

## Ombudsman's Determination

Applicant	Mr S
Scheme	Local Government Pension Scheme (the <b>Scheme</b> )
Respondents	Staffordshire Police and Staffordshire County Pension Fund ( <b>SCPF</b> )

## Outcome

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

## Complaint summary

3. Mr S's complaint against Staffordshire Police and SCPF is about the decision on 13 November 2014 (the **2014 Decision**) to award him early payment of his deferred Scheme benefits on ill health grounds, and about the level of those benefits.

## Background information, including submissions from the parties

4. Mr S was employed by Staffordshire Police and was an active member of the Scheme between April 1985 and 25 August 2010. On 3 March 2010 he was given a decision that he was not eligible for an ill health retirement award. His service was terminated on grounds of capability. A resulting employment dispute was concluded by compromise agreement. When his service with Staffordshire Police ended, Mr S was entitled to preserved benefits under the Scheme.
5. In 2012 Mr S applied for the early payment of his preserved pension under the Scheme on grounds of ill health.
6. Under the regulations governing the Scheme, it is up to the employing authority, in this case Staffordshire Police, to decide whether or not a member is eligible for an ill health pension.
7. Over the months that followed, there was correspondence between Mr S, Staffordshire Police, Staffordshire Police's medical adviser and various medical advisers.

8. In April 2014, Staffordshire Police wrote to Mr S saying that a full submission for the independent registered medical practitioner (**IRMP**) was sent to him in May 2013 but he had declined to release the papers to the IRMP. He was informed that if he continued to decline consent for the submission of the papers to the IRMP, his application would be closed and archived.
9. In October 2014, Staffordshire police wrote to Mr S, the letter was headed 'Application for Early Payment of Deferred Benefits', informing him that, based on the IRMP's opinion, he was eligible for an ill health pension from the Scheme. This was awarded out of deferred status backdated to 11 November 2012, the date which the IRMP had certified as the earliest date of permanent incapacity.
10. Mr S wrote to Staffordshire asking for the 2009 application to be reopened, because in his view he had satisfied the criteria for award of benefit since the date his employment ended (and probably longer).
11. In November 2014, Staffordshire Police wrote to Mr S saying that the question as to whether to award him ill health retirement from active service was considered at the time he left service in 2010. Therefore, that decision could not be revisited. He had the right to appeal that decision under the Scheme regulations, but the time limit for that was six months from the date of the original decision. However, his application for early payment of his deferred pension was successful and, as his application was made in 2012, the payment of his deferred benefits would be backdated to the date he applied as prescribed under the Scheme regulations.
12. Around March/April 2016, Mr S wrote to both Staffordshire Police and SCPF asking for his complaint to be considered under the Scheme internal dispute resolution procedures (**IDRP**). As Mr S had not received a response from either Staffordshire Police or SCPF, we reviewed his case and decided to investigate the 2014 Decision.
13. Mr S's comments with regard to his complaint are set out below.
  - His complaint is about both the 2009 Application and the 2014 Decision, and also other areas of procedural failures by Staffordshire Police.
  - After each error he complained not only to Staffordshire Police, but also to SCPF. He had sought advice from UNISON, the Pensions Advisory Service, his MP and a firm of solicitors. At every stage Staffordshire Police missed opportunities both to correct the mistakes made on his case and tighten up on its procedures.
  - There were many mistakes made over the years leading up to the 2014 Decision.
  - He agrees that any fresh appeal regarding earlier decisions would indeed be out of time, however he had appealed against decisions made and processes undertaken by both Staffordshire Police and SCPF since 2009. The appeals are on-going and to date he has received no satisfactory, full or final response to them.

- He refers to Staffordshire Police's letter of November 2014 and says that he has appealed against that decision. Staffordshire Police had informed him that his appeal has been put to three different departments who will undertake the review and respond. However, he has still not received a response. He continues to wait for the results as agreed with Staffordshire Police some two and a half years on. This is extremely frustrating, but it has been the norm as since 2010 each step has received the police authority's 'Triple DDD' treatment: deny, deflect and delay.
- He believes that Staffordshire Police and SCPF have a duty/statutory requirement to fully review the matters raised and to reply to him, or his representatives, in a timely manner, with an explanation as to how decisions were made or, predominantly in this case, why they were not made.

