

## Ombudsman's Determination

Applicant	Dr G
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	Greater Manchester Shared Services ( <b>Manchester</b> )

## Outcome

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

## Complaint summary

3. Dr G's complaint concerns an application for early release of preserved benefits, which she made after she was made redundant by Manchester. This happened following a period of extended sickness absence. NHS Pensions subsequently granted her a pension from deferred status.
4. Dr G is unhappy that Manchester did not inform her that, if she was dismissed on the ground of ill health instead of being made redundant, she could apply for a higher ill health pension out of active status.

## Background information, including submissions from the parties

5. Dr G was employed by Stockport Primary Care Trust (**Stockport**) from April 2002 until April 2013 as a Speciality Doctor in Public Health.
6. In April 2012, her employment was transferred to Manchester under the Transfer of Undertakings (Protection of Employment) Regulations (**TUPE**).
7. Dr G found her duties at Manchester were significantly different from her job at Stockport and she became ill with depression and anxiety. Her General Practitioner signed her off work on 9 April 2013.
8. On 9 June 2013 Dr Wilding proposed a phased return to work with reasonable adjustments, including some homeworking, use of emails as a preferred communication method, and assistance from others if phone calls needed to be made.

9. Dr G submitted a grievance letter to Manchester on 8 August 2013 and Manchester held a meeting to discuss the issues raised on 28 August 2013. At this meeting, two options were discussed 1) a return to work with reasonable adjustments, 2) redundancy. Dr G notified Manchester that of the two, her preference would be to be made redundant.
10. On 31 December 2013 she was signed off 'fit for work, pending reasonable adjustments in the workplace'.
11. She submitted an application for voluntary redundancy on 12 February 2014.
12. On 17 February 2014 Manchester issued a letter to Dr G notifying her that it had not upheld her grievance, on the basis that it did not consider her role was any different from the position she had held at Stockport.
13. On 17 February 2014, Dr G attended an occupational health appointment arranged by Manchester. The occupational health adviser issued a report on 6 March 2014, recommending that Manchester should arrange for Dr G to use a national text telephone system instead of a telephone. Manchester accepted this suggestion as a reasonable adjustment to facilitate Dr G's return to work, but of the two options put to her Dr G continued to prefer redundancy.
14. On 28 March 2014, Manchester issued a letter to Dr G, telling her that she had been made compulsorily redundant as a result of a cost reduction programme. The termination date was 23 June 2014. Her benefits within the Scheme were preserved.
15. Dr G completed the Scheme's application for early release of her preserved benefits on 23 June 2014.
16. The Scheme initially refused, but ultimately accepted Dr G's application and in November 2014 it granted her a tier two pension, from deferred status.
17. It subsequently came to Dr G's attention that, if she had been dismissed from Manchester on the ground of ill health instead of being made redundant, she could have applied for an ill health pension as an active member of the Scheme. This would have entitled her to a higher pension. Dr G complained to Manchester, saying it should have made her aware of this option.
18. Manchester maintained that, since Dr G applied for redundancy and was not dismissed due to ill health, she was not entitled to ill-health pension. Dr G remained dissatisfied and referred the complaint to our service.

## **Adjudicator's Opinion**

19. Dr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Manchester. The Adjudicator's findings are summarised briefly below:

- Dr G signed the application form for voluntary redundancy on 3 February 2014, which was before her occupational health appointment, underlining that her preferred outcome was to be made redundant.
  - In signing the application form, she confirmed that she understood that taking voluntary redundancy could affect her pension entitlement.
  - The Adjudicator noted that, in order to be eligible for dismissal on the ground of ill health, the sickness absence policy required Manchester to establish that Dr G was incapable of returning to work in her normal role with reasonable adjustments. Having determined that this was not possible, Manchester then had to consider whether Dr G's condition was such that she was unsuitable for redeployment before considering dismissal due to ill health. It was also a prerequisite under the policy that an employee should be unable to provide a return to work date within four weeks of the expiry of sick pay before they are considered for dismissal due to ill health.
  - Dr G had chosen to take redundancy rather than attempting to return to work with reasonable adjustments and before her entitlement to sick pay had ceased. As a result, the Adjudicator concluded that she did not meet the criteria for dismissal due to ill health detailed in Manchester's sickness absence policy.
20. Dr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr G provided her further comments, which in summary are as follows:
- The Adjudicator's reference to her having been made voluntarily redundant was factually incorrect. In fact, Manchester made her compulsorily redundant.
  - She did not decline to put into effect the reasonable adjustment suggested by the occupational health advisor; she simply indicated that she would prefer to be made redundant over returning to work. She was not aware she had the option of applying for ill health retirement.
  - A report from Remploy notes that Manchester did not contact her Vocational Rehabilitation Consultant (**VRC**) to follow up a recommendation that she should receive support from them.
  - Since she had been on extended sick leave, Manchester should have notified her that a third option, of applying for an ill health pension, was available to her.
21. These additional points 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 Dr G for completeness.

