

Ombudsman's Determination

Applicant	Mr G
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Greater Manchester Pension Fund (the Fund) Liverpool Hope University (the Employer)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by the Fund or the Employer.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr G has complained that he should have been considered for ill health retirement (**IHR**) when he resigned from his position as an Administrator with the Employer in 2014.

Background information, including submissions from the parties

4. On 9 June 2014, Mr G attended an occupational health (**OH**) assessment to discuss the back and neck pain he was experiencing. The OH physician said that Mr G was "fit to be in work and engage in the duties of his occupation."
5. On 20 June 2014, Mr G's GP issued a Statement of Fitness for Work confirming that Mr G was not fit for work for a period of two weeks due to stress.
6. On 2 July 2014, whilst on sick leave, Mr G gave formal notice of his resignation. His last day of employment was 18 July 2014.
7. On 17 March 2015, Mr G emailed the Employer to enquire about taking **IHR**.
8. On 28 May 2015, Mr G attended an OH assessment. The corresponding report dated 2 June 2015 set out that, due to his back and neck pain, Mr G found full time work difficult, and that he had developed problems with his ears and sight. However, the report stated that Mr G had not yet had the benefit of evidence based treatment so it was premature to say that his disability was permanent. The conclusion was that the criteria for permanent incapacity under the Local Government Pension Scheme

Regulations 2013 (**the Regulations**) had not been met. The relevant section of the Regulations is set out in Appendix 1.

9. On 16 June 2015, the Employer wrote to Mr G explaining that his IHR application had not been successful.
10. On 25 July 2016, Mr G contacted the Employer asking to be considered for IHR. On 14 October 2016, an OH assessment took place and the OH physician confirmed his opinion that the deterioration of Mr G's health issues meant that it was very unlikely that Mr G would be able to return to gainful employment in the foreseeable future.
11. On 27 October 2016, the Employer wrote to Mr G confirming that his IHR application had been successful.
12. Mr G asked this Office to consider his complaint in July 2016. He felt that he should have been advised of the IHR option when he left employment. Mr G has said that he discussed IHR with the Employer whilst still working, but that he was given incorrect information. Mr G has said that he had several short periods of sickness absence before he resigned from his position, and that the Employer should have considered him for IHR whilst he was still an active member of the Scheme.
13. Mr G recently submitted evidence that his payments from the Department for Work and Pensions (**DWP**) relating to his mobility issues have been increased, and backdated to 4 November 2015. Mr G has also referred to four previous Ombudsman final Determinations where complaints about IHR benefits were upheld.

Adjudicator's Opinion

14. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Fund or the Employer. The Adjudicator's findings are summarised briefly below:
 - As Mr G was not dismissed on ill health grounds, the Employer had no obligation to inform him of the IHR option.
 - In any event, as the OH report in 2015 confirmed that Mr G did not meet the IHR criteria, it is more than likely he would not have met the criteria when he resigned in 2014.
 - The DWP's decision to award benefits from November 2015, bears no influence on the Employer's decision.
 - The four previous decisions to which Mr G referred were non-comparable to Mr G's circumstances.
 - The Employer correctly processed Mr G's IHR application as a deferred member in 2016, in line with the Regulations.

15. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G 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 G for completeness.
16. Mr G's further comments are summarised below:
 - Mr G had erroneously been recorded as resigning whilst on annual leave, rather than on sick leave, which is crucial to the decision process.
 - Mr G resigned in a fragile state of mind, under threat from a visit to his home by his line manager.
 - Mr G expects that the Employer has a duty to inform staff of IHR if they resign whilst suffering from a physical or mental illness.
 - The 2015 medical report said Mr G was not fit for work, which would have been the case in 2014, whilst he was still an active member, so he would have been entitled to a temporary payment of pension, which constitutes a financial loss.
 - The IHR benefits Mr G started to receive in 2016 should be backdated to 2 June 2015, in line with the medical report.
 - The DWP report is relevant as it is an independent medical practitioner confirming Mr G's severe disabilities and that Mr G was unfit for work on a permanent basis.

