

Ombudsman's Determination

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

Outcome

1. Mr E's complaint against Veterans UK is partly upheld. To put matters right, Veterans UK shall pay Mr E £1,000 in recognition of the serious distress and inconvenience caused.

Complaint summary

2. Mr E has complained that he was given incorrect Pension Forecasts by Veterans UK, including one which referred to him receiving two lump sums and based on this information he took out a number of significant loans. He has asked for compensation, due to the stress caused and because he has been left in financial hardship.

Background information, including submissions from the parties

3. Mr E was in the Army and a member of the Scheme until he took redundancy in January 1995. The Scheme is governed by the Armed Forces Pension Scheme 1975 Regulations (**the Regulations**).
4. On 22 January 1995, Veterans UK confirmed his pension benefits as:
 - A pension of £7,203.12 a year from March 1995.
 - A Terminal Grant (lump sum) of £21,609.42.
 - A Special Capital Payment (redundancy payment) of £47,917.20.

5. In June 1995, Mr E chose to use the Resettlement Commutation option to increase his lump sum by a further £26,967.88 by commuting part of his pension. This option resulted in his pension payable being reduced (referred to as abatement) until age 55 (2013), to re-pay the additional amount taken as a lump sum.
6. In June 1996, Mr E re-joined the Army and the Scheme. This meant that the Resettlement Commutation was recovered by abatement against Mr E's service pay and not his pension payments. In Mr E's case the repayment was £3,359.12 a year until he was age 55. He continued to re-pay the Resettlement Commutation by abatement to his service pay until 2007 when a change in the payroll system meant that the abatement ceased in error. At that time there was an outstanding amount of £17,751.67 owed by Mr E.
7. In 2005, an Offer to Transfer (**OTT**) was made to members of the Scheme. Briefly, this was an exercise where members of the Scheme were provided with the option to stay in the current Scheme, the 1975 Section (**AFPS 75**), or transfer to the new Scheme, the 2005 Section (**AFPS 05**).
8. During the OTT exercise, members were provided with a personal benefit statement including a Pension Forecast, a Scheme Booklet (**Booklet**) and a guide to the OTT exercise. This explained the differences between the two Schemes. The material available at the time also included the MMP116 booklet "Armed Forces Pension Scheme 05 Reemployment" (**MMP116**) and MMP129 "Transferring Benefits" (**MMP129**).
9. The MMP116 said "If pension benefits have come into payment they are not transferable nor can they be aggregated."
10. Veterans UK has said it was later established that during the OTT exercise Mr E was given an incorrect Pension Forecast. Mr E then reviewed his options, took advice and decided to reverse his decision to transfer to the AFPS 05. He remained in the AFPS 75.
11. On 5 October 2011, Mr E was sent a Pension Forecast by Veterans UK. This said that his forecasted benefits on 7 December 2015, were:-

"A Service Pension at the rate of £34,640.66 a year, payable upon discharge/retirement.

A tax free lump sum of £103,921.98 = to 3 x annual service pension. You will be entitled to another Terminal Grant on your 65th birthday."
12. This Pension Forecast was later established to be incorrect as Mr E was not entitled to both a tax free lump sum at retirement and then a further Terminal Grant (a second lump sum) at age 65. He was only entitled to his pension and one tax free lump sum of three times his annual service pension at retirement.
13. The Pension Forecast had the following warning:

"This information is not a validated Statement of Pension Benefits. It is a Pension Forecast based on the information currently available to the Pensions Office. Every care is taken to ensure that the information given in the Pension Forecast is correct and in accordance with current regulations. However, the actual rates may differ when benefits become due should this Pension Forecast subsequently be found inaccurate, the Ministry of Defence does not accept liability for it, nor is the Ministry bound, by reason of anything state therein, to pay a particular sum at a future date if you decide to enter into any financial commitment based on this Pension forecast, you will do so at your own risk."

