

## Ombudsman's Determination

Applicant	Mr S
Scheme	Armed Forces Pension Scheme ( <b>AFPS</b> )
Respondents	Veterans UK

### Outcome

1. I do not uphold Mr 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 S has complained that he has not been allowed to re-join the Armed Forces Pension Scheme 1975 (**AFPS 75**). As an alternative, Mr S argues he should be allowed to aggregate his AFPS 75 service with his current Armed Forces Pension Scheme 2005 (**AFPS 05**) membership, or continue to receive his AFPS 75 pension.

### Background information, including submissions from the parties

#### Background

4. Mr S retired in August 2013. He was a member of the AFPS 75. Mr S received an immediate pension and a Terminal Grant.
5. In April 2014, Mr S re-joined the Armed Forces. He became a member of the AFPS 05. His AFPS 75 pension has been abated and he has been informed that he is not able to aggregate his two periods of pensionable service.
6. Veterans UK have provided copies of correspondence between Mr S and the Army Personnel Centre in February/March 2014. The Army Personnel Centre informed Mr S that he would be "reinstated on AFPS 05 terms" and asked him to confirm that he had investigated and was aware of the pay and pension implications of this. Mr S responded that he fully accepted that he would "be on AFPS 05/15". He then said, "It's never been about the money anyway". In his letter applying for reinstatement, Mr S explained that he missed the day to day challenges, team ethos, dynamic lifestyle, and reward of leading and managing soldiers.

7. Veterans UK have acknowledged that their records do not contain any documentation which would show that Mr S was informed about abatement when he retired. They say he was provided with a Service Leavers Pack which contained a brief overview of each of the pension schemes and links to their online booklets. They have been unable to supply a copy of the re-employment booklet (MMP 116) which applied at the relevant time(s); the current version dates from January 2016. Mr S says he never received a Service Leavers Pack.

**Mr S' submission**

8. Mr S says he viewed the Army Pensions Warrant 1977 on the government website and this stated re-joiners could apply to aggregate their service after re-joining. He says the Army Pensions Warrant 1977 appeared to be a live document and did not state anywhere that it had been repealed.
9. Mr S says his Career Manager was unable to give him details about how to aggregate his service but he applied shortly after re-joining in good faith.
10. In his internal appeal submissions, Mr S referred to Article 387 of the Army Pensions Warrant 1977. In particular, Mr S highlighted the provision that "an officer or soldier who has been awarded an immediate or preserved pension and is re-employed or reinstated after a break in service may choose either to aggregate the two periods of service for one pension". He also highlighted the statement that the "option may be exercised immediately on re-employment if the pension is in payment".
11. Mr S has referred to the letter he received notifying him that he could be reinstated (**Offer of Reinstatement**). He points out that there is no mention, in this letter, of the fact that he would not be able to aggregate his service. He has also pointed out that this stated that his terms and conditions of service continued from his point of departure.
12. Mr S has calculated that he will lose over £130,000 in immediate pension payments between April 2014 and November 2022 (when his current service is due to end).
13. Mr S says he had received an offer of employment from the Territorial Army (TA) prior to re-entering the Regular Service. He has provided a copy of an exchange of e-mails confirming this. He says he could have accepted the TA position and worked for 180 days per year and continued to receive his AFPS 75 pension. He has explained that the financial benefits of each option was a consideration in his final decision.
14. Mr S has referred to the document 2013-DIN-01-231. He says, if this document had been made available to him before he was offered reinstatement, he would have accepted the TA post.
15. Mr S says that the advice he has received from Veterans UK has been erroneous. He says, when he first submitted his retirement forms, he was told that he had not

earned an immediate pension. He says he challenged this and was then told he had earned an immediate pension but at a different rank. He asserts, had he not challenged the incorrect pension forecast, he would have been paid the wrong benefits.

16. Mr S says he is committed to aggregating his service through mediation or legal proceedings. He believes Veterans UK had a moral duty to advise him about his benefits, rather than leaving him to seek out information himself. He says he still has his terminal grant and is willing to repay this. He also says he is willing to sign a non-disclosure agreement to avoid setting any form of precedent.

