

## Ombudsman's Determination

Applicant	Ms E
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	Oxfordshire County Council ( <b>the Council</b> )

## Outcome

1. I do not uphold Ms 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. Ms E's complaint against the Council is that its review of its original decision not to award her ill health pension from August 2013 when she left her employment, was flawed.

## Background information, including submissions from the parties

4. Ms E brought a complaint to this office and an Adjudicator issued his opinion on 21 July 2015 and recommended that the Council should reconsider Ms E's application and then decide whether or not she satisfied the criteria for ill health retirement at the date her employment ended. Both parties accepted the opinion. This complaint relates to events after the opinion was accepted by both parties.
5. On 27 July 2015, a new independent registered medical practitioner, (**IRMP**), Dr Olowookere wrote a report that said:

"Based on all the information on her file, it is evident that all available treatments for her condition have certainly not been exhausted. Given the fact that Ms E still has many years before she gets to her retirement age, it does imply that there is still every chance that at the least be in a position to engage in gainful employment at some point in the future. In view of these and in my Opinion, Ms E does not meet the criteria for consideration for IHR by the pension scheme based on all the medical information and evidence currently available on her file".

6. On 5 October 2015, Ms E sent a letter to the Council expressing her dissatisfaction with the IRMP's report. She said that Doctor failed to provide the reasoning behind his opinion.
7. On 8 October 2015, the Council sent a letter to Ms E informing her that it will respond to her points once it has sought clarification from the IRMP.
8. On 26 November 2015, the Council responded to Ms E providing comments from the IRMP with its decision. The letter said that:

“Although Dr Olowookere does not quote specific research in his response he advises that research is not consistent or conclusive in the case of chronic fatigue syndrome and that as you have such a long period of time before your retirement date --20 years – it is not possible for him to confirm at present that your inability to work is permanent such as to fulfil the required definition of the LGPS...The Panel considered that Dr Olowookere's stance was reasonable in the circumstances and we are prepared to accept his advice”.

9. On 5 December 2015, Ms E raised a formal complaint against the Council's decision. The Council agreed for it to be considered under stage 2 IDRP.
10. On 12 February 2016, the decision maker appointed by the Pension Fund Committee, wrote a response to Ms E, under stage 2 IDRP and said that:

“...I am not qualified to judge whether there are any evidence-based reasons to support a view that you could be expected to recover sufficiently to undertake your former role. I do find that neither Dr Olowookere, nor the Council have provided any evidence to support this case...all I can advise is that the Council reviews its decision, ensuring that any new decision is properly supported by evidence based reasons”.

11. On 1 May 2016, a new IRMP, Dr Nightingale wrote a report that said:

“Taking all of the above into consideration, my professional medical opinion is that it is more likely than not that Ms E's condition will improve over the forthcoming nearly 20 years...because the natural course of her condition is such that improvement in the future would be anticipated and improvement is likely to be both hastened and maximised with therapeutic interventions...Furthermore, not all treatment options have been exhausted , the treatment options available are more likely than not to bring improvement...Ms E is not permanently incapable of discharging efficiently the duties of her former employment, namely that of social worker. As per LGPS Regulations, the 'gainful employment' test only follows after permanence has been established; permanence has not been concluded but I shall state my opinion that Ms E does not have a reduced likelihood of being capable of undertaking any gainful employment before her normal retirement age”.

12. On 12 May 2016, the Council sent a decision letter to Ms E that upheld the previous decision of not awarding her ill health retirement pension (**IHRP**).
13. On 18 June 2016, Ms E brought the complaint to this Office.
14. In August 2016, this Office received a formal response from the Council that said:

“The Council has taken considerable steps to review its actions and decisions in relation to Ms E’s ILR application. The Council has now received five reports from IRMPs that have all concluded that Ms E does not fulfil the criteria for IHR. Had any of them certified that Ms E fulfilled the criteria for ill health retirement it is highly likely that the Council would have accepted this advice. However, in the absence of this opinion from any of the doctors consulted the Council remains unable to implement Ms E’s ill health pension.”