14. Mr E has said that in 2011, based on the Pension Forecast stating he would receive a lump sum and an additional Terminal Grant, he had made significant financial arrangements to help his widowed Mother. He re-mortgaged and took out three loans.
15. Mr E has said he used the Scheme's online pension calculator, on 29 October 2015, to calculate his pension benefits. This showed a pension of £39,012 and a pension lump sum of £117,036.
16. On 6 November 2015, Mr E was provided with a Pension Forecast by Veterans UK. This contained the same warning (see paragraph 13), and this said his forecasted benefits from 7 December 2015, were:

"£37,656.62 Annual Service Retired Pay

£78,793.97 Terminal Grant"
17. Mr E did not consider the lump sum figure provided by Veterans UK was correct, so he contacted Veterans UK as he believed he was due two lump sum payments as set out in the October 2011 Pension Forecast. He also argued, based on the online pension calculator which showed his lump sum was £117,036, that he was due two payments of this figure.
18. In May 2016, Veterans UK wrote to Mr E and confirmed his annual pension was £37,656.62. It explained that he was only due one lump sum. Veterans UK also explained that it had previously been agreed that, instead of the residual abatement amount due for the Resettlement Commutation (which stopped in error in 2007) being taken from the lump sum, an amount of £3,259.12 a year would be deducted from his service pension, as this amount was still outstanding. Veterans UK said this amount would be deducted from his pension from 1 May 2016 until 26 March 2021. This meant his pension of £37,656.62 would be reduced by £3,359.12 to £34,297.50 a year until 2021.
19. Mr E received his pension entitlement of £37,656.52 a year from 2015 and a lump sum of three times this amount of £112,969.89. He was paid £91,360.14 which was his lump sum due less the lump sum he was paid in 1995.

20. In May 2016, Mr E complained and said:-

- He had made financial decisions based on the information in the previous Pension Forecasts, including re-mortgaging and taking out loans in 2011.
- He had suffered considerable and debilitating stress as his retirement plans were based on the Pension Forecasts.
- When he re-joined the Army he did make some repayments which then stopped but the Statute of Limitations meant there should only be six year's repayments now.
- He wanted £250,000 in recognition of the distress and inconvenience caused by Veterans UK.

21. On 24 June 2016, Veterans UK replied to Mr E under Stage One of the Internal Dispute Resolution Procedure (**IDRP**) and said :-

- The Pension Forecast of October 2011 stated, in error, that Mr E was entitled to two lump sums, one at retirement and a Terminal Grant at age 65, but there was no further reference to receiving two lump sums in the OTT exercise or any other Pension Forecasts issued.
- Following the OTT exercise where Mr E had decided that all his service would be under AFPS 75, he had now received all the relevant lump sums that Scheme Regulations permitted.
- The Pension Forecasts contained a warning that Mr E would be entering any financial decisions at his own risk.
- The pension calculator screen print from October 2015 was prepopulated by Mr E so was not a valid statement of entitlement.
- Mr E had previously been paid a pension and lump sum in 1995. The value of the lump sum previously paid had to be taken into account when paying any further lump sums and the Regulations did not allow an individual to be compensated for the same period of service twice.
- Mr E was issued with the Scheme Booklet in the OTT pack. This clearly outlined the benefits payable and that he would only be due one tax free lump sum.
- When Mr E received the forecast in 2011 which quoted a benefit he would not have been expecting, the Terminal Grant in addition to the lump sum, he should have queried this.
- When Mr E re-joined the Scheme in 1996, he was required to pay £35,937.90 in respect of the Resettlement Commutation and only part of this was paid due to the abatement stopping in 2007. Mr E had therefore benefited since 2007 from an unreduced service pay due to the abatement stopping.

- It was accepted there has been maladministration as the Pension Forecast in October 2011 was incorrect, but as the financial values of the benefits were larger than the OTT forecast, it was not realistic for Mr E to anticipate pension benefits being paid twice for the same period of service.
- Mr E had been advised on various occasions that the abatement for the Resettlement Commutation would continue to be paid until he reached age 55. Mr E had the responsibility for telling Veterans UK about the payments stopping in 2007.
- Technically, the outstanding amount for the Resettlement Commutation should have been deducted from the final tax free lump sum, but in view of the circumstances it had been agreed to take this from his pension in payment over a period of years.
- It apologised for the error in the Pension Forecast and offered £500 for distress and inconvenience.

