

Ombudsman's Determination

Applicant	Miss K
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

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

Complaint summary

3. Miss K is unhappy that her ill health retirement benefits have not been backdated to the date her illness began.

Background information, including submissions from the parties

4. Miss K worked as a primary school teacher.
5. In March 2003, she took sick leave after experiencing symptoms of constant severe tiredness and fatigue.
6. On 24 May 2003, Miss K attended an appointment with a Consultant Physician, Dr Ewins. He considered that her symptoms, which included progressive lethargy and feeling shaky after any physical exertion, were related to Chronic Fatigue Syndrome (**CFS**).
7. On 31 December 2003, due to her deteriorating health, Miss K resigned from her employment.
8. On 9 June 2005, a consultant physician completed a Department for Work and Pensions (**DWP**) form with details of Miss K's health. This recorded that Miss K had CFS since March 2003, was housebound, and had more bad days than good.

9. On 9 April 2013, Miss K's General Practitioner (**GP**), Dr Stephenson, wrote a letter in support of her application for Employment and Support Allowance. This said that Miss K was not fit enough to consider part time work due to her daily overwhelming fatigue.
10. In October 2015, Miss K applied for an ill health pension from the Scheme.
11. On 21 October 2015, Dr Stephenson completed a TP form with details of Miss K's condition, as part of her application for an ill health pension. This said that, "improvement in functional abilities before normal retirement age is unlikely." Dr Stephenson attached a number of enclosures for consideration, including his letter of 9 April 2013.
12. On 4 November 2015, Dr Jewell, Medical Adviser to the Department for Education (**DfE**), compiled a report for TP. Her concluding advice was that Miss K met the criteria for being permanently incapacitated for teaching, as defined by the Teachers' Pensions Regulations 2010 (**the Regulations**).
13. On 5 November 2015, TP wrote to Miss K saying:

"I'm pleased to inform you that your recent application for Ill-Health retirement with the Teachers' Pension Scheme has been accepted. You've been assessed as being permanently unable to continue in teaching and unable to undertake any form of paid employment.

Your Ill-Health retirement will be payable from 6 months prior to the date of the medical report used to decide your eligibility for Ill-Health retirement. In your case this will be 09.10.12."
14. On 9 November 2015, Miss K wrote to TP saying that she wished to appeal the decision made on her ill health retirement. Specifically, she was unhappy that payment was "only due to be made from 9th October 2012." She highlighted that the evidence she had provided demonstrated that her condition was present in 2003. She asked why this had been disregarded.
15. On 18 November 2015, TP wrote to Miss K saying that under the Regulations, the payable date for an ill-health retirement award is always the latter of the day after the teachers' last day of paid service, or, six months prior to the date of the last medical report used to accept them for ill-health retirement. Miss K's last day of reckonable service was 31 December 2003.
16. The letter also said that Dr Jewell informed TP that she had made a mistake in saying that the report used for the application was Dr Stephenson's letter of 9 April 2013; the report relied upon was dated 21 October 2015. The payable date for Miss K's pension was amended to 21 April 2015.

17. On 19 November 2015, Miss K told TP that she wished to make a complaint under the Internal Dispute Resolution Procedure (**IDRP**) about her ill health benefits not being backdated to 2003.
18. On 1 December 2015, TP responded to the complaint under stage one of the IDRP. It acknowledged the error initially made where it said that Miss K's benefits were payable from 9 October 2012. TP apologised for the inconvenience and distress which had been caused, however, it was satisfied that the regulations relating to the determination of Miss K's ill health benefit payment date was applied correctly.
19. On 10 December 2015, Miss K wrote to TP expressing her dissatisfaction with its decision. She said: -
 - In December 2003, she decided to resign from her post and subsequently enquired about her pension through her employer, who contacted TP. It was confirmed that her pension was preserved.
 - In 2015, when meeting a financial adviser, she was made aware that she could receive her pension before her normal retirement age. She was surprised that no one had informed her of this earlier.
 - After her ill health application was accepted, she appealed the appropriate start date of her benefits, which was then amended to a later date. She was astounded by this error.
 - The commencement date applying to her benefits was crucial as she had relied upon her parents' support in order to survive on a greatly reduced income; the pension would have made a difference to her quality of life.
 - Whilst TP had provided the criteria for determining this commencement date, it was still unclear why evidence of her condition being present in 2003 had been disregarded.
 - In conversations with TP, at no point was it suggested that she could not receive a backdated pension from 2003, therefore she was led to believe she could.
20. On 29 December 2015, the DfE responded to Miss K under stage two of the IDRP. It said: -
 - Both the DfE and TP do not act as employers of teachers, therefore, they were not in a position to automatically provide information to them.
 - Accordingly, employers were relied upon to ensure that information, appropriate to their circumstances, was given to individuals, including a member's options in leaving pensionable employment. Miss K's employer, Cheshire Local Authority (**CLA**), should have provided Miss K with this information at the time, or directed her to where such information was available.
 - TP's records did not suggest that CLA considered Miss K was too ill to take up further employment after leaving. Had this been the case, discussions should have taken place between Miss K, CLA and Occupational Health to explore ways of staying in work. Should these measures have not succeeded, ill health retirement could have been considered.

