The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (the **Scheme**)
Respondents	The Ministry of Defence (the **MOD**) MyCSP Cabinet Office

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the MOD, MyCSP or the Cabinet Office.

Complaint summary

2. Mr N's complaint is that he has been refused ill health retirement.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, the main points of which are set out below.

4. In 1998 Mr N joined the MOD and the Scheme as a Classic (1972) member. He was employed as a Cost Engineer in Defence Equipment and Support.

5. Mr N commenced sickness absence in April 2009. In July 2010 the MOD referred Mr N to Atos Healthcare. In a report dated 9 July 2010 to the MOD (People, Pay and Pensions Agency) Dr Scott (Consultant Occupational Physician) noted:-

   - Mr N remained off sick with depression and anxiety, which Mr N attributed to work-related stress.

   - Mr N was under the care of his GP and taking medication but had had no other treatment.

   - The work issues remained unresolved and Mr N was no better than he was a year ago.

   - Mr N struggled with daily activities, got panic attacks and had significant incapacity.

6. Dr Scott gave his opinion that Mr N remained unfit for work in any capacity and it was unlikely that any adjustments would facilitate his return. Dr Scott said given the length of Mr N's absence it was most unlikely that he would ever be able to return, and even if he did, there was a significant risk of another breakdown in health. Dr Scott said he would support an application for Mr N's medical retirement and that the underlying medical condition and associated incapacity were likely to be permanent.

7. In January 2011 Mr N completed an application for ill health retirement.

8. As relevant, Section II (The 1972 Section) of the Scheme Rules says:-

   "1.12 "Retirement on medical grounds" means retirement from the Civil Service with a medical certificate issued by the Scheme Medical Adviser which states that the person concerned is prevented by ill health from discharging his duties, and that his ill health is likely to be permanent."

   "1.13j The "Scheme Medical Adviser" is the person or body appointed for the time being by the Minister to provide a consultation service on medical matters in relation to Civil Service pension and injury benefit arrangements or, in a case where a function normally exercisable by that adviser is being exercised by another person or body on an appeal from that adviser's decision in accordance with procedures that are acceptable to the Minister, is that other person or body."

9. The MOD referred Mr N's application to the Scheme's Medical Adviser (**SMA**) - Capita Health Wellbeing (**Capita**).

10. Mr N was seen by Dr Pearson. Dr Pearson's report was passed to Dr Ryan (Specialist in Occupational Health).

11. In a report dated 3 March 2011 Dr Ryan gave his opinion that Mr N did not satisfy the criteria for ill health retirement. In his report Dr Ryan noted:-

   - Mr N's date of birth.
   - The criteria for ill health retirement for a Classic (1972) member of the Scheme.
   - Mr N's role as a Cost Engineer was an administrative post in an office-based environment and that he had last worked in April 2009.
   - The medical evidence considered - notes from consultations with: Dr Pearson dated 16 February 2011 and Dr Scott dated 9 July 2010.
   - Mr N had had some gastrointestinal upset over a number of years and had anxiety/depression for which he required medication.

12. Dr Ryan commented that Mr N was currently unfit for work and spontaneous improvement seemed unlikely. Dr Ryan said he could identify no adjustments that

would enable Mr N to return to work and that Mr N's condition was chronic and impaired his day to day activity. Dr Ryan concluded:

> "Having considered the application and evidence there is, in my opinion, reasonable medical evidence that [Mr N] is prevented from discharging his duties and the key issue in relation to the application is whether or not [Mr N's] incapacitating health problems are likely to be permanent. On this occasion it is my opinion that the scheme definitions as outlined above are, on the balance of probabilities, unlikely to be met.
>
> The medical evidence on file confirms that [Mr N] is reasonably physically fit apart from his gastrointestinal upset which has been severe for the past 2 years. His treatment for his depression has failed to control his symptom profile. As a result of symptoms that are not controlled he feels anxious about returning to work as he does not wish to further exacerbate his symptoms. No formal psychiatric opinion has been obtained. In my opinion additional treatment modalities are available to treat his mood state. As a result of there being further options I consider it premature to judge him incapable of working in the future."