22. Mr E responded to Veterans UK and said in summary:–

- He had arranged his financial affairs, in good faith, based on the Pension Forecasts provided on in October 2011.
- The Pension Forecast in 2011 said he was due a tax free lump sum of £103,921.98 and that he would also be entitled to a Terminal Grant (lump sum) on his 65th birthday. So, in Autumn 2011, based on this information he had re-mortgaged and taken out a number of loans. He then had to sell his re-mortgaged property to pay off two of the loans.
- He has an outstanding debt that should be covered by Veterans UK and it should make a payment of £250,000 for maladministration. Alternatively, it should pay the second lump sum payment of £117,036, due on his 65th birthday, as stated in the Pension Forecast of 5 October 2011 and the online pension calculator.
- The letters received from Veterans UK from November 2015 onwards, regarding the amount due for the Resettlement Commutation and the lack of the second lump sum, had caused him stress. He had not received an apology or any sympathy.
- He was owed damages for misrepresentation, failure in a duty of care and gross negligence.
- He should not have to pay the Resettlement Commutation as the Statute of Limitations applied.

23. On 18 September 2017, Veterans UK issued Stage Two of its IDRP and said:-

- The Pension Forecast used a disclaimer stating that the information was not a validated Statement of Pension Benefits. Therefore, Mr E decided to enter into the financial commitments based on the Pension Forecast at his own risk.
- It agreed that the Pension Forecasts issued in 2011, 2015 and during the OTT exercise contained incorrect information as they did not take into account the fact that Mr E had already taken his pension benefits for the first period of service.
- Mr E was discharged on redundancy terms in 1995 and he was awarded a pension under AFPS 75, so this period of service could not count towards further accrual within the Scheme.
- In 2005, when members were considering their options under the OTT exercise, they were provided with an OTT pack which contained pension scheme booklets, an OTT booklet, a personal benefit statement including a Pension Forecast, MMP 116 and MMP 129 which included the statement "If pension benefits have come into payment they are not transferable nor can they be aggregated."
- There was no power under the Regulations to pay benefits to which an individual was not entitled.
- The warning in the Pension Forecast was expected to act as a warning to members but also to banks and loan providers that the information on the Pension Forecast was not a definitive prediction of a person's future pension benefits.
- The incorrect Pension Forecast, issued on 5 October 2011, showed a predicted Service Pension of £34,640 per year and a tax free lump sum of £103,921.98. Although it stated Mr E was entitled to receive a second lump sum (Terminal Grant) on his 65th birthday it did not provide any value for this payment or the mechanism for calculating the second lump sum.
- It would have been clear from the documents Mr E received in 2005, as part of the OTT exercise, that he was only entitled to one lump sum not two. It was reasonable to expect Mr E to have queried the Pension Forecast from 2011 as he should not have been expecting two lump sums to be paid at retirement.
- Mr E retired in 2015 and received an annual pension and a lump sum of £91,360.14 (being the lump sum due under AFPS 75 less the lump sum paid in 1995). This was not significantly different to the value Mr E could have expected based on the incorrect forecasts he received. It was not reasonable for Mr E to assume that he would receive pension benefits twice for the same period of service.
- Mr E said he had suffered actual financial loss as a result of the incorrect information, but he was able to sell a property to settle two of the loans he mentioned. Mr E also had the benefit of the lump sums and the unpaid abatement amounts not paid since 2007.

- Mr E was advised, as late as September 2006, that it was his obligation to pay the abatement due for the Resettlement Commutation until his 55th birthday yet Mr E did not query when the payments ceased less than a year later.
- An amount of £17,751.67 remained owing for the Resettlement Commutation and, as this was public money, it was required to seek repayment. The Debt Recovery section were considering the matter.
- Mr E was aware that members of the armed forces are not employees and do not have an employment contract. The Scheme, of which Mr E has been a member throughout his service career, is established by legislation and it is this legislation which provides for the benefits to which Mr E is entitled. The legislation does not provide for the Scheme to pay benefits which are not provided for under the Regulations and the Scheme administrator had no power to award these.
- It had sympathy for Mr E's personal position, but it was bound by the Regulations and it is not possible to award benefits to which he has no legal entitlement.
- It accepted the provision of incorrect Pensions Forecasts and information on several occasions amounted to maladministration and offered £750 for the distress and inconvenience caused.
- It was not reasonable for Mr E to have relied on one assertion that he was entitled to an unquantified lump sum on his 65th birthday without making further enquiries.

24. Mr E remained unhappy and referred his complaint to my Office. As part of the investigation Mr E confirmed:-

- He had taken out loans estimated at £98,000 and re-mortgaged for £210,000 in 2011. The re-mortgage was repaid following the sale of the property in 2016.
- He had received a number of letters where the benefits quoted were incorrect. He wanted compensation for maladministration, gross negligence of a Ministry of Defence (**MoD**) Contractor, and compensation for breaches of trust and duty of care that breaches the Military Covenant.

