

## Ombudsman's Determination

Applicant	Ms S
Scheme	Local Government Pension Scheme (the <b>Scheme</b> )
Respondent	Cornwall Council (the <b>Council</b> )

## Outcome

1. I do not uphold Ms 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. Ms S' complaint against the Council is about its decision not to award her an ill health pension at the time her service ended, which was on 31 January 2014.

## Background information, including submissions from the parties

4. The relevant regulations are the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (the **2007 Regulations**). The relevant sections within the 2007 Regulations are regulations 20 and 31 and these are set out in the Appendix.
5. Ms S was employed by the Council, but was dismissed on ill health grounds on 31 January 2014 and was awarded a deferred pension under the Scheme.
6. Extracts taken from a letter dated 30 January 2014 from Ms S' Clinical Psychologist (Neuropsychology) to the Council's occupational health department are set out below:

### "1. Confirmation of underlying diagnoses

We have been unable to document a specific neurological diagnosis for this patient.

...

**3. What is the prognosis of this condition with regard to short – the next six months, medium term – the next twelve months or the longer term?**

Unfortunately I am unable to give a specific answer to this particular question as we have been unable to reach a neurological diagnosis.

**4. What further treatments are being offered and over what period of time and what impact will these have on her condition and also on her fitness to return to work?**

I referred this lady to the Pain Clinic and this has been beneficial in aiding her with her pain symptoms...

**5. Is there anything her employers can do to help facilitate a return to work?**

From the neurological point of view we have been unable to find objective signs of disability or what we can call "hard neurological signs".

**6. I would be grateful for your opinion regarding timescales for recovery and return to work.**

From the neurological perspective it might be possible for this lady to return to work however there may be other non-neurological conditions which might preclude her from working.

In conclusion this 50 year old lady presented with neurological symptoms as detailed above without any objective signs of neurological deficit. She has had extensive investigations and all these have been normal. We have been unable to reach an organic neurological diagnosis."

7. On 18 June 2014, an independent registered medical practitioner (**IRMP**) appointed by the Council considered the medical evidence for Ms S and completed a certificate of permanent incapacity. The IRMP's decision was that Ms S did not suffer from a condition that, more likely than not, rendered her permanently incapable of discharging efficiently the duties of her employment with her employer because of ill health or infirmity of mind or body.
8. On 20 June 2014, the Council wrote to Ms S, enclosing a copy of the IRMP's certificate of permanent incapacity and informing her that she would be unable to access her pension from the Scheme early.
9. On 25 March 2015, Ms S' Clinical Psychologist wrote to her GP about her. There is nothing in that letter with regard to her eligibility for an ill health pension from the Scheme.
10. In a letter, dictated on 7 May 2015, marked 'To whom it may concern', Ms S' GP concluded that her debilities were preventing her from returning to her role as an administrative assistant and would prevent her undertaking any gainful employment.

11. Ms S complained to the Council about the refusal to pay her an ill health pension from the Scheme. Her complaint was dealt with by the Council under the Scheme's internal dispute resolution procedures (**IDRP**).
12. On 20 October 2015, the Council wrote to Ms S giving her a stage two IDRP decision. The Council said that it could not consider the letters of 25 March 2015, from her Clinical Psychologist, or 7 May 2015, from her GP, because they were new evidence which had not been submitted, and considered, when the original application was made or at the stage one process. The Council added that her GP was not qualified under the regulations that governed the Scheme to produce a certificate of permanent incapacity. The Council's stage two IDRP decision was not to uphold her complaint.
13. As Ms S could not resolve her complaint with the Council, she brought it to me.

### **Adjudicator's Opinion**

14. Ms 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:
  - Regulation 20(6) of the 2007 Regulations states that before the employing authority makes a decision it must obtain a certificate of permanent incapacity from an IRMP. The Council obtained a certificate from an IRMP and considered Ms S for early payment of her pension on grounds of ill health.
  - The IRMP had studied all the relevant evidence before forming an opinion that Ms S did not meet the criteria for early payment of her pension on grounds of ill health and the Council based its decision to decline Ms S' application on this opinion.
  - There is nothing in the letter of 30 January 2014 from Ms S' Clinical Psychologist which suggests that Ms S may be entitled to an ill health pension.
  - The fact that Ms S was not awarded an ill health pension from the Scheme does not mean that the Council's decision or its IRMP's opinion are flawed. It is not uncommon for IRMP's opinions to differ from an individual's own medical advisor's opinion. The Council, however, are entitled to rely on the IRMP's opinion and give that more weight to it in coming to its decision.
  - The Council had not (i) taken into account irrelevant matters, (ii) asked the wrong questions, (iii) misdirected itself in law or (iv) come to an improper decision.
15. Ms S did not accept the Adjudicator's Opinion but did not have any comments to make on it. The complaint was subsequently passed to me to consider.

## **Ombudsman's decision**

16. When considering how a decision has been made by the Council, I will generally look at whether:
  - the correct questions have been asked;
  - the applicable scheme rules or regulations have been correctly interpreted;
  - all relevant but no irrelevant factors have been taken into account; and
  - the decision arrived at must not be one that no reasonable body would make
17. Providing the Council has acted in accordance with the above principles and within the powers given to it by the 2007 Regulations, I cannot overturn its decision merely because I might have acted differently. It is not my role to review the medical evidence and come to a decision of my own. I am primarily concerned with the decision making process.
18. The weight which is attached to any of the evidence is for the Council to decide. It is also open to the Council to prefer evidence from its own advisers unless there is a cogent reason why it should, or should not without seeking clarification. For example, an error or omission of fact or a misunderstanding of the relevant rules by the medical adviser. If the decision making process is found to be flawed, the appropriate course of action is for the decision to be remitted for the Council to reconsider.
19. I however agree with the Adjudicator that the Council did reach its decision for Ms S' ill health early retirement application correctly in accordance with the above principles and within the powers given to them by the 2007 Regulations for essentially the reasons given by the Adjudicator in his Opinion.
20. I consequently consider that the Council had properly considered all the relevant information available at the time and the decision made was within the bounds of reasonableness.
21. I therefore do not uphold Ms S' complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
23 August 2017

## **Appendix**

Regulations 20 and 31 of the 2007 Regulations says that:

“Early leavers: ill-health

20. – (1) If an employing authority determines, in the case of a member who has at least two years membership –

- a) to terminate his local government employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
- b) that he has a reduced likelihood of obtaining gainful employment (whether in local government or otherwise) before his normal retirement age,

they shall pay him benefits under this regulation.

(2) If the authority determine that there is no reasonable prospect of his obtaining gainful employment before his normal retirement age, his benefits are increased-

- a) as if the date on which he left local government employment were his normal retirement age; and
- b) by adding to his total membership at that date the whole of the period between that date and his actual normal retirement age.

...

(6) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body and, if so, as to the likelihood of the member being able to obtain other gainful employment within a reasonable time of leaving local government employment or, as the case may be, before reaching his normal retirement age.

...

Early payment of pension: ill-health

31. – (1) Subject to paragraph (2), if a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently

incapable of discharging efficiently the duties of that employment because of ill health or infirmity of mind or body-

- a) he may request to receive payment of the retirement benefits immediately, whatever his age, and
- b) paragraphs (2) and (4) of regulation 20 apply.”