13. A 'Medical Retirement Notification of Refusal' certificate of the same date as Dr Ryan's report was signed by Dr Evans (Accredited Specialist in Occupational Medicine).

14. On 18 March 2011 the MOD wrote to Mr N informing him that Capita had not supported his application. A copy Dr Ryan's report and the refusal certificate were included. The letter informed Mr N of his right to appeal against the decision.

15. In an email dated 9 May 2011 to the MOD, Mr N complained about the consultation with Dr Pearson. Mr N said:-

    - Dr Pearson arrived late and for the first time acquainted himself with the claim.
    - He felt "perpetually hurried and cut short" by Dr Pearson.
    - His main concern was that Dr Pearson focused predominantly on his bowel issues rather than the underlying psychological cause(s) of his stress issues and sick leave.
    - While Dr Pearson promised him a copy of his report he had still not seen it.
    - He was left with zero doubt that Dr Pearson's opinion would be "subjective, tainted in the extreme, biased in favour of The Authority and jaundiced to the point of being envious of anyone being considered for retirement on Ill Health grounds."
    - During the consultation Dr Pearson told him "quite categorically" that he would not get ill health retirement.

- The whole proceeding left him feeling “depressed, disgusted and deflated”.

16. On 15 June 2011 Mr N invoked the Scheme’s three-stage medical retirement appeal procedure. Mr N said:-

    - He attributed his chronic psychological condition solely to the treatment he had received from other officers at the MOD. It was his firm belief that his condition would worsen if either his medication was removed or he returned to work.

    - He had been extremely ill over the past three months and only recently had been able to consult his GP with a view to obtaining independent psychological assessment(s) and report(s). He was currently awaiting details of when and by whom these would be undertaken. Consequently, he was unable to provide supporting medical evidence with his stage 1 appeal but wished this additional medical evidence to be considered at stage 2.

    - He also wished to invoke the complaints procedure in view of the lack of professionalism, integrity, diagnostic ability and effectiveness of the consultation and consultant involved (Dr Pearson).

    - He had contacted his trade union, Prospect, for assistance with his appeal against the refusal to grant him ill health retirement and with a complaint about the manner in which the Capita assessment was conducted.

17. The MOD referred Mr N’s stage 1 appeal to Capita. Dr Birrell noted that Mr N had submitted no new medical evidence, but that it was his intention to do so. Dr Birrell said she had reviewed the medical evidence considered by her colleague and her colleague’s original advice was not unreasonable. She said in the absence of new medical evidence there was no reason for her to recommend any changes to that advice and therefore, she was unable to uphold Mr N’s appeal at stage 1. She said she would escalate the file to a colleague who had no prior involvement in the case to consider the appeal at stage 2.

18. The stage 2 appeal was referred to Dr Saravolac. In a letter to the MOD dated 28 July 2011, Dr Saravolac noted:-

    - The Classic scheme criteria for ill health retirement.

    - Mr N would reach his normal retirement age (**NRA**), 60, in October 2013.

    - Mr N had significant ongoing symptoms related to both conditions: gastrointestinal problems and a mental health condition.

- Mr N's application had been considered by three colleagues: Dr Pearson, Dr Ryan and Dr Birrell, all of whom considered a decision of permanent incapacity was premature as there was no evidence of robust treatment for Mr N's mental health.

- Mr N was planning to submit information from the mental health team with whom he was awaiting an appointment.

19. Dr Saravolac said:-

    - Considering the nature of Mr N's gastrointestinal problems, it was reasonable to expect stability through appropriate medical management.

    - It was likely that Mr N's mental health condition was adversely impacting on his gastrointestinal conditions and with improvement of the former it was likely, to some extent, to impact positively on his latter symptoms. Both conditions were likely to be chronic in nature.

    - There was no evidence that effective treatment, as recommended by the National Institute for Health and Clinical Excellence (**NICE**) guidelines, for Mr N's mental health had taken place.

    - Cases should generally be supported by reports from medical specialists/consultants. She was unable to locate any such evidence.

