

Ombudsman's Determination

Applicant	Mr T
Scheme	Armed Forces Pension Scheme 1975 (AFPS)
Respondent	Veterans UK

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Veterans UK.

Complaint summary

2. Mr T's complaint concerns the method of calculation of the abatement that was applied to his pension from the AFPS.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 30 March 2014, Mr T left regular service with the armed forces and retired.
5. On 2 April 2018, Mr T started a period of full-time reserve service (**FTRS**).
6. On 5 April 2018 and 7 February 2019, Veterans UK wrote to Mr T to provide details of the amount of the abatement that would be applied to his pension and a subsequent adjustment to the calculation.
7. On 26 March 2019, Mr T wrote to Veterans UK to ask for a breakdown of the calculation of the abatement. He repeated this request on 30 June 2019, having received an initial response from Veterans UK on 4 April 2019, which did not provide him with the level of detail he wanted.
8. On 15 July 2019, Veterans UK sent Mr T a detailed breakdown of the calculation of the abatement, which is summarised in Appendix 1.
9. On 31 July 2019, Mr T's FTRS ended.

10. On the same day, Mr T responded to the calculation that Veterans UK had sent him. He asked where he could find the rules regarding the calculation of the abatement and how he could appeal against its calculation.
11. On 26 October 2019, Mr T submitted a complaint for consideration under the AFPS' one stage internal dispute resolution procedure (**IDRP**). In summary, he said:-
 - MMP116 'Armed Forces and Reserve Pension Schemes – Re-employment' states that it is the Government's policy that FTRS personnel with a pension in payment: "should not earn more by way of pension and new salary than they earned on the [sic] their last day of Regular service."
 - The abatement calculation had been based on three pieces of information:
 - his AFPS pension that was in payment when his FTRS contract started (**Figure A**);
 - his FTRS salary when his FTRS contract started (**Figure B**); and
 - his final salary in regular service adjusted for inflation to the start of his FTRS contract (**Figure C**).
 - His complaint was that different increase dates had been used in the calculation of the abatement. In particular, when calculating Figure C, the increase for 2018 had not been applied as it was not due until 7 April 2018. However, the calculation of Figures A and B included any increases due in 2018 as these increases were effective from 1 April 2018.
 - This had resulted in an incorrect calculation of the abatement due to his FTRS contract having started between 1 and 6 April 2018. As a result, Veterans UK had failed to deliver Government policy and was responsible for maladministration.
 - He wanted the abatement recalculated using 1 April as the increase date for Figure C. This would result in the annual abatement being reduced by £2,280 and lead to him being due a further payment from the AFPS of £2,848.
12. On 28 January 2020, Veterans UK provided its IDRP response. It did not uphold Mr T's complaint and, in summary, it said:-
 - The rules of the AFPS had been applied correctly. In particular, the abatement had been calculated in accordance with the Naval and Marine Pensions (AFPS 75 and Attributable Benefit Scheme) (Amendment) Order 2010 (**the Rules**). See Appendix 2 for an extract from this document.
 - It was the pensions administrator of the AFPS and had no control over the implementation dates for pay awards. These were recommended by the Armed Forces Pay Review Body. Furthermore, it had no control over pension increases. These were intended to reflect increases in the Consumer Price Index in the preceding 12 months and HM Treasury determined the increase dates.

13. Mr T said that his was not a unique set of circumstances, and he was concerned that other AFPS members were impacted by this issue.

Adjudicator's Opinion

14. Mr T'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 below:-

- Mr T questioned the method used to calculate the abatement that was applied to his pension from the AFPS. He said that, regardless of whether the calculation was in accordance with the Rules, it was not in line with the Government's policy that FTRS personnel with a pension in payment should not earn more by way of pension and new salary than they earned on their last day of regular service.
- The Adjudicator reviewed the Rules and noted that the three key figures required to calculate Mr T's abatement were:
 - the annual amount of his AFPS pension on 2 April 2018;
 - his annual rate of basic pay on 2 April 2018; and
 - his annual rate of basic pay on the last day of the service in respect of which his pension was payable, increased to 2 April 2018 in line with the pension increases granted under the AFPS.
- Mr T was unhappy that, when applying the pension increases to the last of these figures, no increase was included for 2018. However, the 2018 pension increase was granted from 7 April 2018. In the Adjudicator's opinion, Veterans UK was correct in not allowing for this increase in the calculation.
- Mr T said that the calculation of the other two figures had included allowance for increases in April 2018 as these figures were increased on 1 April 2018. The Adjudicator's view was that this was not correct. The annual pension figure used by Veterans UK to calculate the abatement was Mr T's pension on 2 April 2018, and did not include the 7 April 2018 increase.
- Veterans UK is required to calculate members' benefits in accordance with the Rules and the Adjudicator's view was that it did this when calculating Mr T's abatement.
- Mr T questioned whether the provisions in the Rules for the calculation of the abatement were in line with Government policy. In the Adjudicator's opinion, the approach adopted for calculating the abatement at the point that the member started FTRS was reasonable and in line with the spirit of the Government's intentions. Inevitably, if an alternative approach were to be used, some people would be better off and some worse off. However, this did not mean that the current approach was inappropriate.

15. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
16. Mr T provided some further comments in response to the Opinion. In summary he said:-
 - The Opinion had not addressed the arbitrary nature of the abatement calculation. It had also not addressed the fact that Government policy had not been delivered for people commencing a FTRS contract in early April. He considered this to be maladministration.
 - The arbitrary nature of the calculation was demonstrated by the three examples in Appendix 3. The second example resulted in an artificially high abatement.
17. I have considered the additional points raised by Mr T, however they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

18. Mr T's complaint concerns the way that his abatement has been calculated and he questions whether the approach used delivers Government policy for members starting their FTRS in early April.
19. Mr T has chosen to allow for the pension increase that was effective from 7 April 2018 when undertaking his calculation of the abatement. However, Veterans UK has undertaken its calculation based on the figures as at 2 April 2018, which is when Mr T commenced his period of FTRS.
20. I have reviewed Rule H.4(3) which is relevant to the calculation of the abatement. This provides the calculation basis which involves three elements, A, B and C. It is made clear that element B, the member's annual rate of basic pay, is taken at the first day of reserve service. In the case of Mr T, this is 2 April 2018.
21. While the Rules are silent on the date at which elements A and C should be taken, I find that, in the absence of any instruction to the contrary, Veterans UK is correct in also taking these two elements at the start of Mr T's period of FTRS. So, it has correctly applied pension increases up to 2 April 2018 to his annual pension and his annual rate of basic pay on the last day of service in respect of which the pension is payable.
22. Veterans UK is the administrator for the Scheme, and it is bound by the Rules when calculating the benefits payable to Mr T. I find that it has applied the Rules correctly. So, I do not agree that it has been responsible for any maladministration.
23. In assessing the complaint, it is not within my remit to comment on whether the Rules are fair. However, they are a statement of the Government's policy on how the abatement should be calculated.

CAS-49642-P2Q6

24. I do not uphold Mr T's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
19 May 2023

Appendix 1

Calculation of Mr T's abatement

Initial abatement calculation

Last day of regular service:	30 March 2014
FTRS commenced:	2 April 2018
Last regular basic annual salary:	£74,350.68
FTRS annual pay at commencement (Figure B):	£70,950.36
Annual pension on 2 April 2018 before abatement (Figure A):	£42,547.98

Inflationary increases:-

April 2014: 0% - the increase of 2.7% was applied proportionately for anyone discharged within a year of its payment. Mr T was discharged in March 2014 and was not eligible for this increase.

April 2015: 1.2%

April 2016: 0%

April 2017: 1.0%

April 2018: 0% - the increase of 3% was effective from 7 April 2018. Mr T's FTRS commenced prior to this date, so this increase was not applied.

The increases of 1.2% and 1.0% were applied to Mr T's last regular basic annual salary to give a notional figure of £75,993.83 on 2 April 2018 (Figure C).

The abatement was calculated as: ((Figure A + Figure B) – Figure C), giving a value of £37,504.51. This was applied to Mr T's pension in payment, reducing it to an annual figure of £5,043.47.

Revised abatement calculation

Mr T's FTRS annual pay was increased to £72,369.36 (Revised Figure B). This increase was backdated to 2 April 2018.

The revised abatement was calculated as: ((Figure A + Revised Figure B) – Figure C), giving a value of £38,923.51. This was applied to Mr T's pension in payment, reducing it to an annual figure of £3,624.47.

Appendix 2

Extracts from the Naval and Marine Pensions (AFPS 75 and Attributable Benefit Scheme) (Amendment) Order 2010

Part D – Retirement Benefits

“D.23 Pension increases

- (1) Subject to paragraphs (2) and (4), the amount of a pension payable under this Part –
 - (a) in respect of any period on or after 3rd January 2011, shall be (or continue to be) increased as if the former provisions of the Scheme corresponding to this rule were still in force; and
 - (b) in respect of any period on or after 11th April 2011, shall be increased (or further increased) by any amount by which an official pension would, by virtue of an order made under section 59 of the Social Security Pensions Act 1975(b) and coming into force on or after that date, be increased in respect of that period if –
 - (i) it began on the day on which the pension begins, and were payable at an annual rate equal to the annual amount of the pension; and
 - (ii) a qualifying condition were satisfied.”

Part H – Abatement

“H.4 Reserve service

- (1) This rule applies if a pensioner member is in reserve service.
- (2) The annual amount of the pension shall be abated by the relevant amount, for as long as this rule applies.
- (3) The relevant amount is the amount given by the formula $(A + B) - C$, where
 - A is the annual amount of the pension;
 - B is the member’s annual rate of basic pay on the first day of the reserve service; and
 - C is the member’s annual rate of basic pay on the last day of the service in respect of which the pension is payable.But this is subject to paragraphs (4) to (6). [...]
- (6) If rule D.23(1) (pension increases) applies in relation to the pension, C is increased in proportion to the increase in the amount of the pension [...]

Appendix 3**Abatement examples provided by Mr T**

The figures that follow assume inflationary and salary increases at the rate of 10% per annum.

	Example 1	Example 2	Example 3
FTRS commencement date	31 March	3 April	12 April
Current pension in payment (£ per annum)	30,000	30,000	33,000
Final salary in old role adjusted to previous 7 April (£ per annum)	100,000	100,000	110,000
Salary in new role (£ per annum)	80,000	88,000	88,000
Abatement (£ per annum)	10,000	18,000	11,000