

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Armed Forces Pension Scheme ( <b>the Scheme</b> )
Respondent	Ministry of Defence, Veterans UK ( <b>Veterans UK</b> )

## Outcome

1. I do not uphold Mr 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. Mr Y's complaint about Veterans UK, the scheme manager, is that it caused an overpayment of pension benefits, it has stopped those benefits to prevent the overpayment from increasing, and it requires repayment of the overpayment.

## Background information, including submissions from the parties

4. Mr Y was a member of the Armed Forces Pension Scheme 1975 (**the 1975 Section**).
5. In 2005, under an Offer to Transfer (**OTT**), Mr Y was given the opportunity to transfer his benefits in the 1975 Section to the Armed Forces Pension Scheme 2005 (**the 2005 Section**). He later did so.
6. In June 2010, Mr Y was discharged from the Armed Forces on medical grounds. He was given the choice of receiving ill health benefits under the 1975 or 2005 Sections. Veterans UK stated he had this choice because he retained "reserved rights" under the 1975 Section. He elected to take benefits under the 1975 Section.
7. In July 2016, Veterans UK wrote to Mr Y after discovering an incorrect overpayment. The key points were: -
  - The information that it gave Mr Y, in June 2010, about his benefits under the Armed Forces Attributable Service (**AFAS**) was incorrect. He was not entitled to ill-health benefits under the 1975 Section, only under the 2005 Section.

- Mr Y's health condition was Tier 1, meaning he was entitled to: a lump sum of £53,669.43; a deferred annual pension of £6,133.68 from age 65; and, a tax-free lump sum of three times his annual pension from age 65.
- In its letter of June 2010, it had told Mr Y it would pay him benefits in lieu of benefits under the 1975 Section. Instead this would have to be stopped from September 2016, with a deferred pension and lump sum being put in place, payable from age 65. It apologised for the error and disappointment caused.
- It had paid Mr Y benefits of £38,453.99 in total which he was not entitled to, as well as a lump sum of £20,979.00, which came to £59,414.99. Offset against the correct lump sum of £53,669.43 under the 2005 Section, this meant there was a net overpayment of £5,745.56. It was required to recover this amount.
- The benefits projected to Mr Y's ex-wife under a Pension Sharing Order (**PSO**) were also incorrect. Therefore £10,420.70 would be debited from Mr Y's future entitlement at 65, to correct this. The benefits available under the PSO would be considerably reduced. It would write to Mr Y's ex-wife to explain this.

8. In August 2016, Mr Y complained to Veterans UK. The key points were: -

- It had made a major mistake at a stage in his life when he had few options for making up the income deficit, or repaying the overpayment.
- The injury that resulted in his medical discharge could make it impossible for him to work in the future. The incorrect benefits had been invested in property, for him and his ex-wife. Without these benefits, he would have insufficient liquid funds to live on if his (current) wife failed to find work in future.
- He took a part time job working 22.5 hours a week, so he could look after his two young children. There was little chance of extending his hours. Working more hours could aggravate his injury.
- He had taken out a £55,000 mortgage with his current wife based on the incorrect benefits. He might have to sell the house if he could not make the repayments.

9. In October 2016, Veterans UK wrote to Mr Y under stage one of its internal dispute resolution procedure (**IDRP**). The key points were: -

- It reiterated it had made a mistake in offering Mr Y the choice of benefits under the 1975 and the 2005 Sections. However, it was required to seek recovery of the benefits it had paid him, as they had been paid in error.
- The overpayment of £5,745.56 included Mr Y's final payment in September 2016. However, due to an oversight the actual overpayment was £6,079.54.

- It had written off the first three months' pension payments, under the Limitation Act 1980 (**the Act**), which came to £1,748.25. This reduced the overpayment to £4,331.29. It also offered £500 for the distress and inconvenience caused.

10. In November 2016, Mr Y appealed.

11. In February 2017, Veterans UK wrote to Mr Y under stage two of its IDRP. The key points were: -

- It went into some detail explaining the background of the complaint, the rules governing the payment of benefits and why it was required to seek recovery of the overpayment.
- Mr Y had provided insufficient evidence that his losses resulted directly from the overpayment. Firstly, it appeared he had taken a part time job as working longer hours might aggravate his injury. Secondly, he claimed to have taken out a mortgage on the basis of the incorrect benefits, but he would always have incurred costs for housing his family. Whilst he had invested in his current home, and property for his ex-wife, the purchase of assets maintaining their value could not be considered acting detrimentally. Nor could paying off a mortgage, since the property could potentially be sold at a profit.
- It reiterated it would only seek recovery of six years' worth of over-payments, and it would award an interest payment, on part of the Tier 1 payment which should have been received as a lump sum. Offset against the overpayment, that meant the total recoverable amount was £3,981.57. It also increased its offer to £1,000 for the distress and inconvenience caused.

