

Ombudsman's Determination

Applicant	Mr H
Scheme	Police Pension Scheme - (the Scheme)
Respondents	Warwickshire Police

Outcome

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

Complaint summary

3. Mr H's complaint against Warwickshire Police is that it has refused his request for the early payment of his deferred pension.
4. Mr H contends that Warwickshire Police have unjustly used his dismissal from the force as a reason for not paying his deferred pension early. He says that the circumstances of his dismissal were irrelevant.
5. Mr H says that :
 - it was held in R (on the application of Williams) v PMAB and Merseyside Police Authority [2011] EWHC 1119 (Admin) that a Selected Medical Practitioner or Police Medical Appeal Board has a duty under article 6 of the ECHR to provide an officer going through the process with a fair hearing.
 - in the case of R (on the application of AB) (Claimant) v Commissioner of Police of the Metropolis (Defendant) & (1) Independent Police Complaints Commission (2) FE16 (Interested Parties) [2016] EWHC 2714 (Admin), it was held that a police officer was not prevented from retiring even though he faced potential misconduct proceedings following the death of an individual shot by another officer. Preventing a person from conducting his financial affairs lawfully was a very serious interference in his right to conduct his life, the prospect of disciplinary proceedings was speculative, and the benefit to the public where it was only ordinary misconduct proceedings was not great.

- he has a legitimate expectation that his human rights would be upheld and that matters would be dealt with fairly, reasonably, lawfully and proportionately.
6. Mr H says that there are inconsistencies in how Warwickshire Police decides on the early payment of deferred pensions. He says he knows of officers who have had their deferred pensions paid early on the grounds of mental health issues.
 7. Mr H also claims that the time taken by Warwickshire Police in considering his case was unreasonable.

Background information, including submissions from the parties

8. On 17 August 2015, Dr Nightingale , the Selected Medical Practitioner (SMP) issued a report saying,

“Thank you for asking me to act as Selected Medical Practitioner in assessing Mr H’s Occupational Health file pertaining to his application for payment of his deferred pension under Police Pension Regulations.

As Mr H is no longer an employee of the Force, this report is therefore neither for employment ...purposes.

Conclusions

Based upon the evidence before me I conclude that Mr H is permanently unfit for the ordinary duties of a police officer ...”

9. On 3 December 2015 Warwickshire Police wrote to Mr H regarding his deferred pension application. The writer of the letter said that Warwickshire Police has decided not to exercise its discretion to pay Mr H’s deferred pension early. The reason for this decision is as the attached rational from Chief Constable Jelley.
10. In the attached letter from Chief Constable Jelley, he said ,

“...in making my decision I have read the full case file...which includes the specific request letter from Mr H. I have also taken cognisance of the relevant pension regulations.

Key Considerations:

In respect of Mr H’s claim that his mental health condition directly contributed to the behaviour that lead [sic] to his dismissal which was considered by the hearing panel at the time. I remain unconvinced that this was a plausible explanation of his behaviour.

It is not lost on me that Mr H was dismissed from the police service for Gross Misconduct relating amongst other things to his lack of honesty and integrity
...

Mr H has only 10 years' service at the time which on its own does not warrant early access to deferred pension.

Finally, I have to consider the public interest in this case of granting an ex-officer who was dismissed for Gross Misconduct early access to deferred pension which I have to say I do not believe would be in the public interest could be reasonably justified and even if I was convinced otherwise I would have to take account the impact of setting a precedent in relation to such matters."

11. In its formal response letter to this office of 15 March 2016 Warwickshire Police says ,

"Mr H was dismissed from the force on the grounds of gross misconduct. The hearing did not find that his mental health condition contributed to the behaviour that subsequently resulted in his dismissal. This was ratified further by the Chief Constable Jelley's consideration of the pension appeal.

In reaching both the original decision not to release the pension and the consequent confirmation by CC Jelley, legal advice was sought. The matter is covered in Regulation 54 of Police Pension Regulations 2006.

Mr H was not considered for an ill health retirement due to the gross misconduct process.

The decision not to release the pension early was based on the specific legal advice about the applicability of Pensions Regulations. The financial position of the force was not a consideration in this matter."

12. In an email to this office of 12 January 2017, Warwickshire Police say,

- at Mr H's misconduct hearing, the panel considered whether his medical condition directly contributed to the behaviour that led to his dismissal. It considered a psychiatric report supplied by Mr H but it was not convinced about the suggested linkage as a plausible reason for his behaviour.
- the consideration of deferred pension applications typically takes between 9 and 12 months, depending on the complexity of the case. Mr H's case took longer than some other cases as GP and specialist medical reports had to be obtained for the SMP to consider. Additionally, legal advice was sought regarding the application of Regulation 54 as this was the first time the PPA had considered exercising this discretion. Warwickshire Police does not consider that it would be appropriate to offer Mr H any compensation.

13. In a further email to this office of 10 February 2017, Warwickshire Police says that Mr H's deferred pension application was received in November 2014. He had an appointment with the SMP on 17 August 2015 and was notified of the SMP's decision and the application of Regulation 54 on 28 September 2015. Mr H responded in

October 2015 and was notified of the Chief Constable's decision not to exercise his discretion on 3 December 2015.

14. Mr H has submitted a psychiatric report by Dr Baggaley dated 11 February 2017. Dr Baggaley says in the report that,

"It was clinical negligence that he was not diagnosed with bipolar affective disorder in late 2011 ...I believe it likely that is [sic] has made a difference and that he may well not have been made bankrupt and lost his career."

