

Ombudsman's Determination

Applicant	Miss A
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Ministry of Justice (MoJ)

Outcome

1. I do not uphold Miss A's complaint and no further action is required by Ministry of Justice
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss A has complained that MoJ has reached a perverse decision when deciding not to exercise their discretion to allow Miss A early payment of her pension on compassionate grounds.

Background information, including submissions from the parties

4. This complaint was first considered by the Deputy Ombudsman and a determination issued on 24 January 2014. She upheld the complaint and remitted the decision to MoJ to reconsider, after they had obtained the required additional information in order to assess whether Miss A met the criteria.
5. Miss A submitted the further evidence requested by MoJ on 14 October 2014 and the MoJ issued their second decision in July 2015, confirming they were not exercising their discretion in this case. A complaint about this decision was considered by the new Deputy Ombudsman who issued her decision on 7 June 2016. She also upheld the complaint and asked the MoJ to reconsider their decision. The directions were as follows:

"Within 28 days MoJ will provide Miss A with its decision as to whether she should be awarded a pension on compassionate grounds. It must reconsider the information Miss A submitted and provide a detailed explanation as to why she does or does not meet the criteria for release of her pension on compassionate grounds."

6. MoJ sent Miss A its decision on 5 July 2016. In its letter the MoJ said it stood by its original decision to refuse payment on the basis that Miss A's application did not meet the requirements for the early payment of her pension. Their reasons can be summarised as follows:
- The bank account statements were always in credit for the period provided and at September 2014 had a combined balance of more than £8,000.
 - The estimated expenditure quoted is higher than Miss A's incomings, suggesting financial support was available from elsewhere. This was also evidenced by the continuing significant balance in the bank accounts and three significant deposits made totalling £13,000.
 - Although authorising the early payment of Miss A's pension would help her financial position, it wasn't necessary to ensure her continued financial stability.
 - It was not for MoJ to comment on the individuals spending choices, but there was expenditure at higher end shops and on maintaining an executive car, which was not consistent with a claim for early retirement.
 - The cost of authorising Miss A's application for early retirement was a significant consideration, but the decision was based primarily on the view that the evidence submitted does not meet the requirements.
7. Miss A thinks the MoJ has not followed the Deputy Ombudsman's directions as it has not provided detailed reasons as to why the evidence, in particular the medical evidence, does not meet the criteria laid out in the policy. Miss A has asked the Ombudsman to direct the MoJ to pay Miss A the pension.

Adjudicator's Opinion

8. Miss A's complaint was considered by one of our Adjudicators who concluded that no further action was required by MoJ. The Adjudicator's findings are summarised briefly below:
- MoJ's letter of 5 July 2016, had followed the Deputy Ombudsman's determination and had explained adequately why Miss A did not meet the criteria to have her pension paid early on compassionate grounds.
 - MoJ were entitled to consider financial arrangements when determining if there were reasonable alternative arrangements that Miss A could make to overcome her circumstances. In this case, MoJ considered that financial arrangements had been made.
 - MoJ had therefore exercised its discretionary power in a proper manner.

9. Miss A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss A provided her further submissions and a bundle of twenty four appendices which I have considered. My decision and the reasons for it are set out below.