25. Veterans UK confirmed that the abatement for the Resettlement Commutation was stopped in error in 2007. This was due to be repaid by Mr E from May 2016 until May 2021 and it had been agreed this would be taken from his pension rather than from the lump sum paid when he retired. This had been stopped in March 2017, leaving a balance due of £17,751.67. This had been referred to its Debt Recovery section and Veterans UK confirmed it was "highly unlikely" that it will pursue recovery of the outstanding debt.

Adjudicator's Opinion

26. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by Veterans UK. The Adjudicator's findings are set out below:-

- The Adjudicator considered there was maladministration as Veterans UK had agreed that it provided incorrect information to Mr E. However, this did not give Mr E an automatic entitlement to receive higher benefits than were permitted under the Regulations.
- It was unreasonable for Mr E to rely on the misleading information in the October 2011 Pension Forecast when making such a large financial commitment of over £300,000. This was because the Pension Forecast was the only document that referred to two lump sums and the Adjudicator considered Mr E should have queried this or at least checked the value of the Terminal Grant at age 65 with Veterans UK.
- The Pensions Forecast issued in 2011 explained that it was not a validated Pension Statement and that any financial commitment based on this Pension Forecast, would be at Mr E's own risk. It was therefore Mr E's decision to proceed with the loans and a re-mortgage without checking the amount of the Terminal Grant.
- Even if Mr E was able to successfully argue he reasonable relied on the incorrect information about a second lump sum being payable, the loss was not irreversible. Mr E had sold his re-mortgaged house to pay off the loans. The Adjudicator considered that Mr E could use the lump sum of £91,360.14, which he received in 2015, to help towards any further outstanding debt from the loans in 2011.
- No comments would be made about Mr E's reference to additional compensation for gross negligence, breach of trust and duty of care because of the Military Covenant, as these were issues with his employer rather than the pensions complaint which was being considered.
- Mr E had not referred the issue of the Abatement in his complaint to TPO, however he will note the comments from Veterans UK that the Debt Recovery section were unlikely to recover the debt.
- Veterans UK have acknowledged it caused distress and inconvenience by issuing the wrong information and offered Mr E £750. The Adjudicator considered that Veterans UK should pay Mr E £1,000 in total, for serious distress and inconvenience as Mr E was sent the wrong Pension Forecasts over a number of years.

27. Mr E did not fully accept the Adjudicator's Opinion and he raised a number of new issues, including a request for the Adjudicator to stipulate that Veterans UK should meet with him. The Adjudicator has since explained that she was only looking at the

complaint referred to TPO and Mr E was welcome to contact Veterans UK direct for a meeting.

28. The complaint was passed to me to consider and Mr E provided his further comments which do not change the outcome.

29. Mr E said:-

- He had asked for the Pension Forecast in 2011, as he had an unconventional Army career and wanted to plan for his retirement and care for his elderly mother.
- He had suffered a financial loss, as he had to sell the family property to pay off the mortgage and to settle a loan. This was part of the financial planning based on the money he borrowed as a result of the Pension Forecast of 5 October 2011.
- He was expecting a Terminal Grant on his 65th birthday and it was reasonable for him to expect this to have been three times his annual service pension as “pledged” on 5 October 2011.
- He had paid all of his debt off except for one sum that was almost equivalent to a tax free Terminal Grant of 3 times his annual service pension.
- He was requesting compensation for maladministration and “cumulative stress” from November 2015.
- There was a misrepresentation, a failure in duty of care and gross negligence especially under the Military Covenant, but he accepts this may be beyond the scope of my Office.
- He wanted a proportion of the £250,000 that he was told by another third party that the MoD could expect if it sued their contractor for maladministration.
- It was important to him and many others that the MoD must provide “Validated Statements of Pension Benefits” that are correct.
- He wanted Veterans UK to explain in “easily understood language” why the letters from November 2015 disagreed with the previous information he was given by Veterans UK.
- Mr E provided a letter from Veterans UK to another third party which confirmed a Terminal Grant was payable from age 65 along with an annual pension. He said this demonstrated that a further Terminal Grant was payable to him at age 65 as he was pledged by Veterans UK.
- Mr E provided an email from the Forces Pension Society which confirmed the set of circumstances where under AFPS 05 a second lump sum maybe paid when a member was entitled to an Early Departure Payment. He considered this also demonstrated that a Terminal Grant was payable to him at age 65.

