

Ombudsman's Determination

Applicant	Mrs G
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Gateshead Council (the Council) Tyne & Wear Pension Fund

Outcome

1. I do not uphold Mrs G'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 G's complaint against the Council is that its review of the original decision not to grant her an ill health retirement pension (**IHRP**), was flawed.

Background information, including submissions from the parties

4. The Deputy Pensions Ombudsman issued her Determination on 5 May 2015 and directed the Council to reconsider Mrs G's application and then decide whether or not she satisfied the criteria for ill health retirement at the date her employment ended.
5. On 26 May 2015, the Council referred Mrs G to a new independent registered medical practitioner, (**IRMP**), Dr Williams.
6. Dr Williams issued his first medical report on the case on 31 May 2015. However, it did not include all of Mrs G's medical evidence so he issued an amended report dated 27 June 2015. A later amended report dated 3 July 2015 was issued following receipt of further documents from Mrs G. Dr Williams' final report was issued on 14 July 2015.
7. In his report of 14 July 2015, Dr Williams considered all Mrs G's medical evidence, including the report of her treating doctor, Consultant Psychiatrist Dr Rees' who said "owing to the strength of her beliefs and her resistance she would never be able to take up a job with the Council in the future". Dr Williams said that:

"Overall, in my opinion Mrs G should have been capable of returning to work with Gateshead Council if she had chosen to do so at some point between

2nd May 2012 and her normal retirement age, in the role she had been employed in up to 2nd May 2012. There is no medical reason why her antipathy towards Gateshead should not settle. She has no past history of mental illness, therefore I would expect her to respond normally to events. The majority of normal people would settle in their views over time, and if motivated to do so will return to work for an employer with whom they have had a previous disagreement. The fact that her symptoms have worsened since then because of events that have arisen after that time is not a material fact of relevance to my opinion... At the point when she was dismissed she was clearly improving, her absence was due to her feelings for her employer rather than because of any enduring underlying mental health condition, and a very rapid recovery would have been expected. It would have been inappropriate to consider her unfit for gainful employment if she was in fact expected to be capable of gainful employment within a very short period of time measured in no more than a few weeks at most”.

8. On 4 September 2015, Ms Hill, a solicitor on behalf of the Council, sent a decision letter to Mrs G. The solicitor considered two parts of the test under Regulation 20 and concluded that:

“Whilst I have not found this an easy exercise, on balance I prefer and accord greater weight to Dr Williams’ opinion. He has been tasked with providing an objective assessment applying the test under Regulation 20. It is a very detailed opinion that takes into account all of the medical and other evidence to which he has applied that test...I do agree with this view. This appears to chime with other medical evidence...from which it is clear that the main obstacle to improvement in Mrs G’s health and good recovery is her ongoing dispute with the Council. I note that her mood reacts to specific events...There is very little within the medical evidence that suggests that there is any factor independent of her dispute(s) with the Council that at the relevant date would have prevented a rapid improvement in her health had such obstacle(s) been removed or resolved and no consideration is given within that evidence to the prospect or otherwise of her being capable of other work. For these reasons, on a balance of probabilities, I do not consider that, at the date of termination of her contract, Mrs G had a reduced likelihood, at all, of being capable of undertaking any gainful employment before her normal retirement age”.

9. In April 2016, Mrs G appealed against the Council’s decision and contacted the Pensions Advisory Service (**TPAS**). Following TPAS’ assistance, Mrs G invoked the Scheme’s two-stage internal dispute resolution procedure (**IDRP**).
10. The Adjudicator dealing with the IDRP, subsequently sent a letter to Mrs G saying that he cannot accept her appeal until he has received a copy of the Council’s decision letter.
11. On 9 May 2016, the Adjudicator received a copy of the Council’s decision letter and the two months’ timescale to provide a decision began on this date.

