

Ombudsman's Determination

Applicant	Mrs S
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	Department for Work and Pensions (DWP) MyCSP The Cabinet Office

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by DWP, MyCSP or the Cabinet Office.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S has complained that her application for retrospective ill health retirement has been declined.

Background information, including submissions from the parties

4. On 30 July 2014, Mrs S suffered a mental health crisis whilst working for the DWP, and the day afterwards went on sick leave.
5. On 8 August 2014, Mrs S spoke with OH Assist, her employer's occupational healthcare provider. The report which followed included the following observations:

"she is waiting for her medication and counselling to take effect, which could take a further 4 – 6 weeks..."

"She is being treated with medication and counselling, and should make a good recovery within the next 2 – 3 months depending on her response to treatment."
6. On 1 October 2014, Mrs S was assessed again by OH Assist over the phone. The resulting report concluded that Mrs S was unable to return to work at that time due to her symptoms and anxiety, and made the following comments:

“She is attending counselling and she is on medication, but [Mrs S] reports that since her absence began she has not made any progress and she remains scared of any conversation with work due to the way she has been managed.”

7. On 21 October 2014, Mrs S was dismissed from employment with the DWP and became a deferred member of the Scheme.
8. On 9 November 2014, Mrs S applied for retrospective ill health retirement (**RIHR**). The application was, in summary, on the basis of psychological trauma and post-traumatic stress disorder sustained due to bullying and her treatment at work.
9. On 23 December 2014, the Cabinet Office agreed that Mrs S’ application for RIHR should be considered by the Scheme Medical Adviser (**the SMA**).
10. On 26 January 2015, DWP wrote to Mrs S confirming that her application for RIHR had been authorised by the Cabinet Office.
11. On 23 April 2015, the SMA issued an initial report, declining Mrs S’ application. In the following months, Mrs S challenged the accuracy of the report and her factual concerns were reviewed by the SMA.
12. On 7 July 2015, having taken account of Mrs S’ factual concerns, the report was reissued by the SMA.
13. On 10 July 2015, Mrs S consented to the report being provided to her employer and the SMA closed the case.
14. On 11 August 2015, Mrs S’ appeal was received by the SMA and her case was reopened.
15. On 8 October 2015, the SMA issued an interim report, the content of which was challenged by Mrs S.
16. On 16 November 2015, following further consideration and amendments in light of Mrs S’ challenges, the SMA issued a finalised report declining Mrs S’ appeal. It acknowledged that there was medical evidence that she was prevented by ill health from discharging her duties but concluded that at the time Mrs S was dismissed, it was unlikely that this would be permanent. The SMA considered that there were “still ongoing reasonable treatment options that are likely to enable Mrs [S] to return to the duties of her normal role.”
17. In December 2015, Mrs S submitted an application for Early Payment of Preserved Award (**EPPA**). Following this, there was some confusion over whether a EPPA application and RIHR application could be made concurrently.
18. On 1 February 2016, MyCSP wrote to Mrs S confirming that she could pursue the two applications concurrently, with her employer’s consent.

19. On 5 February 2016, DWP wrote to Mrs S stating that it would only be progressing her RIHR application and not her EPPA. Because of the likely similar outcome, it considered that an application for EPPA would be redundant.
20. On 4 April 2016, Dr Britto, a consultant psychiatrist appointed by Mrs S for the purposes of the application, provided a report on Mrs S' mental health that she had commissioned. It stated:

“The purpose of the report is to ascertain if [Mrs S] suffer(ed/s) from a recognised diagnostic mental disorder during her lifetime and especially, from October 2014 to date.”
21. On 12 April 2016, the SMA issued a further opinion which took account of Dr Britto's report. In respect of Dr Britto's report, it concluded that whilst Dr Britto was clear that Mrs S was currently incapable of working, and that this would likely remain the case until her retirement age, he had not provided an opinion on the permanence of Mrs S' condition as at October 2014, excluding the more recent treatments and developments, which was the key issue.
22. The SMA's letter also commented on evidence from Mrs S' GP, from April 2015, that she had been referred to an NHS psychiatrist for treatment. The SMA said that no evidence had been provided by this psychiatrist; and, under the Scheme rules, it was Mrs S' responsibility to provide additional evidence in support of her appeal. The SMA could not seek clarification from Dr Britto or Mrs S' psychiatrist on her behalf and declined the appeal. Ultimately, Mrs S' appeal was not upheld.
23. On 28 June 2016, the SMA issued a report concluding that Mrs S met the criteria for EPPA and, shortly afterwards, issued a certificate confirming this.
24. In September 2016, Mrs S complained about the decision not to award RIHR.
25. On 3 April 2017, MyCSP provided its stage one Internal Dispute Resolution Procedure (**IDRP**) decision. It explained the distinction between the criteria for EPPA, which Mrs S had met, and RIHR. It confirmed that there was insufficient evidence that Mrs S met the criteria for RIHR and therefore the EPPA application would not have been successful had it been made in late 2014, rather than late 2015. Because of the length of time it had taken for DWP to provide information to MyCSP, DWP was directed to pay Mrs S £500 for the distress and inconvenience caused, which it did.
26. On 6 April 2017, Mrs S highlighted areas of the complaint that MyCSP had not addressed.
27. On 11 April 2017, MyCSP responded in light of the additional concerns. It confirmed that, in respect of the RIHR claim, the SMA could only consider medical evidence available up to the date of her dismissal. Dr Britto's report had been taken into consideration, despite being a later report, but this report had failed to address the issue of permanence as at October 2014.