    - It was her opinion that Mr N had not established a reasonable case for an appeal. Mr N needed to provide further suitable and sufficient objective medical evidence. Such evidence would best come from a treating specialist and would need to address certain specific issues, including: treatment already used and Mr N's response to it, if there were further possible treatments, the likely date and duration of further treatments and their likely effect and outcome, whether the treatment would result in improved functional capability and return to work; and any barriers to effective work.

    - In accordance with the Civil Service Medical Appeals Procedure, Mr N now had three months to obtain and submit suitable and sufficient medical evidence. If the required evidence was not submitted within this timescale Mr N's appeal would be deemed to have failed on procedural grounds.

20. Dr Saravolac's report did not specifically reference Mr N's occupation.

21. Mr N commissioned a medical report from Dr Lister (Consultant Psychiatrist). In her September 2011 report Dr Lister confirmed the nature of Mr N's mental health condition (an adjustment disorder with low and anxious mood), that it was likely his symptoms had been brought on by occupational factors as described by Mr N; and the treatment he had received to date in the form of 2 antidepressants. Dr Lister said

Cognitive Behavioural Therapy (**CBT**) could be helpful with milder forms of the condition but because Mr N did not wish to engage with the treatment it was highly unlikely that it would be of any benefit to him. Dr Lister said Mr N's prognosis had to be guarded. The condition had been present continuously since 2009 and whilst Mr N's symptoms were controlled to a degree, whilst off work, it was likely that his symptoms would be aggravated if he returned to the workplace. Dr Lister gave her opinion that Mr N satisfied the Scheme's criteria for ill health retirement.

22. After reviewing the new evidence at appeal stage 2, Dr Saravolac upheld the original decision. Dr Saravolac said whilst a reasonable case had been established there remained uncertainty as to whether the Scheme definitions for medical retirement had been met. Dr Saravolac concluded that it would appropriate for Mr N's appeal to be considered by an independent Medical Appeal Board (the **Board**) at stage 3 of the medical appeals procedure.

23. Mr N's employment was terminated on grounds of ill health effective 18 November 2011.

24. On 30 November 2011 Mr N and his wife attended the Board. The Board comprised Drs Smith and Coolican, both accredited specialists in occupational medicine.

25. The Board recommended that Mr N's ill health retirement appeal be rejected:-

- The Board noted apart from depressive symptoms, Mr N had also had issues with irritable bowel syndrome and diverticulitis. Whilst these conditions caused him problems at work they did not currently impact on his day to day activities and he did not require any specific medication.

- The Board accepted that Mr N's current symptoms and consequent disability were preventing him from performing the key elements of his normal role as a Cost Engineer. In particular his self-confidence and capacity would prevent him from engaging in discussions with contractors.

- The Board agreed with Dr Lister's diagnosis that Mr N was suffering from an adjustment disorder with low and anxious mood.

- While Mr N had suffered with mental health problems over a number of years, the Board considered that further treatment options were available in the form of a review of antidepressant medication and engagement with CBT with a reasonable prospect that Mr N's adjustment disorder would respond to this type of treatment. The Board considered on the balance of probabilities "he may be capable of returning to the role of Cost Engineer in the future."

- Mr N was expected to retire in October 2013 at age 60. Since the Board believed there were further treatment options which needed to be explored, it did not

consider that Mr N's ill health was likely to be permanent, to the extent that it would prevent him from discharging his duties in the future.

26. Mr N invoked the Scheme's two-stage internal dispute resolution (**IDR**) procedure:-

- Mr N reiterated his complaint about the consultation with Dr Pearson.

- Mr N said:

    - Dr Lister's report clearly showed that he met the criteria for ill health retirement.

    - In her October 2011 report, Dr Saravolac failed to clarify why she remained uncertain whether he satisfied the Scheme definitions of medical retirement.

    - Neither doctor on the Board held qualifications in psychiatry.

    - Dr Lister recognised that CBT would little benefit him, but the Board had relied on CBT as a treatment option that could potentially enable him to return to work.

    - He now had a second opinion that CBT would not benefit him.

