

Ombudsman's Determination

Applicant	Mr R
Scheme	Armed Forces Pension Scheme (the Scheme)
Respondents	Veterans UK

Outcome

1. I do not uphold Mr R'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 R's complaint against Veterans UK is that, contrary to what he was told previously, they now say that he has not entitled to a preserved pension from the Scheme.
4. Mr R believes that, due to his length of service he qualifies for a preserved pension under the Scheme Rules and complains that he was not given any information regarding pensions upon starting service.

Background information, including submissions from the parties

5. On 9 January 1972 Mr R began serving in the Royal Navy on a Short Service Commission (**SSC**). This period of service concluded on 8 January 1982.
6. In 1982, following completion of his SSC, Mr R was subject to compulsory reserve service liability until 1986.
7. Mr R subsequently joined the Royal Naval Reserves, serving as a member until 1992. Upon retiring, Mr R held the rank of Lieutenant Commander.
8. In 2014, Mr R contacted Veterans UK to ascertain if his previous SCC was classed as pensionable service and if he had any entitlement to a preserved pension from the Scheme.
9. Veterans UK incorrectly informed Mr R that he was entitled to a preserved pension, and sent him the necessary form to complete and return to claim this.
10. On 28 July, Mr R returned the signed and completed form to Veterans UK.

11. On 21 September, Veterans UK wrote to Mr R and explained that, upon further examination of his records, he was not in fact entitled to a preserved pension under the Scheme Rules. This was due to the fact that his SSC was a gratuity earning commission, rather than pensionable service.
12. On 30 September, Mr R wrote to Veterans UK to formally complain about the decision not to award him any preserved pension under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mr R stated in this letter that, upon re-reading the Armed Forces Pension Scheme '75 rules (**AFPS 75**); he was convinced that he qualified for a preserved pension due to the length of his service.
13. Mr R also complained at this stage that he was not given any advice with regard to his pension options upon joining the Royal Navy, during his period of service, or upon completing service.
14. On 18 December, Veterans UK responded to Mr R's complaint under Stage 1 of the IDRP. They did not uphold Mr R's complaint, confirming that he was not entitled to a preserved pension under the Scheme Rules, as these state:

"Provided they have given a minimum of 5 years' reckonable service or 5 years' contracted out service they may be awarded a preserved pension at the rates shown in Clause 3 below. These provisions do not apply to officers serving on gratuity-earning short career commissions."
15. Unfortunately, Veterans UK's response wrongfully referred to the relevant rules as the Naval and Marine Pay and Pensions Order 1982. This should, in fact, have been the Naval and Marine Pay and Pensions (Non-Effective Benefits and Family Pensions) Order 1981 (**the NMPPO 1981**).
16. Despite the error in the year given for the relevant rules, the information supplied was correctly quoted from the NMPPO 1981.
17. On 6 February 2015, Mr R wrote to Veterans UK to appeal the IDRP Stage 1 decision. Mr R again stated that, having further checked the criteria in AFPS 75, he was of the opinion that he was clearly eligible for a preserved pension. Mr R also pointed out the reference to the incorrect scheme rules.
18. On 23 March, Veterans UK sent Mr R their IDRP Stage 2 decision. Veterans UK confirmed the position of the IDRP Stage 1, that Mr R's complaint could not be upheld as the nature of his SSC meant he was not entitled to a preserved pension under the applicable Scheme Rules, specifically the NMPPO 1981.
19. Veterans UK acknowledged the error of the IDRP Stage 1 response, in referring to "the Naval and Marine Pay and Pension Order 1982", and confirmed that the relevant document was the NMPPO 1981.
20. Mr R then complained to this service.

Adjudicator's Opinion

21. Mr R'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:
- Veterans UK were clear from the commencement of Mr R's SSC that this was a gratuity earning commission, rather than pensionable service.
 - Mr R does not dispute that he received the appropriate gratuity upon completion of the SSC. It would not be reasonable for him to expect to receive a preserved pension in addition to this.
 - Mr R was provided with incorrect information by Veterans UK regarding his pension entitlement, and this amounts to maladministration. However, this error was identified shortly afterwards, and Mr R was provided with the correct information regarding his entitlement within 2 months, and before the provision of any figures or estimates.
 - The Scheme Rules relevant to Mr R's case – The NMPPO 1981 – have been correctly applied and, despite Mr R being provided with some contradictory information in this regard, Veterans UK have no discretion over the rules and cannot award a pension to Mr R to which he is not entitled.
 - Mr R has suffered a loss of expectation due to the maladministration of Veterans UK. However, given the relatively short time within which the mistake was rectified, there has been no significant distress and inconvenience caused, therefore, this error does not warrant a payment of compensation.
22. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R 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 R for completeness.

Ombudsman's decision

23. I am aware that Mr R has argued that his entitlement, or otherwise, to a preserved pension from the Scheme is dependent upon the requirements of the Scheme Rules as they were at the date of his joining, rather than the date he ceased employment with the Royal Navy. As such, Mr R argues that his length of service does give rise to an entitlement to a preserved pension under the Scheme Rules.
24. Mr R also argues that the Adjudicator's Opinion had wrongly concluded that there was no maladministration by Veterans UK, or that he had experienced any distress or inconvenience as a result of maladministration on the part of Veterans UK.

25. This is simply not the case, the Adjudicator's Opinion expressly acknowledged that Veterans UK had provided Mr R with incorrect information and that this amounted to maladministration on their part. What the Adjudicator did say, however, was that the distress and inconvenience caused to Mr R was not sufficiently serious as to warrant a compensation payment. Having looked at the facts of Mr R's complaint, I too am satisfied that there was maladministration on Veterans UK part. However, the circumstances of this case are such that I do not consider the maladministration identified by my investigation to be sufficiently serious as to warrant the award of compensation.
26. Turning to the point Mr R has raised about the applicable Scheme Rules, I can confirm that the applicable Scheme Rules are those that were in operation at the date Mr R left employment with the Royal Navy, rather than those which were in operation on the date he commenced employment.
27. As I am sure Mr R will appreciate, it is not unusual for an individual to be a Member of an occupational pension scheme for a number of years, even decades. During this time, the Scheme Rules will be the subject of a continuing process of amendment and review. As such, the Scheme Rules in place when a Member joins a scheme can be significantly different from those in place decades later when they leave service. Over the years the scheme rules have to be amended to reflect both legislative and statutory changes and the applicable scheme rules are those that are in operation at the time of leaving employment.
28. In this case, the applicable Scheme Rules were those that were in place on 8 January 1982, the date Mr R ceased employment with the Royal Navy, and these are the NMPPO 1981. Given these facts, I am satisfied that Veterans UK identified and applied the correct section of the appropriate Scheme Rules and that Mr R does not have an entitlement to a preserved pension from the Scheme.
29. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
5 July 2016