12. On 7 July 2016, the Adjudicator sent Mrs G a decision letter refusing her appeal on the basis that it was time barred. The letter concluded that:

"I note that...Service Director, wrote to you on 4 September 2015 notifying you of her decision. She informed you that you had the right to appeal to me within six months of the date of her letter. I received your appeal on 13 April 2016. Furthermore, you also made contact with the Pensions Ombudsman on 8 April 2016...I cannot consider your appeal as it is not within the specified timescale and I am unable to extend the time in your case as you were notified the decision in accordance with regulation 74 of the Local Government Pension Scheme Regulations 2013 which states: (2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under regulation 73 (notifications of first instance decisions)."

13. On 15 November 2016, Mrs G wrote an appeal letter, however it was not delivered to the Council until 16 February 2017. The delay was caused by it being delivered to the address provided to Mrs G at stage one which turned out to be incorrect and some family circumstances.
14. On 10 May 2017, South Tyneside Council's solicitor, Mr McCann sent Mrs G a response under stage two of the IDRP. He explained that under regulations 72-80 of the 2013 Administration Regulations that govern Mrs G's IDRP appeal process, an appeal to stage two must be made before the relevant date. 'Relevant date' is defined as being six months from the date the stage one decision is received. He also added that:

"I note your submissions that the address provided by the Adjudicator was incorrect... It is very strange that the address in Hebburn was provided by the Adjudicator... I can only assume that an old template letter was used for your Stage One IDRP...Whilst not explicitly stated in your correspondence to me, I also note that your husband was very unwell around the relevant time and I am sure this would have been a factor in the delays caused. I have considered whether the wording of Regulation 76(4) allows me any discretion to extend the 6 months' timescale in order for me to substantively consider your Stage Two appeal. However, I do not believe Regulation 76(4) can be used this way....I therefore conclude that I am not lawfully permitted to extend the timescale in which you were able to submit your Stage Two appeal".

15. In September 2017, Mrs G brought the complaint to this Office.
16. On 4 October 2017, the Council sent this Office a formal response that stood by South Tyneside Council's IDRP decision.

Adjudicator's Opinion

17. Mrs G'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 another perverse decision following its review of its original decision.
 - The Council has followed the Deputy Pensions Ombudsman's directions correctly by nominating a new IRMP, who had no prior involvement in the case. It is clear from Dr Williams' medical report that it considered all Mrs G'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 another reconsideration.
 - It is not for this Office to reach its own decision on Mrs G's suitability for an IHRP. However, the Council needed to consider the case again in line with the Scheme Regulations and properly explain why her application either can or cannot be approved.
 - The Adjudicator noted that in his report, Dr Williams had a detailed discussion about Mrs G's condition and considered her treating specialists' medical opinions. The Adjudicator also noted that the Council has responded to Mrs G's questions throughout the process and kept her informed. The Council also applied the test correctly as stated in the Scheme Regulations.
 - The Adjudicator appreciated that the Council's decision may not be satisfactory to Mrs G. However, Dr Williams and subsequently the Council had considered Mrs G's entitlement to an IHRP at the date she left her employment correctly.
 - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
18. Mrs G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs G provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by her.
19. Mrs G maintains that Dr Williams said he was not required by this Office to issue a certificate with his medical report however, he is required to do so according to the Scheme Regulations.
20. Mrs G referred to previous Determinations issued by this Office that she believes are relevant to her case.
21. Mrs G believes that the South Tyneside Council's solicitor failed to exercise his discretion with regard to extending the time limit for Mrs G to appeal under stage two of the IDRPs and did not provide any adequate explanation for his decision for not exercising his discretion properly. Therefore, Mrs G believes for all the above

reasons, the Council made an administrative error when making a decision about her ill health pension.