## **Adjudicator's Opinion**

17. 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 briefly below:
  - The AFPS 75 is a closed scheme and has been since 2005. This was set out in Article 19F of the Army Pensions Warrant 1977, which was revoked in April 2010.
  - On reinstatement, Mr S' only option (if he wished to join an employer's pension scheme) was to join the AFPS 05. Mr S' current pensionable service is, therefore, subject to the rules of the AFPS 05.
  - Rule G.4. in the Armed Forces Pension Scheme Order 2005 provides for members to aggregate previous AFPS 75 service. However, there are specific conditions attaching to this option: the member must have been awarded preserved benefits in respect of service which ended before 6 April 2005. These conditions do not apply in Mr S' case; he was awarded an immediate pension in 2013.
  - Mr S' AFPS 75 pension ceased when he was reinstated in the Armed Forces. This is in accordance with rule H.1 of the Army Pensions (AFPS 1975 and Attributable Benefits Scheme) (Amendment) Warrant 2010. Mr S' reinstatement did not meet the conditions (service of less than six months or lower pay) which would have enabled him to retain payment of some or all of his AFPS 75 pension.
  - Mr S is seeking either to be allowed to aggregate his AFPS 75 service with his AFPS 05 service or to be allowed to receive his AFPS 75 pension in full. There is no scope within the AFPS 75 and/or AFPS 05 rules to allow either of these options.
  - Article 387 must be read in the context of section 27 as a whole and article 380 makes it clear that it does not apply to Mr S.

- Mr S appeared to have done some research himself by viewing the Army Pensions Warrant 1977 online. He would, therefore, have had access to all of the AFPS booklets which were provided online. It is also clear that Mr S was aware, before he was reinstated, that he would be a member of the AFPS 05.
  - There is no evidence that he was told by Veterans UK that it might be possible for him to aggregate his AFPS 75 service with his AFPS 05 service, or vice versa. The AFPS 05 booklet does refer to aggregation but in the context of preserved benefits and Mr S was aware that he did not have preserved benefits in the AFPS 75; he was already in receipt of his benefits. The booklet specifically states that a pension in payment cannot be aggregated. It also states that a pension can be suspended or reduced on re-joining.
  - Mr S' expectation of being able to aggregate his service appears to have arisen from his own reading of the Army Pensions Warrant 1977 rather than anything provided by Veterans UK.
  - Mr S asserted he could have taken a TA position and retained his AFPS 75 pension. The evidence did not indicate that Mr S declined this option as a result of being given misleading or incorrect information by Veterans UK.
  - Information about the possible abatement of his pension was available to Mr S online. He was asked if he had investigated and was aware of the pay and pension implications of reinstatement. Mr S' answer indicates that he was aware that he would be joining the AFPS 05. He did not seek any specific information about aggregation and/or abatement at this time. This, together with the reasons he gave for seeking reinstatement, suggests that the implications for his pension were not significant deciding factors in Mr S' decision not to take the TA post.
18. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

### **Ombudsman's decision**

19. Information about the AFPS is readily available online; this includes both booklets and copies of the rules. Mr S acknowledges that he did his own research into the AFPS prior to re-joining. He consulted the Army Pensions Warrant 1977 and concluded from this that he would be able to aggregate his AFPS 75 and AFPS 05 service. Although Mr S asserts that the Army Pensions Warrant 1977 did not say it had been repealed, Part 1A of that document is headed "Closure of Pension Arrangements and Application to Service on or After 6<sup>th</sup> April 2005". In searching for information about aggregation, Mr S must have overlooked this part of the Army

Pensions Warrant 1977. This does not demonstrate maladministration on the part of Veterans UK.

20. There is no evidence that Mr S requested information from Veterans UK about aggregating his service. It is perhaps surprising that he did not if, as he says, this was a factor in his decision to re-join the Army rather than take up the TA post. He has explained that Veterans UK previously gave him incorrect information about his immediate pension on retirement. Whilst that may be true, it is not relevant to determining whether, or to what extent, Mr S might have been misled about aggregating his benefits on re-joining. I do not find that he was.
21. The information contained in the online documents was correct and Mr S was not given any other information by Veterans UK prior to his re-joining. Mr S argues that Veterans UK have a moral duty to advise service personnel, rather than leaving them to seek out information themselves. There are statutory requirements relating to the provision of information which must be fulfilled, but these do not extend to proactively advising members about their particular circumstances. The information Mr S required was available to him in the online documents. Had Mr S requested particular information from Veterans UK and been given incorrect or inadequate information about aggregating his benefits, there would be grounds for upholding his complaint. But this is not what happened here.
22. Mr S has referred to the document 2013-DIN-01-231. He says, had this document been made available to him, he would have accepted the TA post. However, this document is not relevant to Mr S' circumstances; it relates to the aggregation of AFPS 75 and AFPS 05 service for the purposes of Early Departure Payments, Resettlement Grants, Tier 1 ill-health awards and redundancy compensation.
23. I note Mr S' offer to repay his terminal grant and to sign a non-disclosure agreement. However, Veterans UK must administer the AFPS in accordance with the relevant rules and these do not provide for Mr S to aggregate his service.
24. Therefore, I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
4 June 2016