## **Jurisdiction**

14. The complaint which Mr S brought to the Ombudsman included complaint about the 2009 Application which resulted in the March 2010 decision. He was told that the Ombudsman could not investigate this part of his complaint because he had not brought his complaint to us until March 2016 and therefore it was outside the three year time limit for bringing a complaint. Issues relating to reasons for termination of his employment were also outside jurisdiction. He asked for a review of that decision, which was reconfirmed to him on 16 March 2017. The issues which were investigated were those relating to the 2012 application for early release of deferred benefit.

## **Adjudicator's Opinion**

15. Mr S's complaint was considered by one of our Adjudicators who concluded that no further action was required by Staffordshire Police and SCPF. The Adjudicator's findings are summarised briefly below:
  - the 2014 Decision lay with Staffordshire Police, as Mr S's employer, and not with SCPF - consequently, the complaint against the latter cannot be upheld;
  - Mr S's submissions are mainly in relation to the 2009 Application and the issues surrounding the termination of his service by Staffordshire Police in 2010 – he has been informed that we cannot investigate his 2009 Application because it is out of time and we cannot investigate issues related to reasons for the termination of his service because this is an employment issue;
  - Mr S has been granted early payment of his deferred pension on ill health grounds and there is no evidence to show that Staffordshire Police has mishandled the matter.
16. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness.

## **Ombudsman's decision**

17. In response to the Adjudicator's Opinion, Mr S says:

- the Department for Work and Pensions agree that he had not been able to undertake his duties since 2009 onwards, and had placed him in the 'support' group meaning that it was not necessary for him to undertake training or job interviews due to his permanent disabilities;
- an offer of a tier one ill health and injury award was made by Staffordshire Police in 2009 which was accepted and appeals were made for the non-payment of the 2009 award, giving it the opportunity to correct itself;
- the medical evidence compiled at the time shows that the tier one ill health pension offer in 2009 met the criteria required and was correct;
- While the appeals process for the 2009 offer was ongoing, it was not necessary to approach the Ombudsman as no final decision had been made;
- regarding the time limits on the 2009 Application, these only begin from the point of time at which it is made clear to all parties that any appeal is rejected and no further appeal will be considered;
- Staffordshire Police has continued with promises to review the 2009 Application up to the time of the Ombudsman's involvement;
- it is not true that he was considered for an ill health pension in 2010 – he was asked to attend meetings at that time which were solely concerned with his employability within Staffordshire Police;
- around 2012, as part of the on-going appeal, he was forwarded a form which he believed gave Staffordshire Police the authority to appoint yet another IRMP to progress his evidence in support of backdating the tier one ill health award and not a 'preserved' pension; and
- the award made to him in 2014 was appealed by him, and by a firm of solicitors, and he rejected the award.

18. I have carefully considered Mr S's comments on the Adjudicator's Opinion and set out below a summary of my response to them.

- There is no evidence to show that Mr S had been made an offer of a tier one ill health pension in 2009.

- It is clear that Mr S was informed in March 2010, while he was still employed by Staffordshire Police, that he was not eligible for an ill health pension and was told that he could not appeal that decision further until his employment had been terminated. Mr S has produced no evidence that he did appeal that decision or to support his argument that he was told that it was still under review. Mr S signed a "Request for early payment of deferred benefits on grounds of permanent ill-health" on 11 January 2012 and Staffordshire Police HR Department acknowledged it as such in a letter to Mr Brunjes dated 4 May 2012. That was the basis upon which medical evidence was sought, and consent to disclosure was given, and the basis on which the 2014 decision to award benefit was made. I therefore cannot agree that the process in 2012 was a continuation of the 2009 Application or that it was otherwise flawed in not looking back to an earlier date.
- A number of Mr S's comments relate to the 2009 Application, which we cannot investigate and he has been informed of this. He has also been told that if he wishes to appeal the Ombudsman's jurisdiction decision it would need to be judicially reviewed.

19. Therefore, for the reasons given above, I do not uphold Mr S's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
20 June 2017