

## Ombudsman's Determination

Applicant	Mrs Y
Scheme	Armed Forces Pension Scheme ( <b>the Scheme</b> )
Respondents	Veterans UK

## Outcome

1. I do not uphold Mrs Y'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. Mrs Y's complaint concerns Veterans UK's refusal to award her a discretionary widow's pension in 2015.

## Background information, including submissions from the parties

4. The late Mr Y was medically discharged from service in the Armed Forces as a Roman Catholic Chaplain on 9 December 1964. He married Mrs Y on 18 November 1972 and died on 17 January 1979.
5. In 1979 Mrs Y applied for a widow's pension but this was rejected as she was not married to Mr Y before he left the Armed Forces.
6. In 1987 Mrs Y made a further application for a widow's pension which was rejected again for the same reason. She was advised she could apply under the discretionary criteria but there is no evidence that such an application was made.
7. In April 2015, Mrs Y's son made an application on her behalf. The application was rejected again. However, a set of guidance notes referring to the discretionary criteria was included and in May 2015, he made an application under this criteria. It is this latest decision that the Pensions Ombudsman is investigating.
8. The Army Pensions Warrant 1977 Article 219b (annex C to D/AG Sec2/26/2/2 dated 21 April 1992), sets out the discretionary criteria:

"Payment of half rate widows pension in 'common law wife' cases may be made where all the following criteria are satisfied:-

- (1) The relationship must have been a stable, ongoing one whilst the man was a member of the Armed Forces.
  - (2) There must be evidence to show that the relationship was indistinguishable from a legal marriage (e.g. children were born out of the relationship: the woman changed her name by deed poll to that of her common law husband).
  - (3) The man's previous marriage had broken down before the new relationship commenced.
  - (4) The couple must have been prevented from becoming legally married whilst the man was in service by circumstances outside their control (e.g. disappearance of former spouse: spouse refused to grant divorce).
  - (5) The couple were legally married as soon as they were free to do so and that marriage continued until the husband's death."
9. The application was rejected as Mr and Mrs Y did not marry as soon as they were free to do so after Mr Y left the Armed Forces.
  10. Mrs Y's son appealed on behalf of his mother under the Scheme's Internal Dispute Resolution Procedure and said the reason why his parents did not marry any sooner was because his father thought he had a Reserve Liability and was therefore not able to marry until he was discharged.
  11. The application was rejected on the basis that individuals discharged due to medical reasons did not have a Reserve Liability.
  12. Veterans UK says Mrs Y was explicitly informed about discretionary pensions in 1987. As Mr and Mrs Y married 8 years after Mr Y was discharged from the Armed Forces, they did not marry as soon as they were free to do so and she did not therefore meet the criteria.
  13. Veterans UK says it did not inform Mr Y that he had a Reserve Liability and therefore, his belief did not stem from any information or paperwork provided by Veterans UK. It says: "Vets UK would like to apologise to Mrs [Y] if any offence has been caused. It was not our intention to suggest that Mr [Y] had intentionally lied to his family."
  14. Mrs Y's son has provided evidence in the form of property documents and photographs to prove that his parents were in a committed relationship.

## **Adjudicator's Opinion**

15. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no action was required by Veterans UK. The Adjudicator's findings are summarised briefly below:-
  - There was no doubt that Mr and Mrs Y were in a committed relationship. However, Veterans UK explained that Mrs Y is not eligible for a discretionary widow's pension

as she does not meet all of the criteria set out in annex C of the Scheme's Rules. Specifically, Mr and Mrs Y were not "legally married as soon as they were free to do so". They married approximately 8 years after Mr Y was discharged from the Armed Forces and on this basis, the application was rejected.