    - The Board's report contained fundamental errors. The covering letter referred to a Dr Coolican as a party to the preparation of the report when he/she had not been involved in his appeal. The report's introduction wrongly referred to a Mrs Perkins as the appellant and again referred to Dr Coolican when the second doctor on the Board was Dr Dagens. The Board had glossed over his physical health problems and he was astonished that it had concluded that CBT would give him a speedy return to health and work. Neither Capita nor the Board had sought advice from a consultant psychiatrist as they were required to do in accordance with the medical appeals guidance notes.

    - He wanted the Board's report declared void. An explanation why the medical evidence submitted was deficient for meeting the criteria for ill health retirement so that he had an opportunity to remedy this. The medical retirement appeal process reinstated at stage 1 with three months to provide new evidence. Capita to be given a full job description for the role of Cost Engineer. Any further Medical Appeal Board to be conducted in a clinical manner by relevant specialists.

27. MyCSP referred Mr N's complaint to Capita. On 5 April 2013 Capita wrote to the MOD:-

On Mr N’s consultation with Dr Pearson

- Dr Pearson no longer worked for Capita and it could not contact him for comments, but it had no reason to doubt Dr Pearson’s professionalism or integrity.

- Doctor Pearson’s notes did not record the duration of the consultation and apologised if he was late in attending.

- It did not know whether Mr N’s job description had been included in the referral papers reviewed by Dr Pearson.

- Dr Pearson’s role was to gather evidence for Dr Scott to consider Mr N’s eligibility for medical retirement.

- In the absence of any opportunity to obtain Dr Pearson’s perspective on the consultation it was not able to comment on what may have been said. However, it was apparent that Dr Pearson’s view was that Mr N was unfit for work and that the outcome of his application depended on the likely benefits from further treatment.

On Dr Saralovac’s decision to refer Mr N to the Board

- Dr Saralovac’s role was not to uncritically accept the opinions of Mr N’s doctors but to assess the available evidence and attach appropriate weight to it.

- From her report to the Board it was clear that Dr Saralovac had given Dr Lister’s report significant weight but was of the view that Mr N’s mental health had not been treated in accordance with NICE guidelines.

- Dr Saralovac was of the opinion that further treatment options were available to Mr N which could be effective. As Dr Lister did not share the same view, Dr Saravolac referred Mr N’s case to the Board.

- Dr Saralovac’s opinion was within a reasonable range of medical opinion and her referral of Mr N’s case to the Board was entirely reasonable.

- Given that Mr N had already submitted Dr Lister’s report it was difficult to see what other evidence he could reasonably be expected to submit.

On the Board

- The Board consisted of Dr Smith and Dr Coolican. Dr Coolican replaced Dr Dagens who was originally due to attend.

- The reports reference to Mrs Perkins was a typographical error. The report otherwise referred to Mr N and reflected his circumstances.

- The new medical evidence that Mr N submitted to support Dr Lister's view that CBT would not benefit him was dated after the Board had convened and therefore was not relevant to his complaints about the Board.

- The Board's chair (Dr Smith) disagreed with Mr N's view that neither he nor Dr Coolican were suitably qualified to consider his case. Occupational Physicians were experienced in advising on mental ill health issues in relation to employment.

- Neither the Scheme's Rules nor guidance specified the qualifications for doctors sitting on the Board.

- It was satisfied that Mr N's case had been properly considered. Any flaws with Dr Pearson's consultation was remedied by the Board doctors. It was evident that the Board had discussed the nature of Mr N's duties with Mr N and were aware that he worked out of the office 3 to 4 days a week.

28. MyCSP duly informed Mr N that it was satisfied with Capita's review of his case and complaints and turned down his IDR stage 1 appeal.

29. In June 2014 Mr N invoked IDR stage 2. Mr N said:-

- From the outset of Capita's involvement his case seemed pre-ordained. Dr Pearson gave his opinion within 5 minutes of the consultation.

- Before taking up his post, the MOD had contrived to exact retribution against him for his earlier dealings with the department as a contractor.

- His mental ill health and inability to carry out his duties was caused by his treatment at work. He had a record of the events that took place and could supplement this evidence with details of additional events to support his serious accusations.

