

## Ombudsman's Determination

Applicant	Ms T
Scheme	Lloyds Group Pension Scheme ( <b>the Scheme</b> )
Respondents	Lloyds Bank Pension Trust (No.2) Limited ( <b>the Trustee</b> ) Equiniti

## Outcome

1. I do not uphold Ms T's complaint and no further action is required by the Trustee and Equiniti, the Scheme Administrator.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Ms T is complaining about the commencement date of her ill health early retirement (IHER) pension, the level of her IHER benefits and the delay in dealing with her application for IHER.

## Background information, including submissions from the parties

4. The relevant section of the Scheme Rules in relation to Ms T's IHER is Rule 12.2(b), which states:

"If a TSB member:

(a) left Service entitled to a pension under Rule 12.1(b) and

(b) is shown, to the satisfaction of the Trustee, to be under an Incapacity which is of a permanent nature,

the TSB Member may retire under the Scheme before NRD on an immediate pension. This shall be equal to the pension to which the TSB Member would otherwise have been entitled under Rule 12.1(b) from NRD but disregarding any increase referable to any period after the TSB Member retires. Notwithstanding the foregoing provisions of this sub-rule:

(i) where, in the opinion of the Trustee, a TSB Member is both under an Incapacity and incapable of deciding whether it is in his interest to consent to a pension being paid to him under this sub-rule as if he had applied for such a pension;

(ii) the Trustee shall ensure, to its reasonable satisfaction, that when the TSB Member retires the benefits which have accrued to or in respect of the TSB Member are at least equal to the then value of the benefits which have accrued to or in respect of the TSB Member under the Rules after effect has been given to the Revaluation Requirements.

Where before NRD a TSB member in receipt of a pension under this sub-rule:

(aa) recovers (in the opinion of the Trustee) from the Incapacity (whether wholly or in part), or

(bb) fails to produce evidence, satisfactory to the Trustee, of his continued Incapacity (the Trustee being under no duty to seek such evidence but being at liberty to do so at any time before NRD),

then if the TSB Member retired under this sub-rule after 30 May 1992 the Trustee may reduce or suspend the pension payable under this sub-rule. In that event, the pension from NRD may not be less than that which would have been payable under Rule 12.1(b) had the TSB Member not retired under this sub-rule.

If the TSB Member dies while his pension is reduced or suspended, the Trustee shall determine the benefits payable but the benefits may not be more than those which would have been payable had he not retired under this sub-rule.”

5. Ms T began working for Lloyds TSB in July 1977. Her last role was a Programme Manager.
6. Between January 2009 and September 2011, Ms T went on long term sick leave due to work related stress. She has suffered from mental health problems.
7. Ms T applied for IHER on 10 November 2011, a few months after signing a compromise agreement and her final leaving date was April 2011.
8. On 24 February 2012, Ms T’s IHER application was declined. Equiniti said:

“...I regret to advise that based on the information provided, the bank’s medical adviser does not support your application for early payment of your pension due to incapacity...”
9. Ms T appointed solicitors, Linda Myers, to deal with her complaint. With its assistance, Ms T appealed against the decision in July 2012.

10. It was not until 11 January 2013 that Ms T received full details of the internal dispute resolution procedure (IDRP).
11. On 23 October 2013, Ms T received a further rejection letter from the Trustee that said:

“...I am not able to grant Ms T’s application for an incapacity pension...I accept that she is under an Incapacity as defined in the Scheme rules. However, her application is declined on the ground that she is not shown, to the satisfaction of the Trustee, to be under an Incapacity which is of a permanent nature...”
12. On 24 January 2014, Linda Myers invoked IDRP stage 1.
13. On 24 March 2014 the Trustee sent a response to Linda Myers under IDRP stage 1, that said:

“I have taken all of the relevant factors into account and must advise you that...I cannot uphold her complaint against the Scheme nor her request for compensation.”
14. On 14 April 2014, Linda Myers wrote to the Trustee saying it was no longer representing Ms T.
15. On 16 September 2014, Ms T appealed against the decision by invoking IDRP stage 2.
16. On 11 November 2014, the Trustee wrote a letter to Ms T confirming that the Committee was not able to conclude to its satisfaction that Ms T’s condition met the criteria for IHER. It also explained that it would prefer to seek an up to date medical opinion given that medical reports previously submitted were more than a year old and noting in particular that Ms T was now taking medication.
17. It was not until 9 June 2015 that Ms T managed to send all the required medical evidence to Equiniti.
18. On 3 August 2015, Equiniti sent a letter to Ms T about her IHER and explained that the commencement date of the payment was 9 June 2015.
19. On 12 August 2015, Equiniti wrote to Ms T confirming that her IHER benefits have been awarded.
20. On 17 August 2015, Ms T sent a letter to Equiniti seeking clarification on her complaint points.
21. On 27 August 2015, Equiniti sent Ms T a letter explaining her IHRP benefit calculation and confirming that the commencement date of 9 June 2015 has been used as this was the date of Ms T’s letter which included the final evidence required.

