

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Armed Forces Pension Scheme 1975 ( <b>AFPS 75</b> )
Respondents	Ministry of Defence, Veterans UK ( <b>the Administrator</b> )

## Outcome

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

## Complaint summary

3. Mr Y complains that he has been unfairly prevented from aggregating his service as a soldier, with his reckonable service as an officer.
4. Mr Y says that he was not told that he would lose the three years of reckonable service that accrued whilst he was a soldier, when he changed roles.
5. Mr Y says that if newer Armed Forces pension schemes allow service aggregation in circumstances like his, then this change should also apply to the AFPS 75.
6. Mr Y says he made pension contributions to AFPS 75 and would like a refund because he is unable to aggregate his two periods of service.

## Background information, including submissions from the parties

### Background

7. Mr Y joined the Armed Forces at around 15 years old. His reckonable service as a soldier began when he was 18 years old and became an officer at 21.
8. Mr Y submitted an application for Premature Voluntary Retirement and his preferred date of discharge was 01 April 1991, which was authorised by the Army Retirements Board.

9. In September 1991, Mr Y accepted a post with the Territorial Army (**TA**)
10. On 18 November 2016, Mr Y requested a pension forecast. On receipt, he saw that his reckonable service was considered only from the age of 21.
11. The rules of the Scheme only provide for one rank; the final rank, to be considered in the calculation of pension benefits.
12. Mr Y's final rank was as an officer. Reckonable service is counted from the age of 18 for other ranks, and from the age of 21 for an officer. However, the level of benefit accrual for an officer is higher than that of a soldier.
13. Qualifying service is shown at paragraph 29 (a), of the AFPS Rules, as; "*Full pay commissioned service...*"
14. For reckonable Officer Service, paragraph 33 of the APW says; "*Reckonable service for Service retired pay shall be so much of the officer's qualifying service as was given after he attained the age of 21 years.*"
15. Reckonable service for Other ranks is shown at Paragraph 138 (a) as; "*Un-forfeitable full pay service given, otherwise than as a commissioned officer, after attaining the age of 18 years....*" In calculating Mr Y's AFPS 75 pension entitlement, the administrators only took into consideration his reckonable service as an officer, Mr Y is disputing this approach.

**Mr Y's position**

16. Mr Y assumed that his service across both roles could be aggregated because the AFPS 75 rules did not categorically say that they could not be.
17. He says he was not given any information from his employer to say that a change in role would affect his reckonable service accrual.
18. The decisions he made on pension planning and when to leave the forces could have been different had he known that his three years of pension accrual would not count.
19. Although he understands the outcome reached by the adjudicator, that the administrators actions were in line with the scheme rules, he does not feel that the AFPS 75 rules are fair.
20. He also feels that he was unfairly disadvantaged because his employer gave him a commission of 12 years, when the eligibility requirement for an immediate pension was 16 years reckonable service. Out of the 12-years' service given, Mr Y served only eight years.

**The Administrator's position**

21. Paperwork on file shows Mr Y submitted an application for a commission and attended the Officer training from January to August 1985. On completion he was promoted to 2nd Lt. Had he been unsuccessful he would have returned to his previous role in the field Army.
22. As with all other ranks who receive a commission into Officer service, there is no break in service, and this is classed as continuous. At the time of his retirement the rules on reckonable service for pension were in the Army Pensions Warrant 1977 (**APW**), and Mr Y's pension was calculated correctly in line with this.
23. We cannot comment on the information provided or not provided from the employer to Mr Y upon him changing roles. Nor is it the role of our office to provide pension advice to scheme members when there is a change in their engagement. However, pension information was available to all Service personnel at this time in the form of the booklet entitled; "*An Introduction to the Armed Forces Pension Scheme*".
24. We cannot confirm if this was issued to all service personnel, but can confirm that copies were held by all Unit Administration Offices, and would have been freely available to view on request. At page 4 under the heading; "*Counting of Service*" it confirms that only service from age 21 (for officers) is reckonable for pension.
25. Prior to his retirement, he was sent a copy of his retirement forecast in 1990 outlining that his pension would be calculated in accordance with his rank as an officer. Around the time of his retirement in April 1991, he was also sent further correspondences detailing his deferred benefits. Neither were queried.
26. Mr Y took up an Officers post with the TA on the 11 September 1991. We have a copy of a Unit Personnel Record dating from April 1993. This is normally issued on an annual basis to TA members to check and update with any changes in circumstances. It is noted that Mr Y has made several amendments to this record. Of note is the fact that his pensionable service date is recorded as starting from 10 August 1985; which relates to his service as an Officer. However, he made no enquiries regarding this date at that time.
27. His pension entitlement can only be calculated in accordance to the rules of one role; his final role. The level of benefit accrual for an officer is higher than that of a soldier. In order to assist Mr Y, we provided a comparison on the accrual rate of his role as an; Other Rank, and as an Officer to evidence that despite him feeling the rules were unfair, the calculation was advantageous for him as an Officer, without the service counted from his time as an; Other Rank.