Scheme Regulations

15. The Police Pensions Regulations 2006 (the Regulations)

"Withdrawal of early payment of deferred pension

54. In a case where a person ... ceased to serve by reason of dismissal or requirement to resign under the Conduct Regulations and was permanently disabled for engaging in any regular employment at the time when he so ceased to serve or becomes so disabled before he attains the age of 65 years, no payment shall be made on account of the pension in respect of the period before he attains the age of 65 years unless the police authority in the exercise of their discretion determine to make such payment."

Adjudicator's Opinion

16. Mr H' complaint was considered by one of our Adjudicators who concluded that no further action was required by Warwickshire Police. The Adjudicator's findings are summarised briefly below:
- Under the Regulations Warwickshire Police has discretion whether or not to pay deferred benefits before age 65. It would therefore need to assess Mr H's medical condition as part of its review process as it would be a relevant matter.
 - Mr H asserts that the process undertaken by Warwickshire Police in assessing his case for ill health retirement was not followed correctly and that the evidence shows that he was permanently unfit to work.
 - The Adjudicator noted Mr H has submitted a psychiatric report by Dr Baggaley dated 11 February 2017, in which he indicates that Mr H had suffered from bipolar in late 2011. However, Dr Nightingale said in her report of 17 August 2015 after she had assessed Mr H's medical condition that he was permanently unable to carry out the ordinary duties of a police officer. So it is evident that she had considered Mr H's medical evidence in this regard. In any event, it is not disputed by Warwickshire Police that Mr H was permanently unable to carry out the ordinary duties of a police officer. The Adjudicator therefore did not think his assertion is justified or that he has suffered an injustice in this instance.

- Mr H argues that despite his poor health, Warwickshire Police persecuted him for an off duty conduct matter that was mitigated by a psychiatric report that was ignored. Mr H says that despite the evidence showing he was permanently unable to carry out the ordinary duties of a police officer, Warwickshire Police gave priority to his dismissal for gross misconduct in considering his application for the early payment of his deferred pension. However, the evidence shows that Mr H's mental health condition and whether or not it contributed to his behaviour that led to his dismissal was considered by the hearing panel and subsequently by Chief Constable Jelley.
- In accordance with Regulation 54, the Adjudicator considered that the circumstances of Mr H's dismissal are also relevant and can be reasonably taken into account by Warwickshire Police in exercising its discretion as to whether or not to agree to the early payment of Mr H's deferred pension. As an employer, it would be able to take its own interests into account. So, if it concluded that to be seen to be paying pension benefits to someone whose conduct led to dismissal would have a negative impact on the public perception of the service, that is well within the range of reasonable decisions it might make.
- The Ombudsman's role is to ensure that the Regulations have been applied correctly and where decisions are to be made or discretions exercised, that has been done properly. The Adjudicator thought that Warwickshire Police has exercised its discretion in relation to Regulation 54 correctly. It had considered Mr H's medical health and its impact on his dismissal, as well as wider issues regarding his length of service and the impact on the public perception of the service. In addition, it had obtained legal advice on the matter before arriving at its decision. The Adjudicator therefore did not think that the decision taken by Warwickshire Police to reject Mr H's claim for the early payment of his deferred pension was unreasonable. He also did not consider that there is any basis to conclude that the process followed by Warwickshire Police in reaching its decision was flawed.
- Warwickshire Police say they normally take up to 12 months, depending on the complexity of the case to consider applications for deferred pensions. Taking into account the process taken by Warwickshire Police in considering Mr H's case as stated in its correspondence to this office of 12 January 2017, it seems that it had carefully considered the case. The Adjudicator therefore did not consider that the time Warwickshire Police took from the date of Mr H's application in November 2014 to the date he was notified of Warwickshire Police's decision on 3 December 2015 was unduly excessive.
- Mr H contends that there were officers who had their deferred pensions paid early on the grounds of mental health issues. He has also cited previous cases which he says supports his claim for the early payment of his deferred pension. However, the Ombudsman would only consider the merits of this particular case.

17. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his 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 Mr H for completeness.

Ombudsman's decision

18. Mr H maintains that in exercising its discretion whether or not to grant the early payment of his deferred pension, Warwickshire Police ought to have appreciated that the root cause of his financial problems, which led to the behaviour which resulted in his dismissal, was his underlying disability, namely his mental health problems. He had compulsive spending habits as a result of his mental health problems and, at least at some stage, was unable to work and therefore was on half pay. Mr H also says that in making its decision, Warwickshire Police was required to demonstrate that it had exercised a "fair balance" between the interests of the public authority and the interest of the individual.
19. Regulation 54 states that no payment shall be made on account of the pension in respect of the period before an officer attains the age of 65 years unless the police authority in the exercise of its discretion determine to make such payment. The Regulation in question does not specify that Warwickshire Police should take account of whether his medical condition directly contributed to the behaviour that led to his dismissal. However, as mentioned by the Adjudicator in the Opinion, Mr H's mental condition and its impact on his behaviour that led to his dismissal was properly considered by Warwickshire Police. I find based on the evidence that has been presented Warwickshire Police considered the relevant factors including Mr H's mental health in arriving at its decision not to grant the early payment of his deferred pension. I therefore do not think that there are any justifiable grounds for me to find that Warwickshire Police's decision was perverse or that the process it undertook in reaching its decision was flawed.
20. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
29 March 2017