30. Veterans UK accepted the Adjudicator's Opinion and in response to Mr E's additional comments said, "The information previously given [to Mr E by another third party] advising that the Contractor would receive a fine was incorrect. Further, DBS [Veterans UK] does not share information regarding the addressing of Contractor performance as this is classed as Commercially Sensitive."
31. Veterans UK also explained that the Early Departure Payment forms part of the benefits available under AFPS 05 if a member retires before age 55. Mr E is not a member of AFPS 05 and has no entitlement to any benefits under the Scheme. When he revisited his OTT decision, he elected to have all of his service under AFPS 75. Mr E is not entitled to any further payments or another Terminal Grant at age 65.
32. I agree with the Adjudicator's Opinion and note the additional points raised by Mr E.

Ombudsman's decision

33. Veterans UK agree that there were errors in the information issued to Mr E. The Pension Forecast issued in October 2011 incorrectly referred to a Terminal Grant being paid at age 65 in addition to the lump sum paid when Mr E retired. Clearly, the provision of misleading and incorrect information amounted to maladministration on the part of Veterans UK, and it has offered £750 to Mr E for the distress and inconvenience caused.
34. Mr E has argued that he has suffered an actual financial loss because he had made a number of financial commitments, including loans and re-mortgages, following the Pension Forecast issued in October 2011. Mr E says this was because he was expecting to receive a lump sum at retirement and a further Terminal Grant at age 65.
35. It is clear that Mr E was provided with misleading information. The basic principle regarding negligent misstatements is that a scheme is not bound to follow incorrect information. Mr E is only entitled to receive the benefits provided for under the Regulations. For financial loss to be claimed as a result of misstatement Mr E needs to show that there was a direct reliance on the misstatement, that it was reasonable to do so and that it resulted in an irreversible loss.
36. I appreciate that Mr E was unhappy when he learned that he was not entitled to another lump sum at age 65. However, I do not consider it was reasonable for Mr E to rely on the Pension Forecast from October 2011 as a basis to take out loans and to have re-mortgaged for such a significant financial commitment of over £300,000. This was because there was no value given for the Terminal Grant at age 65 on the Pension Forecast, and this was the only document that referred to two payments. The Pension Forecast also carried warnings about not relying on the information provided.
37. I consider it would have been reasonable for Mr E to check the value of any expected Terminal Grant, or to confirm with Veterans UK if this information was correct, before committing to such a significant debt.

38. In support of his argument Mr E provided a letter from another third party which shows a Terminal Grant being due at age 65. However, this does not demonstrate that the third party or Mr E was due two lump sums under the Scheme Regulations. Mr E also provided an email from the Forces Pension Society, about payments being made at age 65, but again this does not demonstrate he is entitled to a further Terminal Grant at age 65. In any event, I am only considering the circumstances of Mr E's complaint.
39. Mr E has said he was caused stress from November 2015. I appreciate this matter has been difficult for Mr E and I do not doubt that he was disappointed when he found out he would not be receiving a second lump sum. This is a loss of expectation rather than a financial loss. I consider he was caused serious distress and inconvenience as a consequence.
40. Mr E has said he was told that the MoD would get £250,000 if it sued its contractor. It is this figure that Mr E refers to in his complaint and that he considers he should be entitled to a proportion of this amount. This is an issue for the MoD and not an issue I will be commenting on.
41. Veterans UK has acknowledged that there was maladministration. I consider Mr E has suffered a loss of expectation as he was expecting to receive a second lump sum in the form of a Terminal Grant at age 65. He also received incorrect Pension Forecasts over a number of years as Veterans UK had not correctly recorded that his pension from his first period of service in 1995 was in payment. This made it difficult for Mr E to prepare his retirement planning, and this will have caused him serious distress and inconvenience.
42. Therefore, I uphold Mr E's complaint in part.

Directions

43. Within 28 days of the date of this Determination, Veterans shall pay Mr E £1,000, £250 in addition to the £750 already offered, in recognition of the serious distress and inconvenience its maladministration caused him.

Anthony Arter

Pensions Ombudsman
20 May 2021