

Ombudsman's Determination

Applicant	Mrs S
Scheme	Armed Forces Pension Scheme (The Scheme)
Respondent	Veterans UK

Outcome

1. I do not uphold Ms 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 S' complaint concerns the payment of her late husband's death benefits. She is dissatisfied that Veterans UK paid the death benefits to her late husband's friend instead of using its discretion to pay her the benefits.

Background information, including submissions from the parties

4. Mrs S' husband was a Sergeant (**Sgt**) in the Armed Forces and was a member of the AFPS 05. In 2013, prior to being deployed to Iraq, Sgt S was advised to complete a death benefit lump sum nomination form (**the form**). At the time Sgt S completed the form, he was single and he listed his friend as the sole beneficiary.
5. In April 2015, Sgt S was automatically transferred to the Armed Forces Pension Scheme 15 (**AFPS 15**). Sgt S married Mrs S on 19 August 2016 and on 3 October 2016, he visited his unit orderly room and updated his details, naming his wife as the beneficiary of his will. On 17 October 2016, Sgt S tragically died in a road traffic accident.
6. On 16 November 2016, Veterans UK informed Mrs S that although she was Sgt S' widow and he had made her the beneficiary of his will, as he had not updated his death benefit nomination form, the 2013 form he had completed remained valid. Therefore, Veterans UK could not pay the death benefit lump sum to anyone other than the nominee on the form.
7. Dissatisfied with the contents of the 16 November 2016 letter, Mrs S raised a complaint through both stages of the Scheme's internal dispute resolution procedure

(IDRP). Mrs S was unhappy that although she had informed Veterans UK of the fact that she was Sgt S' widow and was financially dependent on him prior to his death, Veterans UK did not agree to pay her the death benefit lump sum.

8. Veterans UK did not uphold Mrs S' complaint and in the IDRP stage one response dated 16 December 2016 it said:

"The DO has reviewed your case thoroughly taking into account all the available evidence. While he sympathises with your situation and appreciates the issues you have raised, he is satisfied that your case has been administered properly. An existing AFPS 05 nomination remains extant under AFPS 15 rules until a new one is made. He stresses that the regulations do not allow, the administrators of the schemes, any discretion, regardless of how unfair it appears. Regrettably the scheme rules must be applied."

9. Unhappy with the stage one response, Mrs S appealed through stage two of the IDRP. In the stage two response dated 14 July 2017, Veterans UK stated:

"Your late husband... at the time of signing his death benefit nomination form [was] a member of AFPS 05 and as such would have been able to access the booklet "Your Pension Scheme Explained." This booklet states at the bottom of Page 18 that a Death Benefit Nomination should be reviewed upon a change in circumstances (for example: marriage) and also states that the completion of a Service Will does not establish entitlement to the pension lump sum."

10. Veterans UK informed Mrs S that the relevant Regulations applicable to her complaint were Regulations 78 and 84 of the Armed Forces Pension Scheme 2014 (**the 2014 Regulations**). It explained that the said Regulations made the same provision as Rules E.15 and E.21 of the Armed Forces Pension Scheme Order 2005 (**the 2005 Order**).
11. It explained that when Rule E.15 of the 2005 Order was originally enacted in 2005, it conferred a wide degree of discretion on the Secretary of State to decide who should receive the lump sum, with the possible beneficiaries being the nominee, a surviving spouse/partner or the estate of the member. However, Rule E.15 was amended in 2011 and only allowed the lump sum death benefit to be paid to the nominee if there was one. It explained that if there was no nominee, the lump sum had to be paid to the spouse.
12. Further, Regulation 78 of the 2014 Regulations only gave the scheme manager discretion as to whether or not a death benefit is payable. Once it was decided that a death benefits was payable, it had to be paid in order of priority and the 2014 Regulations state that if there is a valid nomination form, it takes priority over any other category of potential beneficiaries.
13. Dissatisfied with the responses she received from Veterans UK, Mrs S, through her representative, referred her complaint to this Office. As part of her submissions, Mrs S provided copies of documents she had sent to Veterans UK in support of her

complaint including, a letter from Sgt S' colleague, who was present in the unit orderly room at the time that he updated his personal details.