## Adjudicator's Opinion

28. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Administrator. The Adjudicator's findings are summarised below:-
- At the time of Mr Y's employment with the Armed Forces there was no provision under the APW for aggregation of reckonable service across different ranks.
  - Although Mr Y says the rules did not categorically say this could not be done, the absence of a rule confirming aggregation does not imply that it could be a possibility.
  - Although Mr Y feels subsequent rule changes on membership aggregation should be made retrospective, there is no provision for this in the AFPS 75 rules.
  - The Administrator was correct in its application of the APW when calculating Mr Y's pension benefits based on when reckonable service could be counted from his final rank alone; from the age of 21.
  - Mr Y did not suffer a financial injustice despite the inability to aggregate his two periods of service. If Mr Y had remained a non-commissioned soldier and accrued a full nine years of service, his pension benefit would still be less than the amount awarded for his six years of service as an officer.
  - There is no evidence to suggest that clearer information would have caused Mr Y to have acted differently. Mr Y has said that he cannot confirm that he would have acted any differently even if he had been told of the pension change when changing roles.
  - So, it was more likely than not that Mr Y would have still taken the commission for the role of an officer, even with the knowledge that he could not aggregate his two periods of service. As such, Mr Y would have gone on to receive the same level of benefit he is querying.
  - Mr Y did not make any contributions towards his Scheme benefits, so he is not entitled to receive a refund of contributions.
29. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

## Ombudsman's decision

30. Mr Y's complaint is that the Administrators have not aggregated all of his reckonable service when calculating his pension.
31. In his submissions, Mr Y has made reference to contractual entitlements that he also feels he was not allowed.
32. As the Pensions Ombudsman, I have jurisdiction to handle applications regarding acts or omissions of an employer in relation to a pension scheme (s 146 (3)(b) Pension Schemes Act 1993). It was confirmed in *Engineering Training Authority v The Pensions Ombudsman* [1996] OPLR 167, that this in respect of pension issues only: "the Ombudsman's jurisdiction (in relation to employers) ...is clearly directed, in my view, to their functions under or 'in relation to' the pensions scheme in question. It does not give the Ombudsman jurisdiction to investigate complaints concerning ordinary contractual relations between employer and employee." I cannot therefore consider this element of Mr Y's complaint.
33. Mr Y had one period of unbroken service in the Armed Forces during which he held two ranks.
34. Under the APW pension calculations for each period of continuous service can only be subject to one set of rules; that which is applicable to the final rank held.
35. The AFPS 75's glossary of pension terms defines final rank as; "... *The highest substantive (permanent) rank held for more than two years or the highest paid acting rank held for three years in the case of officers.*"<sup>1</sup>
36. Part 2, Article 33 of the APW defines reckonable service for officers as; "*Reckonable service for Service retired pay shall be so much of the officer's qualifying service as was given after he attained the age of 21 years.*"
37. There is no scope within AFPS 75 to aggregate reckonable service from multiple roles during employment in the Armed Forces. Calculations are made by assessing separate periods of service first, and then the final rank within each, second.
38. The administrator is required to pay the correct benefits from the AFPS 75 in accordance with the individual's circumstances at the time the benefits are paid and this is what it has done.
39. Mr Y feels that he should be refunded any pension contributions that have been made to the scheme. The AFPS 75 is a non-contributory, un-funded scheme and therefore there are no contributions that could be refunded. Mr Y's benefits have been correctly calculated and so any type of refund or award would be inappropriate.

40. It is important to note that although Mr Y contends that he should have been told that there were two schemes. There is only one scheme, the AFPS 75, that provides the benefits to which Mr Y is entitled. Rather there are different rules within the AFPS 75 that apply to different categories of members, in this case Officers and Other Ranks.
41. It is my opinion that the administrators were correct in its; interpretation and application of the APW under AFPS 75. I am not persuaded that there has been any failing in the calculation of Mr Y's pension, therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
27 September 2018