

## Ombudsman's Determination

Applicant	Mr N
Scheme	Armed Forces Pension 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 is unhappy for several reasons regarding how his benefits from the Scheme have been calculated.
4. Firstly, Veterans UK initially included Mr N's Belize Defence Force service (**the BDF service**) in his recorded reckonable service, and as such his pension forecasts were higher than they ought to have been. Mr N says he relied on this information when leaving his employment.
5. Secondly, Veterans UK has refused to include his BDF service in his reckonable service for the purpose of calculating his Scheme benefits. As such, his Scheme benefits are lower than he believes they ought to be.
6. Lastly, when Mr N began to receive benefits from the Scheme, he opted to commute part of his income for a larger tax-free lump sum. However, he believes his total commuted income will be greater than the additional lump sum he received. He complains that he was not informed this would be the case.

## Background information, including submissions from the parties

7. This complaint has a long background and a number of issues have been raised and responded to throughout the overall process. The summary below includes the most salient dates and matters relating to the unresolved issues.

8. From 1 December 1993 to 7 October 1996, Mr N served in Belize and completed BDF service. In 2000, Mr N enlisted with the Royal Air Force and his reckonable service under the Scheme began to accrue.
9. On 8 October 2013, Mr N received a benefits statement outlining his forecasted benefits from the Scheme. This statement included the BDF service. Around this time, Mr N was considering Premature Voluntary Withdrawal (**PVR**). As part of this, he checked whether the BDF service was reckonable, as his benefits statement indicated, and was assured it was. In the event, Mr N decided not to take PVR and instead he continued in his employment.
10. On 9 February 2016, Mr N was sent another benefits statement. Once again, the BDF Service was incorrectly included, so his forecasted benefits were higher than they ought to have been. Around this time, Mr N was considering leaving his employment and was informed that he would be entitled to immediate benefits from the Scheme if he did. In addition, Mr N was informed that, once he began to receive Scheme benefits, he would also have the option to choose Resettlement Commutation.
11. Under Resettlement Commutation, certain Scheme members can apply for an additional tax-free lump sum if they leave before age 55 and are entitled to a pension straightaway. The additional sum is the difference between the termination grant (or tax-free lump sum) they have accrued, and the maximum termination grant available under the Scheme rules. To receive this additional sum, Scheme members commute (or sacrifice) part of their pension income. The income reduction is fixed until age 55, where upon the pension is restored to its full pre-commutation level. For Mr N, this meant the income reduction would be fixed for 5.5205 years, but he could receive an additional tax-free lump sum of £32,664 (see Appendix).
12. On 2 August 2016, Mr N left his employment, having opted for Resettlement Commutation. He then immediately began work with the Full-Time Reserve Service (**FTRS**).
13. On 10 August 2016, Mr N was informed that his pension income would be abated (or reduced) as he was still earning. There was a significant level of correspondence following this, whereby it became apparent that Mr N's benefits had also been calculated incorrectly because the BDF service had been wrongly included in his reckonable service. Mr N was also told that the total amount of gross pension income he had agreed to commute, up until age 55, was £37,705.02. This was more than the additional lump sum he had received from Resettlement Commutation.
14. In responding to Mr N's complaint regarding the BDF service, Veterans UK said that reckonable service for his membership under the Scheme is defined by the relevant regulations – which in this case are the Air Force (AFPS75 and Attributable Benefits Scheme) Order 2010 (as amended). In particular, Veterans UK said that Mr N was not a member of the UK Armed Forces whilst he served in Belize, and as such Rule B1 confirms the BDF service is not reckonable.

15. Veterans UK noted that Rule A11 of the relevant regulations states that service in commonwealth countries (such as Belize) can count towards qualifying service. However, this is only the case if the service in question started before 1985, and so it cannot be applied to Mr N's BDF service.
16. Veterans UK has also provided the figures relating to Mr N's Scheme benefits (see Appendix), and said that his income is not significantly lower as a result of the BDF service not being included. For example, it highlights that his income was initially calculated as £13,582.31 per annum, but once the BDF service was not included it was still £13,124 per annum. In other words, his income only reduced by approximately £458 a year, or approximately £38 a month before tax.
17. Notwithstanding this, Veterans UK has acknowledged that it did lead Mr N to believe his BDF service would be included in his reckonable service, and as a result it had provided incorrect pension forecasts to him on two of his benefit statements. In recognition of this, Veterans UK offered Mr N £500 for any distress and inconvenience caused.
18. Mr N was not happy with this offer, and highlighted that he had made financial decisions based on his benefit statements. He has said that, had he been provided with correct pension forecasts from the outset, he would still have left his employment, but he may have looked for a higher-paying civilian role rather than join the FTRS. He concedes that any civilian role would most likely have cost him additional expenditure in travel. However, he says he may still have considered other opportunities.
19. In relation to Mr N's complaint about his Resettlement Commutation arrangement, Veterans UK has highlighted that Part D of the application form for scheme benefits, which Mr N would have signed, states applicants must read the Defence Information Notices (**DINs**) regarding how the process works. Veterans UK also says that Mr N used the online pensions calculator to obtain an estimate of his benefits depending on whether he opted for Resettlement Commutation or not.
20. In response to this, Mr N says that the DINs do not explain that the additional lump sum will effectively be repaid with interest. He has also provided evidence that he received pension forecasts after he used the online calculator, and each had conflicting figures. He says he asked Veterans UK for clarity as to what the correct figures were, but did not receive a response.
21. Veterans UK has not been able to find evidence that Mr N queried the discrepancies in the figures he was provided. It acknowledged that the benefit statements provided varying figures, but highlighted that Mr N is in a better position as a result of Resettlement Commutation. In particular, whilst the total gross reduction to Mr N's income through Resettlement Commutation is £37,705.02, after a basic rate of tax is applied it is only £30,163.79. As the additional lump sum of £32,664 he received from Resettlement Commutation is tax-free, he is better off as a result of accepting Resettlement Commutation.

