

Ombudsman's Determination

Applicant	Mr N
Scheme	Armed Forces Pension Scheme (the Scheme)
Respondents	Ministry of Defence (MoD) Veterans UK

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the MoD or Veterans UK.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that it is unlawful that his wife is not entitled to widow's benefits under the Scheme Rules.

Applicable Rules

**Army Pensions (Armed Forces Pension Scheme 1975 and
Attributable Benefits Scheme) Warrant 2010**

"Part E

Death Benefits

Pensions for adult dependants (service ending on or after 31st March 1973)

E.1 Pensions for surviving spouse or surviving civil partners'

...

- (4) A surviving spouse or surviving civil partner who married or formed a civil partnership with a member after the member ceased to be in service is only entitled to a pension under this rule if the whole or part of the member's reckonable service was served on or after 6th April 1978.

..."

Background information, including submissions from the parties

4. Mr N was an active member of the Scheme until 31 August 1975, when he was discharged from military service.
5. In 1989, Mr N married his current wife.
6. In June 2018, Mr N enquired as to the benefits payable to his wife in the event of his death.
7. Veterans UK responded in June 2018 stating that as Mr N left pensionable service in 1975, and married his wife after leaving active service, no spouse's benefit is payable under the Scheme Rules. However, it confirmed that the rules changed in April 1978 to provide a widow's benefit where a member married after leaving active service, but this amendment was not retrospective.
8. In July 2018, Mr N disputed this position for a number of reasons. He said that if you assumed the average recruit was 18 years old and that they were discharged at the age of 40 with a full pension entitlement and 22 years qualifying service, then anyone born after 1938 would be entitled to this benefit and anyone born before would not. He said this is age discrimination. He also said that other Public-Sector pension schemes such as the Teachers' Pension Scheme do not have the same limitations and as such the Government is discriminating against ex-service personnel born before 1938.
9. On 24 July 2018, Veterans UK responded. It reiterated that the Scheme Rules do not provide a widow's benefit as Mr N left active service before April 1978 and married after leaving service. It also confirmed that ex-service personnel are treated the same as public sector employees and that the change was brought about by the 1975 Social Security Act applicable from April 1978 for future service only. Veterans UK listed multiple occasions on which it said it had previously addressed similar queries in relation to spouses' death benefits over the period spanning from March 1993 to June 2018. The letter went on to say that Mr N could appeal using the internal dispute resolution procedure (**IDRP**).
10. On 30 July 2018, Mr N invoked IDRP. His main point was that the Scheme Rules are unlawful and cannot be used to deny his claim for widow's benefits for the following reasons:-
 - Discrimination on age is unlawful and this is an integral principle in UK law. Any one born before 1938 who married after leaving 22 years of active service will not be entitled to a widows' pension.
 - The Equality Act 2010 (**EA 2010**) protects people from discrimination in the workplace and wider society.

- Public Sector Equality Duty requires all public bodies to consider all individuals and have due regard to the need to eliminate discrimination and advance equal opportunities.
11. On 3 August 2018, Veterans UK acknowledged receipt of the complaint under IDRP and informed Mr N he should expect a response within 60 working days.
 12. On 14 September 2018, Veterans UK wrote to Mr N enclosing a copy of the IDRP factsheet and informing him that IDRP does not cover challenges to Scheme Rules. However, it went on to say that as he had been informed he could appeal under IDRP it would continue to consider the complaint under it, but that it was bound to follow Scheme Rules, so the outcome would not be in his favour.
 13. On 25 September 2018, a response was issued under the IDRP by the MoD. The MoD maintained the same position as Veterans UK; Mr N's wife is not entitled to a widow's pension under the Scheme Rules. It explained that it has no discretion in the application of the Scheme Rules and is also not able to retrospectively apply later versions of the Rules. It said there is nothing in the Rules to suggest discrimination on grounds of sex, age or disability.
 14. Mr N remained dissatisfied and sent further letters expanding on his previous points to Veterans UK and the MoD. His main point was that his appeal on the grounds of age discrimination had been rejected. He was informed that the IDRP was now complete and the next step was to bring the complaint to this service, which Mr N did.

Adjudicator's Opinion

15. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the MoD or Veterans UK. The Adjudicator's findings are summarised below:-
 - The MoD and Veterans UK are bound to administer the Scheme in accordance with the Scheme Rules and any overriding legislation. Rule E.1 (4) as set out above, does not entitle a surviving spouse or civil partner to an adult dependant's or spouse's pension where the member left active service prior to 6 April 1978 and married afterwards. As Mr N left active service in 1975 and married in 1989, his spouse is not entitled to a pension in the event of his death.
 - Mr N has raised a number of arguments in relation to age discrimination and equality legislation in support of his position that his wife should be entitled to benefits in the event of his death. He has made specific references to the EA 2010. However, this legislation does not override the Scheme Rules or pensions legislation in this matter for the reasons explained below.
 - The EA 2010 came into effect on 1 October 2010 and applied to both employment and pension practices from that date. The EA 2010 was preceded by the Employment Equality (Age) Regulations 2006 (**the Age Regulations**), which

applied to employment practices from 1 October 2006 and pension practices from 1 December 2006.

- The EA 2010 does impose an overriding non-discrimination rule on all occupational pension schemes, which requires trustees or scheme managers to refrain from any act that is directly or non-directly discriminatory. In practice, the effect of this is that the benefits of those members who are disadvantaged on grounds of their age automatically have their benefits equalised up to the same level as the advantaged members, but only for pensionable service accrued from 1 December 2006 onwards, which is when the Age Regulations came into force.
- As Mr N's benefits were accrued prior to this date (his service accrued between 1954 and 1975), neither the Age Regulations or the EA 2010 have any impact on the calculation of his benefits, or any spouse's or dependant's benefits in the event of his death. As such, the Adjudicator concluded that there has been no maladministration by the MoD or Veterans UK in respect of Mr N's benefits or the death benefits available under the Scheme.

16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which 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

17. Mr N has said that he believes that the legislation on discrimination has supremacy over any rules or conditions laid before the discrimination legislation came into effect. He has provided a copy of a letter from the MoD dated 27 November 2018 which states, "It is recognised that the introduction of new arrangements from a specific date will, inevitably, not benefit those who fall the wrong side of the start date." He states that this is, "a direct acknowledgement that the arrangements are discriminatory and therefore unlawful."
18. There is no dispute that the change in legislation applicable from April 1978 means that members leaving before April 1978 are disadvantaged when compared to members leaving after April 1978. However, the legislation only applied to future service, so even those leaving after April 1978 only accrued a spouses' benefit for their service after April 1978 until their date of leaving. This allowed schemes to plan so that they were able to meet the costs to provide the additional benefits going forward. Applying changes such as this retrospectively would be a significant cost for schemes, many of which are already in deficit or under financial pressure.
19. I understand Mr N's position in respect of discrimination legislation. Still, the legislation itself specifies the date from which it is effective. Current discrimination legislation is not applied retrospectively as the Adjudicator has explained. As such the

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Scheme Rules applicable to Mr N's membership remain unchanged and his spouse is not entitled to a spouses' benefit in the event of his death.

20. While I empathise with Mr N's situation, for the reasons explained above I do not find that the MoD or Veterans UK have made any errors in the administration of Mr N's pension.
21. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2019