22. On 11 October 2015, Ms T wrote to Equiniti requesting a discretionary enhancement to her pension and disputing the pension start date.
23. On 3 November 2015, Ms T wrote to Equiniti saying that if she does not receive a full response by 27 November 2015, she will be referring her complaint to this Office.
24. On 27 November 2015, Ms T received a letter from Equiniti stating that it is unable to give a definitive timescale for a response.
25. On 8 December 2015, Ms T brought the complaint to this Office.
26. On 24 June 2016, this Office received a formal response from the Trustee that said:

“Under the relevant Scheme rule a member “may” retire when she is shown “to the satisfaction of the Trustee” to be under an Incapacity which is of a permanent nature. The commencement date is therefore dependent on when the evidence shown satisfies the Trustee that the nature and extent of the member’s ill health meets the criteria...Rule 12.2 also provides for the amount of the pension payable and there is no power on the Trustee’s part to enhance the amount of pension due under the rule...Any delay in the Scheme’s process, to the extent it could be considered unreasonable, was caused predominantly by Equiniti...In order to try to resolve the matter, we are prepared to accept that it would have been decided to backdate Ms T’s award of the pension to 1 January 2015...This is because there was a delay in the correspondence between Equiniti and Ms T, in respect of the up to date medical evidence...it is reasonable to believe Ms T’s further medical evidence as requested by the sub-committee ought to have been received and considered within around 6-8 weeks of the sub-committee’s letter. In addition, in light of the delay overall in this case...the Trustee is prepared to offer Ms T £1000 in recognition of any distress and inconvenience caused”.

## **Adjudicator’s Opinion**

27. Ms T’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee and Equiniti. The Adjudicator’s findings are summarised briefly below:
  - The Adjudicator sympathised with Ms T’s complaint as it has gone on for a significant length of time.
  - However, the Adjudicator believed that the Trustee has not acted with maladministration in connection with this complaint. The Trustee correctly interpreted the Scheme Rules and Ms T is only entitled to the benefits provided under the Scheme Rules. So the Adjudicator disagreed with Ms T’s claims for enhanced benefits and an earlier commencement date.

- The Adjudicator believed that the Trustee's offer is reasonable. It has considered the overall delay caused by Equiniti and fully taken responsibility for it. Not only did it offer to backdate Ms T's IHER benefits to 1 January 2015 but it has also offered £1,000 compensation for the distress and inconvenience caused.
  - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
28. Ms T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms T has provided her further comments 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 Ms T.
29. Ms T provided comments in relation to a report by the Scheme's medical advisor, Dr Taylor, who said in his report dated 17 February 2012 that,
- “Despite the fact that her condition was ascribed to work and her problems with Lloyds TSB, it appears that she has not improved since that time. She had concerns about taking anti-depressant medication as she and her then GP felt that the cause was very clear and, after leaving Lloyds she hoped to improve...Despite her reservations, I feel that not every reasonable form of intervention has been tried. Therefore, I cannot agree to her application for early payment of her pension on the grounds of ill-health. Regardless of that factor, I feel confident that she would improve if she agreed to referral to a psychiatrist for assessment and onward referral to a psychologist for intervention, possibly based on the Cognitive Behavioural Therapy principal. I also feel that this benefit would improve even more if she agreed to take antidepressant medication, which appears from her symptoms to be present. From the evidence supplied, I see no real cogent reason for her very significant concern about taking medication or, one presumes, referral to a psychiatrist for assessment.”
30. In his report, Dr Taylor also answered 'NO' to the question, 'I have received the relevant documents relating to the above-named member and would support a case for early payment of the preserved pension on the grounds of incapacity'.
31. Ms T's position:
- The likelihood of her illness being permanent after taking medication and taking into account her role is not included in Dr Taylor's report.
  - Dr Taylor did not consider all Ms T's circumstances when giving her opinion.
  - Dr Taylor's 'wait and see' approach was not sufficient.
  - Ms T referred to a few cases determined by the previous Pensions Ombudsman and asked for the same approach to be applied in her case.
  - The Trustee did not ask the correct questions when making a decision.

32. The Adjudicator did not address these points in her Opinion because she focused on Ms T's main complaint as stated in her submission to this Office. However, the Adjudicator had regard to these additional comments during the course of her investigation.

### **Ombudsman's decision**

33. My role in this matter is not to decide whether or not Ms T is or is not entitled to ill health retirement from deferred status – that is a matter for the Trustee to decide after obtaining requisite certification from an appropriate medical advisor. It is also not for me to agree or disagree with any medical opinion.
34. My role is to decide whether the Trustee has complied with the Scheme's Rules, asked correct questions, considered all relevant evidence and reached a decision which is not perverse. By perverse, I mean a decision which no other decision maker, properly advising themselves, would come to in the same circumstances.
35. I find that Dr Taylor took into account the Scheme's Rules and all relevant evidence. I also think that Dr Taylor's report is sufficient. It shows that Dr Taylor considered all Ms T's relevant medical evidence. Dr Taylor also included a prognosis by saying that she feels confident that Ms T would improve after trying appropriate treatment. Consequently, I consider that the Trustee's subsequent decision was properly made taking into account a valid report from an appropriate medical practitioner.
36. The Rules state that the requirement to be awarded IHER benefits is that Ms T must show to the satisfaction of the Trustee, to be under an Incapacity which is of a permanent nature. Having asked the relevant question about likely prognosis with appropriate treatment, Dr Taylor certified her view that Ms T is not permanently incapable of returning to the current employment. So the Trustees had applied the Rules correctly taking into account the views of a suitably qualified medical practitioner.
37. I have also considered the Trustee's letter dated 24 February 2012 confirming its decision to Ms T. I find that the Trustee did not solely rely on Dr Taylor's opinion but made its decision based on all the information provided. It asked the right questions and considered all the relevant medical evidence. The Trustee also provided a proper explanation detailing its reasoning behind its decision.
38. Ms T referred to other similar cases that were determined by previous Ombudsmen. However, each case is considered on its own merits and I can see no basis to interfere with the Trustee's decision in this case. I consider that the £1,000 compensation offered by the Trustee for the distress and inconvenience to Ms T is sufficient redress in this case.

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39. Therefore, I do not uphold Ms T's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman

30 June 2017