22. Lastly, and notwithstanding the above, Veterans UK has offered to undo Mr N's Resettlement Commutation option. However, it has said he will need to repay the lump sum of £32,664 in order to do this. Mr N says this is not a reasonable offer as he has now spent most of the lump sum and so he cannot repay it.

### **Adjudicator's Opinion**

23. 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:-
- The Adjudicator was satisfied that Mr N's BDF service does not count towards reckonable, or qualifying, service for the purposes of the Scheme. This is because there is no provision for it to be included under the relevant regulations. Due to this, she did not recommend that Veterans UK provide Mr N with higher benefits based on the BDF service.
  - In addition, the difference between Mr N's pension, depending on whether the BDF service is or is not included, is relatively negligible. Overall, the Adjudicator did not believe Mr N would have acted differently had he been provided with pension forecasts based on the correct reckonable service. Veteran UK's offer for £500 was therefore reasonable
  - On the other hand, the evidence indicates that Mr N was not provided with clear information about what his pension was likely to be. Whilst pension forecasts may never be entirely accurate, some of figures Mr N received varied considerably. In addition, the Adjudicator agreed that the DINS do not explain that the total gross income Mr N would commute would be greater than the additional lump sum he received.
  - However, from reviewing Mr N's particular case in detail, the Adjudicator could not see he had suffered a financial loss; Mr N was due to receive a greater net income through Resettlement Commutation than he would have done if he had not opted to take Resettlement Commutation. As such, the Adjudicator believed it was more likely than not that Mr N would have opted for Resettlement Commutation whether he had received further information about it.
  - The Adjudicator agreed that Veterans UK's offer to unwind the Resettlement Commutation may not be practical. However, the Adjudicator was satisfied that Veterans UK need not do anything further.
24. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N emphasised that his total gross commuted income from Resettlement Commutation is £37,705.02. He has evidenced that the additional lump sum he received through Resettlement Commutation was not invested. Instead, it was spent on home improvements and holidays that could have waited. Mr N emphasises that

he therefore would not have taken Resettlement Commutation had he known he would be financially worse off in the long-term.

25. Mr N adds that his additional lump sum under Resettlement Commutation was due to be £37,705.02. He accepts that the Scheme has reduced this amount in line with guidance from the Government Actuary Department. He also accepts that the amount is reduced because he is receiving it early, and that the reduction offsets the risk to the Scheme. However, he does not believe he ought to repay £37,705.02.
26. Mr N's further comments 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**

27. Mr N believes he will be worse off financially, long-term, as a result of accepting Resettlement Commutation. However, I do not agree.
28. All parties agree that Mr N's total commuted gross income for Resettlement Commutation will be £37,705.02. As this is more than the £32,664 additional lump sum he gains from Resettlement Commutation, Mr N believes he is worse off.
29. However, the £32,664 has been paid as a tax-free lump sum. It is therefore inappropriate to compare it with the figure of £37,705.02. The net total income Mr N will commute under Resettlement Commutation is £30,163.79. As this is lower than £32,664 he has not suffered a financial loss.
30. Mr N says the Scheme has reduced his gross income by £37,705.02 as a result of Resettlement Commutation. As such, he says that the Scheme will have regained this money by the end of the 5.5205 years, and so he must be repaying it. However, this is not completely true. Instead, overall, less tax will be paid on Mr N's benefits from the Scheme, and this is how Mr N is able to benefit whilst simultaneously the Scheme does not suffer.
31. As such, I am not satisfied that Mr N has suffered a financial loss as a result of accepting Resettlement Commutation. I do not uphold his complaint and I believe Veterans UK's original offer of £500 is reasonable. I will leave it to Mr N to decide if he wishes to contact Veterans UK and accept this offer.

**Anthony Arter**

Pensions Ombudsman  
5 June 2018

## Appendix

*A breakdown of Mr N's Scheme gross benefits with BDF service included, showing initial and Resettlement Commutation options:*

Initial pension:

Income = £13,582.31

Lump sum/terminal grant = £40,746.93

Resettlement Commutation:

Maximum terminal grant available = £72,036

Additional lump sum = £31,289.07

Income after commutation = £7,039.77 (a total reduction of circa £37,000 by age 55)

*A breakdown of Mr N's Scheme gross benefits without BDF service included, showing initial and Resettlement Commutation options:*

Initial pension:

Income = £13,124

Lump sum/terminal grant = £39,372

Resettlement Commutation:

Maximum terminal grant available = £72,036

Additional lump sum = £32,664 (**not subject to tax**)

Income after commutation = £6,293.96

*A breakdown of how abatement affects Mr N's Scheme gross benefits and gross FTRS income (nb: BDF service not included, abatement applied first, then Resettlement Commutation applied):*

Income = £13,124

Abatement = £7,155.92

Income after abatement = £5,968.08

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Income after Resettlement Commutation of £6,830 = -£861.96

Reduction to Mr N's FTRS income = £71.83 per month