

## Ombudsman's Determination

Applicant	Mr L
Scheme	Armed Forces Pension Scheme 1975 (the <b>Scheme</b> )
Respondents	Ministry of Defence (the <b>MoD</b> ), Veterans UK

## Outcome

1. Mr L's complaint against the MoD, and Veterans UK is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) the MoD should compensate him for the non-financial loss they have caused him to suffer.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr L says his late wife, Mrs L, was given a clear expectation that the death in service lump sum benefit would be three times her pensionable salary. As they were both serving Officers in April 2005, he clearly recalls the promise that was made. Had she known that it would be based on 'representative pay', he is certain that she would have transferred to the Armed Forces Pension Scheme 05 (**AFPS 05**).

## Background information, including submissions from the parties

4. Under rule E.21 of the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 (the **Amendment Order**) the amount of lump sum death benefits payable on the death of an active member must be three times the member's 'representative rate of pay' in force on the last day of their pensionable service. Representative rate of pay is specified in a code setting out rates of pension, recommended by the Armed Forces Pay Review Body and approved by the Secretary of State.
5. In a list of definitions in a Scheme booklet issued to all Armed Forces personnel in 2002, it stated:

"Representative Pay

Unlike most final salary-related pensions, AFPS pension for members below one star level (Commodore, Brigadier, Air Commodore) are not based on individual earnings but on a representative rate of pay for each rank. This “all of one company” principle means that all those of the same rank with the same length of service retiring in the same year receive the same rate of pension, regardless of their actual earnings”.

6. The booklet stated that, on death in service, a tax-free lump sum would be payable equivalent to “about one year’s salary” (or the terminal grant if greater).
7. Around April 2005, Scheme members were given the choice to transfer to the AFPS 05 (the **Offer to Transfer**).
8. Mrs L was issued with an information pack containing a personal benefit statement (the **Personal Statement**), a booklet about the Offer to Transfer (the **OTT Guide**); and a copy of the AFPS 05 booklet. The 1975 scheme booklet was not included as it had been provided in 2002.
9. On the front page of her Personal Statement Mrs L was advised of a ‘basic annual salary for pension purposes’ of £98,122.
10. Page two of the statement presented a table for comparison, displaying feature of the Scheme on the left and those of the AFPS 05 on the right. It compared death in service lump sums directly.

It described the benefit provided by the Scheme as: “Tax-free lump sum of about **3 x** annual pensionable salary for both attributable and non-attributable death-in-service payable to spouse or partner... **This is a change to the current Death-in-Service lump sums shown in the AFPS 75 booklet and is payable from 6 April 2005**”.

And by AFPS 05:

Tax-free lump sum of 4 x annual pensionable salary for both attributable and non-attributable death-in-service payable to spouse or partner.

11. Immediately below the table a bold note said that details of dependant’s benefits were summarised in the scheme booklets;“ These should be read carefully.”
12. In other sections of the comparison table the Personal Statement advised that the dependant’s pension under the AFPS 05 was 62.5% of the member pension (payable for life) compared to 50% of the member’s pension under the Scheme (ceasing on cohabitation or remarriage).
13. It quoted an annual pension at normal retirement age of £38,510 under the Scheme and a tax free lump sum of £115,531. The annual retirement pension and tax free lump sum quoted under the AFPS 05 were £38,262 and £114,786 respectively.

14. The introduction in the OTT Guide said that the guide provided the details Mrs L needed to make her choice between the two schemes, that the 'AFPS 05 offered terms that differed materially from those available under the Scheme; and that she should try and understand how the differences affected her personally as her decision could significantly impact the value of the benefits payable to her or her dependants'.
15. The instructions contained in the OTT Guide said that the Scheme booklet was sent to every member of the Armed Forces in 2002, and that a copy should also be available from their unit administration office. Mrs L was asked to check that the contents listed had been received.
16. In a summary of the dependant benefits in the OTT Guide, it stated that, "a tax-free lump sum of approximately three times pay" was provided under the Scheme. The wording in the footer on the same page stated:

"All those of the same rank with the same length of service retiring in the same year receive the same rate of pension, regardless of their actual earnings."
17. On the page headed 'Retiring from age 55' another set of comparisons describes the Scheme as 'based on representative pay' and the SAFPS 05 as 'based on pensionable pay'.
18. A definition of 'representative pay' was included in the list of terms described in the OTT Guide:
19. "For AFPS 75 members only – fixed annually to give those leaving service at the same rank with the same length of service the same pension no matter what they are being paid."
20. On the page headed Dependant's Benefits, the comparisons describe death-in-service benefits under the Scheme as 'tax-free lump sum of about three times your pay' and under the AFPS as 'tax-free lump sum of four times your pensionable pay'. Neither pay or pensionable pay are defined in the list of terms contained in the OTT Guide.
21. The OTT Guide also gave an example of death in service benefits under each of the two schemes using the same 'salary' figure for the illustration. 'Salary' is not defined in the example nor in the list of terms contained in the OTT Guide.
22. In a list of Questions and answers about the offer to transfer, the question appears:

"Will those on enhanced pay spines, i.e. medical/dental officers and professional aviators, receive a pension based on their individual pensionable pay rate?"