Ombudsman's decision

17. Mr G's complaint is that the Employer failed to consider him for IHR when he resigned in 2014.
18. In order to be eligible for IHR, the member must be dismissed by their employer on ill health grounds and be deemed permanently incapable of doing their current job. The Employer did not dismiss Mr G, so the first requirement is not fulfilled
19. The OH report dated 9 June 2014 confirmed that Mr G was fit to be in work at that time. His GP then signed him off sick. However, there was no evidence that he was permanently incapable of doing his job at that time. The second requirement is therefore not fulfilled. For these reasons, Mr G was not eligible for IHR in June 2014 when he resigned.
20. Mr G has argued that the OH report dated 28 May 2015 said he was unfit for work, which is correct, but that report also confirmed that he was not then permanently incapable of discharging the duties of his former role.
21. Mr G believes he would have been entitled to an early pension on ill health grounds as an active member. This benefit allows an active member to receive a pension for a maximum of three years, provided certain criteria are met. The section of the

Regulations on this benefit is set out in Appendix 2. In order to qualify for this benefit, the member must be dismissed by their employer on ill health grounds. Further, the member must be permanently incapable of performing their existing work duties, and not immediately capable of undertaking any gainful employment. Mr G was not dismissed by the Employer, and the OH report of June 2014 confirmed that he was capable of managing his work role. Mr G was therefore not eligible for the early pension.

22. Mr G has argued that, as he was on sick leave at the time of his resignation, the Employer had a duty to inform him about IHR, however the fact he was on sick leave does not of itself give rise to an obligation under the Regulations. The Employer did not propose to terminate his employment on grounds of ill health.
23. Mr G has asked for his IHR benefits to be backdated to 2 June 2015, in line with the OH report of the same date, but this report confirmed that Mr G did not meet the criteria for IHR, therefore Mr G is not entitled to receive IHR benefits from this date. I am satisfied that the Employer has processed Mr G's benefits in line with the advice received from OH and in line with the Regulations. It is not permissible for a member to receive more benefits than those to which they are entitled.
24. Mr G has said that DWP's confirmation that he was permanently unfit for work in November 2015 means that the Employer must award benefits from this time. However, the Scheme cannot award IHR benefits without certification from OH of the member's capacity. The Employer has not made an error by relying upon the advice of OH before making a decision on Mr G's IHR application.
25. Therefore, I do not uphold Mr G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
8 August 2017

Appendix 1

Local Government Pension Scheme Regulations 2013

38 Early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members

(1) A deferred member who, because of ill-health or infirmity of mind or body-

(a) becomes permanently incapable of discharging efficiently the duties of the employment that member was engaged in at the date the member became a deferred member, and

(b) is unlikely to be capable of undertaking gainful employment before normal pension age, or for at least three years, whichever is the sooner, may ask to receive payment of a retirement pension whatever the member's age.

(2) A request under paragraph (1) must be made in writing to the deferred member's former Scheme employer or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(3) Before determining whether or not to agree to a request under paragraph (1), the deferred member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member is suffering from a condition that renders the member-

(a) permanently incapable of discharging efficiently the duties of the employment the member was engaged in because of ill-health or infirmity of mind or body; and, if so,

(b) whether as a result of that condition the member is unlikely to be capable of undertaking gainful employment before reaching normal pension age, or for at least three years, whichever is the sooner.

(4) A deferred pensioner member who, because of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age, may ask to receive payment of a retirement pension at any time before the member's normal pension age.

(5) A request under paragraph (4) must be made to the deferred pensioner member's former Scheme employer, or appropriate administering authority where the member's former Scheme employer has ceased to be a Scheme employer.

(6) Before determining whether to agree to a request under paragraph (4), the deferred pensioner member's former Scheme employer, or administering authority, as the case may be, must obtain a certificate from an IRMP as to whether the member, as a result of ill-health or infirmity of mind or body, is unlikely to be capable of undertaking gainful employment before normal pension age.

(7)If the Scheme employer is not the deferred or deferred pensioner member's appropriate administering authority, it must obtain that authority's consent to the appointment of an IRMP under this regulation.

(8)An IRMP appointed under paragraph (6) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).

Appendix 2

Local Government Pension Scheme Regulations 2013

35 Early payment of retirement pension on ill-health grounds: active members

(1)An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.

(2)The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill-health pension amounts).

(3)The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.

(4)The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.