12. Dissatisfied with Veterans UK's response, Mr Y referred his complaint to this Office.

### **Adjudicator's Opinion**

13. Mr Y'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 below: -

- Mr Y might have a defence against recovery of the overpayment, if he could show that he had undergone a detrimental change of position. However, this defence did not apply in his case for two reasons. Firstly, whilst he stated he had taken a part-time job on the promise that the benefits would continue to be paid, he had also stated he was unable to work longer hours on account of his injury. So it was likely he would always have taken a part-time job.
- Secondly, whilst he stated he had taken out a second mortgage on the basis of the incorrect benefits, it was more likely than not that he would have done so anyway, because he would have had to make living arrangements for his family, so he would always have incurred such costs.

- Buying the house via a mortgage could not be considered acting detrimentally, as it was expected that the value of property would usually rise over time.
  - Veterans UK might be “estopped” from recovery of the overpayment if Mr Y could show (a) a clear representation had been made, (b) he had acted in reliance on the information and it was reasonable for him to do so, and (c) he would suffer detriment if the respondent were not held to the incorrect information. However, this defence did not apply either, because Mr Y had not taken specific actions in reliance on the incorrect information; both the changes would have been made even if no incorrect benefits had been paid.
  - Veterans UK had agreed to write off that part of the overpayment that accrued more than six years ago. That was what the Ombudsman would have recommended, had Veterans UK not agreed to it.
  - There was no dispute that Veterans UK had acted in maladministration by paying incorrect benefits to Mr Y. However, Mr Y had not acted detrimentally in reliance on those benefits. Therefore, Veterans UK’s total offer, comprising an interest payment on a lump sum that should have been paid, and a £1,000 award for distress and inconvenience, was reasonable.
  - Veterans UK had written to Mr Y’s ex-wife regarding the incorrect information it had provided to her, in connection with the PSO. She would, however, have to complain to Veterans UK on her own account. If she remained dissatisfied with its responses, she could potentially bring a complaint to this Office.
14. Veterans UK accepted the Adjudicator’s Opinion, but Mr Y did not. So the Adjudicator requested further information from both parties. Mr Y provided the following additional information, in summary: -
- He would have taken a full-time job, rather than a part-time job, had he known he was not entitled to the incorrect benefits, because a full-time job would have been less physically demanding.
  - He would not have taken out a second mortgage because it was only for some home improvements; he did not need to take out the mortgage in order to buy a house to live in. In addition, it was not guaranteed that improvements would increase the value of his property.
  - His career prospects were now worse than six years ago, as he had missed out on potential training, studying and promotion. He had also missed out on the opportunity to save more money.
  - He disagreed that Veterans UK gave him incorrect information in 2010. Also, he could have been reinstated in the 1975 Section up until May 2010. Had he known about that deadline, he could have requested to leave Armed Forces in previous medical boards before May 2010.

- The money he paid to his ex-wife came from a separate settlement from the NHS and had nothing to do with this pension complaint.
- After leaving the Armed Forces, he trained as a gas engineer then worked full-time in that role for six months. He took a part-time job to spend more time with his children, on the assumption that he had the incorrect benefits to supplement his income.
- The repayments on his first mortgage were latterly about £750 a month; he paid that off in May 2012. He then took out a second mortgage for £55,000; the monthly repayments were about £420 a month. He earned the national minimum hourly rate for six months as a trainee gas engineer. After that, he worked 22.5 hours per week as a postman earning £240 a week.
- He latterly received about £300 a month from the incorrect benefits, before Veterans UK stopped the payments to prevent the overpayment increasing.
- He and his wife paid the second mortgage from a combination of the incorrect benefits, his income and her income. However they ensured that the mortgage could be covered by the incorrect benefits alone if necessary.
- He was told, in 2005, that his right to take benefits under the 1975 Section had transferred across to the 2005 Section. If Veterans UK had made him aware that he could secure benefits under the 1975 Section, by leaving the Armed Forces under previous medical boards prior to 2010 he would have done so, and this complaint could have been avoided.

