

## Ombudsman's Determination

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| Applicant   | Mr Y  |
| Scheme      | Local Government Pension Scheme ( <b>the Scheme</b> ) |
| Respondents | Oxfordshire County Council ( <b>OCC</b> )             |

## Outcome

1. I do not agree that this complaint should be upheld and in my opinion no further action is required by OCC.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr Y's complaint is that OCC, his employer, has refused his application for Ill Health Retirement (**IHR**).

## Background information, including submissions from the parties

4. In 2007, Mr Y fell off scaffolding at work and injured his back.
5. In February 2014, Mr Y had a further accident.
6. On 27 February 2014, Mr Y started a period of sickness absence and did not return to work.
7. In October 2014, December 2014 and March 2015, Mr Y was reviewed by the OCC's Occupational Health (**OH**) physician, Dr K. Dr K said Mr Y would not be able to return to his normal role but a return to light, reduced hours would be possible.
8. On 3 December 2015, Dr R provided an Independent Registered Medical Practitioner's (**IRMP**) report on Mr Y. It was based upon reports from OH, his General Practitioner (**GP**), his Pain Management consultant and Psychiatrist. Dr R concluded not all treatments for Mr Y's conditions were exhausted, none of the evidence suggested permanent incapacity and Mr Y's recovery was likely over several years. Dr R further said there was no conflicting evidence in the opinions and a return to work could reasonably be expected before Mr Y reached Normal Pension Age (**NPA**).

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9. On 8 January 2016, Mr Y's GP sent a further letter to OCC in support of his application for IHR.
10. On 12 April 2016, Mr Y was dismissed on grounds of capability from his role after not attending several capability interviews with representatives of OCC. OCC said it would continue to investigate Mr Y's application for IHR with the expectation further information would be provided by Mr Y's specialists.
11. In October 2016, after a break in correspondence, Mr Y contacted OCC regarding his application for IHR. OCC then informed Mr Y of its decision not to grant IHR. It said he did not meet the criteria of being permanently incapable of undertaking the duties of his previous employment. OCC said it sought further reports from Mr Y's Musculoskeletal Team and Psychiatrist (that were not provided) as the former refused and Mr Y did not provide permission for the latter to be released.
12. On 14 March 2017, Mr Y appealed the decision under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Mr Y said OCC had not resolved his application for IHR when his employment was terminated in April 2016.
13. On 3 July 2017, OCC provided its IDRP Stage 1 response. It said that the original decision had been made in line with the Scheme's Regulations. OCC said it had also tried to obtain further evidence after Mr Y was dismissed, in order to review its decision. However, further information was not supplied until much later. After this information was submitted, OCC's representative directed it to request a further IRMP's report and re-consider Mr Y's IHR application.
14. On 28 September 2017, Dr S provided a further IRMP's report on Mr Y. Dr S' report is summarised as follows:
  - Although Mr Y had chronic back pain, he had not been diagnosed with a specific condition.
  - Mr Y likely had 'mechanical back pain' and this diagnosis was variable. He noted it could interact unhelpfully with Mr Y's mental health issues and pain perception.
  - Consideration had been given to the duties Mr Y performed as a Multi-Trade Operative (**MTO**) and the degree to which he would likely recover the functional capacity to do that role again.
  - The medical evidence suggested Mr Y would likely recover over a period of several years and he could not be considered as permanently incapable of discharging the duties of his job.
  - Mr Y was undergoing talking therapies and these were 'likely to be helpful' in addressing his mental health problems over several months.
  - Although Mr Y's GP had recommended IHR, this was without reference to the Scheme's criteria for awarding an IHR pension.

