

Ombudsman's Determination

Applicant	Mr Y
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Kent County Council, Thanet District 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 the Council should reinstate his Tier 3 ill health early retirement (**IHER**) pension from August 2014 when it was stopped following an 18 month review.

Background information, including submissions from the parties

4. On 31 January 2013, Mr Y was medically retired from his role as a refuse loader on the grounds of ill health and was subsequently awarded a Tier 3 IHER pension with effect from 1 February 2013.
5. On 28 August 2014, the 18 month review of Mr Y's Tier 3 IHER pension was carried out by the Council's Independent Registered Medical Practitioner (**IRMP**), Dr Ashby, who determined that Mr Y was currently capable of undertaking gainful employment. Dr Ashby considered: a report from Mr Salter, Consultant Orthopaedic Surgeon, dated 13 March 2013; reports from the pain clinic connected to Mr Y's GP; and a letter from Mr Y's GP, Dr Walton, dated 14 August 2014.
6. On 8 September 2014, the Council considered the advice of Dr Ashby and held that Mr Y no longer qualified for IHER in accordance with the regulations and ceased payment of his pension.
7. On 8 October 2014, Mr Y appealed the decision made by the Council. His appeal was dealt with by the Council under stage 1 of the Scheme's internal dispute resolution procedure (**IDRP**).

8. On 15 January 2015, the Council issued its stage 1 IDRP response. The Adjudicator turned down Mr Y's appeal as he was satisfied that the Council had acted in accordance with the correct processes and regulatory requirements. No application for IDRP stage 2 was ever made by Mr Y.
9. On 28 September 2015, Mr Y made a request to the Council for the pension benefits to be brought back into payment. He said that as this request was made within 3 years of his Tier 3 pension ceasing it was possible to consider whether he now met the condition to be eligible for Tier 2.
10. On 17 November 2015, Mr Y was assessed by John Akers who was of the opinion that Mr Y was not fit to return to work at present in his previous role.
11. On 19 February 2016, the Council referred Mr Y to another IRMP, Dr Cooper. Dr Cooper was of the opinion that Mr Y was not fit to discharge the duties of his employment. He certified that Mr Y had not been capable, due to his medical condition, of undertaking gainful employment within three years of the date of leaving but that it was likely he would be capable of undertaking gainful employment before his normal retirement age.
12. On 20 April 2016, the Council wrote to Mr Y confirming that, following a review of his medical capacity, it would be awarding him Tier 2 IHER. The Council said that Mr Y's Tier 2 pension should be paid from 28 September 2015, the date of his application.
13. On 27 July 2016, Mr Y appealed the Council's decision, he stated that although he agreed with the reinstatement of his pension and the upgrade to a Tier 2 pension, he felt that this should be backdated to the cessation date of his Tier 3 pension.
14. On 28 November 2016, Kent County Council, in its stage 1 IDRP response turned down Mr Y's appeal that it should backdate his Tier 2 award to August 2014, when his Tier 3 ill health pension was stopped following an 18 month review. The Council held that Mr Y's appeal was turned down in January 2015, and he did not re-apply for payment of his deferred benefits until September 2015. Regulation 20 (11) (b) only allows the increase in benefits to be from the date of the subsequent determination.
15. On 22 February 2017, Mr Y appealed under stage 2 of the IDRP.
16. On 15 May 2017, Kent County Council issued its stage 2 IDRP response to Mr Y. The decision maker agreed with the stage 1 IDRP decision and held that the Council followed the correct regulatory requirement when making its determination in Mr Y's case and it was reasonable for the Council to pay his pension from September 2015.

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 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 Y'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 Y says that the medical information about his condition could have been incorrectly given to Dr Ashby. However, the Adjudicator was of the view that Dr Ashby took into consideration all relevant medical evidence during Mr Y's 18 month review. Further, looking at the whole process from the time Mr Y challenged the Tier 3 pension award to when the Council issued its IDRP stage 2 response, the Adjudicator believed that it had considered all the relevant facts and followed the procedure correctly.
 - Mr Y says that although he agrees with the reinstatement of his pension and the payment of the upgraded Tier 2 pension, he feels that this should have been backdated to the cessation of his Tier 3 pension. However, under Regulation 20 (11) (b) any increases are to be paid from the date of the subsequent determination. Although the determination was made by the Council in early 2016, it has agreed to pay the pension from the date of Mr Y's application, 25 September 2015, an earlier date. As such, the Adjudicator was satisfied that the Council had correctly followed the relevant regulations in this instance.
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 questions how conflicting decisions can be made by the Council yet it has not reinstated the Tier 3 IHER pension for the period it was ceased. He says that the Council determined in January 2013 that he was permanently incapable of undertaking his previous role but likely to be capable of gainful employment within three years and awarded Tier 3. Then in September 2014, at the 18 month review, it reached the decision that he was capable of gainful employment and ceased his Tier 3 pension. It then reached the decision, in April 2016, that he was not capable of gainful employment within three years of his dismissal and awarded Tier 2 backdating it to his application in September 2015. However, it did not reinstate his Tier 3 pension for the period between September 2014, when it was ceased, and September 2015 when the Tier 2 pension was awarded.

20. However, my role is not to review the medical evidence and come to a decision of my own but to consider the decision making process. I find that, based on the evidence that has been presented, the Council had considered the relevant factors in arriving at its decision not to grant Mr Y Tier 3 IHER. It is for the Council to obtain a medical opinion from an IRMP at the relevant time and I can see that it has done so. I therefore do not consider there are 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.
21. Mr Y did appeal the Council's decision to cease his Tier 3 IHER pension. This appeal was turned down in January 2015. I have not found any issues with the way the Council handled Mr Y's appeal in January 2015, and he did not appeal again at the second stage of the IDRP.
22. In September 2015, Mr Y made a request to the Council for the pension benefits to be brought back into payment. As this was after the deadline for a stage 2 IDRP appeal, but within 3 years of his Tier 3 pension ceasing, the Council considered whether he now met the condition to be eligible for Tier 2 under Regulation 37 (10). I find that this is a reasonable approach to take and it led the Council to determine that Mr Y was eligible for Tier 2 IHER which is an increase in pension from Tier 3.
23. Regulation 20(11) (b) states that an increase in benefits is only possible from the date of the subsequent determination. The Council determined to award Tier 2 in April 2016. However, while the Council was not required to do so under the Regulations, it used the date Mr Y applied for his early payment of his benefits as the effective date for the uplift to Tier 3. I find that the Council acted reasonably in this regard.
24. I understand Mr Y's frustration in respect of the sequence of events. However, all the Council has done is to act in accordance with the Regulations, they do not have the authority under the Regulations to backdate the Tier 2 pension to the date the Tier 3 pension ceased.
25. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
30 April 2018