- The payable date for Miss K's ill health benefit was correct.
21. Miss K subsequently referred her complaint to The Pensions Advisory Service (**TPAS**). The TPAS adviser asked TP whether any discretion could be used with regard to the date the ill health pension was payable from.
 22. On 17 May 2016, TP replied saying that the matter had been forwarded to Dr Jewell. She said, having reviewed the evidence again, that the GP report of 9 April 2013 was the first indication that Miss K's condition was permanent. Earlier reports did not indicate this. Miss K's award would be revised again, with a payable date of 9 October 2012.
 23. On 11 July 2016, the TPAS adviser asked TP whether the award could be backdated further and if it would take into account retrospective medical reports regarding the permanency of Miss K's condition.
 24. On 25 July 2016, TP replied saying that it did not have the discretion to backdate Miss K's benefits to her last day of pensionable service.
 25. The complaint was subsequently referred to this Office.
 26. On 3 November 2016, TP sent this Office its formal response. It said: -
 - The date from which ill health retirement benefits are paid is determined by the Regulations.
 - Regulation 60(4) states that a retirement pension is payable from the entitlement day.
 - Regulation 60(10) then states that Schedule 7 determines whether a 'Case' applied and where this is so, the entitlement day for the Case.
 - Paragraph 6(1) of Schedule 7 states that the entitlement day is the latest of three dates. Miss K satisfies the third possible entitlement date, this being the date six months prior to the medical report which determines the member's incapacity under the relevant conditions.
 - The Regulations do not allow for the exercise of any discretion in this matter. Paying Miss K's retirements benefits at an earlier date would be in clear breach of the Regulations and discriminate against those in a similar position.
 27. On 22 November 2016, Miss K made the following comments: -
 - She would have applied for ill health benefits much earlier had she known about this option. Did TP regulations direct CLA to the steps it should take when an employee resigns on ill health grounds and did TP have a duty of care to reiterate a member's rights to CLA?
 - In her report, Dr Jewell had answered in the affirmative that she was incapacitated at the date of leaving service. Therefore, TP should backdate her pension further.

- TP had initially said that it was following regulations in relation to the latest report that proves a member's incapacity. If this was the case, why did they backdate it at all? TP had used their discretion although they had said they did not have the powers to.

Adjudicator's Opinion

28. Miss K's complaint was considered by one of our Adjudicators who concluded that no action was required by Teachers' Pensions. The Adjudicator's findings are summarised briefly below: -

- Miss K had provided evidence which demonstrated that her CFS began to have a significant impact in her life in 2003. This was not in doubt.
- However, ill health retirement was a strict process defined by a Scheme's regulations. These set out when such a benefit can be paid.
- Miss K believes that as her condition began in 2003, the 2010 regulations are irrelevant. This is not the case; Miss K's application was received in 2015 and consequently, it was assessed according to the 2010 regulations, which also apply due to her status within the Scheme.
- An assessment of Miss K's complaint must focus on the Regulations, which TP must administer the Scheme in accordance with. As per paragraph 10 of Regulation 60, Schedule 7 is the relevant section for determining the entitlement day which applies to a member granted ill health retirement.
- Specifically, paragraph 6 of Schedule 7 outlines that the entitlement day is the latest of the following: the day on which the member first satisfied the criteria for permanent incapacity; the day after which the member ceased to be in pensionable employment; or, the date which is six months before the medical report which determines that the member satisfies the test for permanent incapacity.
- Although Miss K might have satisfied the criteria for permanent incapacity much earlier, the regulation determines when ill health retirement comes into payment; it is the latest date of the given scenarios which applies.
- Miss K questioned why TP decided to backdate her pension to 2012, having told her that it had no discretionary powers in this matter. However, TP did not apply discretion in doing so; Dr Jewell amended her position in regard to the report she relied upon in forming her conclusions on Miss K satisfying the incapacity criteria. The Regulations state that an ill health pension is payable six months before the date of the medical report which satisfies the incapacity criteria.
- Although Miss K's incapacity at the date she left employment was acknowledged by Dr Jewell, this is not equivalent to her meeting the ill health criteria at this time.
- Miss K's disappointment of only being notified about ill health retirement recently was understandable, but TP was not responsible for providing direct information to members in such circumstances.

