

Ombudsman's Determination

Applicant	Mr S
Scheme	Armed Forces Pension Scheme 1975 (the Scheme)
Respondent	Veterans UK

Outcome

1. Mr S' complaint against 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, Veterans UK shall pay Mr S £500 for the significant distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S is complaining that he has been denied the opportunity to take advantage of the "Life Commutation Scheme" and exchange (commute) some of his annual pension for a tax free lump sum. He also states he did not receive any literature informing him that the Scheme Rules had changed and removed this option.
4. Mr S is also unhappy that the Scheme's website contained incorrect and misleading information which he says he relied upon when making certain financial decisions.
5. Mr S believes he has been financially disadvantaged by not being able to exchange some or all of his annual pension for a tax-free commutation lump sum of £79,368.

Background information, including submissions from the parties

6. On 4 March 1958, Mr S joined the Army and became a member of the Scheme. He retired on 3 September 1995 when he reached age 55.
7. Mr S says that upon leaving the Scheme he was employed as a "Retired Officer" until 2003 and was Chairman of the Retired Officers' pay committee. As such, he kept up to date with service pensions and advised retiring officers about various claim forms.

8. The Scheme Rules in force when Mr S retired in 1995 stipulated that Mr S could exchange some or all of his pension benefits for a one-off tax-free lump sum as long as he was in service before 31 March 1978, and his application to exchange some of his pension benefits for a tax free lump sum was made before the age of 89.
9. In 2018, sadly, Mr S' wife passed away. He says at this time he wanted to raise some capital.
10. On 17 April 2018, Mr S contacted the Scheme's Pensions Division requesting information about exchanging some of his pension benefits for a tax-free lump sum, however, the Scheme's Pensions Division said the "Life Commutation Scheme" no longer existed. Mr S requested confirmation of this in writing.
11. In response, Veterans UK wrote to Mr S on 8 May 2018, saying:

“...there is no scope under the Scheme Rules for you to obtain Life Commutation. Scheme Rules under AFPS 75 and Attributable Benefits Scheme Warrant 2010 state that “Life Commutation Scheme” should be applied for before leaving service.”
12. In addition, MOD have released a defence instruction 2009DIN01-054 on HM Revenue & Customs (HMRC) Life Commutation rules. Any payment made after a pension is in payment will be regarded as an unauthorised payment, be liable to tax and attract a significant tax charge for both the scheme member and administrator. As you left before the Finance Act 2004, MOD confirm that “Life Commutation Scheme” is not available as his pension was already in payment and would attract a charge”.
13. On 11 May 2018, Mr S submitted an appeal under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
14. On 20 May 2018, Mr S completed an AFPS Form 11 (**Form 11**), which was an application to exchange part of his pension for a tax-free lump sum.
15. On 18 July 2018, Veterans UK wrote to Mr S confirming his appeal had not been upheld for the following reasons:-
 - A-Day introduced tax simplification rules which came into effect on 6 April 2006. Advice received from HMRC at the time “implied” that Life and Resettlement Commutation taken under the Scheme was exempt, qualifying for transitional protection up to and including 2020. However, HMRC later confirmed that this advice was wrong.
 - HMRC was responsible for publicising any changes relating to A-Day. However, in 2010 Veterans UK were informed by HMRC that the guidance it had provided to the Scheme in 2004 was wrong. Revised guidance was provided in 2010, on behalf of Veterans UK, in the form of a Scheme newsletter sent to the home addresses of all retired scheme members with pensions in payment.

- This newsletter contained important information on the Scheme's changes. This information was repeated in subsequent newsletters sent in 2012 and again in 2015.

A-Day information

16. The tax rules applicable to pensions changed significantly on 6 April 2006 when the Finance Act 2004 was enacted. This date became known as 'A-Day'.
17. From A-Day, the tax regime was simplified with the previous, prescriptive system of eight pension taxation regimes being integrated into a single one, applying to all registered pension schemes.
18. A-Day limited the types of payments that could be made from a registered pension scheme without incurring tax penalties. The ones permitted by the Finance Act 2004 are known as authorised payments while those that were not permitted are known as unauthorised payments. Unauthorised payments are subject to separate tax charges.
19. HMRC provided Veterans UK with information and advice regarding the likely impact A-Day would have on the Scheme. It was not until 2010 that it was discovered this information was wrong.
20. Veterans UK says that it had no discretion to act outside the Scheme's Rules as to do so would trigger an unauthorised payment and a tax charge for both Mr S and the Scheme. Mr S' application was therefore declined.
21. However, the deciding officer acknowledged that it was not clear on Form 11 that "Life Commutation Scheme" was not applicable for retired members with a pension in payment. Veterans UK had contacted the relevant department to have a caveat added to Form 11 to this effect, and to make amendments to the Scheme's website.

Adjudicator's Opinion

22. Mr 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:-
 - Given the advice provided by HMRC at the time of A-Day, Veterans UK had no reason to issue any correspondence to Mr S until transitional protection ceased in 2020. Once Veterans UK became aware that the guidance HMRC had provided in 2006 was wrong, it provided new and additional guidance in the form of three separate newsletters, which were sent to all retired members with pensions in payment.
 - Each newsletter contained advice under the heading "Life and Resettlement Commutation", and additional website addresses were provided with reference to where to find further information, and was sent to all retirees home addresses

which were held by Equiniti, the third-party administrator responsible for paying the Scheme's pensions. The address used for Mr S was the one currently in use.

