

## Ombudsman's Determination

Applicant	Mrs T
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

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

## Complaint summary

3. Mrs T's complaint is that she has been refused ill health early retirement (**IHER**).

## Background information, including submissions from the parties

4. Mrs T was employed as a Senior Patient Services Officer.
5. On 13 September 2016, NHS BSA instructed Medigold to provide an independent medical opinion on Mrs T's case. On 16 September 2016, Dr Ahmad considered her unfit for work and said that she was likely to meet the criteria for IHER.
6. On 23 September 2016, NHS BSA received Mrs T's application for IHER due to depression and anxiety, sciatica and COPD.
7. On 28 November 2016, NHS BSA turned down Mrs T's application for IHER. It said that the relevant medical evidence had been considered, and on the balance of probabilities Mrs T was not permanently incapable of NHS employment, therefore the Scheme's condition for Tier 1 has not been met and that as she is not permanently incapable of regular employment of like duration, she has not met the Scheme's condition for Tier 2.
8. On 12 December 2016, Mrs T appealed the decision made by NHS BSA. Her appeal was dealt with by NHS BSA under stage 1 of the Scheme's internal dispute resolution procedure (**IDRP**).
9. On 14 March 2017, NHS BSA issued its stage one IDRP response to Mrs T. NHS BSA referred the matter to a new Medical Advisor, Dr Glen, who took account of a

letter from Mrs T's GP dated 20 January 2017 and additional information provided by Mrs T. Dr Glen said that the condition of anxiety and depression are treatable with a combination of interventions with medication and talking therapy. He also said that with such treatment, problems of anxiety and panic should resolve, enabling a psychological recovery and return to work. Dr Glen's opinion was that with full and appropriate mental health intervention and cessation of smoking activities that Mrs T's health should improve enabling a return to her NHS duties at some point prior to normal retirement age. Based on this, NHS BSA did not uphold Mrs T's appeal and it maintained that she does not meet requirement for Tier 1 IHER.

10. On 31 July 2017, Mrs T was seen by her GP, Dr Singh. Dr Singh was of the opinion that based on his recent clinical assessment, Mrs T was unable to undertake the duties of her former employment due to her medical conditions.
11. On 2 August 2017, Mrs T appealed under stage two of the IDRP.
12. On 11 October 2017, NHS BSA issued its stage two IDRP response to Mrs T. NHS BSA referred the matter back to Dr Evans. Dr Evans took into account the referral documents, report from Dr Singh, a letter from Mrs T and all previous documents in relation to her file. Dr Evans was of the opinion that although the combined impact of Mrs T's various medical problems was currently sufficient to prevent her from working, it was reasonable to consider that some improvement may come about spontaneously. Dr Evans further said even if improvement does not come about, further treatment options were available and the likely benefits of these treatments were such that Mrs T was likely to regain capacity for her normal role and these benefits were likely to be realised before she reaches pension age.
13. Based on this NHS BSA held that the decision not to award Mrs T Tier 1 IHER was reasonable given all the medical evidence. Also, as there were further treatment options available, Mrs T was likely to regain capacity for her normal role.

## **Adjudicator's Opinion**

14. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
  - The Ombudsman's role is not to decide whether Mrs T is eligible for IHER; that is a matter for NHS BSA 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 NHS BSA 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 NHS BSA to look at Mrs T's case again. However, the weight which is attached to any of the evidence is for NHS BSA 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.

- Mrs T says the Occupational Health Doctor and her GP's opinion seems to have been ignored. However, it is for NHS BSA to attach weight (if any) to the relevant medical evidence. NHS BSA made its final decision based on all relevant reports including Mrs T's occupational health report and GP report. As such, the Adjudicator was satisfied that the NHS BSA had considered all the relevant information.
- Dr Glen and Dr Evans were of the opinion that Mrs T was not permanently incapable of discharging efficiently the duties of her employment by reason of ill health or infirmity of body or body (until age 65) and she was not unlikely to be capable of undertaking gainful employment before normal pension age. They both said that Mrs T's conditions were unlikely to be permanent and with treatments including assessments by specialists, psychological therapy such as cognitive behavioural therapy and medication there is time for the benefits of such treatments to be realised before Mrs T reaches pension age.
- Mrs T disagreed with Dr Glen and Dr Evans assessment and reiterated that her GP supports her application. However, the Adjudicator was of the view that this was not sufficient for the Ombudsman to say that NHS BSA's preference for Dr Glen and Dr Evans opinions was perverse.

15. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T 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 T for completeness.

### **Ombudsman's decision**

16. It is my view that Dr Evans' report covered all the necessary requirements and provided NHS BSA 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 Mrs T's concerns or condition. Dr Evans' opinion took into account evidence and referred to appropriate medical research.
17. I appreciate that Mrs T disagrees with NHS BSA's decision not to grant her IHER. However, Mrs T's disagreement is not a sufficient reason for me to remit the matter back to NHS BSA for her IHER application to be reconsidered.
18. Mrs T questions how a decision can be made by NHS BSA that she was not eligible for IHER when she has not returned to work since May 2015. However, as explained by the Adjudicator in the Opinion 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, NHS BSA had considered the

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relevant factors in arriving at its decision not to grant Mrs T IHER. I therefore do not consider there are justifiable grounds for me to find that NHS BSA's decision was perverse or that the process it undertook in reaching its decision was flawed.

19. Therefore, I do not uphold Mrs T's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
16 March 2018