

Ombudsman's Determination

Applicant	Mrs E
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Rotherham Metropolitan Borough Council (the Council)

Outcome

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

Complaint summary

3. Mrs E's complaint against the Council is that its review of its original decision not to backdate her ill health pension to 31 August 2008 when she left employment, was flawed.

Background information, including submissions from the parties

4. The Deputy Pensions Ombudsman issued her determination on 9 March 2015 and directed the Council to reconsider Mrs E's application and then decide whether or not she satisfied the criteria for ill health retirement at the date her employment ended.
5. On 8 June 2015, a new independent registered medical practitioner, (IRMP), Dr Gemmell wrote a report that said:

"The overriding features of this case are her relative youth, (44), the existence of age related degenerative changes in the spine and her condition of Fibromyalgia, which was and remains poorly understood and impossible to predict. Even the Cochrane reviews state that no one individual's response to the modalities of treatment can be predicted...whilst I accept the lumbar spondylosis would have deteriorated further, it is not unreasonable to assume that research into Fibromyalgia and its treatment would be ongoing – as has been the case...I am therefore overwhelmingly of the opinion that without any degree of certainty over the causation, progression and prognosis of Fibromyalgia and with moderate spinal degeneration in keeping with her age, I would not be able to view her as being permanently incapable of resuming her job at some point in the intervening years".

6. On 22 June 2015, the Council wrote a letter to Mrs E to confirm the preliminary decision. The letter said:

“I have now received and had the opportunity to consider the report of Dr Gemmell and the previous information that has been supplied in respect of your case. Having taken account of all the evidence previously supplied and the conclusions of Dr Gemmell my preliminary decision is that I am unable to agree to the release of ill health retirement benefits as at the date your employment terminated”.

7. Mrs E disagreed with the Council’s preliminary decision and on 3 July 2015 sent a letter to the HR manager providing her comments.

Mrs E’s position:

8. Dr Gemmell failed to look at the case wholly afresh because she relied on all previous evidence and medical reports and discussed the case with Mr Chapman, the Head of Pensions Administration.
9. Dr Gemmell is being biased against Mrs E’s ill health retirement pension, (IHRP), application by relying on Dr Davies’ previous medical report.
10. Cochrane reports were available in 2008 and showed no quantifiable benefit or little benefit to Fibromyalgia sufferers so Mrs E was permanently incapable when she left her employment.
11. Mrs E did not refuse the acupuncture and did not dropout of a graded exercise programme.

The Council’s position:

12. Dr Gemmell had no previous involvement with Mrs E’s case and Mr Chapman has not had any detailed discussion with the doctor. However, it was essential for a thorough review of Mrs E’s case that all the evidence be considered to date.
13. The medical opinion at the time when Mrs E left her employment showed that her condition was treatable and resolvable and therefore her IHRP could not have been supported.
14. The Occupational Physicians (OP) at the Council may pass comments to the IRMP, however it is the IRMP who provides their opinion whether or not the member meets the criteria for IHRP under the Scheme Rules.
15. On 26 October 2015, the Council sent additional evidence to Mrs E, in the form of emails it received from the South Yorkshire Pensions Authority in response to her arguments. The emails were exchanged between Mr Chapman and Dr Gemmell after the medical report had been issued. Dr Gemmell confirmed that Mrs E’s condition was treatable in 2008. He also said:

“As for dropping out of a graded exercise programme, I would again be quoting from the GP records and specialist reports...She has declared that she has not embarked on a graded exercise programme and so I must accept that statement as a fact”.

16. On 30 November 2015, Mrs E sent a letter to the Council requesting that it invokes the two-stage internal dispute resolution procedure, (IDRP).
17. On 22 December 2015, the Council sent a letter to Mrs E explaining that as it has already exhausted the IDRP to its fullest extent, she may refer the complaint to the Pensions Ombudsman, (TPO).
18. On 6 January 2016, Mrs E brought the complaint to the TPO.
19. On 2 February 2016, TPO received a formal response from the Council saying:

“Mrs E’s case has now been the subject of four reviews by different IRMPs. The most recent of these took place following a decision reached by the TPO...we have complied with the findings of the appeal adjudicator and the Ombudsman. The decisions reached have been consistent and based on the evidence and advice available”.

Adjudicator’s Opinion

20. Mrs E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator’s findings are summarised briefly below:
 - It was the Adjudicator’s view that the Council has not reached a perverse or flawed decision following its review of its original decision.
 - The Council has followed the Ombudsman’s directions correctly by nominating a new IRMP, who had no prior involvement in the case. The Adjudicator recognised that the Council has made an administrative error as a certificate has not been issued with the medical report. However, it is clear from the medical report that it considered all Mrs E’s medical evidence and the Adjudicator has found no significant flaws by the Council during its review process to justify remitting the matter back for further reconsideration.
 - It is not for this Office to reach its own decision on Mrs E’s suitability for an IHRP. However, the Council needed to consider the case again taking into account the relevant Scheme Rules and properly explain why her application either can or cannot be approved.
 - Mrs E has commented that the Cochrane reviews were available in 2008 and showed little or no benefit to Fibromyalgia sufferers. There is a detailed discussion about Cochrane reviews in Dr Gemmell’s report saying that even though patients have shown little benefit from psychological therapies there is more reliable benefit

from a graded exercise program. So the Adjudicator disagreed with Mrs E's assertion that her condition was permanent in 2008, as the evidence considered by the Council shows otherwise.

- Mrs E has commented that Dr Gemmell and Mr Chapman are being biased against her IHRP application. However, the Adjudicator has found no evidence to support her argument.
- The Adjudicator also noted that the Council has responded to Mrs E's questions throughout the process in a timely manner and kept her informed of the next steps.
- The Adjudicator appreciated that the Council's decision may not be satisfactory to Mrs E. However, Dr Gemmell and subsequently the Council had correctly considered Mrs E's entitlement to an IHRP at the date she left her employment.
- It was therefore the Adjudicator's opinion that this complaint should not be upheld.

Mrs E's did not accept the Adjudicator's Opinion but has not made any further submissions. The complaint was passed to me to consider.

Ombudsman's decision

21. I agree with the Adjudicator's Opinion. I find that based on the evidence that has been presented the Council it has considered the relevant factors in arriving at its decision not to grant Mrs E an IHRP following its reconsideration of her application. Therefore there are no justifiable grounds for me to find that the Council's decision was perverse or that the process it undertook in reaching its decision was flawed.
22. Therefore, I do not uphold Mrs E's complaint.

Anthony Arter

Pensions Ombudsman
27 June 2017