14. Veterans UK provided this Office with its formal response to Mrs S' complaint. It relied on the decisions made at both stages of the IDRPs and made the following points:
- Sgt S' Unit confirmed that there is no documentary evidence that it had informed him that he should consider amending his nomination form. Personnel at his Unit recalled informing him of the requirement to change his will but could not recollect if they had also advised that he should consider amending his nomination form.
 - The booklet AFPS 05 "Your Pension Scheme Explained" containing the Pens Form 2 signed by Sgt S, has a number of paragraphs detailing the reason for the nomination. It also explains that whilst a will would add to evidence that Veterans UK would consider, it would not on its own entitle the recipient of the service will, the pension lump sum. It also advises individuals that it is their responsibility to review their nomination from time to time, especially where there has been a change in their personal circumstances.
 - A Defence and Instruction Notice was also issued in July 2013. This was a specific reminder to all AFPS 05 and RFPS 05 members of the importance of completing a nomination form.
 - Since Sgt S' death, changes have been put in place to make it easier for the Service Person to access their current details, review their form and make any necessary changes.

Adjudicator's Opinion

15. Mrs 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:-
- Mrs S believes that Veterans UK has discretion to decide how the death benefit lump sum should be paid. She considers that its decision to pay the death benefit lump sum to the nominee on the form is perverse and unfair.
 - Veterans UK is the Administrator of the Scheme and its role is to ensure that the Scheme is administered in accordance with the Rules that govern it. Although Sgt S was initially a member of the AFPS 05, he was transferred to the AFPS 15 in 2015. Therefore, his membership in the Scheme was governed by the 2014 Regulations. Regulations 78 and 84 of the 2014 Regulations (Appendix 1) set out how the death benefit lump sum should be paid.
 - Regulation 78 of the 2014 Regulation states:
“(1) On the death of a member, the scheme manager may pay a lump sum to-

- (a) the person or persons nominated by the member in accordance with regulation 84 (nomination for lump sum death benefits);
- (b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under regulation 65 or 67 (surviving spouses' and civil partners' pensions and other adult dependants' pensions) in respect of the member;

- Regulation 84 of the 2014 Regulations states:

“Nominations for lump sum death benefits

84.- (1) For the purposes of regulation 78 (death of a member: lump sum benefit), a member may nominate-

(a) one or more individuals;

(3) A nomination must be made by signed notice in writing to the scheme administrator in such form as the scheme manager may require or is willing to accept.

(4) A member may revoke or alter a nomination by a further signed notice in writing to the scheme administrator in such form as the scheme manager may require or is willing to accept.”

- She sympathised with Mrs S that she was in an unfortunate situation, but, in her view, there was no maladministration by Veterans UK. Therefore, she did not consider that I would uphold this complaint.
- Veterans UK are bound by the Regulations of the Scheme and in her opinion, Regulations 78 and 84 make it clear that the death benefits need to be paid to the person nominated on the form and only if there is no one nominated, then the payment may be paid to a spouse. She did not consider that the Regulations allowed the scheme manager to use its discretion to overlook the nomination form and pay the death benefits to an alternative individual.
- It was appreciated that Mrs S said that Sgt S updated his will and made her his sole beneficiary after their marriage. However, that alone was not sufficient to make the nomination form invalid. Regulation 84 of the 2014 Regulations, provides details of when a nomination is invalidated and an updated will was not one of the reasons.
- The nomination form, although completed while Sgt S was a member of the AFPS 05, was still valid when he transferred to the AFPS 15 as a result of Part 6 - of the Armed Forces (Transitional Provisions) Pensions Regulations 2015 (Appendix 2). This is because he had not completed a new nomination form when he was automatically transferred to AFPS 15.
- It was noted that Veterans UK had said that personnel at Sgt S' unit could not recall if they had informed him to update his death benefit nomination form at the time that he was informed to update his will. However, the responsibility to amend and

update the nomination form is the responsibility of the member and not that of Veterans UK or any other party. Therefore, it was for Sgt S to revoke the nomination he had previously made and list Mrs S as the beneficiary of the death benefit in the event of his death.

- The changes that have been implemented to make it easier for the Service Person to access their current details and make any necessary changes, is helpful for members whose personal circumstances have changed. In her opinion, these changes not being in place at the time that Sgt S updated his details, did not mean that there was maladministration by Veterans UK. Sgt S had received information previously, that informed him that it was his responsibility to update any changes in his personal circumstances and this included amending his death benefit nomination form.
- It was appreciated that this situation has caused Mrs S significant distress and inconvenience. However, she did not consider that I would agree that this situation resulted from Veterans UK's maladministration.