- The Adjudicator did not believe the complaint should be upheld as Veterans UK had properly considered the application for a discretionary widow's pension based on the criteria.
  - Mrs Y's son had commented that Veterans UK did not provide the criteria at an earlier stage and that Mr Y thought he had Reserve Liability. The Adjudicator found there was no evidence that Mr Y was informed that he had a Reserve Liability and Veterans UK cannot be held responsible for any mistaken belief.
  - The Adjudicator also noted that Veterans UK did advise Mrs Y in 1987 that she could apply for a discretionary widow's pension but there is no evidence that she did this or that she asked Veterans UK to provide her with the criteria.
  - Finally, Veterans UK has offered an apology to Mrs Y if it caused offence by suggesting that Mr Y had lied to his family about Reserve Liability. The Adjudicator considered the apology was reasonable in the circumstances.
16. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs Y's son has provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs Y's son for completeness.

### **Ombudsman's decision**

17. Mrs Y's son says the discretionary criteria was only revealed to him by the Pensions Ombudsman and at no time before this. He says that Mrs Y was not advised that she could apply for a discretionary widow's pension in 1987. She was not aware of it until it was described in the pension guidance notes in 2015 and even then she did not receive a criteria document.
18. I have looked at the letter from 1987 which says:
- "In a very small number of cases however the Defence Council is able to exercise discretion...and award a pension without the requirement being fully met...If you are able to produce documentation relating to your husband's retirement from the priesthood, confirming dates etc., I may be able to refer your case to the Defence Council for their consideration."
19. I therefore agree that Mrs Y was made aware that the Defence Council did have discretion to award a pension in some circumstances. There is no evidence that Mrs Y enquired any further about this discretion at the time despite being informed about

it. Although she may not have received a criteria document, she was aware that she could have asked Veterans UK to consider exercising discretion to award a pension.

20. Mrs Y's son says the Opinion was written afterwards, and is contrary to the legal precedent set by the Supreme Court that pension schemes are obliged to give married and unmarried partners equal rights. I believe he is making reference to the case of Brewster v Northern Ireland Local Government Officers' Superannuation Committee [2013] NICA 54 (Brewster).
21. Mrs Y's son says this ruling has the effect that the Army Pensions Warrant 1977 Article 219b, breaches the Human Rights Act. He has previously said that the criteria document breaches the Equalities Act and this was not mentioned in the Opinion.
22. He says the Brewster case makes it irrelevant how long after service his mother and father got married so long as they were acting as a married couple. He believes the Supreme Court ruling clarifies the legal position of unmarried partners. He says the ruling stated that there could be no difference in pension entitlement for married or unmarried partners and therefore payment of only half widow's pension for discretionary cases is also contrary to this judgment.
23. However, the case has not set a precedent to give married and unmarried partners equal pension rights in all circumstances. Rather, the judgment deals with a very specific issue.
24. The case of Brewster related to the requirement of completing a nomination form in the case of unmarried couples. This requirement was found to be in breach of ECHR article 14 (right to protection from discrimination), read in conjunction with Protocol 1 article 1, as married couples were not required to complete a nomination form for payment of retirement pensions to certain survivors.
25. Ms Brewster's appeal was successful as the requirement in the 2009 Regulations, that the appellant and her partner should have made a nomination, was dis-applied on the basis that the nomination form amounted to unlawful discrimination and as such Ms Brewster was entitled to receive a survivor's pension under the scheme.
26. Ms Brewster was disqualified from receiving a pension solely because her partner had not nominated her to receive benefits in accordance with the relevant regulation. The regulations relevant to Ms Brewster made provision for unmarried couples.
27. Mrs Y's case is not comparable to the Brewster case as the Scheme says that to be eligible at the time of Mr Y's death, a widow must have been married to her husband before he left the Armed Forces.
28. The Scheme makes provision for widows and for those who were prevented from becoming legally married whilst in service. It does not make provision for cohabiting partners generally.

**PO-12847**

29. The Scheme specifically distinguishes between widows (already married at the time of the member's death) and widows who were married after the member's retirement from the Army. Mr Y left service in 1964. If a member left service before 6 April 1978, an application for a discretionary award can be made. In order to be eligible to receive a discretionary half rate widow's pension, Mr and Mrs Y would have had to have married as soon as they were free to do so. As they did not marry as soon as they were free to do so, Veterans UK did not award the pension.
30. Veterans UK have applied the criteria properly and have explained why Mrs Y is not eligible for a discretionary award. Therefore, I do not uphold Mrs Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
6 April 2017