- On the balance of probabilities, it was more likely than not that Mr S would have received these newsletters and would have been aware of the new rules relating to the "Life Commutation Scheme". Unfortunately, the information held on the Scheme's website contradicted this, however the Scheme's Rules had changed. and the ability to take "Life Commutation" had ceased with the introduction of tax simplification.
- Veterans UK was given wrong advice by HMRC in 2006. However, as soon as it was aware the advice was wrong, it sent out amended guidance to all retired members with pensions in payment, confirming the Scheme Rules had changed. Through no fault of Veterans UK, correct advice was provided only after the window of opportunity to exchange annual pension for a tax free lump sum had closed.
- Whilst Veterans UK have since correctly withdrawn all reference to the "Life Commutation Scheme" from its website, this should have happened as soon as HMRC corrected its advice to the Scheme.
- Although Mr S claims he has suffered financial injustice as Veterans UK have denied him the opportunity of a tax-free cash lump sum of £79,368, he has continued to enjoy the benefits of his pension.
- There is no dispute that Veterans UK failed to keep its website up to date and information regarding Life Commutation was only amended in June 2018. This was some 12 years after the Scheme Rules changed. Further, that Form 11 was readily available for Mr S to incorrectly apply for an exchange of his pension for a tax free lump sum. These failings amount to maladministration and contributed to Mr S suffering a loss of expectation resulting in significant distress and inconvenience. In recognition of this, Veterans UK should pay Mr S a sum of £500.

23. Veterans UK accepted the Adjudicator's Opinion, but Mr S did not and made the following comments:-

- The Veterans UK website continued to allow members to download Life Commutation rates, and the online application form, Form 11. Its website stated the scheme was to be phased out in 2020. The MOD regulations stated that the "Life Commutation Scheme" was still in existence.
- The Veterans UK newsletters are of no relevance. The sections in the newsletters about AFPS75 matters did not mention commutation. Instead it was mentioned in the sections headed AFP05 and RFPS, but he would have had no reason to look at these two sections.

- He accepted that the “Life Commutation Scheme” could not now be implemented, but he did not receive any warning about the Scheme changes, therefore, he was denied the opportunity to exchange part of his pension for a tax free lump sum before the Scheme Rules changed. As a result, he has suffered a financial loss of £79,368 and requires compensation to reflect this loss; the £500 offered was totally inadequate.

24. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman’s decision

25. A-Day introduced tax simplification rules which came into effect on 6 April 2006. Prior to the introduction of these changes, HMRC had provided Veterans UK with incorrect advice. It was not until 2010, after the introduction of these changes, that HMRC provided Veterans UK with amended advice, following which, the ‘Life Commutation Scheme’ had to be withdrawn immediately. Mr S says that had he been informed that the ability to commute some of his annual pension for a tax-free lump sum was to be removed, he would have applied for it sooner. In considering this point, whilst I have sympathy for Mr S’ position, and find it plausible that he would have taken the opportunity to commute his pension sooner had he known, I do not find that Veterans UK’s actions in this respect amounted to maladministration. Veterans UK relied on HMRC to provide the correct advice and because it was misadvised, it was unable to offer any of its members the opportunity to take advantage of the Scheme before it closed.
26. The question is whether Veterans UK issued adequate and appropriate guidance about the Life Commutation Scheme once HMRC had corrected its advice. Veterans UK provided new and additional guidance in the form of three separate newsletters, which were sent to all retired members with pensions in payment. Mr S has said that these newsletters did not contain information relevant to his situation. I acknowledge that no reference was made to the “Life Commutation Scheme” under the heading AFPS075 in the 2010, 2012 and 2015 newsletters and understand why Mr S therefore feels that information on this point was not adequately drawn to his attention.
27. Having considered the newsletters, I agree that Veterans UK’s communication on the “Life Commutation Scheme” could have been clearer.
28. Mr S also says that Veterans UK’s website indicated, at the time of his application, that the “Life Commutation Scheme” was still available.
29. From the evidence I have seen it is clear that Veterans UK failed to keep its website up to date, information about Life Commutation was only amended in June 2018, which was 12 years after the Scheme Rules had changed. In my opinion, the lack of clarity in the newsletters and the misinformation on the website would have given rise

to the expectation that the “Life Commutation Scheme” was still available. As such it reinforced a message that was wrong and gave Mr S an expectation that could not be met.

30. Mr S accepts that the “Life Commutation Scheme” could not be implemented at the time of his application as the Scheme Rules had changed. The Scheme cannot act outside of its own rules and doing so would have resulted in a tax charge for both Mr S and the Scheme. Whilst I have every sympathy for the position in which Mr S finds himself, I do not agree that he has suffered a financial loss of £79,368, as he has continued to enjoy the benefits of receiving his pension, albeit not in the form he would have preferred.
31. I consider that the communication errors wrongly led Mr S to believe the Life Commutation Scheme remained an option, causing him significant distress and inconvenience when he learned of the correct position.
32. I therefore uphold Mr S’ complaint in part.

Directions

33. Within 21 days of the date of this Determination, Veterans UK shall pay Mr S £500 for the significant distress and inconvenience caused to him.

Anthony Arter

Pensions Ombudsman

24 July 2019