

Ombudsman's Determination

Applicant	Mr Y
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Nottinghamshire County Council (the Council)

Outcome

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

Complaint summary

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

Background information, including submissions from the parties

4. In December 2011, Mr Y suffered an injury to his left ankle at work.
5. On 16 January 2013, Mr Y was dismissed on capability grounds and was given 12 weeks' notice.
6. In August 2013, Mr Y was referred to Dr Gupta to provide an opinion on whether he would be eligible for IHER. Dr Gupta's report, dated 21 August 2013, noted that there had been no significant improvement in Mr Y's condition and recommended that an up to date report be requested in order to clarify his likely prognosis.
7. On 9 October 2013, Mr Y was referred to Dr Williams, whose report concluded that Mr Y continued to have ongoing disability as a result of his chronic ankle injury. However on the basis that there was potential for improvement following surgical intervention and treatment he did not consider that Mr Y had met the relevant criteria for IHER, and he completed the Scheme's medical certificate accordingly. Following this, Nottingham City Homes (**NCH**) turned down Mr Y's application.
8. On 11 January 2014, Mr Y appealed the decision made by NCH. His appeal was dealt with by NCH under stage 1 of the internal dispute resolution procedure (**IDRP**).
9. On 22 January 2014, a further medical report was submitted in support of Mr Y's appeal which indicated ongoing problems with his ankle. It confirmed that an

arthroscopy had been undertaken in November 2013 and this showed severe changes of osteoarthritis up to grade IV.

10. A series of reports were submitted by Mr Desai, Consultant Orthopaedic Surgeon, at the instruction of Mr Y's solicitors dated 18 July 2013, 31 January 2014 and 7 August 2014. Mr Desai's second medical report noted that it was considered too early to say if the arthroscopy had improved Mr Y's symptoms. In his third medical report Mr Desai confirmed that in his opinion, Mr Y's ankle symptoms had become static, chronic and permanent in nature.
11. NCH referred Mr Y's case to Dr Coles, Senior Occupational Physician, to provide a further opinion on whether he met the criteria for IHER. Dr Coles' report, dated 2 May 2014, concluded in his opinion Mr Y "does meet the criteria for IHER in that he is on the balance of probabilities, permanently unfit to resume the role of a joiner. He is not totally unfit for all other types of work...."
12. On 19 May 2014, Dr Coles certified that Mr Y is suffering from ill health that renders him permanently incapable of discharging efficiently the duties of his previous employment and is eligible for the early release of his pension on ill health grounds. However Dr Coles said he had completed the medical certificate incorrectly and on 23 June 2014 completed a new medical certificate which confirmed Mr Y was not eligible for the early release of his pension on ill health grounds.
13. On 8 July 2014, NCH did not uphold Mr Y's stage 1 appeal, on the basis of Dr Coles' opinion that he did not meet the relevant criteria.
14. On 25 August 2014, Mr Y appealed under stage 2 of the IDRP. The Council instructed Medigold to provide an independent medical opinion in relation to Mr Y's case.
15. On 22 April 2016, Dr Hall said Mr Y is permanently unfit to undertake the duties as a Joiner. However it was also his opinion that Mr Y is fit to undertake suitable non-manual sedentary roles which do not require prolonged walking or standing. Dr Hall certified that, in his view, Mr Y did not meet the relevant criteria for IHER.
16. On 26 May 2016, the Council issued its stage 2 IDRP response to Mr Y. The decision maker accepted Dr Hall's opinion and turned down Mr Y's appeal. The decision maker said that, having considered the medical evidence and Dr Hall's opinion, Mr Y did not meet the criteria for IHER at the time when his employment ended.

Adjudicator's Opinion

17. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised briefly below:-

- The Ombudsman's role is not to decide whether Mr Y is eligible for IHER; that is a matter for the Council to decide after obtaining the requisite certification from an IRMP.
 - The Ombudsman's role is to decide whether the Council had abided by the Regulations, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. The Ombudsman can request that the Council look at Mr Y's case again should he find flaws in the decision making process. The medical evidence is reviewed in order to determine whether it is appropriate and supports the decision made. However, it is up to the Council to decide which evidence it wishes to attach any weight. The Council can prefer the advice of its own medical advisers unless there is a cogent reason why it should not.
 - Mr Y says that the medical certificate dated 19 May 2014, issued by Dr Coles, stating he was eligible for IHER, conflicts with the medical certificate dated 23 June 2014. The Council has said that the medical certificate dated 19 May 2014 was completed incorrectly and a correct medical certificate was sent to him on 2 July 2015. The Adjudicator appreciated that some confusion may have been caused but was of the opinion that the correct medical certificate supersedes the incorrect one.
 - Mr Y contends that it has been five years since he has been able to work in any gainful employment as a joiner and the situation has not changed. However, under Section 20 (6) of the Local Government Pension Scheme (benefits, Membership and Contributions) Regulations 2007, Mr Y needs to be incapable of carrying out any paid employment, in order to be eligible for IHER. Therefore, it is insufficient for him to say that his condition is permanent just because he can no longer undertake work as a joiner.
 - Mr Y says that due to his financial circumstances he took his pension early and as a result his pension was subject to a 25% reduction for early payment. However, this reduction was in accordance with the Scheme rules and as such the Council has acted correctly. The Adjudicator also noted that it was Mr Y's decision to bring his pension into early payment.
18. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

Ombudsman's decision

19. Mr Y has reiterated that an error was made by Dr Coles in issuing an incorrect medical certificate dated 19 May 2014, which indicates a level of unfairness and incompetence. I sympathise with Mr Y, as I appreciate he would have suffered a loss

of expectation on learning the report needed to be amended. However, I also note that by 2 July 2015, the Council had sent him the correct medical certificate. As such I am not persuaded that the error was significant as the Council had notified Mr Y of the correct position within a reasonable period of time.

20. Mr Y says he had to take his pension early due to his financial circumstances. I appreciate that Mr Y was subject to a 25% reduction for taking his pension early. However, as explained by the Adjudicator in the Opinion the reduction has been made in accordance with the Scheme rules, and as such I do not find that the Council has acted wrongly.
21. I find that, based on the evidence that has been presented to the Council, it has considered the relevant factors in arriving at its decision not to grant Mr Y IHER. There are no justifiable grounds for me to find that the Council's decision was perverse or that the process it undertook in reaching its decision was flawed.
22. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
26 October 2017