

Ombudsman's Determination

Applicant	Mr N
Scheme	Armed Forces Pension Scheme (the Scheme)
Respondent	Veterans UK

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Veterans UK.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint is that he was not awarded an Immediate Pension when he was made compulsorily redundant.

Background information, including submissions from the parties

4. Mr N was a Flight Lieutenant in the RAF. He enlisted on 4 April 1999 at age 27. He was made compulsorily redundant on 11 June 2013. He had accrued 14 years 69 days qualifying service which counted as reckonable service for the calculation of his pension. He received a Special Capital Payment and a Retirement Grant and preserved pensions payable at age 60 and 65 (respectively for service pre and post 6 April 2006).
5. At the date of his redundancy Mr N was a member of the Armed Forces Pension Scheme 1975 (**AFPS 75**), and subject to the rules contained within 'The Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010' (**the Amendment Order 2010**), which came into force on 3 January 2011. His redundancy was processed under the terms of 'The Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No 2) Order 2010' (**SI 832/2010**), which came into force on 6 April 2010. The latter introduced the Armed Forces Redundancy Scheme 2010 (**AFRS 10**).
6. AFRS 10 applies to members of the Regular Armed Forces who are members of the AFPS 75. It includes those who joined, or re-joined the Regular Armed Forces before 6 April 2005 and who did not transfer their pension rights from AFPS 75 to AFPS 05.

7. Relevant extracts from the Amendment Order 2010 and the Royal Airforce Redundancy Programme – 2012DIN01-022, are provided in the Appendix.
8. Mr N says:-
 - AFRS10 has been applied retrospectively and as a consequence he has lost his entitlement to an Immediate Pension. “These changes removed over twenty years of pension payments [from redundancy to age 60 when Mr N will begin to receive his deferred pension rights] removing over half of the value of the pension depending on life expectancy”.
 - There is a standard expectation of protecting public sector pensions for those within 10 years of collecting their pension which was applied to the AFPS 15, but not to him.
9. At IDR stage 1 and 2 Veterans UK said:-
 - When Mr N enlisted there was no on-going redundancy programme. Therefore, the rules of AFPS 75 remained relevant to him. However, SI 832/2010 introduced AFRS 10, and it is these rules which then applied to those personnel who were members of AFPS’75, and who were selected for redundancy.
 - It is the rules of the pension scheme which exist at the time an individual leaves the Service which determine how their pension is calculated. If a pension scheme’s rules are to be applied/changed retrospectively, then those changes would be applied to members already in receipt of their pensions. But Mr N was not in receipt of a pension when AFRS10 was introduced and he did not qualify for an Immediate Pension.
 - AFRS10 was introduced in respect of personnel selected for redundancy at a future date, therefore it was not a backdated action. Mr N was not selected for redundancy at AFRS 10’s inception.
 - With regard to Mr N’s claimed financial loss. On being selected for redundancy Mr N effectively ceased to be an active member of AFPS 75. As a result of his selection AFRS 10 applied to him. Therefore, any benefits that might have been gained prior to the introduction of AFRS 10 are purely hypothetical. Consequently, there is no actual financial loss.
 - Mr N is not entitled to a pro-rata Immediate Pension, the footnote in 2012DIN01-22, clearly states that this only applies to Officers who joined at the age of 18 and have 18 years qualifying service at the date of redundancy. This does not apply to Mr N.
 - There has been no change to Mr N’s deferred pension rights; these still exist and will be paid when he reaches deferred pension age.

Adjudicator's Opinion

10. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Veterans UK. The Adjudicator's findings are summarised briefly below:-
- Mr N was incorrect in saying that his pension has been retrospectively amended and he has lost 20 years pension.
 - As Mr N was over age 21 when he joined the RAF all of his qualifying service counted as reckonable service for calculating his pension under the AFPS 75.
 - Prior to his selection for redundancy, to receive an Immediate Pension Mr N had to have completed 16 years reckonable service.
 - When Mr N was made redundant his entitlement to either, an Immediate Pension and Pension Lump Sum, or a Preserved Pension and Pension Lump Sum at age 60/65, was dependant on whether he had completed sufficient qualifying service to reach his Immediate Pension Point (the earliest date that he could receive an Immediate Pension) on termination of service.
 - Under AFRS 10 the minimum qualifying service for an Immediate Pension on being made redundant is for Officers, 18 years qualifying service from age 18, or 16 years qualifying service from age 21, whichever is the earlier. For Officers with sufficient years to qualify for an Immediate Pension on redundancy, but with less than 16 years reckonable service, their pension is calculated as a proportion of the 16-year rate for Retired Pay on compulsory retirement.
 - At the date of Mr N's redundancy he had completed 14 years and 69 days qualifying/reckonable service. Consequently he was not entitled to an Immediate Pension, or a proportion of it under AFRS 10.
 - Therefore, Mr N has suffered no actual loss of pension. His entitlement is his deferred pension rights.
 - Mr N says there is a standard expectation of protecting public sector pensions for those within 10 years of collecting their pension which was applied to the AFPS 15, but not to him. But this is not relevant as Mr N is an AFPS 75 deferred member.
11. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

12. Mr N says:-

- From 2010 he was within 10 years of collecting his pension and therefore should qualify for Transitional Protection.
- AFRS 10 is unfair and is in breach of the fundamental rules of pensions that accrued years are protected in accordance with the Pension Regulator's Guidance.

