

Ombudsman's Determination

Applicant	Mr E
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Staffordshire County Council (the Council), Staffordshire Police (the Police)

Outcome

1. Mr E's complaint is upheld and to put matters right the Police shall review Mr E's ill health application afresh, as though it were October 2014, with the assistance of a new independent registered medical practitioner (**IRMP**). In addition, the Council and the Police shall each pay Mr E £500 for the significant distress and inconvenience that he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that he should have been awarded Tier 1 ill health retirement, not Tier 3. He feels that the opinion of his Consultant Psychiatrist has not been properly taken in to account. Mr E has also raised concerns over the time taken to review his complaint during the appeals process.

Background information, including submissions from the parties

4. On 3 December 2014, he was medically retired from the Police, and awarded a Tier 3 ill health pension. This decision was based on an IRMP report dated 14 October 2014. The IRMP agreed that Mr E was permanently incapable of performing his current role until his normal retirement date (**NRD**), but stated that he would, on the balance of probabilities, be capable of gainful employment within the next three years.
5. On 16 December 2014, Mr E appealed this decision and, on 6 July 2015, the Police responded under stage one of the internal dispute resolution procedure (**IDRP**). The appeal was not upheld.
6. On 22 December 2015, Mr E appealed under stage two of the IDRP and, on 6 June 2016, the Council upheld the appeal. The appeal was upheld on the basis that, at stage one, the Police considered it necessary to obtain a new medical opinion, from a

new IRMP, but did not do so before issuing the IDRP stage one decision due to a misunderstanding with the IRMP which was not corrected. The Council said that, as the Police considered it necessary to obtain a new opinion, this should have been done and asked the Police to do so, assessing the claim using the evidence available at the time of the original decision.

7. A new IRMP reviewed the application and, in his report dated 27 July 2016, he agreed that Mr E should have been awarded Tier 3 benefits. The IRMP said that there was not sufficient medical evidence to suggest that Mr E would be permanently incapable of gainful employment, and that it was likely that he would be capable of gainful employment within three years of the original decision.
8. On 11 August 2016, Mr E was informed that the Tier 3 benefit he was already receiving would remain unchanged.
9. In August 2016, Mr E raised a complaint with this office about the Tier of ill health pension he had been awarded and the time taken during the appeals process.
10. On 27 September 2016, Mr E appealed for a second time under IDRP stage one. On 14 February 2017, the Police did not uphold the appeal.
11. On 1 March 2017, Mr E appealed for a second time under IDRP stage two. On 20 June 2017, the Council informed him that his appeal was on hold awaiting the outcome of his complaint to this office.

Adjudicator's Opinion

12. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by both the Council and the Police. The Adjudicator's findings are summarised briefly below:-
 - It is not the role of the Ombudsman to review the medical evidence and come to a decision of his own as to Mr E's eligibility for payment of benefits under Regulation 35 of the Local Government Pension Scheme Regulations 2013. The Ombudsman is primarily concerned with the decision making process. If the decision making process is found to be flawed, the appropriate course of action is for the decision to be remitted back to the Police for reconsideration with the assistance of an IRMP not already involved in the case.
 - Under Regulation 35, to qualify for any Tier the applicant must be considered permanently incapable of carrying out their current role until NRD, and currently incapable of gainful employment. The Tier awarded depends on whether the applicant is considered capable of gainful employment before NRD. If they are not, Tier 1 can be awarded. If the applicant is considered to be capable of gainful employment before NRD but not within a period of three years, Tier 2 is applicable. Whereas, if the applicant is considered capable of gainful employment

within a period of three years, Tier 3 is applicable. Gainful employment is clearly defined in the Regulations.

