

Ombudsman's Determination

Applicant	Miss Y
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Capita London Borough of Barnet (the Council)

Outcome

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

Complaint summary

3. Miss Y has complained that Capita and the Council provided her with incorrect information about; the value of her pension benefits; the options available to her; and, the consequences of taking her benefits. Because of the pension being put into payment, her entitlement to certain benefits have been significantly reduced.
4. Additionally, Miss Y considers that as a vulnerable individual, who was unable to make informed decisions, the Respondents should have done more to protect her interests.
5. Finally, Miss Y has queried the accuracy of the benefits she has been paid.

Background information, including submissions from the parties

6. In December 1992, Miss Y enquired with her employer, the Council, about transferring her preserved benefits with the Civil Service Pension Scheme, totalling 4 years 301 days service, into the Scheme.
7. On 7 December 1992, the Council confirmed to Miss Y that on transfer, the transferred benefits would purchase 4 years 239 days service within the Scheme. The transfer subsequently went ahead.
8. In November 1993, Miss Y ceased employment with the Council and her pension benefits became deferred.

9. On 7 January 2015, Miss Y contacted Capita to request a current value of her benefits.
10. On 15 January 2015, Capita wrote to Miss Y providing her with a benefit quote and HR contact details through which she could apply for ill health early retirement.
11. On 27 January 2015, Miss Y's GP wrote a letter "to whom it may concern" in support of her ill health early retirement application, confirming Miss Y's current medication and saying:

"She [Miss Y] suffers from significant and disabling anxiety and depression and for this is awaiting long-term psychological therapy..."
12. On 25 March 2015, financial advisers appointed by Miss Y contacted the Council to request a Cash Equivalent Transfer Value (**CETV**).
13. On 26 March 2015, the Council received Miss Y's request to be considered for ill health early retirement.
14. On 9 April 2015, Capita issued a CETV to Miss Y's financial adviser, showing a value of £29,133.57.
15. On the same day, the Council wrote to Miss Y providing the necessary consent form for her ill health application to be considered by the medical adviser.
16. On 19 August 2015, Miss Y's application for ill health benefits was assessed by a medical adviser who was of the view that she met the criteria for ill health early retirement. The report detailed Miss Y's condition, saying:

"The report [from Miss Y's treating doctor] confirms a formal diagnosis of "emotionally unstable borderline personality disorder" and her major problems described as "a tendency to dissociation under stress". The Consultant confirms that [Miss Y] becomes highly anxious and agitated under stress, even of a very mild degree.

The consultant confirms that [Miss Y] is in receipt of the enhanced rate of DLA and given a disability premium so that she can have additional assistance when she is acutely distressed, and he reports that [Miss Y]'s solicitor has appointed a "litigation friend" to manage her affairs when she is in an acutely distressed state.

Her medication includes citalopram, pregabalin, clonazepam and propranolol.

The consultant's opinion indicates a very vulnerable and fragile personality and gives us a reasonable prognosis as to why she is likely to remain permanently incapable both in her old substantive post and of alternative occupations."
17. On 2 September 2015, Miss Y enquired about the progress of her ill health application.

18. On 8 September 2015, on receipt of the medical adviser's report, the Council wrote to Miss Y informing her that she had been authorised to access her benefits early under ill health retirement. It would pass her details across to Capita, who would contact Miss Y independently.
19. Around this time Miss Y made enquiries with the Council and Capita asking what was delaying the payment of her pension.
20. On 23 September 2015, Capita wrote to Miss Y to provide her with the options available. She could take an annual pension of £2,215.25 and lump sum of £6,645.73 or reduce her pension and take a higher lump sum, in which case the annual pension would be £1,780.11 and lump sum of £11,867.40. The letter also stated:

“Your employer and Capita are unable to advise you on what choices you should make in connection with your retirement. If you feel that you would like to take financial advice before proceeding it is recommended that you contact an Independent Financial Adviser.”
21. On 26 October 2015, Miss Y submitted her retirement option form requesting the pension be put into payment with the maximum lump sum.
22. On 6 November 2015, Miss Y's pension was put into payment. Capita wrote to Miss Y confirming that she was due pension arrears of £1,229.46 along with the first monthly payment due on 30 November 2015. This would be less a deduction of £860 applied because of an interim payment she would already have received. This letter also confirmed Miss Y's income would be taxed using the basic rate tax code.
23. In September 2017, Miss Y raised a number of concerns about the process of her taking benefits. The decision to access her benefits has had an adverse impact on her overall financial circumstances because she can no longer access certain income assessed state benefits.
24. In the following months Miss Y's complaint was declined at Stage 1 and 2 of the internal dispute resolution process and subsequently referred to this Office for consideration.