- Although TP's having amended the date for which Miss K's benefits should come into payment, with this being unfavourable on the first occasion, would have caused her distress and inconvenience, this was not significant enough to warrant an award of £500.

29. TP accepted the Adjudicator's Opinion. Miss K did not accept the Adjudicator's Opinion and made the following comments: -

- There was no doubt as to the severity of her condition in 2003; at that point there should have been a duty of care and a formal procedure within TP to safeguard members.
- The regulations state that that a member's ability must be impaired by more than 90% permanently, yet it was likely that some of the members which satisfied this went on to return to work.
- If the regulations had been explicitly followed, why did TP choose to backdate the pension to 2012?
- Overall, TP had not treated her fairly.

30. The complaint was subsequently passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Miss K for completeness.

Ombudsman's decision

31. I am sympathetic to Miss K's condition and the fact that this has persisted over a long period of time.
32. It is also regrettable that Miss K was not aware earlier that she could apply for ill health retirement, particularly when considering that any such payments would have eased her financial hardship. However, TP were not directly responsible for making her aware of this option.
33. The Regulations define when Miss K's ill health retirement benefits are payable from. TP has acted in accordance with these.
34. TP amended the date which Miss K's benefits were payable from on two occasions. This was not a matter of discretion, rather, Dr Jewell had reconsidered which report she had relied upon in forming her conclusions on the ill health criteria. The relevance of the report relied upon, and the date of this, is provided for in the Regulations in determining the entitlement day.
35. Whilst I understand Miss K's disappointment in this matter, I am satisfied that TP has acted in accordance with the Regulations in paying Miss K's ill health retirement benefits.

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36. Therefore, I do not uphold Miss K's complaint.

Anthony Arter

Pensions Ombudsman

29 June 2017

Appendix

The Teachers' Pensions Regulations 2010 (only relevant parts cited)

Regulation 60: Retirement benefits

(1) A person (P) falls within this paragraph if P satisfies either the condition for retirement or the condition for retirement following further employment.

(4) A retirement pension is payable to a person (P) who falls within paragraph (1) from the entitlement day.

(10) Schedule 7 (retirement benefits) has effect for the purpose of determining whether a Case applies to P's reckonable service and, if so, the entitlement day for the Case.

...

Schedule 7

3 Case C: ill-health retirement

(1) Except as provided in paragraph 4, a person (P) falls within this paragraph if -

- (a) P was in pensionable employment at any time after 31st March 1972,
- (b) P ceases to be in pensionable employment, excluded employment, on non-pensionable sick leave, on non-pensionable family leave or on a career break,
- (c) P satisfies either Conditions 1, 2 and 3 or Condition 4, and
- (d) P makes an application under regulation 107 for retirement benefits on the basis that Case C, and no other Case (apart from Case A), applies to P's reckonable service.

(2) Condition 1 is that P is incapacitated and is likely to be incapacitated permanently.

(3) Condition 2 is that immediately before satisfying Condition 1 -

- (a) P was in pensionable employment,
- (b) or
- (c) P was, with the consent of P's employer, on non-pensionable sick leave, on non-pensionable family leave or on a career break which, in every case, followed on immediately after a period of pensionable employment.

(4) Condition 3 is that P's application under regulation 107 -

- (a) is made within two years after the end of pensionable employment, and
- (b) is signed by P's employer.

(5) Condition 4 is that P's ability to carry out any work is impaired by more than 90% and is likely to be impaired by more than 90% permanently.

...

- (1) The entitlement day for Case C is the latest of the following -
- (a) the day on which a person (P) first satisfies Condition 1 (where P satisfies Conditions 1, 2 and 3) or Condition 4 (where P does not satisfy Conditions 1, 2 and 3).
 - (b) the day after the day on which P ceases to be in pensionable employment, excluded employment, on non-pensionable sick leave, on non-pensionable family leave or on a career break;
 - (c) the day which occurs 6 months before the date of the medical report following consideration of which the Secretary of State determines that P satisfies Condition 1 (where P satisfies Conditions 1, 2 and 3) or Condition 4 (where P does not satisfy Conditions 1, 2 and 3).