- It is accepted that Mr E was permanently incapable of performing his role with the Police, and that, in 2014, he was currently incapable of any gainful employment. Both IRMP reports, dated 14 October 2014 and 27 July 2016 respectively, state that there is not enough medical evidence to suggest that, on the balance of probabilities, Mr E will be incapable of gainful employment until NRD. Both reports then conclude that Mr E would be able to return to gainful employment within three years. Yet neither IRMP report confirms what further treatment or therapy is available to Mr E, or what impact those treatments or therapies are likely to have on Mr E's condition to enable him to return to gainful employment within three years.
- Under the Regulations, it is the Police that must make the decision whether to award Mr E an ill health pension and, if so, what Tier to award. In making the decision the Police must obtain an IRMP report, however the Police should not follow the IRMP's opinion blindly and need to evidence independent decision making. The Adjudicator thought it would have been reasonable for the Police to seek clarification from the IRMP's as to what they believed would bring about the improvement in Mr E's condition to enable his return to work within three years. The Adjudicator said there is no evidence to support that the Police sought this clarification, or that there was any other independent decision making on the part of the Police.
- Therefore, The Adjudicator recommended that the Police review Mr E's ill health application again, with the assistance of a new IRMP, as though making the decision in October 2014 using the medical evidence available at that time. This does not guarantee that a different decision will be reached, so it remains a possibility that Mr E may receive the same tier of benefit, but the decision needs to be made following the correct process.
- Further, it has been acknowledged that there were failings and delays during the appeal process. Neither IDRPs stage corrected the issues explained above. This and the time taken for Mr E to receive a response to his IDRPs appeals amounts to maladministration.
- In addition to this, Regulation 37 (2) states that the employer must carry out a review of Tier 3 benefits after 18 months. This review has never been carried out as required under the Regulations, and this failure also amounts to maladministration. The Adjudicator said, these two issues would have caused Mr E a significant amount of distress and inconvenience.
- To put matters right the Adjudicator recommended that the Council and the Police should each pay Mr E £500 in respect of the significant distress and inconvenience caused.

- In addition the Police should appoint a new IRMP to review Mr E's ill health application as though it were being considered in October 2014 using all the medical evidence available at that time. The Police should then issue its decision on receipt of the IRMP's report. If a higher Tier is awarded, this should be backdated to December 2014, and any arrears due should be paid with interest at the base rate for the time being quoted by the reference banks. If it is decided that Tier 3 is correct, the Police should then carry out the 18 month review in line with the Regulations as at the 18 month point. If it is decided that Mr E was entitled to Tier 2 benefits at the 18 month review this should be backdated to the 18 month point, and arrears should be paid with interest at the base rate for the time being quoted by the reference banks.
13. Mr E and the Police accepted the Adjudicator's Opinion, however the Council did not and the complaint was passed to me to consider. The Council provided its 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 the Council for completeness.

Ombudsman's decision

14. The Council has said that it adhered to Regulation 77, with respect to the timescales of its IDRPs stage two, by issuing an interim reply advising that it was not possible to provide a response within the two month timescale. A further letter was issued explaining clarification was being sought from the Police and gave a new expected date for the response. Further, the Regulations provide a two stage IDRPs and once this is exhausted the complaint can be referred to the Pension Ombudsman meaning the second IDRPs stage two appeal made to the Council on 1 March 2017 was not appropriate.
15. I do not dispute that the Council adhered to Regulation 77's timescale and requirement to issue an interim reply setting out the reason for the delay and the expected decision date, but this is not the reason that redress for non-financial loss was recommended from the Council.
16. There were failings in the IDRPs in that the errors in the original consideration of Mr E's ill health retirement application were not identified, and subsequently not corrected. Neither the Police at IDRPs stage one, nor the Council at IDRPs stage two, identified the issues found in the original decision by the Adjudicator. I am aware that the Council did remit the case back to the Police after IDRPs for reconsideration. Had these errors been identified by the Council, Mr E would have had his original application reconsidered correctly in August 2016. I consider that the failure to require the IRMP to consider prognosis correctly has made the process to date unsatisfactory, which has caused Mr E significant distress and inconvenience, and that redress for this is merited.

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17. The Council's comment that Mr E had already completed IDRPs so a second appeal to IDRPs was not appropriate. Yet, neither the Police nor the Council informed Mr E of this upon receipt of his second appeal.
18. The Council has not made any comments on the Adjudicator's recommendation to refer the decision of Mr E's ill health retirement application back to the Police, and the Police has accepted that recommendation.
19. Therefore, I uphold Mr E's complaint.

Directions

20. Within 21 days the Council and the Police will each pay Mr E £500 with respect to the significant distress and inconvenience that their maladministration has caused.
21. Within 21 days the Police will appoint a new IRMP to review Mr E's ill health application using all the medical evidence available at the point of the original decision in October 2014. The Police will then issue its decision within 14 days from receipt of the IRMP's report.
 - If a higher Tier is awarded, this will be backdated to December 2014, when Mr E's pension was put into payment. Any arrears due will be paid within 21 days of notification of the decision, including interest at the base rate for the time being quoted by the reference banks.
 - If it is decided that Tier 3 is correct, the Police will carry out the 18 month review, in line with the Regulations as at the 18 month point. If it is decided that Mr E was entitled to Tier 2 benefits at the 18 month review this will be backdated to the 18 month point, and arrears will be paid with interest at the base rate for the time being quoted by the reference banks.

Karen Johnston

Deputy Pensions Ombudsman
3 October 2017