- He had taken a drop-in in salary to join the MOD, where he had hoped to find security stability and permanency of tenure.

- He wanted the MOD to admit and apologise for its actions.

30. Cabinet Office (The Pension Scheme Executive - **TPSE**) turned down Mr N's appeal:-

- It was unable to address Mr N's employment complaints under the IDR process, these were matters for Mr N to pursue directly with the MOD.

- It noted Mr N's claim that his mental ill health had been caused by events at work, but it had seen no evidence that Mr N had asked to be considered under the Civil Service Injury Benefit Scheme (**CSIBS**). If he wished to do so MyCSP could provide Mr N with further information about the CSIBS and making a claim.

- Scheme rule 1.12 provided for medical retirement. The criteria concerned the nature of the ill health, incapacity and permanency. The cause of ill health was not relevant.

- Capita rejected Mr N's original application because it felt Mr N had submitted insufficient evidence to support medical retirement under rule 1.12.

- Mr N's subsequent complaints about Dr Pearson and the Board were addressed by Capita to the MOD in April 2013. Mr N did not appear to dispute Capita's findings, although he seemed to remain concerned about Dr Pearson's conduct during the consultation. As Capita had explained, Dr Pearson had left Capita's employment and it was unable to contact him to discuss the matter. However, Mr N's case was subsequently reviewed by Drs Ryan, Birrell and Saravolac and he then had a face to face meeting with the Board, Drs Smith and Coolican. TPSE was satisfied that if there were any flaws in Doctor Pearson's evidence gathering this would have come to light during the 3 stages of the medical appeal process so as not to have an impact on the final outcome.

- IDR was not an extension of the medial appeal procedures that could be used to review new or existing medical evidence or Capita's decision on whether to issue a medical retirement certificate.

- TPSE was satisfied that the MOD "made full and appropriate use of the process in place to consider [Mr N's] medical retirement application and appeals".

Mr N's position

31. Mr N is represented by Prospect. With Mr N's application to us, Prospect submitted two letters from GPs at the same medical practice: Dr Fox's letter, dated 24 May 2017, to 'Psychiatry Consultant' requesting a review of Mr N's diagnosis and asking if a second agent may be useful with regard to his medication; and Dr Mandiratta's letter, dated 7 November 2017, to Prospect confirming that he agreed with Dr Lister's report.

32. Prospect say:-

    - Dr Fox's and Dr Mandiratta's letters corroborate the findings of Dr Lister and show that Mr N was medically unfit in 2011 and that his condition has not improved since despite further treatment and medical interventions such as several courses of CBT.

- The effect of the condition on Mr N and his family has been catastrophic and long lasting.

- Since his dismissal Mr N has qualified for an Earning & Support Allowance (**ESA**) and a Personal Independence Payment (**PIP**).

- Mr N attests that he remains incapable of working as per the definitions of the Scheme.

33. Mr N's wife has submitted a personal statement attesting to the impact Mr N's condition has had on her husband and their family.

Respondents positions

34. The MOD says decisions on whether to award ill health retirement lies with the SMA. It says the due administrative process was followed for Mr N's application and it cannot comment on the decision made by Capita at the time.

35. MyCSP's and Cabinet Office's respective positions are as per the IDR stage 1 and 2 decisions.

Adjudicator's Opinion

36. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the MOD, MyCSP or Cabinet Office. The Adjudicator's findings are summarised below:-

    - The Scheme rules determine the circumstances in which members are eligible for ill-health benefits, the conditions which they must satisfy, and the way in which decisions about ill-health benefits must be taken.

    - The relevant Scheme rule is 1.12. For Mr N to receive benefits under this rule the SMA had to have been of the opinion that Mr N was permanently (that is to Mr N's NRA of 60) prevented by health from discharging his duties as a Cost Engineer. If that had been the case, it was then for the MOD to agree to his retirement on ill health grounds.

    - SMAs are not within the Ombudsman's jurisdiction. However, if there had been an error or omission of fact by an SMA, the MOD would be expected to seek clarification. It is, therefore, appropriate to review the reports provided by the SMAs.