Ombudsman's decision

10. Under Regulation 31 of the Local Government Pension Scheme Regulations 1997, the decision to award an unreduced pension on compassionate grounds is at the discretion of the employing authority/former employing authority. In accordance with Regulation 106 of the Regulations each employing authority/former employing authority must have a policy in place for the exercise of this discretion. It has been suggested that the policy in some way displaces the discretion created by the Regulations. I do not agree. Assessing the facts against the criteria established by the policy ensures that discretion is exercised fairly and consistently, but does not in my view displace the discretion itself.
11. Broadly, the general principles for the exercise of a discretion by an employer (or, as here, former employer) are that the decision maker must take into account all relevant factors and no irrelevant factors, act within the scope of the power it is using (and of any discretion it has as to how it is used), direct itself correctly in law, ask itself the right questions, and not come to an irrational or perverse decision, that is one which no reasonable employer faced with the same evidence would have taken. Further, in exercising its discretion the employer/former employer is entitled to have regard to its own interests, which includes its own commercial interests. The Ombudsman cannot overturn the exercise of a discretion merely because he/she might have reached a different decision. Based on the evidence, I am satisfied that MoJ has exercised its discretionary power in a proper manner and in line with these principles and there is no basis to interfere with the decision of 5 July 2016.
12. Miss A believes that the decision is perverse. She argues that the previous Ombudsman decision held the stance to refuse payment to be perverse and considers it is therefore not open to MoJ to reach the same decision again.
13. The previous complaint was upheld because MoJ did not have regard for its own policy, and did not provide a detailed explanation as to why the information submitted by Miss A was not persuasive enough to release the pension on compassionate grounds. . The determination did not make findings about the correctness of the substantive decision. It found that the process for reaching and communicating the decision had not been correct. It does not follow that simply because the outcome of the most recent decision has remained the same, it must therefore be perverse. Whether it is perverse must depend upon the manner in which the decision maker has considered the evidence and the relevant criteria, points which I consider at greater length below.

14. Miss A also submits that MoJ have not given a full and detailed explanation as to why she does or does not meet the criteria in their policy, and therefore does not follow the Ombudsman's direction of 7 June 2016.
15. MoJ were directed to reconsider the information and provide a detailed explanation as to why Miss A does or does not meet the criteria for release of her pension on compassionate grounds. Miss A does not believe MoJ's decision letter of 5 July 2016 (**the letter**), does explain this.
16. The policy used by MoJ to decide eligibility for early payment of pension on compelling personal grounds (which is reproduced in full at Appendix 1) states as follows:

'A preserved award may be paid early when:

- a member or former member is aged 50 or over; and
- there are compelling personal grounds for payment of pension.

The criteria are applied rigorously and both the conditions set out below must be met.

- The member or former member must be facing such personal difficulties or problems as to be prevented from following any form of paid employment, either full-time or part-time.
- It must not be possible to make any reasonable alternative arrangements to overcome the immediate circumstances giving rise to the request (for example, by employing a nurse or daily help when a dependent relative needs full-time care and attention).

... Financial hardship by itself does not constitute grounds for early payment of benefits.

The member or former member must apply for early payment of the preserved award giving full details of the circumstances in support of the request. Any application must include the following information:

- Full details of income...
- Evidence of expenditure....
- Medical evidence (where appropriate). '

17. Mrs A has had sight of the policy and submitted evidence as required. MoJ plainly considered the evidence submitted because it wrote on 15 December 2014 asking supplementary questions related to eligibility for benefits and/or ability to claim on insurance policies.
18. The letter of 5 July 2016 does not itself set out the criteria and the policy. However the policy has been made available to Mrs A. There has been complete transparency about its contents. The letter of 5 July 2016 sets out reasons, which when compared

with the policy, are sufficient to enable Miss A to understand why MoJ believe she does not meet the criteria for an award. To put it another way, they provide sufficient detail for her to say why she disagrees with MoJ.