13. Transitional Protection was a government decision for all public service schemes, for those members who were within 10 years of their Normal Pension Age on 1 April 2012. It ensures that such members see no change in their normal pension age nor any decrease in the amount they receive at that age.
14. AFPS 15 was introduced on 1 April 2015. All serving personnel who were members of the Scheme were automatically transferred to AFPS 15 unless they qualified for Transitional Protection.
15. Transitional Protection does not apply to Mr N as he was only 40 on 1 April 2012, and therefore had more than 10 years to reach his NPA 60/65.
16. Nevertheless, Mr N's accrued pension has not been retrospectively changed.
17. As Veterans UK has previously stated, it is the rules of the scheme which exist at the time a member leaves which determine how their pension is calculated.
18. When Mr N was made redundant he did not qualify for an Immediate Pension, or a proportion of it under AFRS 10, simply because he had not completed sufficient qualifying/reckonable service.
19. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2018

Appendix

The Air Force (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010

20. As relevant Part D, rule D.2, 'Immediate pension point: officers' says,

"(1) This rule applies to a member whose pension rank is that of OF-1 or above

(2) The member has reached the immediate pension point if any of conditions A to C is met.

...

(5) Condition C is that—

(a) the member is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant; and

(b) the member has— (i) 16 years' qualifying service that were served after the member reached the age of 21; or (ii) 18 years' qualifying service that were served after the member reached the age of 18."

21. "qualifying service" has the meaning given by rule A.10.

22. Rule A.10, 'Qualifying service', says,

"References to a member's qualifying service are to the aggregate of—

(a) every period in respect of which the member received pensionable earnings (other than a period during which the member was absent without leave) or is treated as having receiving assumed pay;

(b) any period during which the member was on unpaid leave;

(c) any period during which the member was on loan to an organisation and was required to be an active member of a pension scheme open to members of that organisation; and

(d) any other period which, immediately before 3rd January 2011, the member was entitled to count as qualifying service under any former provision of the Scheme."

23. "reckonable service" has the meaning given by rule A.11.

24. A relevant, A.11, 'Reckonable service', says,

"(1) Subject to the following provisions of this rule, references to a member's reckonable service are to the aggregate of—

(a) every period served by the member—

(i) as an officer after the age of 21, or

(ii) otherwise than as an officer after the age of 18, in respect of which the member received pensionable earnings (other than a period during which the member was absent without leave) or is treated as having receiving assumed pay;

(b) any period by which the member's reckonable service is increased under—

(i) rule C.2 (purchase of additional reckonable service);

(ii) rule C.3 (loan to another organisation); or

(iii) rule F.3 (transferred-in service); and

(c) any other period which, immediately before 3rd January 2011, the member was entitled to count as reckonable service under any former provision of the Scheme.

(2) A member's reckonable service may not exceed—

(a) if the member's pension rank is that of OF-1 or above, 34 years;

(b) otherwise, 37 years.

...

25. As relevant, D.5 'Amount of immediate pension: other officers', says

"(1) This rule applies if—

(a) a member is entitled to a pension under rule D.1;

(b) the member's pension rank is that of OF-1 or above;

(c) rule D.4 (officers of or above OF-7 rank) does not apply; and

(d) the ill-health condition is not met.

(2) Subject to the following provisions of this rule and rule D.10 (increase at age 60 or 65), the annual amount of the pension is the aggregate of—

(a) the amount specified, for a person of the member's pension rank with the number of whole years' reckonable service that the member has, in the relevant table in the pension code [*] in force on the member's last day of pensionable service; and;

(b) if rule D.8 (reckonable service in excess of whole years), D.13 (rank addition) or D.15 (professional supplement) applies, an additional amount calculated in accordance with that rule.

(3) If the member—

...

(c) is notified by the Defence Council that the member is to be treated for the purposes of AFRS as having become redundant, for the purposes of paragraph (2)(a)

the relevant table is that setting out rates of pension paid on compulsory retirement for officers.”

**“pension code” means the tri service pension codes that specify the rates of pension and rates of compensation for injury or death which are attributable to service as recommended by the Armed Forces Pay Review Body and approved annually by the Government.*

RATES OF SERVICE RETIRED PAY PAID ON COMPULSORY RETIREMENT - Officers (Including Chaplains) (Applicable to Officers who give Full Pay Service on the Active List on or after 31 March 2013)

26. Table starts from the minimum 16 years reckonable service requirement.

**Royal Airforce Redundancy Programme – 2012DIN01-022
Appendix 3 – Armed Forces Redundancy Scheme 2010 (AFRS 10)**

27. As relevant AFRS 10 says for AFPS 75 members (Interim Arrangements 16 April 2010 to 31 December 2015), Immediate Pension,

“Qualifying service more than 16 years from age 21 or 18 years from age 18 for Officers...

Where Officer has less than 16 years reckonable service, but retains the right to an IP, the pension is calculated on a pro-rata basis using the 16-year rate for Retired pay on compulsory retirement for Officers”*

*Footnote 29:

“In normal circumstances an IP would not be payable to offrs [sic] before they have completed 16 years reckonable service...However, a Statutory Instrument applies to redundancy which allows the MOD to award an IP after 18 years.

Thus this would apply ...where an officer joined at 18 and had completed 18 years qualifying service, on redundancy they would be eligible for an IP despite being 2 yrs short of the 38/16 point.”