    - Dr Ryan noted the criteria for ill health retirement and Mr N's date of birth, incapacitating conditions and occupation. After considering the relevant medical evidence (Dr Scott's and Dr Pearson's reports), Dr Ryan gave his opinion that while Mr N was currently unfit to discharge his duties his incapacity for work was unlikely to be permanent. Dr Ryan said no psychiatric opinion had been obtained

and there were additional treatments available to treat Mr N's mood state. However, Dr Ryan did not say what treatments he had in mind or comment on why he believed they were likely to improve Mr N's mental health to a sufficient extent to mean that he would be capable of discharging his duties as a Cost Engineer before he reached his NRA.

- At medical appeal stage 1, Dr Birrell noted that Mr N had submitted no new medical evidence, but that it was his intention to do so. Dr Birrell agreed with Dr Ryan's opinion and said in the absence of new medical evidence there was no reason for her to recommend any changes to her colleague's original advice.

- At medical appeal stage 2, Dr Saralovac gave her opinion that it was reasonable to expect stability of Mr N's gastrointestinal problems through appropriate medical management. But Dr Saralovac did not specify what she had in mind. Dr Saralovac said it was likely that Mr N's mental health condition was adversely impacting on those problems and therefore improvement of his mental health was likely to have a positive impact, to some extent, on the symptoms. She said there was no evidence that effective treatment, as recommended by NICE, had been tried for Mr N's mental health. Again, Dr Saralovac did not specify the treatments she had in mind or comment on their likely efficacy for Mr N. Dr Saralovac said that Mr N needed to submit evidence covering such matters as treatments taken and his response to it, the efficacy of likely further treatments in improving his functional capability and return to work and any barriers to work.

- Mr N duly commissioned Dr Lister's (Consultant Psychiatrist) report. Dr Lister said Mr N was complying fully with treatment with 2 recognised and established psychotropic drugs, which were widely used for his adjustment disorder and low and anxious mood. Dr Lister said psychological therapies (CBT) might be useful in milder forms of the condition but, as Mr N did not wish to explore this, little would be gained by forcing him to accept the treatment which crucially depended on the motivation of the individual to succeed. Dr Lister said Mr N's prognosis was guarded. Whilst the symptoms were controlled to a degree it was likely that he would experience symptom aggravation if he returned to the workplace.

- Mr N attended the Board at medical appeal stage 3. The Board appear to have considered all the relevant medical evidence. Drs Smith and Coolican detailed the criteria for ill health retirement and noted when Mr N would reach his NRA. The Board agreed with Dr Lister's diagnosis of Mr N's mental health condition and accepted that Mr N was currently incapable of effectively discharging his duties as a Cost Engineer. But considered a review of his medication and his engagement with CBT were likely to improve Mr N's condition to a sufficient extent to mean that he would be capable of discharging those duties before his NRA.

- The Board's consideration corrected any flaws with the opinions of the previous SMAs. Whilst the Board's opinion on the likely effect of CBT on Mr N's condition differed to that of Dr Lister's, that is not sufficient for the Ombudsman to find that the decision to turn down Mr N's application was not properly made.

- The SMAs are occupational health specialists, rather than specialists in mental health; unlike Dr Lister. However, the criteria for benefits under rule 1.12 relate to Mr N's capability to discharge his duties as a Cost Engineer. It is, therefore, not inappropriate for the opinions of occupational health specialists to be sought.

- It appears that Mr N's condition has not improved with further treatment, including several courses of CBT. But that is applying the benefit of hindsight. The Board could only give its recommendation based on the medical evidence available to it at that time.

- Mr N is in receipt of an ESA and a PIP from the State. An ESA may be awarded if illness or disability affects a person's ability to work. A PIP may be awarded for difficulties with daily living or getting around. But the criteria for ill health retirement under the Scheme is more stringent and the pension is payable for life.

37. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N's wife and Prospect have provided 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 N and Prospect for completeness.

Ombudsman's decision

38. Mrs N has commented on the MOD's treatment of her husband during his employment. I have put to one side these comments as employment issues are outside of my jurisdiction. In any case they are not relevant to the complaint that we have agreed to investigate.