**Ms E’s position:**

15. The IRMP has not taken into account the nature of her position and the impact it would have on her condition. Further the Council has not reached the decision in relation to the balance of probabilities.
16. Dr Nightingale is being biased against Ms E by relying on studies that show Cognitive Behavioural Therapy and Graded Exercise Therapy can be beneficial to Chronic Fatigue Syndrome (**CFS**) sufferers. Ms E referred to her own medical research that shows there is no quantifiable benefit or little benefit to CFS sufferers.

**The Council’s position:**

17. Dr Nightingale was aware of Ms E’s nature of work as a social worker and she makes references to it in her report. The report has been produced with evidence based conclusions, referencing medical research literature so there has not been any error or omission of fact by the IRMP. However Ms E’s research is general and not specific to her case.

**Adjudicator’s Opinion**

18. Ms 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.
  - The Council has followed the Adjudicator’s recommendation correctly by nominating a new IRMP, Dr Olowookere, who had no prior involvement in this case. I recognise that the IRMP’s opinion was flawed so following the decision under stage 2 IDRP, the Council decided to seek another opinion. It is clear from the second IRMP Dr Nightingale’s report, that it considered all Ms E’s medical evidence and research

available on her condition. The Adjudicator has found no significant flaws by the Council during its review process to justify remitting the matter back for further reconsideration.

- Ms E has referred to her own research to support her case. There is a detailed discussion about Ms E's condition and a variety of medical research in Dr Nightingale's report and on balance her condition is likely to improve with time. So, the Adjudicator disagreed with Ms E's assertion that the test was applied incorrectly.
  - While the Adjudicator accepted that the Council's decision fell short of what was expected from it under Regulation 57 of the Administration Regulations 2008, however asking the Council to reconsider its decision letter will not change the overall outcome. The medical opinion of the IRMP is thorough enough and sets out why Ms E has not met the criteria for early retirement on grounds of ill health.
  - The Adjudicator appreciated that the Council's decision may not be satisfactory to Ms E. However, Dr Nightingale and subsequently the Council have considered Ms E's entitlement to an ill health early retirement at the date she left her employment correctly.
19. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E 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 E for completeness.
20. Ms E contends that Dr Nightingale's deductions made from the evidence available at the time, have drawn wrong conclusions. She also referred to item 13 under LGPS supplementary guidance for IRMPs dated June 2011, that states, "medical incapacity could arise not only because of disability resulting from the employees illness, but also if there were a serious risk that a job could exacerbate the employee's illness".
21. Ms E maintains that the Council's decision is flawed on the basis that she is unlikely to be symptom free and will not be able to return to her previous activity levels. She also says that she has managed to discredit previous medical reports through the complaints procedure and that Dr Nightingale's opinion is also flawed.

### **Ombudsman's decision**

22. It is my decision that Dr Nightingale's report covered all the necessary requirements and provided the Council with a comprehensive opinion in order for it to reach a decision. I have not seen any evidence to show that it did not cover any aspect of Ms E's concerns or condition. Dr Nightingale's opinion took into account relevant evidence and referred to appropriate medical research. I appreciate that Ms E disagrees with the conclusions reached, and presented her counter arguments, but Dr Nightingale was expected to reach her opinion regardless if Ms E agrees or

disagrees with it. While I recognise that Ms E disagrees with Dr Nightingale, that is not enough to say that the report is an inadequate basis for the Council's decision.

23. Ms E has referred to item 13 under LGPS supplementary guidance for IRMPS dated June 2011, which she thinks may have a bearing on her case. However, the example given at point 13 is in relation to more specific factors that might exacerbate the specific condition – in this instance, Dr Nightingale has presented her opinion regarding this aspect and it allowed the Council to reach its decision. So, I disagree with Ms E that point 13 has not been considered.
24. I find that based on the evidence that has been presented to the Council, it has considered the relevant factors in arriving at its decision not to grant Ms 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. It follows, then that I cannot remit the decision back to the Council.
25. Therefore, I do not uphold Ms E's complaint.

**Karen Johnston**

Pensions Ombudsman  
18 August 2017