Answer: Yes. All pensionable pay will be used when calculating the final pensionable pay. However specialist pay which is not part of the pay spine, and allowances are not pensionable. "

23. Service personnel were provided with access to further details via the various internet and intranet links cited in the information pack. A dedicated helpline was made available for personnel to raise any questions not addressed elsewhere in the communication. While Veterans UK is unable to comment on whether Mrs L made any enquiries to her unit administration office, it has no record of her contacting the helpline.
24. Mr L explains that the responses to queries he raised at the time shows the hurried nature of the Offer to Transfer process that prevented further details being obtained. Veterans UK ignored the time pressures under which members had to make their decision.
25. In early January 2006, Mrs L elected to remain in the Scheme. No evidence has been provided which indicates that she had been diagnosed with a terminal medical condition at that point in time.
26. Mrs L's salary between the period 1 January 2011 to 1 January 2012 was £127,402.
27. On 13 June 2011, in response to a request from Mrs L for a forecast of death in service benefits, Veterans UK advised that under existing regulations her spouse would receive a gratuity of £209,340 at current rates, but the actual rates may differ when benefits become due. Mrs L was by then terminally ill.
28. Veterans UK says the forecast was based on representative salary plus supplements that would have been payable on death, rather than on Mrs L's actual salary. While it appreciates that they would have been under considerable pressure due to Mrs L's illness, neither Mrs L nor Mr L questioned the figures.
29. In early November 2011 Veterans UK quoted a lump sum death benefit of £210,810 to the Welfare Officer in advance of their visit to Mrs L later that month. There is no indication that she did not receive the figures.
30. In October 2016, Mrs L died in service.
31. Mr L says, as his wife's annual basic pay was £136,119 at the time of her death, he expected to receive a lump sum death benefit of £408,357: ie three times her actual pay. The amount he actually received was £273,868, 67% less than he had anticipated.
32. Mr L has explained that they both had serious medical conditions in the years leading up to her death, so they were conscious of the need to provide adequate protection should either of them die. His wife had a clear expectation of the lump sum death benefit and protection available to her family based solely on the information provided by Veterans UK. When he was visited by Veterans UK after his wife's death, he was quoted an estimated lump sum of £273,868. When he queried it, the Welfare Manager agreed that his wife's salary appeared to have been miscalculated.

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33. Veterans UK says that a representative rate of pay of £76,004 was used in the calculation of the death in service lump sum death benefit. As a Medical Officer, Mrs L was entitled to a pension supplement' of £15,285. This was added to the representative rate of pay and the total multiplied by three to give an overall lump sum death benefit of £273,868.
34. Mr L says based on information in the Offer to Transfer pack, and details provided in personnel briefings given at each military unit around the time of the Offer to Transfer, they felt confident that they had adequate financial protection for their family should either of them die early. That belief was 'shattered' on the day of his wife's funeral when he was told that the lump sum had been confirmed as three times representative pay.
35. Mr L has provided a copy of a House of Commons briefing paper on the 'Armed forces pension reform -1995 to 2005' dated 7 September 2015. It states that the lump sum payable on death in service 'amounts to about three times salary'. Mr L says this further supports his belief that a promise was made.
36. Veterans UK says the notes made at the time of their visit to Mr L records that the Welfare Manager and Visiting Officer discussed the figures with him and that he was concerned that the sum of £273,868 that had been quoted to him was wrong. While the Welfare Manager agreed to get the figures checked, Veterans UK does not accept that he was given misleading information about the figures.
37. Further comments from Mr L are provided below.
  - His wife and he were both Serving Officers so they wanted assurance that should either of them be injured, or become ill, the surviving spouse would be adequately protected.
  - The salary basis used to calculate the lump sum death benefit differs materially from that stated in the general and personalised information that was made available to his wife, which stated repeatedly that it was about three times annual salary. There was no mention in the details provided of the need to refer to relevant legislation, or any warnings to alert staff that the information was wrong. The Amendment Order had not been made at the time of the Offer to Transfer.
  - Veterans UK had the opportunity to include the definition of the pay that would be used to calculate the death in service lump sum in the Personal Statement.
  - It is distressing that Veterans UK claim that they knew his wife better than he did and assume that they also knew their financial planning in the face of her terminal illness.
  - Medical Officers should have been able to rely on the details provided. To deny them the "promised financial protection supposedly designed to give security to a

military family suffering a tragedy on grounds not described at the time... is inexcusable”.