39. Mrs N says nobody visited her husband at home to see how he lived (and is still living) or talked to her or their children who had watched his catastrophic demise over the years.

40. But it was for the SMA to decide whether that was necessarily before giving their opinion.

41. Mrs N asks why Capita did not employ the services of a fully qualified psychiatrist (as her husband did) who could have made a more objective view of the case instead of having three of four people giving their non-mental health professional subjective views?

42. It is not for me to say what the SMAs should have done. SMAs are answerable to their own professional bodies and the GMC. Whilst the SMAs are not experts in mental health they are occupational health specialists. As noted by the Adjudicator, the criteria for benefits under rule 1.12 relate to Mr N's capability to discharge his duties as a Cost Engineer. Consequently, it was appropriate for the opinions of occupational health specialists to be sought.

43. Mrs N says it has been well documented over the years that her husband's condition is chronic. Mrs N says CBT is a therapy that works for mild to moderate anxiety and

depression and it fails to address the underlying causes of the mental health condition.

44. Nevertheless, the Board considered CBT was likely to enable Mr N to be capable of discharging his duties as a Cost Engineer before his NRA.

45. Prospect says the short period between Mr N's IHR application (Jan 2011) and NRA (Oct 2013) has not been considered and challenges the opinion that Mr N would have been able to return to work before his NRA. Prospect says the SMAs made no comment on timescales for receiving any potential treatment.

46. However, in making its recommendation the Board was clearly aware when Mr N would reach his NRA.

47. Prospect says the only evidence from a mental health specialist (Dr Lister) was dismissed.

48. That is not quite right. Dr Lister's opinion was considered and largely accepted by the Board. While the Board's opinion on the likely effect of CBT on Mr N's mental health condition differed with Dr Lister's view, that is not sufficient for me to find that the decision to turn down Mr N's application was not properly made.

49. Similarly to Mrs N, Prospect comments that the MOD did not seek specialist evidence. It says the weight the MOD placed on CBT suggests that if Mr N had already had the treatment his application would have succeeded. Prospect says history has borne out that CBT has not improved Mr N's mental health.

50. The Scheme rules are slightly different to some other public sector schemes; inasmuch as the employer cannot grant ill health retirement unless the SMA has come to the opinion that the member meets the criteria. It is not like the Local Government Pension Scheme, for example, where the employer should weigh up the medical evidence. Having said that, the employer is not expected simply to proceed if there is something obviously amiss with the SMA's decision. The employer is required to look for the kind of things a layperson might spot. For example, an error or omission of fact or a misunderstanding of the relevant rules. The employer can refer a decision back to the SMA if there is something factually wrong. But the employer would not be expected to challenge a medical opinion.

51. Unfortunately, Mr N's mental health condition does not appear to have responded to CBT in the way that the Board expected. But, as the Adjudicator said, that is applying the benefit of hindsight. It does not invalidate the Board's recommendation which was based on the medical evidence available to it at that time.

52. There is some precedence for saying that, if a doctor does not have sufficient appropriate evidence on which to base a decision, the decision-maker should not just accept his/her opinion. But that is not the case here. From a layperson's point of view, this matter boils down to a difference of opinion between the SMAs and Mr N's

doctors. That is not sufficient for me to find that the decision to turn down Mr N's application for ill health retirement was not properly made.

53. While the MOD might have asked the Board to explain why it held a different view to Dr Lister, I cannot say that the MOD should have accepted Dr Lister's opinion over that of the Board because the Scheme rules do not allow it.

54. The most the MOD could have done was ask the SMA to review an opinion. But in Mr N's case at each stage of the review process the SMA said he did not meet the criteria for ill health retirement.

55. Prospect has referred to a link on the NHS website concerning CBT to challenge the Board's opinion. In effect it is asking me to review the medical evidence and make my own decision on it. But that is not for me to do. I am primarily concerned with the decision-making process. It is not relevant whether I agree or disagree with the actual decision that was made.

56. I am satisfied that the relevant Scheme rules have been correctly applied and appropriate medical evidence was considered. I find no grounds for saying that the Board erred in making its recommendation.

57. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 August 2019