16. Mrs S did not accept the Adjudicator's Opinion. Below is a summary of her response:

- Much has been made of Sgt S' responsibility, rather less of the Ministry of Defence (**MOD**) and the context in which it operates. This underpins the division of responsibility and what the MOD should do to discharge its duties to its own people.
- The MOD routinely deploys its personnel into harm's way. As such, it has a special duty to look after them and their dependants properly, and it is not one to be worn lightly.
- That duty is enhanced if such an organisation seeks to limit its own discretion and in so doing impose rules on its personnel that are both at odds with normal practice elsewhere and its own previous practice. Particularly when they have the potential for such a catastrophic impact on an unwitting third party, as has happened in this case.
- The Adjudication does not give sufficient weight to this context and the extent of the responsibilities that the MOD must discharge. Sgt S was not provided with the right information at the right time and, there was no proper process in place to deliver it.
- How is it that a man who self-evidently tried to do the right thing by his wife but was ultimately unable to fulfil his intent? Did he fail his wife or was he failed by an inadequate process and understanding of its own rules by staff at all levels?

- Veterans UK relies heavily on the various booklets and online publications that were 'available' to Sgt S to inform him of his responsibilities. But the MOD had a duty which went well beyond simply publishing the information – which is lost in the plethora of other online information, and expecting people to find it. It should have drawn the information directly to the attention of those affected and kept them abreast of their responsibilities. This is what other public sector organisations do routinely. The MOD has plenty of tools for doing so, it simply fails to use them.
- It is clear that staff at all levels were not aware of the rules or the consequences of getting it wrong. This is what led to the current situation and not a failure by Sgt S. He was unaware of the necessity of updating the form.
- The information that was provided was insufficient. Personnel were advised that it was important to complete a nomination form. But the reality is that often it would be better not to – it is frequently superfluous and risks them becoming a victim, like Sgt S. None of the available information informed Sgt S of the catastrophic consequences of not updating the nomination form.
- The pamphlet does tell people that keeping the nomination form up to date is their responsibility. Personnel are told frequently that things are their responsibility. But the consequences of not acting are not usually grave and can be put right with a prompt. Nevertheless, routine individual documents are checked annually, to bring things up to date. Yet there was no prompt for a critical document. This was a failure of process.
- Taking all of the evidence into consideration, the very strong probability is that the unit staff did not inform Sgt that he should update his nomination form. If they had done so, we would not be in this situation now. They should have informed him, they were under a duty to do so. How was Sgt S supposed to be able to fulfil his responsibilities if his unit experts charged with such a duty did not assist?
- The Opinion states that, changes made to process to allow personnel to access their current details since this case has come to light, are not evidence of maladministration before the change. Taken in isolation that might be the case. However, taking a holistic view, it is not. The widespread evidence of complete lack of knowledge in the chain of command about the rules amongst those who should have known, coupled with the lack of elementary steps to prevent a problem arising, shows a clear picture of failure or even a lack of a discernible process. This justifies the charge of maladministration.
- There is nothing in the Regulations that explains what makes a valid nomination. There is provision for how a member revokes it but, that relates to the member, not the scheme administrator – who is empowered to accept a nomination in such form as he 'may be willing to accept.' In other words, Veterans UK is empowered not to accept the nomination form and not to pay out, based not only on whether the form was correctly signed and dated but based on the whole circumstances surrounding it.

- The Opinion states that the responsibility to update the nomination form is the responsibility of the member and not Veterans UK. This is true but, it is not an absolute. It depends on process and does not absolve Veterans UK of all responsibility to look after their people, in cases where that process has failed.
17. The complaint was passed to me to consider. Mrs 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 Mrs S for completeness.

Ombudsman's decision

18. Mrs S remains of the view that following Sgt S' death, the death benefits should be paid to her instead of the person on the nomination form. She asserts that the nomination form not being updated resulted from system failures and not as a result of Sgt S' actions. Therefore, the scheme manager should use his discretion in this case and disregard the nomination form.
19. This is indeed an unfortunate situation Mrs S is in, and undoubtedly it has and continues to cause her significant distress and inconvenience. However, I do not find that the Regulations permit Veterans UK to do as Mrs S wishes. I do not find that the Regulations allow Veterans UK to disregard a valid nomination form, despite the unfortunate circumstances of this case.
20. Sgt S completed the nomination form prior to his deployment to Iraq. He updated his will subsequent to his marriage to Mrs S, making her the beneficiary. Mrs S asserts that it is more probable than not that Sgt S would have updated his nomination form at the same time as his will, had he been informed that he should do so. She asserts that Veterans UK owed a duty to Sgt S, to inform him of the importance of updating the nomination form.
21. I accept that Veterans UK has a duty to look after its members and their dependants. However, I find that it does so by offering its members a pension and the opportunity to leave a death benefit to their chosen beneficiary.
22. I appreciate that we cannot be certain that Sgt S was informed by his unit staff that he should have updated his nomination form. However, Mrs S has said that although personnel were advised to complete a nomination form, the reality was that it was better not to, as it risked them becoming a victim. Therefore, as Sgt S was newly married at the time that he updated his will, and he was not imminently being deployed to a war zone, he may have made the decision not to update the nomination form at that time. While I appreciate that Sgt S' death was untimely, I find that ultimately, it was his responsibility to remember to update his death benefit form, if he had intended to change the beneficiary.