28. Mrs S sought assistance from the Pensions Advisory Service and appealed MyCSP's decision.
29. On 7 August 2017, the Cabinet Office provided the stage two IDRPs response. It concluded that the SMA had reached a reasonable conclusion based on the evidence available.
30. Mrs S subsequently referred the matter to this Office for consideration.
31. On 6 November 2018, following the Adjudicator's opinion, Dr Britto supplied a further medical report to this Office concluding that Mrs S was permanently incapable of working in October 2014.

Adjudicator's Opinion

32. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by DWP, MyCSP or the Cabinet Office. The Adjudicator's findings are summarised below:-
 - The issues under consideration were whether the correct questions had been asked, whether only the relevant evidence was considered, and whether the outcome was rational.
 - For an RIHR application to be successful, the SMA would need to conclude that, as of October 2014, Mrs S was prevented by ill health from working and that it was likely that this would continue until her normal retirement age. The Adjudicator considered it was appropriate for the SMA to consider evidence that would have been available in October 2014, and the evidence postdating October 2014 which commented on her condition at that time. However, the progression of Mrs S' illness following October 2014 was irrelevant as it could not have been known at the relevant time.
 - The Adjudicator considered the SMA's reports and concluded that on each occasion the relevant questions had been asked, and that, in October 2014, it was clear that Mrs S had met the first condition of being prevented from working. However, the impediment to her application being successful was that the SMA was unable to say that in October 2014 her incapacity would be permanent, because not every reasonable treatment had been tried at that time, and those treatments were thought at the time likely to enable her to return to her normal role.
 - The Adjudicator also considered: the evidence relied upon by the SMA; the reports of August and October 2014; Mrs S' GP records; and, Dr Britto's retrospective report. The Adjudicator was satisfied that the SMA had relied upon only the relevant evidence.
 - Considering whether the outcome was rational, the Adjudicator pointed to the fact that, over the course of 2015, Mrs S was undergoing alternative treatments. Although these treatments were unsuccessful, the fact that they were attempted showed that, as of

October 2014, reasonable treatments remained available to her. On that basis, the Adjudicator took the view that the SMA's conclusions were rational.

- Commenting on Dr Britto's report, the Adjudicator agreed that, although postdating October 2014, it was relevant evidence. However, as the SMA said, the report did not comment on the permanence of Mrs S' condition as of October 2014. The Adjudicator was also satisfied that, by the time Dr Britto issued his report, the conditions for RIHR to be approved had been set out by the SMA in previous reports.
 - In respect of the complaint against the DWP, the Adjudicator did not comment on Mrs S' dismissal, or the events leading up to it. However, he did note that any disadvantage suffered by Mrs S, by not being assessed for ill health retirement when she was dismissed, was put right by being given the opportunity to apply retrospectively.
 - In respect of Mrs S' application for EPPA, the Adjudicator noted that the DWP had initially delayed the consideration of that application on the basis that it would not consent to the EPPA and RIHR applications being considered concurrently. The Adjudicator concluded this was not unreasonable given the similarities between the two applications and the fact that, if the RIHR application were successful, it would make the EPPA application redundant. The Adjudicator noted that when Mrs S' EPPA application was eventually accepted, it was backdated to November 2015, when the initial EPPA application was made, and so she had suffered no financial loss because of DWP's decision to defer the consideration.
 - Mrs S had raised concerns that factual errors she highlighted in the SMA's report had not been adequately addressed during the consent period. However, the Adjudicator was satisfied that, where objective facts had been challenged, the SMA had made amendments in line with Mrs S' comments, and her comments had been taken into consideration.
 - Finally, Mrs S had highlighted evidence from her psychiatrist, from 2015, that she says should have been available to the SMA, but which the SMA specifically said was not available. Having reviewed the file, the Adjudicator concluded there was no supporting evidence that these psychiatric reports had been provided; but, even if they had, they did not provide comment on the permanence of Mrs S' illness in October 2014 and were therefore not relevant evidence in the context of the RIHR criteria on which her application failed.
33. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her 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 Mrs S for completeness.