- The Offer to Transfer process was flawed in the way it was carried out and communicated. Serving Medical Officers he has spoken to, do not understand the death in service lump sum benefit basis under the Scheme. The MoD should either carry out the process again or honour the level of death benefits promised.

38. Further comments from Veterans UK/MoD are provided below.

- Scheme booklets are produced to assist members to understand the main aspects of their scheme. It was not possible to bring every officer’s attention to each aspect of the rules which might affect them personally.
- It is not possible to say with certainty the reasons why Mrs L, while in good health, decided to remain in the Scheme.
- The AFPS 05 scheme would have provided better death in service benefits. But the Scheme offered higher pension benefits on retirement. It is possible that this influenced Mrs L’s decision to remain in the Scheme.

39. In May 2017 the Acting Surgeon General of the Defence Medical Services (**Surgeon General**) wrote to Veterans UK requesting an urgent review of the communication material provided to Medical and Dental Officers at the time of the Offer to Transfer, which, he said, ‘consistently stated that the death in service benefit would be approximately three times the member’s salary and did not indicate that representative pay would apply’.

40. Mr L considers an amount of £134,489 to make up the alleged shortfall in the lump sum death benefit would be reasonable compensation.

## **Adjudicator’s Opinion**

41. Mr L’s complaint was considered by one of our Adjudicators who concluded that further action was required by the MoD, to put right the significant non-financial injustice he had suffered. The Adjudicator’s findings are summarised briefly below:-

- The regulations that apply in this case require death in service lump sum benefits to be calculated using representative rate of pay. No promise was made to Mrs L that the lump sum would be based on her actual pay, such that it would give rise to an entitlement to the higher level of death benefits Mr L is claiming.
- It was reasonably foreseeable that Mrs L would rely on the information in the Offer to Transfer pack. The communication should have made it clear that the death in service lump sum benefit was also based on ‘representative pay’.

- Although the information was meant to be read in conjunction with the Scheme booklet issued in 2002, which defined representative pay, and a change to the death in service lump sum benefit basis was highlighted in the Personal Statement, the booklet referred to in the pack did not show the up to date position. Consequently, it would have been entirely reasonable for Mrs L to have inferred that the current basis was reflected in the Personal Statement.
- The dependant's benefits under each scheme would likely have been a consideration for Mrs L. It is now not possible to know whether she would have acted differently had the details been made clearer. The projections provided to her in 2011, are more in keeping with the actual lump sum death benefit paid following her death, than the significantly higher amount of £408,357 Mr L had expected. While Mrs L was terminally ill at the time, there is no evidence that she queried the figures quoted in 2011.
- But Mr L should be paid £1,000 in compensation for the significant loss of expectation he has suffered.

42. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L has provided his further comments but these 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 L for completeness.

### **Ombudsman's decision**

43. Mr L says that the Forces Pension Society has information about the issue of the death in service benefits which might be useful to his case. Additionally, the material used in presentations provided by Veterans UK at the time of the Offer to Transfer, restated that the death in service lump sum would be three times the member's salary. The details provided were consistent with information conveyed to Medical and Dental Officers in an earlier 'policy letter' from the MoD. It is accepted that the policy letter stated that pension benefits for Medical and Dental Officers would fully reflect their salary, taking account of the difference between their salary and those of non-medically qualified Armed Forces personnel. He notes that Veterans UK did not provide copies of the presentations to our office.
44. Mr L says, as highlighted by the Surgeon General in May 2017, the difference between actual pay for Medical and Dental Officers, when compared to representative salary, is such that representative salary could not be presented as being 'approximately three times' their salary. Had they been made aware of the real difference in the death in service benefits between the two schemes, it would have undoubtedly have affected the decision making of some of those Officers. In his opinion, Medical Officers were disadvantaged because the relevant regulations now being cited were not shared with them. Furthermore, no information was provided which would have highlighted to them that the pay used in their personal benefit statement was a pay other than their own individual pay. Consequently, they would

have been unaware of the correct position, and any decision, based on the information, including his wife's decision to remain in the Scheme, should be void and the Offer to Transfer exercise carried out again using the full and correct explanation of their options.