Adjudicator's Opinion

25. Miss Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Capita or the Council. The Adjudicator's findings are summarised briefly below:-
 - In 1992, when Miss Y transferred service into the Scheme, it did not purchase like for like service. This was not maladministration and the amount of service being credited to Miss Y following the transfer was made known to her at the time.
 - The Council could have identified Miss Y as vulnerable during her ill health application, however she did appear to be acting and communicating clearly and

rationally. There was no indication over the course of the correspondence that she could not have made a legitimate decision about taking benefits.

- The evidence suggests that Miss Y's difficulties in managing her affairs fluctuated and whilst the Adjudicator accepted Miss Y was unwell over the course of 2015, in his view there was no reason for the Council to doubt her decision-making capabilities or second guess her decision.
- There is no requirement for Capita or the Council to take extra care when dealing with potentially vulnerable members, and they were unaware that Miss Y was isolated and had no support when making her decision. In the course of the ill health application there had been no maladministration by either Capita or the Council.
- Whilst Miss Y considers the CETV issued in 2015 ought to have been higher, the Adjudicator pointed out that the methods she had used to reach a different figure did not reflect the actual method of calculation or the variables involved. There was no evidence that Miss Y had been provided with an incorrect CETV, and in any event, she had not pursued that option further.
- Although Miss Y is of the belief that she ought to have been offered alternatives to taking ill health early retirement, such as an enhanced annuity, a further CETV or a hardship allowance, the Adjudicator considered that these alternatives were not required to be offered. Miss Y could either take ill health early retirement, accept a transfer value, or leave her benefits as deferred. Miss Y did not request a new transfer value (as would have been necessary by the time her ill health application was accepted), and instead agreed to take benefits. The Adjudicator noted that neither Capita or the Council could advise her on whether to accept the offer, but they had suggested she seek financial advice.
- In respect of the possible hardship allowance, the Adjudicator noted that Miss Y, at the time, was not the requisite age to request consideration and she no longer lived or worked in the Borough. Although the criteria had not been provided, in these circumstances, it was highly unlikely that she would have qualified. In these circumstances the Adjudicator did not think it was necessary for Capita or the Council to have made Miss Y aware of the hardship allowance potentially available to her when she turned 50.
- Although the decision to take ill health early retirement has undoubtedly had adverse and unforeseen consequences for Miss Y, there were no errors on the part of Capita or the Council when responding to her application, and there is no general responsibility for an employer to provide warnings about the potential wider financial implications of such a decision. Neither the Council or Capita were aware of Miss Y's personal financial circumstances.

- The Adjudicator did not agree that Miss Y had been unfairly or deliberately mistreated by the Respondents. She had applied for ill health early retirement and was invited to take it.
 - The Adjudicator acknowledged it had taken some time for Miss Y's application to be considered but noted that it was not unusual for ill health applications to take time to be completed and the pension had been backdated once in payment.
 - Miss Y had made a number of observations about the level of payment made to her, including concerns over her pension increases and the amounts paid once in payment. The Adjudicator reviewed the payments made and explained why, when tax and the applicable annual revaluations were taken into account, the payments made were correct.
26. Miss Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss Y 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 Miss Y for completeness.

Ombudsman's decision

27. Initially, I must say that I have great sympathy for the situation Miss Y finds herself in. Taking her pension benefits has ultimately financially disadvantaged her due to the reduction in her disability and associated benefits. This is particularly unfortunate when the intention of an ill health pension is to help to relieve financial difficulties. However, pensions, once in payment, are not intended to be reversed and there are limited circumstances where I can direct this to happen.
28. Miss Y has stressed that she does not think her illness and the difficulties it poses her have been properly considered by the Adjudicator. She stresses that it is hugely debilitating, impacting on her ability to make decisions, manage her affairs and plan for the future. She argues that the Council was aware of her circumstances and ought to have adapted its communication to suit her needs, and had it done so she would not have taken benefits.
29. I have considered the medical report that the Council received during the ill health application, dated 19 August 2015. Given the content of the report the Council could certainly have identified her as vulnerable. However, I agree with the Adjudicator that it is not clear that she was incapable of deciding about taking benefits and a vulnerable individual is not automatically incapable of making decisions. I also note that the report says that it was at moments of stress when Miss Y requires "additional assistance" or a "litigation friend". I am not persuaded that on the basis of that report the Council had a duty to ensure Miss Y sought additional assistance or guidance on the question of taking benefits.
30. Miss Y has referred to the Equality Act 2010 and highlighted that under that Act her disability should be treated as permanent whether it fluctuates or not. In that context