15. Veterans UK provided the following additional information, in summary: -

- In its letter of 26 July 2016, it accepted that it had acted in maladministration by providing the incorrect information. So it was unable to accept a separate claim about Mr Y's not having the opportunity to be discharged before May 2010.
- It could not comment on what Mr Y was told in 2005, but members discharged for certain conditions caused before April 2005, could be treated as members of the 1975 Section for ill health benefits. However, that changed in April 2010.
- It would not have been possible for Mr Y to be reinstated in the 1975 Section in April 2010, because that Section was closed.
- There were only two circumstances where members could revisit the decision to transfer Sections: in the event of redundancy before March 2008; or, in the event of a material error in the Personal Benefit Statement, meaning that the election would not have been made. Neither applied in Mr Y's case.
- If Mr Y had retired before April 2010, he could have been treated as a member of the 1975 Section for ill health benefits; however, these benefits could not be

applied to him now, because Veterans UK was unaware at the time that this would no longer be possible after April 2010.

16. The additional points raised by Mr Y did not change the Adjudicator's opinion that the complaint could not be upheld. So the complaint was passed to me to consider. I agree with his Opinion, and will therefore only respond to the key points made by Mr Y and Veterans UK for completeness.

### **Ombudsman's decision**

17. There is no dispute that Veterans UK acted in maladministration when it gave Mr Y the choice of taking ill health benefits under the 1975 and 2005 Sections. At the time he was discharged, he only had a right to ill health benefits under the 2005 Section. I have considered whether Veterans UK should have informed Mr Y, at the time of his previous medical boards, that there was a possibility that he could take benefits under the 1975 Section, if he was discharged at those times. However, I have not seen any evidence that Veterans UK was required to so inform him. Moreover, the question of whether or not Mr Y should be discharged from the Armed Forces was an issue for Veterans UK to consider, in accordance with his terms of Mr Y's service. Notwithstanding Veteran UK's comments in its letter dated 26 July 2017, I do not believe this issue can be considered as part of this complaint.
18. What I must decide is whether the receipt of the incorrect benefits has caused Mr Y to act detrimentally. Mr Y states he made two basic changes, on the assumption that the incorrect benefits were in fact correct. Firstly, he took a part-time job rather than a full-time job. Secondly, he took out a £55,000 mortgage with his second wife, in order to make some home improvements.
19. Firstly, I do not consider that taking a part-time job over a full-time job can be viewed as acting detrimentally. Mr Y has stated that he took the part-time job in order to be able to spend more time with his children. He also says if he had not been in receipt of the incorrect benefits, he would have had to make other childcare arrangements. So Mr Y would always have incurred costs for the care of his children; however, he saved on those costs taking a part-time job. Moreover, whilst he earned less income from the part-time job, Mr Y cannot be reimbursed for full-time work he did not do, or for savings he did not make. Nor is there a suitable remedy for career development that did not happen or promotions that did not occur; in any case, the evidence that such things would have happened is too uncertain. In the end, Mr Y chose to take a part-time job, but there was nothing stopping him from taking a full-time job, if he wanted to improve his future earnings and increase his savings.
20. Secondly, whilst the evidence indicates Mr Y paid off debt before taking out a second mortgage, it has not been demonstrated that this has been detrimental to him. Mr Y has been given the opportunity to show how the new mortgage is currently being paid, but I cannot see that he is in a worse position now. Previously, he was in receipt of the ill health benefits, but he had higher monthly mortgage repayments, with repayments

being serviced through a combination of the ill health benefits, his income and his wife's income. Latterly, he no longer receives the incorrect benefits, but has lower mortgage repayments. I cannot see a monthly shortfall that Mr Y is currently unable to service. I accept that it may prove more difficult to service the mortgage in future, depending on his and his wife's employment situation. However, it was also noted in Veterans UK's second stage IDRP response that since the incorrect benefits stopped, Mr Y has been able to increase his hours and thus his income. Therefore, whilst the Adjudicator did explore these issues further after his Opinion, it has not been shown that Mr Y is currently suffering detriment by having to continue paying the mortgage, without the benefit of the incorrect benefits.

21. In addition, the improvements Mr Y has mentioned cannot be considered detrimental changes. They will most likely add to the value of the home, although this ultimately depends on the timing and circumstances of any sale. Therefore, I do not find that the overpayment should be written off.
22. Veterans UK has explained that Mr Y should receive an interest payment, of £349.72, relating to the portion of a lump sum benefit that should have been paid at the time of his discharge. It has offered to offset this against the overpayment, therefore the total amount recoverable is £3,981.57. I believe that this is reasonable in the circumstances. Veterans UK should allow Mr Y a reasonable period for reimbursement of the overpayment.
23. I agree that this matter will have caused Mr Y significant distress and inconvenience, and that an award of £1,000 is appropriate.
24. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
18 September 2017