## Ombudsman's decision

22. Dr G has provided a copy of a letter, dated 8 March 2014, which Manchester sent to her, notifying her that her post had ceased to exist as a result of changes to the Trust's organisational structure. The letter explains that, due to this, she had been made compulsorily redundant. I accept that Dr G was ultimately made compulsorily redundant and not voluntarily redundant. However, this does not make a material difference to the outcome of the complaint.
23. Dr G makes the point that she did not refuse to trial reasonable adjustments. I accept that there is no evidence that she refused. It appears the specific recommendations of the 4 March 2014 occupational health report were never put to the test because Dr G was made redundant shortly thereafter. There is no dispute about the fact that the ground on which her employment terminated was redundancy. I cannot go behind that reason, or make a finding about whether there were other possible ways in which her employment could have ended. Those are matters solely for an employment tribunal. I can make a finding about whether Dr G was given the right information about her pension options. I can see no evidence that she was not.
24. Dr G considers that Manchester ought to have told her that she had a third option, namely ill-health retirement. I do not agree that they were under a duty to do that. Under the Regulations, entitlement to ill-health retirement from active service arises only when the member's employment is terminated because of their physical or mental infirmity. At the relevant time, Manchester had not arrived at a decision to terminate Dr G's employment on that ground.
25. Manchester's sickness absence policy details the circumstances under which an employee can be considered for ill health retirement as follows::
- Reasonable adjustments to facilitate a return to work have been fully explored;
  - the employee is considered by occupational health to be unsuitable for temporary or permanent redeployment; and
  - their entitlement to sick pay has run out and they cannot provide a return to work date within four weeks.
- At the time Dr G was made redundant, none of these criteria had been met. Therefore I can no reason to conclude that Manchester had come under an obligation to raise the question of ill-health retirement.
- 26.
27. Manchester is required to make information about the Scheme available but is not required to advise employees on the best way to maximise their pension benefits. Information on ill health pensions, along with the full Scheme regulations, was available on the NHS Pensions website for Dr G to review. Therefore, I do not uphold Dr G's complaint.

**PO-14647**

**Karen Johnston**

Deputy Pensions Ombudsman  
20 January 2017

## Appendix

### The National Health Service Pension Scheme Regulations 2008

28. As relevant, regulation 2 says:

“2.D.8 Early retirement on ill-health (active members and non-contributing members)

(1) A pension payable under this regulation shall be known as an ill-health pension and may be paid at two different tiers known as a tier 1 ill-health pension and a tier 2 ill-health pension.

(2) An active member or a non-contributing member who has not reached the age of 65 and who has ceased to be employed in NHS employment is entitled to immediate payment of a tier 1 ill-health pension that is payable for life if-

(a) in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently,

(b) the member's employment is terminated because of that physical or mental infirmity,

(c) the member has at least 2 years of qualifying service, and

(d) the member has claimed the pension.

(3) An active member who has not reached the age of 65 is entitled to immediate payment of a tier 2 ill-health pension if -

(a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Secretary of State the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration,

(b) the member's employment is terminated because of that physical or mental infirmity,

(c) the member has at least 2 years of qualifying service, and

(d) the member has claimed the pension.

(4) The annual amount of a tier 1 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4), but on the assumption that the member's pensionable service -

(a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous;

(b) is not increased by the enhancement period in the circumstances referred to in (a) if -

(i) the member's pensionable service before and after the break is treated separately under regulation 2.G.2; or

(ii) the member's pensionable service in respect of an earlier service credit is treated separately under regulation 2.K.7.

(6) In this regulation "the enhancement period" means two-thirds of the member's assumed pensionable service."