she argues that the report should be taken as meaning that she was permanently vulnerable, and that she ought always to have been treated as requiring additional support. Whilst I appreciate the point Miss Y is making, I think such a stance can only be applied if I was to make a positive finding that she was discriminated against, and I do not agree that this is the case.

31. Miss Y suffers a significant disability, but in order to make a finding that she has been discriminated against, I would need to conclude that the Respondents acted in a way that prevented her from utilising its service in a way that a non-disabled person might. Miss Y was provided with standardised correspondence, setting out the information relating to her pension required by law. Miss Y suggests she should have been provided with more detail as to the consequences of her taking benefits for her to better understand the options, and this would be a reasonable adjustment as required under the Equality Act 2010.
32. I do not agree that more detail about the consequences of taking benefits would be reasonable or appropriate. There is no general requirement on an employer or pension provider to give guidance on the wider financial implications of taking pension benefits, and I do not agree the Council or Capita can be expected to tailor its correspondence to an individual where it is not aware of that individual's financial circumstances. This also poses the very real risk as being seen as giving financial advice, which the Respondents cannot provide. I consider that the service provided to Miss Y allowed her to utilise it in the way that a non-disabled person might, and I cannot see how the Respondents' actions amount to discrimination.
33. Additionally, the correspondence between Miss Y and the Respondents does not display any uncertainty or misunderstanding. In this context I do not think that the Respondents, when corresponding with Miss Y, can have anticipated that she was struggling to understand her options as she has suggested, and so, despite the content of the medical report, providing her with the standard documentation appears reasonable.
34. Miss Y applied for ill health early retirement and following assessment was offered the right to take benefits. The Respondents could have identified that Miss Y as vulnerable, but I do not find that it was clear cut or readily apparent in the correspondence with her, and I do not find that their actions amount to maladministration or discrimination.
35. I also think it is notable that, despite what Miss Y has said, she did make contact with a financial adviser. The evidence is clear on this point. I accept Miss Y did not ultimately receive the proposed advice, but it would be reasonable for Capita to think she was being advised, and it shows she was aware of an appropriate source of guidance for advice before making her decision. Further, the documentation did say that Miss Y should seek independent financial advice if she was unsure of anything.
36. I have considered the amounts paid to Miss Y in November and December 2015, but as the Adjudicator has said, the difference between the quoted pension and the

amount received into Miss Y's bank account is due to basic rate tax being applied. If Miss Y thinks she should not have been paying tax over this period she should approach the relevant tax office for a rebate.

37. Also, in respect of the annual pension increases, the income paid to her reflects the annual increases applicable for the Scheme.
38. Finally, Miss Y has highlighted a second occupational pension she was in receipt of, but which was unwound following the involvement of this Office. I acknowledge that the pension was unwound, however the circumstances here are different. In that case, that was a private employer's occupational pension scheme, and the Trustee made an offer to unwind it as a gesture of goodwill following the suggestion of an Adjudicator. There was no finding of fault on the part of the Trustee in that case, but the Trustee exercised its discretion to unwind it.
39. In this case, the Scheme is a statutory scheme, with no mechanism within the regulations to allow a discretionary unwinding of a pension. It would be unlawful for the Council to authorise this without a direction from a court or myself. Because I cannot see any fault on the part of the Respondents, I cannot make the necessary direction for this to happen.
40. As I have said, I am extremely sympathetic to Miss Y's circumstances, and I hope she is able to find some way to, at least, bring her income up to the level it was prior to her benefits being stopped, so she is no worse off. However, there is no justification here for me to direct that this pension be unwound.
41. Therefore, I do not uphold Miss Y's complaint.

Anthony Arter

Pensions Ombudsman
7 January 2019