain circumstances, ended for people who reached State Pension age from 2016. The rules around GMP indexation are extremely complex and an assessment of someone's position is only possible by examining their NI record. The information you provided about the person's pension position seems unusual. I urge your correspondent to contact us through the link on the factsheet and we will provide that assessment.

You also asked what steps DWP has taken to ensure private pension schemes provide accurate and timely information about the impact of the new State Pension on people with GMPs. As mentioned above, we can only provide accurate information about the impact of the new State Pensions on GMPs once individuals have contacted DWP. We encourage individuals to do so. To this end, we have asked the Pensions Regulator to include information in their monthly bulletin to schemes so they can alert members to the uprating policy change and direct them to the factsheet on GOV.UK.

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Work and Pensions Committee

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Laura Trott MP
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From the Chair

7 December 2022

Dear Laura

Many congratulations on your appointment as Minister for Pensions. The Committee looks forward to working with you. As requested, I am reissuing my letter of 26 October.

As you will have seen, we launched an inquiry on defined benefit (DB) schemes with LDI investments and intend to look at wider issues affecting DB schemes next year. I wanted to take the opportunity to write on other issues on which we would welcome your views.

State Pension age review

I understand that Baroness Neville Rolfe submitted the report of her independent review of the State Pension age in September and that the Department must publish its own review by May 2023. In the interests of public scrutiny, we would welcome assurance that Baroness Neville-Rolfe's report will be published as soon as possible, and the report from the Government Actuary's Department as soon as it is available.

Pension Protection Fund and Financial Assistance Scheme

Following the Court of Appeal's judgement in Hughes, the Pension Protection Fund (PPF) compensation cap has been lifted and those affected are receiving arrears with interest. However, this does not apply to Financial Assistance Scheme members. [1]
The Committee questions the justification for this difference in treatment. The former Pensions Minister, Guy Opperman, argued that the cap was one of the measures brought into control the costs of the scheme, as a publicly funded scheme. He said it

[1] Letter from Pensions Minister to Chair, 26 April 2022; Letter from Pensions Minister to Chair, 29 June 2022

applied to all FAS members, irrespective of age. It was not affected by the Court of Appeal judgment and was not being disapplied.[2]

However, FAS members did in fact experience different treatment on ground of age. This was because, under the legislation in force at the time, pensioner members took priority in the distribution of assets and the scheme could buy them an annuity for the full scheme benefits. Those under pension age, however, could be left with nothing. The FAS was set up to provide them with some compensation, but those who entered it were subject to the cap.[3] The FAS was needed because the legislation in place at the time was insufficient to protect scheme benefits. Following a long campaign and legal action, FAS benefits were increased so that they were "broadly comparable" with those provided by the PPF. In return, the remaining assets in failed schemes were transferred to the Government.[4]

Continuing to apply the cap to FAS members, when it has been removed from PPF members, introduces a new source of inequality. Rising inflation means finding a solution is particularly urgent. The Pensions Action Group tells us that the lack of indexation on rights built up before 1997 means many are now receiving less than 60% of their expected pension. They say their members are becoming financially distraught, affecting their physical and mental health.

Would you be willing to meet the Pensions Action Group to discuss these issues?

As regards the payment of interest on arrears, although there is no legal requirement for this in the case of FAS compensation, we believe there is discretion to do so under HM Treasury guidance on Managing Public Money (para 4.7.3). Mr Opperman told us he had asked officials to explore further whether this was appropriate. **We would be grateful for an update on this work.**

Guaranteed Minimum Pensions – factsheet

In February 2022, the Government sent the Committee its review of its factsheet, Guaranteed Minimum Pensions (GMPs) and the effect of the new State Pension. The factsheet had been published in August 2021, following a 2019 report by the Parliamentary and Health Service Ombudsman which found that DWP had failed to communicate that the introduction of the new state pension system could have a negative long-term impact on people. The conclusion of the Government's review was that there is no evidence at this time that a further iteration of the factsheet is required and there is no need for further research.[5]

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[2] Letter from Pensions Minister to Chair, 26 April 2022

[3] DWP, Action on Occupational Pensions, CM 5835, June 2003, para 15; PBC Deb 19 February 2008 c508

[4] The Financial Assistance Scheme (FAS) Review of Assets, December 2007; PBC Deb 19 February 2008 c508

[5] Letter from DWP Permanent Secretary to Chair, 2 March 2022

However, a steady stream of feedback from members of the public suggested to the Committee that a revised factsheet is needed to explain better: the potential impact on individuals over retirement, particularly as inflation rises; and that some individuals may be eligible for compensation and how they can apply. On 11 May 2022, we therefore wrote to the former Pensions Minister again, expressing concerns that, three years on from the PHSO report, it is still the case that some people with GMPs negatively affected by the new State Pension reforms "have not been able to find the information they need." We called on the Department to revisit its decision not to review the factsheet and commit to improving its content so that it better meets the needs of those affected and promoting it better.[6]

In a response dated 29 June (not yet published), the Minister explained that "of the 16 people who have contacted us, we have been able to deduce that none would have been significantly worse off." He believed that the factsheet was balanced in saying that people could have "a notable loss over their whole retirement". He did not believe that people who had read the factsheet would be deterred from making an enquiry.[7]

However, the Committee continues to hear concerns from people who think they will be substantially worse off. One, for example, told us that when he turned 65, his pension increases "fell off a cliff." Most of his £10,000 occupational pension was GMP, most of it built up before 1988. Under the old State Pension, indexation on rights built up before 1998 was effectively provided through increases in the additional State Pension. However, this was removed when the new State Pension was introduced. The result was that instead of receiving an increase of up to £1,000 (£10,000 x 10%), the scheme member expected an increase of only £80 pa. Information provided by his pension scheme. had not made this clear. A leaflet from the scheme in 2016 had mentioned the GMP change on page 11 and said people might be affected but in subsequent annual communications the scheme had continued to say that GMP increases were paid by the Government.

We would be grateful for information to explain what steps DWP has taken since the new State Pension was introduced, to ensure occupational pension schemes give accurate and timely information about the impact of the new State Pension on people with GMPs.

We were grateful for Mr Opperman's explanation of the process the Department would follow when contacted by individuals seeking compensation.[8] However, we remain concerned that many people do not know this is a possibility. As one person put it: "How on earth do they expect the affected people to read the information if they don't know it is there in the first place?"

As with the FAS issue, this issue has been given new urgency by rising inflation. Is the Department considering a new campaign to raise awareness of the factsheet?

[6] Letter to Pensions Minister from Chair, 11 May 2022

[7] Letter from Pensions Minister to Chair, 29 June 2022

[8] Letter from Pensions Minister to Chair, 29 June 2022

Yours sincerely,

Stephen Timms

Rt Hon Sir Stephen Timms MP
Chair