

Ombudsman's Determination

Applicant	Dr H
Scheme	Armed Forces Pension Scheme 1975 (the Scheme)
Respondents	Veterans UK

Outcome

1. I do not uphold Dr H'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. Dr H's complaint is that he was provided with conflicting information regarding his Additional Voluntary Contributions (**AVC**) and the rank which will be used to calculate his Scheme entitlement.

Background information, including submissions from the parties

4. On 1 June 1988, Dr H enlisted in the Royal Navy (**RN**). He accrued over 9 years of reckonable service in the Scheme and left in July 1997.
5. In May 2000, Dr H re-enlisted in the RN and his engagement will end in March 2025. Dr H is a Medical Officer (**MO**) serving at OF4 rank in the RN and his Normal Retirement Age (**NRA**) under the Scheme Rules is age 55.
6. On 4 March 2002, Naval Pay & Pensions Branch wrote to Dr H to say that his election to purchase 2 years and 357 days of AVCs was accepted, and deductions would begin from 10 April 2002. Dr H's AVC equated to accruing the maximum Scheme entitlement permissible under the Rules, at age 55.
7. In June 2006, Dr H elected to remain in the Scheme, rather than transfer to the Armed Forces Pension Scheme (2005). Scheme pensions are calculated based on final rank and not actual pay.
8. On 6 November 2009, the Surgeon General of the RN wrote to all MO's stating he had approved a review of promotion rules to promulgate promotion based on merit. Since 2003, under the previous system, MO's were almost certainly guaranteed

promotion if they served the requisite number of years. The Surgeon General said that:

“With this new process of promotion on merit, there may be some who reach Normal Retirement Age before reaching the rank of OF5. For such officers who had elected to remain (in the Scheme), this would have had an unforeseen impact on their retirement benefits. For this reason, all officers (in the Scheme) who serve to their NRA in the OF4 rank and would have expected to reach OF5 under the old rules, will have their retirement benefits paid at OF5 representative rates.”

9. On 1 January 2010, merit-based promotion was introduced for all MO's. It was formally announced in a Defence Instructions and Notices (**DIN**) released that month. The DIN stated MO's could retire based on the Scheme entitlement they would have been entitled to under the Common Terms of Service (**CTOS**) they signed at the start of their engagements (a pension calculated at OF5 rate). MO's who failed to be promoted to the rank of OF5 under the new rules were required to be age 58, complete at least 25 years' reckonable service and reach OF3 rank to retire on the more generous terms.
10. On 3 January 2011, the Naval and Marine Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Order 2010 (**the Order**) came into force. The Order contained the discretionary rules for MO's.
11. In March 2016, Dr H wrote to Veterans UK to request that it allow him to cease paying his AVC election. He said that his benefits were growing substantially each year which would cause him to breach the Annual Allowance in future and incur a large tax liability.
12. On 31 March 2016, Veterans UK refused Dr H's request to cease his AVC payments. It said an election was irrevocable and could only cease on “grounds of exceptional circumstances outside the member's control”. Veterans UK argued an Annual Allowance breach did not constitute an exceptional circumstance and it could not mitigate a member's tax liability that resulted from changes in primary legislation.
13. On 1 March 2017, Pensions & Compensation Policy Instruction 01/2017 (**the Instruction**) was released by SGD. The Instruction stated it intended to protect the retirement expectations of MO's at OF3 and OF4 rank, with effect from 10 June 2009. It maintained the same criteria for MO's retiring on the enhanced basis.
14. On 27 April 2017, after further exchanges of correspondence, Dr H asked Veterans UK to quote the specific Scheme rule that set out his ineligibility to retire on MO terms before age 58.
15. On 4 May 2017, Veterans UK responded via email stating it had referred the matter to the Surgeon General's Department (**SGD**). SGD said the policy was not covered in the Scheme Trust Deed and Rules but was covered in the Order. It also said the Order was envisioned to “protect the retirement expectations” of Scheme members

prior to the introduction of merit-based promotion. However, “it should not provide an incentive to early termination in advance” of an MO’s CTOS by retiring before age 58.