Ombudsman's decision

34. Mrs S has argued that the decision to decline her application for RIHR is unjust. Whilst I appreciate Mrs S' disappointment that her application for RIHR was declined, my role is to determine whether, in reaching that decision, the correct process was followed. Medical opinions can be divisive, especially in cases such as this where the decision is made retrospectively.
35. Having considered the reports issued by the SMA, I find that the correct questions were considered and answered by the SMA. The test, in order for Mrs S' RIHR application to be successful, was that the SMA must be persuaded that she was incapable of working due to ill health at the time that she was dismissed, and that it would remain permanent. Permanence in this case means until normal retirement age. The SMA did not dispute that, in October 2014, when Mrs S was dismissed, she was incapable of working. But it was not persuaded that at that time it could be said that this would remain the case permanently.
36. Mrs S argues that the SMA was fully aware of the extent of her condition, and its permanence, when it considered the matter over the course of 2015. However, the RIHR test is not made against her condition in 2015, but on the basis of the evidence available in October 2014. I accept that the wider evidence available may have evolved over the timeframe of the SMA's consideration to more strongly support the position that her condition would be permanent, but that does not mean all of that evidence is relevant to the question at hand, that being the prognosis as at October 2014.
37. The evidence that was clearly relevant is the evidence that would have been available in October 2014; the OH Assist reports and Mrs S' GP records. The SMA also concluded that Dr Britto's report, although dated 18 months later, was also relevant as it addressed Mrs S' condition retrospectively. I agree that it was appropriate for that report to be considered as it did comment on Mrs S' condition in October 2014. However, significantly, I also agree that it did not provide an opinion on the issue of permanence from October 2014 onwards.
38. Mrs S argues that her psychiatrist's reports from 2015 ought to have been taken into account too, as she provided them to the SMA. But the SMA has said that they were not available. There is significant correspondence between Mrs S and the SMA, including other documents and reports which Mrs S provided. However, in respect of these psychiatric reports, whilst Mrs S may be unequivocal that they were provided, there is no evidence in the file provided to this Office that they were.
39. Notwithstanding that, even if they were submitted, I do not see how they alter Mrs S' application for RIHR. The reason the SMA was unable to make a finding of permanence as at October 2014 was that not all reasonable treatments had been exhausted. Identified reasonable treatments would include referral to psychiatrists and psychologists, and in October 2014, those approaches were untried. The fact

that she subsequently underwent those treatments, albeit unsuccessfully, highlights why it would have been so difficult to make a finding of permanence in October 2014.

40. Mrs S has also argued that, in the course of issuing its reports, the SMA has failed to take account of factual errors that she highlighted prior to their being disclosed to her employer. However, the revised reports show that her concerns were taken into account, even if the SMA disagreed that certain points she had raised were factual errors. In this respect, I am satisfied that the SMA has acted appropriately and remedied relevant factual errors.
41. Mrs S has highlighted Section 6.1 of Annex 6J – Ill Health Retirement – Procedural Guidance for Employers (**the Guidance**), which I have reviewed. In respect of this, Mrs S has said:

“SMA failed to follow their own procedures which you [the Adjudicator] failed to identify in section 6.1 of SMA Actions.

The SMA disadvantaged me as they omitted to ensure all evidence and sources had been completed thoroughly.

The SMA decided not to seek third party clarification which has disadvantaged me throughout the process

All decisions on my case were made by themselves which clearly has been deliberate to place me in a disproportionate position

Therefore the above needs to be looked at further.

As previously cited the SMA never referred me to the required assessment which would have given the clarity they required.

Instead they deemed this not necessary.”

42. The earliest version of this specific document I have been able to find is from June 2017, but whether or not it was in place at the time of Mrs S’ application, I am not persuaded it changes the outcome of the complaint. As I have already said, in relation to the psychiatric reports, I cannot see how those reports would influence the SMA’s decision to reach a different conclusion.
43. It may also be that Mrs S considers that, on the basis of this guidance, the SMA ought to have approached Dr Britto for further clarity as to his comments in the report of April 2016. However, Mrs S had been given significant opportunity to provide supporting evidence and it is for the SMA to decide if there is sufficient information to provide advice, or whether a consultation is necessary. It is apparent that the SMA was satisfied that advice could be provided on the basis of the available evidence and a consultation was not necessary.

44. Therefore, I cannot conclude that there has been a flaw in the way the SMA reviewed the case. I find that the SMA asked the relevant questions, considered the relevant evidence and reached a rational conclusion.
45. Following the Adjudicator's Opinion, Mrs S has provided a further report from Dr Britto where he explains that, in his view, Mrs S was permanently disabled as at October 2014. Whilst I appreciate the efforts Mrs S has gone to in order to source this report, it unfortunately does not assist as it is too late at this point to provide new medical evidence, and this complaint is about the SMA's decision on the basis of the evidence that was available at the time. This new report was not available to the SMA when the decision was made and so it cannot be used to retrospectively alter that decision now.
46. Mrs S may present this evidence to MyCSP separately to this complaint, and it may reconsider the matter, but it is not a relevant consideration for the reasons I have given.
47. Therefore, I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
16 January 2019