19. Miss A thinks MoJ needs to provide its interpretation of the criteria, to have given a full explanation. However, I cannot see that in applying the criteria MoJ has gone beyond giving the words in the criteria their ordinary meaning. It is possible to compare the reasons given with the criteria contained within the policy and make reasoned arguments about whether the decision is right or wrong. I therefore think the reasons given are sufficient.
20. Miss A contends that MoJ has misinterpreted the policy and misdirected itself as a result. She considers that the relevant criteria are essentially medical and therefore fall to be satisfied on medical evidence. She argues that MoJ has not mentioned her medical evidence and has not set out whether she meets the second limb of what she terms 'the criteria' which I understand to be a reference to the second condition set out above.
21. , I cannot agree with Miss A's interpretation that the criteria of the policy are purely medical or that a decision maker considering the second of the two conditions is limited to consideration of medical evidence.
22. The overarching criteria are age, and whether 'compelling personal grounds' exist. The policy sets out two conditions which must be met in all cases but they do not displace the overarching criteria or completely bind the discretion. In any event I do not consider that the conditions can properly be read as limited to medical issues. "Personal difficulties" covers a broader range of circumstances that could lead to an application. Similarly, 'reasonable alternative arrangements to overcome the immediate circumstances giving rise to the application' appears to contemplate practical arrangements to get over whatever the difficulties are in fact. The view that an application for early retirement on compassionate grounds need not always arise due to medical issues, is also supported by the fact that the policy states that medical evidence is not always considered appropriate. Similarly, I can see no basis for Miss A's assertion that financial hardship is not a criteria. The ability of individuals to overcome their circumstances may depend on their finances. If finances were irrelevant applicants would not be required to submit financial evidence. The policy acknowledges the relevance of financial hardship, otherwise it would not be necessary to say that hardship '*by itself* it does not constitute grounds for early payment of benefit'.
23. In her application Miss A herself put forward the case that she was financially unstable as a result of her unavoidable caring responsibilities. MoJ considered the financial evidence going to that point and concluded that the evidence shows the pension was not necessary to ensure Miss A's continued financial stability. In my view that this is a conclusion which it was entitled to draw from the evidence. I cannot see that MoJ were wrong to consider the financial information submitted by Miss A. It

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was necessary to consider whether the personal grounds she was putting forward were sufficiently compelling.

24. It follows, I do not uphold Miss A's complaint and I will not be asking MoJ to reconsider their decision or intervening by assuming the role of decision maker.

Karen Johnston

Deputy Pensions Ombudsman
7 December 2016

Appendix I

Moj's Policy on the exercise of discretion under Regulation 31

"Circumstances in which a preserved award may be paid before the pension age

A preserved award may be paid early when a former member:

- opts for an actuarially reduced award; or
- is in ill health; or
- proves there are compelling personal grounds for early payment.

Actuarially reduced retirement

Former members who left the Local Government Pension Scheme before the pension age can sometimes opt to receive a reduced pension and reduced lump sum. In these circumstances, if there is no charge to the department, the member can be allowed to take their pension early

The award is actuarially reduced before it is paid. The degree of reduction depends on the member's age.

...

Early payment on compelling personal grounds: eligibility

A preserved award may be paid early when:

- a member or former member is aged 50 or over; and
- there are compelling personal grounds for payment of pension.

The criteria are applied rigorously and both the conditions set out below must be met.

- The member or former member must be facing such personal difficulties or problems as to be prevented from following any form of paid employment, either full-time or part-time.
- It must not be possible to make any reasonable alternative arrangements to overcome the immediate circumstances giving rise to the request (for example, by employing a nurse or daily help when a dependent relative needs full-time care and attention).

Financial hardship by itself does not constitute grounds for early payment of benefits.

The member or former member must apply for early payment of the preserved award giving full details of the circumstances in support of the request. Any application must include the following information:

- Full details of income for the member or former member and all household members. They must include details of state benefits, including the outcome of any application for Income Support and income derived from savings.
- Evidence of expenditure on the main household items including:
 - rent or mortgage repayments;

- council tax;
- all utility bills, including gas, electric, water bills etc
- telephone line rental;
- insurances;
- food and clothing (there are set rates per person of household);
- other main household expenditure which can be shown as essential in the circumstances.

Details of income and expenditure should be supported by bank statements, bills etc

- Medical evidence (when appropriate). This is always required when a close member of the family needs full-time care, although if Attendance Allowance is in payment the medical criteria may in general be said to be satisfied. The member or former member is responsible for providing the evidence.”