

Ombudsman's Determination

Applicant	Mr A
Scheme	BT Pension Scheme (the Scheme)
Respondent	British Telecommunications PLC (BT)

Outcome

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

Complaint summary

3. Mr A's complaint is that he has been refused ill health early retirement (**IHER**).

Background information, including submissions from the parties

4. Mr A is a member of Section C of the Scheme. The Scheme is a defined benefit occupational pension scheme.
5. On 23 July 2013, Mr A was informed that his employment with BT was being terminated on grounds of impaired capability due to ill health with effect from 23 August 2013.
6. On 31 July 2013, in accordance with BT's medical retirement procedure BT's occupation health service (**OHS Core**) considered whether Mr A met the Scheme's medical retirement criteria. Mr A was referred to Dr Macaulay of BT's OHS Core who reviewed his medical history and requested further evidence of Mr A's medical history from his GP.
7. On 23 August 2013, Mr A was dismissed from BT on the grounds of impaired capability due to ill health.
8. On 5 November 2013, Dr Macaulay sent an initial report to Mr A's line manager and confirmed that after considering all of the evidence received from Mr A's GP Dr Scofield that in her opinion Mr A did not meet the Scheme's medical retirement criteria.

9. On 12 November 2013, having reviewed information from Mr A's OHS records, including a medical report from his consultant spinal Surgeon of 12 December 2012, Dr Macaulay finalised a report in which she advised that she did not consider that Mr A met BT's medical retirement criteria. It was her view that the "permanently incapable" element of BT's medical retirement criteria was not met. Dr Macaulay stated that "Although the outcome of Mr A's back problems cannot be predicted with any certainty it is reasonable to expect surgery should lead to some improvement, such that return to work would be possible. However, one would need to await the outcome of the surgery. Therefore currently, it cannot be said that permanent incapacity has resulted from his back condition with respect to his ability to undertake his normal Customer Service Advisors role. Assuming there is improvement following surgery, he should be expected to return and to be able to undertake his Customer Service Advisors role with or without adjustment in place."
10. On 29 November 2013, Mr A appealed the decision made by Dr Macaulay and supplied a letter from his GP, Dr Ord, dated 24 February 2014, which stated that Mr A is on a waiting list for L4/L5 spinal decompression with posterolateral instrumental fusion with transforaminal lumbar interbody fusion. Dr Ord further said Mr A is "experiencing back pain which radiates to both legs, he has pins and needles in both feet, restless legs and pain in hips."
11. On 2 December 2014, BT confirmed that as Mr A had missed the deadline for submission of further medical evidence, it was refusing his appeal.
12. On 5 December 2014, Mr A's case was referred to Dr Litchfield, Chief Medical Officer (CMO) who allowed Mr A's appeal on the basis that he had acted in good faith. Dr Litchfield reviewed all the medical evidence and said that once Mr A has the long awaited spinal surgery, his symptoms would improve and "in the great majority of cases that would be to the extent to allow an individual to resume sedentary type of employment." Dr Litchfield said there was no medical evidence presented that concluded that Mr A's case was exceptional and that he would be unable to resume employment after the surgery. Therefore the "permanently incapable" test was not met, in accordance with BT's medical retirement procedure.
13. On 11 December 2014, BT considered Mr A's application and appeal for medical retirement in accordance with BT's medical retirement procedure and held that BT acted reasonably in its decision that Mr A did not meet the criteria.

Adjudicator's Opinion

14. Mr A's complaint was considered by one of our Adjudicators who concluded that no further action was required by BT. The Adjudicator's findings are summarised briefly below: -

- The Ombudsman's role is not to decide whether Mr A is eligible for IHER; that is a matter for BT to decide after obtaining requisite certification from OHS Core. It is also not for the Ombudsman to agree or disagree with any medical opinion.
 - The Ombudsman's role is to decide whether BT 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 BT to look at Mr A's case again. However, the weight which is attached to any of the evidence is for BT to decide, including giving some of it little or no weight. It is open for 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 medical adviser, or a misunderstanding of the relevant Regulations.
 - Mr A says that Dr Litchfield did not carry out a proper review of his case. The Adjudicator did not see any evidence to show that Dr Litchfield did not review any aspect of Mr A's concerns or condition. Dr Litchfield's opinion took into account relevant evidence and referred to appropriate medical research. The Adjudicator appreciated that Mr A disagrees with the conclusions reached, and presented his counter arguments, but while she recognised that Mr A disagrees with Dr Litchfield's report, that is not a sufficient reason for her to remit the matter back to BT for the application to be reconsidered.
 - Mr A questions how a decision can be made that he would be fit for work after his spinal operation a year before the operation was even conducted. However, the Adjudicator's role is not to review the medical evidence and come to a decision of its own but to consider the decision making process. In this particular case, the Adjudicator was satisfied that BT has considered all the relevant facts and followed the procedure correctly. As such there are no justifiable grounds to conclude that BT's decision making process was flawed.
15. Mr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr A 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 A for completeness.

Ombudsman's decision

16. Mr A maintains that Dr Litchfield did not review all the relevant medical evidence during the second stage appeal. However, I do not find that there is sufficient evidence to support this assertion. The medical opinion of Dr Litchfield and subsequent decision at the second stage of the Scheme's appeal process were sufficiently thorough and set out why Mr A had not met the criteria for a IHER. Further, Dr Litchfield stated in his report that there was no medical evidence

presented that concluded that Mr A's case was exceptional and that he would be unable to resume employment after the surgery.

17. It is my view that Dr Litchfield's report at stage 2 of the appeal process provided BT 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 Mr A's concerns or condition properly. Dr Litchfield's opinion took into account relevant medical evidence and referred to appropriate medical research. I appreciate that Mr A disagrees with BT's decision not to grant him IHER. However, Mr A's disagreement is not a sufficient reason for me to remit the matter back to BT for his IHER application to be reconsidered.
18. Mr A has said he was advised to appeal to the second stage but then his appeal was turned down. I have not found any issues with the way BT handled Mr A's appeal in December 2014. In December 2013, Mr A was given 12 weeks to provide further information starting from 29 November 2013. The deadline for submission of this information was 21 February 2014. Mr A provided his evidence after that deadline and such his appeal for medical retirement had expired and was initially refused. However, Dr Litchfield's report stated that as Mr A had acted in good faith, he will accept his appeal. I find this is a reasonable approach to take and it led BT to determine that Mr Y was not eligible for IHER.
19. I find, based on the evidence that has been presented, that BT has considered the relevant factors in arriving at its decision not to grant Mr A an IHER. I do not consider that there are justifiable grounds for me to find that the process BT undertook in reaching its decision was flawed. Therefore, I do not uphold Mr A's complaint.

Karen Johnston

Deputy Pensions Ombudsman
19 December 2018