

Ombudsman's Determination

Applicant	Mr D
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Scottish Public Pensions Agency (SPPA), South Ayrshire Council (the Council)

Outcome

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

Complaint summary

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

Background information, including submissions from the parties

4. Mr D was employed by the Council as a social worker.
5. On 3 September 2015, following a period of sickness absence the Council held a stage 1 meeting with Mr D regarding the Maximising Attendance Policy.
6. On 20 January 2016, Mr D was referred to occupational health (**OH**) and Dr Schreiber concluded that Mr D does not meet the criteria for IHER. She said there are still further treatment options which have not yet been pursued including a surgical option which could be considered if medication alone does not provide appropriate symptom control. She also said the surgical treatment normally carries a success rate of around 70%.
7. On 26 January 2016, a stage 2 meeting was held with Mr D regarding the Council's Maximising Attendance Policy.
8. On 24 February 2016, Mr D appealed against the Council's decision to refuse him IHER.
9. On 5 May 2016, during the stage 3 meeting Mr D was dismissed on the grounds of capability.

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10. On 17 June 2016, Mr D appealed the decision by the Council under stage 1 of the Scheme's internal dispute resolution procedure (**IDRP**).
11. On 20 June 2016, the Council referred the matter back to a new an independent registered medical practitioner (**IRMP**), Dr Czekaj. On 28 June 2016, Dr Czekaj, considered all the information contained within Mr D's OH file including a report from Dr Chong and a job description for a social worker. Dr Czekaj certified that in her opinion Mr D does not meet the medical criteria for IHER as there is no medical evidence confirming that he is likely to be permanently unfit to undertake the duties of his own post or any other post in future.
12. On 6 July 2016, based on Dr Czekaj's opinion the Council did not uphold Mr D's appeal and held that he does not meet the criteria for IHER. Mr D says he did not receive this letter.
13. On 22 August 2016, Mr D appealed under stage 2 of the IDRP. SPPA was responsible for reviewing this appeal, and it referred the case to a new IRMP, Dr Blatchford for reassessment.
14. On 21 February 2017, Dr Blatchford reviewed Mr D's case and subsequently submitted a report to SPPA. Dr Blatchford took into account Dr Chong's, Dr Czekaj's, and Dr Schreiber's previous reports, letters from Mr D's GP and other information provided. She found that Mr D was not permanently incapable of discharging efficiently the duties of his employment and on the balance of probabilities he is not unlikely to be capable of undertaking gainful employment before normal pension age.
15. On 24 March 2017, SPPA issued its stage 2 IDRP response to Mr D. The decision maker held that the decision to not award Mr D IHER was reasonable, given all the medical evidence, and he was satisfied that the relevant Scheme regulations had been applied correctly.

Adjudicator's Opinion

16. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by SPPA and the Council. The Adjudicator's findings are summarised briefly below:-
 - The Ombudsman's role is not to decide whether Mr D is eligible for IHER; that is a matter for the Council to decide after obtaining requisite certification from an IRMP. It is also not for the Ombudsman to agree or disagree with any medical opinion.
 - The Ombudsman's role is to decide whether the Council has abided by the Regulations, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. If there are flaws in the decision making process the Ombudsman can require the Council to look at Mr D's case again. However, the weight which is attached to any of the evidence

is for the Council to decide, including giving some of it little or no weight. It is open to it to prefer the advice of its own medical advisers unless there is a cogent reason why it should not.

- Mr D says his GP's opinion seems to have been ignored. However, it is for the Council to attach weight (if any) to the relevant medical evidence. The Council made its final decision based on Dr Blatchford's report, which made reference to Mr D's GP report. As such, the Adjudicator was satisfied that the Council had considered all the relevant information.
- Dr Blatchford certified that Mr D is not permanently incapable of discharging efficiently the duties of his employment by reason of ill health or infirmity of body or body (until age 65) and he is not likely to be capable of undertaking gainful employment before normal pension age. She said that should Mr D's condition become more frequent, prolonged or continuous, he would be treated with medication or surgery, with the expectation to return to work when the episodes are controlled.
- Mr D disagreed with Dr Blatchford's and Dr Schreiber's assessment and reiterated that his GP supports his application. However, the Adjudicator was of the view that this was not sufficient for the Ombudsman to say that the Council's preference for Dr Blatchford's and Dr Schreiber's opinions was perverse.
- The Adjudicator accepted that the Council's decision making process initially fell short of what was expected of it, however the medical opinion expressed by Dr Blatchford was thorough and sets out why Mr D had not met the criteria for IHER. As such, the evidence shows that the Council has ultimately considered the available medical evidence properly before reaching its final decision.

17. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D 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 D for completeness.

Ombudsman's decision

18. It is my view that Dr Schreiber's report covered all the necessary requirements and provided the Council with a comprehensive opinion in order for it to reach a decision. I have not seen any evidence to show that it did not review any aspect of Mr D's concerns or condition. Dr Blatchford's opinion took into account relevant medical evidence and referred to appropriate medical research. I appreciate that Mr D disagrees with the Council's decision not to grant him IHER. However, Mr D's disagreement is not a sufficient reason for me to remit the matter back to the Council for his IHER application to be reconsidered.

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19. Mr D questions how a decision can be made that he was not eligible for IHER as he had not exhausted all of the treatment options available for his condition, but if he had gone back to work it would have made him more ill. I have reviewed the medical evidence provided to SPPA and its decision. I am satisfied that SPPA addressed the correct questions and that there was medical evidence sufficient to support its reasoning. 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 D 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.
20. Therefore, I do not uphold Mr D's complaint.

Karen Johnston

Deputy Pensions Ombudsman
9 April 2018