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15. On 9 October 2017, a representative of OCC wrote to Mr Y refusing his request for IHR. The representative said it had afforded Mr Y the opportunity to provide further evidence and he had not supplied any additional medical information that was not previously available. The representative further said OCC had considered all the available evidence, including the 2 IRMP's reports, and concluded that Mr Y did not meet the permanence of incapacity criteria necessary to be granted IHR.
16. On 11 October 2017, Mr Y emailed OCC's representative to request his complaint be considered under Stage 2 of the Scheme's IDRPs. He said that the job description the IRMP's had considered was dissimilar to the duties he performed. He argued his role involved predominantly 'heavy manual labour' which had not been considered. Mr Y also said too much emphasis had been placed on what the criteria for IHR was and that OCC should have asked more specific questions of his specialists.
17. On 20 December 2017, OCC provided its IDRPs Stage 2 response. It did not uphold Mr Y's complaint and maintained he did not meet the permanent incapacity criteria necessary to be granted IHR. OCC's representative said it had reasonably considered the job role Mr Y was performing. As no evidence was presented in the medical reports that Mr Y was permanently incapable of performing the duties of a MTO, OCC said it had properly considered Mr Y's IHR application and refused it.

## **Adjudicator's Opinion**

18. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Trustee. The Adjudicator's findings are summarised below:-
  - The Ombudsman's role is not to decide whether Mr Y is eligible for IHR; that is a matter for OCC to decide after obtaining evidence and a report from a suitably qualified IRMP. It is also not for the Ombudsman to agree or disagree with any medical opinion.
  - The Ombudsman's role is to decide whether OCC has abided by the Scheme's 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 OCC to look at Mr Y's case again. However, the weight which is attached to any of the evidence is for OCC 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, or should not without seeking clarification. This might include errors or omissions of fact on the part of the IRMP, or a misunderstanding of the relevant Regulations.
  - OCC is entitled to ascribe little weight to recommendations in support of Mr Y being granted IHR from his specialists or GP. Particularly if those recommendations are not made in with reference to the criteria laid out in the

Scheme Regulations. IHR decisions can only be made on the balance of probabilities. OCC appropriately considered the question of whether Mr Y would likely be permanently incapable of performing the duties of an MTO until NPA.

- In its IDRP Stage 1 response, OCC acknowledged further medical evidence was provided by Mr Y after it refused his initial IHR application. Consequently, OCC afforded Mr Y the opportunity to submit further evidence and reasonably sought a further IRMP's opinion from Dr S. Both Dr S' and Dr R's reports assessed Mr Y's functional capacity, the efficacy of future treatments and likely probability of his return to gainful employment after 3 years.
- It is for OCC to apportion weight (if any) to the relevant medical evidence as it sees fit. However, it should be able to justify why it prefers one opinion over another. The evidence supplied supports the finding that OCC reviewed Mr Y's application appropriately. The Adjudicator understood why Mr Y felt the IRMP's did not appropriately consider the role he performed as an MTO. However, having reviewed the job description of an MTO, OCC gave due consideration to the type of duties Mr Y performed in making its decision. The job description outlined hard, physical tasks such as plastering and fitting kitchens.
- A job description can never be considered exhaustive and the one provided reasonably reflects the type of work Mr Y undertook as an MTO. The Adjudicator said OCC thoroughly assessed all the available evidence against the Scheme's Regulations for granting IHR and did not reach an unreasonable decision.

19. 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**

20. I appreciate that Mr Y disagrees with OCC's decision not to grant him IHR. However, Mr Y's disagreement is not sufficient grounds for me to remit the matter back to OCC for his application to be re-considered.
21. In his comments, Mr Y maintains that his IHR application was incorrectly considered against the job description of an MTO. He argues that he has worked exclusively as a bricklayer and consequently, his duties were more onerous than those of an MTO. However, Dr S' IRMP report adequately considered the nature of work Mr Y was performing as an MTO. Furthermore, if Mr Y's job description was so dissimilar to the job he was performing it would have been reasonable for him to query this with OCC much sooner than he did.
22. As explained by the Adjudicator in his Opinion, my role is not to review the medical evidence and come to a decision of my own but to consider OCC's decision-making process.

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23. In this case, from the point Mr Y appealed OCC's original decision, I find that it followed the correct process and considered the relevant facts. This is borne out by OCC's Stage 1 IDRPs decision to seek a further IRMP report from Dr S and consider Mr Y's IHR application afresh. I am satisfied that OCC adequately addressed Mr Y's concerns about his job specification during the IDRPs process. Consequently, there are no justifiable grounds for me to find that OCC's decision was unreasonable or that the process undertaken to reach it was flawed.
24. Therefore, I do not uphold Mr Y's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
29 May 2019