

## Ombudsman's Determination

Applicant	Mr N
Scheme	Royal Mail Pension Scheme ( <b>the Scheme</b> )
Respondent	Royal Mail

## Outcome

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

## Complaint summary

3. Mr N's complaint is that he has been refused an ill health early retirement (**IHER**) pension.

## Background information, including submissions from the parties

4. Mr N was employed by Royal Mail as a postman.
5. On 17 December 2014, following a period of sickness absence, Mr N was referred to Ms Devlin, an occupational health, (**OH**), advisor who stated that Mr N was unfit for work at present due to his continuous lower back pain, and his neurological symptoms.
6. On 5 January 2015, Mr N was referred to Dr Scott, Consultant Occupational Physician. Dr Scott was of the opinion that Mr N was, for the foreseeable future, incapable of carrying out his current duties and any other such duties that he might reasonably be expected to perform by Royal Mail. Yet he did not feel that there was sufficient evidence to indicate that Mr N was permanently incapable of resuming other forms of employment in the future. Dr Scott recommended that the management consider awarding Mr N retirement on ill health grounds with a lump sum payment rather than an immediate pension.
7. In January 2015, following the medical assessment and report provided by Dr Scott, Mr N was retired from employment with the payment of a lump sum.

8. Mr N was dissatisfied with the outcome and made an appeal under the Scheme's internal disputes resolution procedure.
9. As part of the appeal Mr N submitted new medical evidence including a report from General Practitioner (**GP**) Dr Boruch, dated 17 February 2015, in which she said that Mr N is unfit for his present job and will be for the foreseeable future and in fact his condition was likely to become longstanding i.e. more than 10 years because of his ongoing back symptoms. A further report from his GP dated 2 March 2015, confirmed that Mr N could not carry out his present job as a postman. However, depending on the type of other employment, she was not able to comment whether Mr N would be able to resume other forms of employment in the next 10 years at that time.
10. On 23 March 2015, Mr N was referred by his GP to Dr Sare, Consultant Neurologist, who said that in his view, Mr N was suffering from a functional neurological disorder and there was no evidence of demonstrable organic pathology to account for his symptoms. Dr Sare recommended that, in view of the functional neurological disorder, Mr N should be referred for specialist neuro-rehabilitative physiotherapy and that he should also be assessed by a Consultant Psychiatrist.
11. On 18 January 2016, Dr Sare wrote to Dr Flynn, OH, and said it was difficult to estimate the long term prognosis for a functional neurological disorder, but that Mr N should indeed be offered treatment in the form of specialist physiotherapy and a psychiatric assessment.
12. On 19 January 2016, Dr MacCarthy, Consultant Occupational Physician upheld Dr Scott's previous recommendation of IHER with the payment of a lump sum.
13. On 27 January 2016, Royal Mail wrote to Mr N and confirmed that his appeal was unsuccessful based on the evidence available. It said that "while it is accepted Mr N continues to have problematic symptoms rendering him unable to work, there does not appear to be a medical condition that would cause permanent incapacity for suitable alternative work."
14. Mr N appealed Royal Mail's decision under the Scheme's second stage appeal process.
15. On 23 March 2016, Mr N was referred to Dr Robinson who took into consideration all previous medical evidence, including Ms Devlin's advice letter dated 17 December 2014, letters from Dr Sarkar and Dr Sare, and further evidence provided by Mr N. Dr Robinson held that after a review of all the evidence available at the time of the initial recommendation, and after assessing Mr N, it was his opinion that there was insufficient evidence to confidently state that Mr N would have been permanently (defined as 10 years from the decision or the normal retirement date) unfit to work in his then role, any other role for Royal Mail, or for any other employer. He added that there was insufficient evidence to demonstrate Mr N would be permanently incapable of employment in the future. He said it was therefore logical to recommend a payment of a lump sum and not an immediate pension.

## Adjudicator's Opinion

16. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal Mail. The Adjudicator's findings are summarised briefly below:-
- The Ombudsman's role is not to decide whether Mr N is eligible for an IHER pension; that is a matter for Royal Mail to decide after obtaining requisite certification from a medical advisor. It is also not for the Ombudsman to agree or disagree with any medical opinion.
  - The Ombudsman's role is to decide whether Royal Mail has abided by the Regulations, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. If there are flaws in the decision making process the Ombudsman can require Royal Mail to look at Mr N's case again. However, the weight which is attached to any of the evidence is for Royal Mail to decide, including giving some of it little or no weight. It is open to it to prefer the advice of its own medical advisers unless there is a cogent reason why it should not.
  - Mr N says his GP's and Dr Sarkar's opinion seems to have been ignored. However, it is for Royal Mail to attach weight (if any) to the relevant medical evidence. Royal Mail made its final decision based on Dr Robinson's report, which made reference to both Mr N's GP report, and Dr Sarkar's letter dated 2 April 2015. As such, the Adjudicator was satisfied that Royal Mail had considered all the relevant information.
  - Mr N disagreed with Dr Robinson's assessment and reiterated that his GP supported his application. However, the Adjudicator was of the view that this was not sufficient for the Ombudsman to say that Royal Mail's preference for Dr Robinson's opinion was perverse.
  - Mr N says that Royal Mail was only concerned about the original medical retirement decision and he should have been medically retired on all of his conditions not just one. However, the Adjudicator was satisfied that Dr Robinson in his assessment reviewed subsequent medical reports which had been provided to him following the date of Mr N's medical retirement. Further, at the second stage of the Scheme's internal appeal process, the medical opinion expressed by Dr Robinson was thorough and set out why Mr N had not met the criteria for an IHER pension. As such, the evidence shows that Royal Mail has ultimately considered the available medical evidence properly before reaching its final decision.
17. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his 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 Mr N for completeness.

## **Ombudsman's decision**

18. Mr N maintains that Dr Robinson failed to take into account his neurological disorder in his report and as such Royal Mail did not consider all relevant medical evidence. However, I do not find that there is sufficient evidence provided that supports this assertion. The medical opinion of Dr Robinson and subsequent decision at the first and second of the Scheme's appeal process were sufficiently thorough and set out why Mr N had not met the criteria for early retirement on grounds of ill health. Further, Dr Robinson stated in his report that the most likely reason for Mr N's continuing medical symptoms and associated disability is in fact as a consequence of him suffering from a functional neurological disorder. However, Dr Robinson concludes by saying that even if this information was available to Royal Mail at the time the medical retirement decision was made, he did not believe this would have changed the recommendation that Mr N be awarded IHER. This is because there was insufficient reason to believe that Mr N would be permanently incapacitated from returning to other forms of employment in the future.
19. It is my view that Dr Robinson's report provided Royal Mail with a comprehensive opinion in order for it to reach a decision. I have not seen any evidence to show that it did not review any aspect of Mr N's concerns or condition properly. Dr Robinson's opinion took into account relevant medical evidence and referred to appropriate medical research. I appreciate that Mr N disagrees with Royal Mail's decision not to grant him IHER. However, Mr N's disagreement is not a sufficient reason for me to remit the matter back to Royal Mail for his IHER application to be reconsidered.
20. I find that, based on the evidence that has been presented, that Royal Mail has considered the relevant factors in arriving at its decision not to grant Mr N IHER. There are no justifiable grounds for me to find that Royal Mail's decision was perverse or that the process it undertook in reaching its decision was flawed.
21. Therefore, I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
26 April 2018