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23. Therefore, while I sympathise with the situation Mrs S is in, I do not find that Veterans UK is responsible. As the Administrators of the Scheme Veterans UK must administer the Scheme in accordance with the Regulations. I do not find that the Regulations permit Veterans UK to use its discretion to disregard the nomination form and, pay Mrs S the death benefit. Therefore, I am unable to direct it to do so.

24. As a result, I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
29 June 2018

Appendix 1

The Armed Forces Pension Regulations 2014

Death of a member: lump sum benefit

78.-(1) On the death of a member, the scheme manager may pay a lump sum to-

(a) the person or persons nominated by the member in accordance with regulation 84 (nominations for lump sum death benefits);

(b) if there is no person within sub-paragraph (a), to any person who is entitled to a pension under regulation 65 or 67 (surviving spouses' and civil partners' pensions and other adult dependants' pensions) in respect of the member;

(c) if there is no person within sub-paragraph (a) or (b), to any person who, but for the application of regulation 65 or 67 would be so entitled or to whom a pension may be awarded; or

(d) if there is no person within sub-paragraph (a), (b) or (c), to the member's personal representative.

(2) If the scheme manager decided to pay all or part of the lump sum in accordance with a nomination then-

(a) the payment is to be made to them in such proportions as the member has specified in the nomination; or

(b) if no proportions are so specified, in such proportions as the scheme manager considers appropriate.

(3) This regulation does not apply if-

(a) the member is-

(i) a pensioner member, who is not also a deferred member or an active member; or

(ii) a pension credit member who dies after any benefits attributable to a pension credit have become payable and who is not also an active member, a deferred member or a pensioner member; and

(b) the death takes place-

(i) more than 5 years after the member's pension becomes payable; or

(ii) after the member's pension has been commuted under regulation 116 (commutation of small pensions) or 60 (option for members in serious ill-health to exchange whole pension for lump sum).

Nominations for lump sum death benefits

84.-(1) For the purposes of regulation 78 (death of a member; lump sum benefit), a member may nominate-

- (a) one or more individuals;
- (b) one incorporated or unincorporated body; or
- (c) one or more individuals and one incorporated or unincorporated body.

(2) A nomination may specify how payments are to be apportioned between-

- (a) two or more individuals; or
- (b) one or more individuals and one incorporated or unincorporated body.

(3) A nomination must be made by signed notice in writing to the scheme administrator in such form as the scheme manager may require or is willing to accept.

(4) A member may revoke or alter a nomination by a further signed notice in writing to the scheme administrator in such form as the scheme manager may require or is willing to accept.

(5) the nomination of a person is invalid-

(a) if-

(i) the person nominated is an individual who was the spouse, civil partner or other adult dependant of the member at the date the nomination was made and is not the spouse, civil partner or other adult dependant of the member immediately before the member's death; and

(ii) the member did not confirm the nomination by notice in writing to the scheme administrator after the marriage, civil partnership or adult dependency ended; or

(b) if the person nominated is an individual who predeceases the member.

(6) If a person nominated is convicted of the offence of murder of the member, the person's nomination is to be treated as invalid from the member's death.

(7) If a person nominated is convicted of manslaughter or any other offence (apart from murder) of which the unlawful killing or wounding of the member is an element, the scheme manager may determine that the nomination is to be treated as invalid from the member's death.

Appendix 2

The Armed Forces (Transitional Provisions) Pensions Regulations 2015

Part 6

Miscellaneous transitional provisions

Nomination under the AFPS 2005 continues to have effect

45.—(1) This paragraph applies if a transition member with continuity of service has not nominated a person under the AFP Regulations 2014 to receive a lump sum death benefit under the AFP Regulations 2014.

(2) An existing nomination has effect as if made under the AFP Regulations 2014 until the transition member makes a nomination under the AFP Regulations 2014.

(3) In this paragraph, “existing nomination” means a nomination which—

a) was made for the purpose of the AFPS 2005; and (b) as at T’s transition date, had effect under the AFPS 2005.