Ombudsman's decision

22. Although Dr Williams initially refused to provide a certificate with his report, he later agreed to provide it on 19 June 2015. I therefore am satisfied that the certificate, medical report and further comments have been subsequently provided to Mrs G.
23. Mrs G referred to previous Ombudsman Determinations in support of her case. However, I consider each case on its own merit. I find that based on the evidence that has been presented the Council has considered the relevant factors in arriving at its decision not to grant Mrs G 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.
24. I also find that the South Tyneside Council's solicitor provided sufficient explanation to Mrs G why he has not been able to exercise discretion in her favour. I consider that his interpretation of the Regulations was a reasonable one. In any event, I do not consider that this procedural issue is capable of having caused Mr G any hardship. This is because having considered the substance of Mrs G's complaint, I can see no flaw in the decision making process of the Council.
25. Therefore, I do not uphold Mrs G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
12 March 2018

Appendix 1

74 Applications for adjudication of disagreements

(1) Each Scheme employer and administering authority must appoint a person ("the adjudicator") to consider applications from any person whose rights or liabilities under the Scheme are affected by

(a) a decision under regulation 72 (first instance decisions); or

(b) any other act or omission by a Scheme employer or administering authority,

and to make a decision on such applications.

(2) An applicant under paragraph (1)(a) may apply to the adjudicator appointed by the body making the decision, within six months of the date notification of the decision is given under regulation 73 (notification of first instance decisions).

(3) An applicant under paragraph (1)(b) may apply to the adjudicator appointed by the body responsible for the act or omission, within six months of the date of the act or omission which is the cause of the disagreement, or, if there is more than one, the last of them.

(4) The adjudicator may extend the time for making an application under paragraph (2) or (3).

(5) An application under paragraph (2) or (3) must:

(a) set out the applicant's name, address and date of birth;

(b) if the applicant is not a member of the Scheme, set out the applicant's relationship to any relevant member of the Scheme and give that member's full name, address, date of birth, national insurance number and the name of the member's Scheme employer;

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(c)include a statement giving details of the nature of the disagreement and the reasons why the applicant is aggrieved;

(d)be accompanied by a copy of any written notification under regulation 73 (notification of first instance decision); and

(e)be signed by or on behalf of the applicant.

(6)The adjudicator must determine:

(a)the procedure to be followed when exercising functions under this regulation; and

(b)the manner in which those functions are to be exercised.

76 Reference of adjudications to administering authority

(1)An applicant under regulation 74 (applications for adjudication of disagreements) may refer a decision under regulation 75 (decisions of the adjudicator) for reconsideration by the appropriate administering authority.

(2)A reference under paragraph (1) must:

(a)be made before the relevant date;

(b)set out the applicant's full name, address and date of birth;

(c)if the applicant is not a member of the Scheme, set out the applicant's relationship to any relevant member of the Scheme and give that member's full name, address, date of birth, national insurance number and the name of the member's Scheme employer;

(d)include a statement that the applicant wishes the decision to be reconsidered by the administering authority;

(e)set out the details of the grounds on which the applicant relies;

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(f) be accompanied by a copy of any written notifications under regulations 73 (notification of first instance decisions) and 75 (decisions of the adjudicator); and

(g) be signed by or on behalf of the applicant.

(3) The relevant date for the purposes of paragraph (2)(a) is-

(a) in a case where notice of a decision has been given under regulation 75(1), six months from the date the notice is received;

(b) in a case where an interim reply has been sent under regulation 75(2), but no notice has been given under regulation 75(1), seven months from the expected decision date; and

(c) in a case where no notice has been given under regulation 75(1) and no interim reply was sent under regulation 75(2), nine months from the date on which the application was made.

(4) The administering authority must determine-

(a) the procedure to be followed when exercising its functions under this regulation; and

(b) the manner in which those functions are to be exercised, but it must ensure that no person who was involved in the making of a first-instance decision or a decision under regulation 75 (decisions of the adjudicator) is involved in a decision on reconsideration.

(5) For the purposes of paragraph (1) of this regulation, the appropriate administering authority is the administering authority which is or was the last appropriate administering authority for the member who is the applicant, or who is the relevant member in relation to any other applicant.