



Department
for Work &
Pensions

GUY OPPERMAN MP
Minister for Pensions

Stephen Timms MP
Work and Pensions Committee
House of Commons
SW1A 0AA

25 January 2022

Dear Stephen,

Thank you for your letter of 12 January regarding 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. The PPF and the FAS are two distinct compensation schemes. 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, at the same time as protecting the entitlements of FAS members.

The level of protection provided by the PPF and the FAS has been challenged in the European and domestic courts, known as the Hampshire Judgment. The litigation concluded with the CoA Judgment, handed down on 19 July 2021. Following the Judgment, the PPF made the decision to make the payments set out below.

The Court of Appeal Judgment

The CoA found that the PPF's methodology for calculating the minimum level of protection due under the Hampshire Judgment to be lawful. The Hampshire Judgment requires that, in the event of employer insolvency, every individual employee should receive no less than 50 per cent of the value their accrued old age benefits and the protection should never fall below that minimum level.

However, the CoA ruled the PPF compensation cap unlawful on the grounds of age discrimination. PPF members below their scheme's normal pension age at the date of the employer's insolvency had their compensation payments capped.

The payment of arrears arising from the Hampshire Judgment

The PPF has been uplifting the compensation payments of both PPF and FAS members affected by the Hampshire Judgment, but delayed making any payment of arrears until its methodology for calculating the uplifts had been settled by the CoA. Following the conclusion of the litigation, the PPF has started to pay arrears of compensation payments and financial assistance to affected members.

The compensation cap

The CoA ruling means that the PPF compensation cap has to be disapplied. The PPF, therefore, has started to identify affected members and to remove the cap on their compensation payments. Those members are entitled to arrears of uncapped compensation payments.

The FAS cap was not the subject of legal action. The cap on financial assistance payments applies to all members and there is no differentiation on the grounds of age.

The award of interest

The Board of the PPF decided to back date the payment of arrears arising from the Hampshire Judgment and the disapplication of the PPF cap to the inception of the PPF. Regulation 17 of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006 requires the PPF to award interest on underpaid compensation.

The Secretary of State, who is responsible for the taxpayer funded FAS and mindful of her duty to protect public funds, similarly decided to fully backdate the payment of arrears arising from the Hampshire Judgment. Unlike the PPF, there is no legal basis to pay interest on the arrears due to FAS members and so no interest is payable.

I hope that this clarifies the position.

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

Guy Opperman MP
Minister for Pensions and Financial Inclusion



Work and Pensions Committee

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

12 January 2021

Pension Protection Fund and Financial Assistance Scheme payment of arrears

Dear Guy,

Last year the Court of Appeal ruled that the cap on compensation paid by the Pension Protection Fund (PPF) was unlawful. The Court of Appeal also supported the PPF's approach to increasing payments to its members and to members of the Financial Assistance Scheme (FAS), which is administered by the PPF, following the 2018 European Court of Justice judgement in the Hampshire case.

The approach to paying arrears now due is different for members of the PPF and the FAS, which is taxpayer funded and where DWP has more responsibility for decision making. PPF members will receive uncapped arrears with interest paid and no time limit. FAS members will similarly receive arrears with no time limit, but no interest will be paid and a cap, not dissimilar to the one ruled unlawful for PPF members, remains in place.

I would be grateful if you could please set out in detail to the Committee the reasons for these differences and confirm whether or not the Department is still in the process of finalising its approach to this case?

I look forward to hearing from you.

Yours sincerely,

Rt Hon Stephen Timms MP
Chair, Work and Pensions Committee