45. Mr L explains that in electing to stay in the Scheme, his wife was not acting irresponsibly or impulsively but making a decision based on flawed information provided by the MoD. The information confirmed that, should she die in service, the financial commitments inherited by her family would be adequately covered by a death benefit of no less than three times her pensionable salary.
46. Mr L accepts that his wife asked about her pension, particularly should she be discharged because of injury or illness, and that she was provided with figures. But he says the details she was given stated that the figures should not be relied upon, and it is not unheard for Veterans UK to misquote figures. In any case, the lump sum death in service benefit was clearly stated in the Personal Statement, and widely believed to be three times the member's own salary and four times their salary under the AFPS 05.
47. Contrary to the Opinion, Mr L says he does know what his wife would have done had she known the true position. In 2012, he was offered his current post. With their financial commitments, his wife's income was central to his decision to accept it. They discussed over a considerable period that should either of them die, the financial position of the surviving spouse was protected by the benefits that they were told would become payable under Scheme. She verified the position with her personnel unit. If her medical condition had remained dormant until her retirement in 2019, they would have been financially secure.
48. Mr L says the Adjudicator was also wrong to say that the death in service lump sum basis used to calculate his wife's benefits was not challenged. He did question the calculation when he was visited by Veterans UK in October 2016. Since then, he has been asking for his wife's case to be reviewed in line with the details that were provided in her Personal Statement. He also disagrees that he has not been financially disadvantaged by the significant shortfall in the expected lump sum death. The consequences for him are so severe that his continued ownership of their family home is now in doubt. In his view, the right outcome would be for Veterans UK to honour the death benefits promised in statements made to Medical Officers, which would restore trust that the UK Government would do the right thing in the event of an Officer's death.
49. My starting position is that Mr L is only entitled to the death benefits permitted under the applicable regulations that govern the Scheme. Those regulations require the death in service lump sum to be based on representative rates of pay rather than the member's actual pay and that is the pay definition Veterans UK have used to work out the lump sum death benefit in this case.



50. Mr L's complaint is essentially that his late wife was given a definite expectation that the Scheme would provide a lump sum of three times her actual salary in the event of her death in service. And that this amounted to a promise on the part of the MoD and Veterans UK.
51. I accept that the details provided to Mrs L at the time of the Offer to Transfer, indicated that the death in service lump sum would be approximately three times her pay. This was clearly misleading in her case, because her actual pay was so much higher than the representative rate. .
52. It is evident that the terminology used in the communication issued at the time of the Offer to Transfer was intended to describe the new death in service lump sum basis under the Scheme in simple terms. But in using a very general description of the salary that would apply for the calculation of death in service benefit, without referencing the representative rate which formed the basis of this benefit, , Veterans UK failed to make the position sufficiently clear. This amounts to maladministration.
53. Mr L's expectation was clearly that the death in service lump would be based on his wife actual salary. But without evidence to independently verify what his wife's expectation were, or that the amount of death benefit under the Scheme was pivotal to her decision to remain in the Scheme, I am unable to conclude that the omission would likely have affected how she acted. I note that on its face the comparison between the Scheme and AFPS 05 death-in-service benefits showed the AFPS 05 benefit to be higher (4x pay compared with 3x pay). Conversely, the pension benefit at 55 was slightly lower. This does not suggest that Mrs L's decision to stay in the Scheme was driven by a comparison between death-in-service benefits. Mrs L was advised a basic annual salary of £98,122 for pension purposes in her Personal Statement. Had the Scheme regulations provided for a death in service lump sum death of three times her salary, the death benefit would have been amounted to £294,366 at that point in time.
54. In June 2011, Veterans UK quoted Mrs L an estimated death in service lump sum of £209,340. In November the same year, Veterans UK gave a figure of £210,810 to the Welfare Officer. It is reasonable to assume that the Welfare Officer shared the quote with Mrs L. By this time her salary had increased to £127,402. The figures quoted to Mrs L in 2011, are significantly less than they would otherwise have been had the calculations been based on either three times the basic pay shown in her Personal Statement or her salary of £127,402 at that time. There is nothing to indicate that Mrs L considered the figures which were later quoted to her to be out of line with her expectations.
55. I recognise the difficult circumstances Mr L now finds himself in, but I am not persuaded from the evidence that Mrs L would have elected to join the AFPS 05, had she been given greater clarity on the death in service benefits available under the Scheme at the time of the Offer to Transfer. However, Mr L is entitled to be compensated to the extent that his loss of expectation has caused him significant non-financial injustice.

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**Directions**

56. To put matters right, the MoD shall, within 21 working days of the date of this Determination, pay £1,000 to Mr L for the significant disappointment he has suffered.

**Karen Johnston**

Deputy Pensions Ombudsman  
6 December 2017