16. On 27 November 2017, Dr H raised a complaint via the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). Dr H argued that he was wrongly being forced to work beyond his NRA because Veterans UK would not allow him to retire on an OF5 pension at age 55. He said Veterans UK had stated it was a ‘rule’ he could not retire on the enhanced terms, without any reference to a DIN and that SGD appeared to have made a unilateral decision, with no reference to the Scheme rules.
17. On 26 January 2018, Veterans UK responded to Dr H’s complaint and said SGD amended Dr H’s terms and conditions to incorporate meritorious promotion. Veterans UK said the Scheme Rules were unchanged but SGD had provided supplementary regulations that were approved by Veterans UK’s Policy Section, in its capacity as Scheme Manager. Veterans UK added the discretion for MO’s to retire on an OF5 entitlement was exercised “as an exception outwith the Scheme Rules”.
18. On 21 March 2018, Dr H asked for his complaint to be considered under IDRPs Stage 2. He maintained that he should qualify for an OF5 pension at his NRA of age 55. He also argued his AVC could not be considered ‘voluntary’ if he was unable to cease paying into it before NRA.
19. On 31 May 2018, Veterans UK provided its Stage 2 response and rejected Dr H’s complaint. It said the Scheme Rules entitled Dr H to a pension entitlement calculated on his substantive rank. However, its Policy Section could apply the discretion to grant the enhanced benefit if Dr H met the additional criteria. It argued these terms were codified in the Instruction. Veterans UK also said it could not provide members with financial advice on AVC elections and it was solely up to Dr H to make the decision to proceed.

Adjudicator’s Opinion

20. Dr H’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:-
 - Veterans UK permits Dr H, as an MO, to retire on a pension calculated at OF5 rank, under certain circumstances. This is far higher than a pension calculated on his substantive rank, which is his Scheme entitlement under the Rules. However, he is eligible to retire with an OF5 pension if he meets the additional qualifying criteria of being age 58, with 25 years reckonable service. Consequently, Dr H cannot retire on these terms at age 55.
 - Dr H is likely to breach the Annual Allowance (**AA**) and Lifetime Allowance (**LTA**) significantly in future years. This is further exacerbated by Dr H paying an AVC. The AA and LTA were altered significantly by legislation after Dr H elected to start paying an AVC. Veterans UK cannot be held responsible for any resulting

personal tax liability. It could not reasonably have anticipated the scope and impact of subsequent legislative changes by successive governments when Dr H made his election in March 2002.

- Dr H will not suffer a financial loss. A higher tax liability in future is offset against a greater Scheme entitlement that Dr H will have the benefit of if he chooses to keep contributing to the Scheme.
- The Adjudicator appreciated Dr H's frustration that he could not cease paying the AVC before age 55 to mitigate his tax liability. However, Dr H's circumstances did not meet the definition of "exceptional" and Veterans UK had applied the Rules correctly in refusing his request to cease his AVC.
- Paying the AVC afforded Dr H the opportunity to retire at age 55 with the greatest possible Scheme entitlement under the Rules, unless he chose to work to age 58 to take advantage of the enhanced MO retirement terms.

21. Dr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr H did not provide any further comments in support of his complaint. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Dr H for completeness.

Ombudsman's decision

22. I understand why Dr H sought further clarification to ascertain the correct position with regard to his pension benefits at retirement, as his entitlement to an OF5 rank pension is contingent on further criteria outwith the Scheme Rules. If Dr H retires before meeting the criteria as set out in the Instruction then his Scheme entitlement shall be calculated in accordance with the Rules.

23. Veterans UK could not reasonably have foreseen the significant changes made to pension taxation following Dr H's election to pay an AVC in 2002. Dr H may incur a tax liability with HMRC in future because of this decision. However, that loss is purely hypothetical at this point. Continuing to pay the AVC also entitles Dr H to retire at NRA with the maximum service permissible under the Scheme rules regardless of whether he chooses to remain in service in order to take advantage of the enhanced pension benefit.

24. Therefore, I do not uphold Dr H's complaint.

Anthony Arter

Pensions Ombudsman
16 May 2019