

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Nottinghamshire County Council (the Council)

Outcome

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

Complaint summary

3. Mrs Y is unhappy with the decision made by the Council not to grant her early release of her pension on compassionate grounds. In her opinion she meets the Scheme requirements and would like access to her pension.

Background information, including submissions from the parties

4. On 17 May 2017, the Council wrote to Mrs Y to ask if she would provide formal consent to the release of her medical records from her GP to the Occupational Health Service (**OH**). The letter explained that consent would allow it to obtain evidence of her current health issues, and that upon receipt the OH may invite her to attend an appointment to further establish and evidence them. The letter also stated that the OH report would be considered by the relevant department chief who would consider whether to release her pension early on compassionate grounds. The Council explained that its decision would be communicated to Mrs Y with a full explanation.
5. On 8 June 2017, we upheld Mrs Y's original complaint against the Council's decision not to exercise discretion and release her pension early. We stated that to put matters right it should:
 - obtain evidence of Mrs Y's health and consider wholly afresh whether to exercise its discretion, and grant early release of retirement benefits;
 - notify Mrs Y of that decision explaining its reason(s);

- if the Council does decide to allow early release of benefits, simple interest, as calculated by the reference banks, should be added to the backdated pension payments and any lump sum payment(s), from the due date of each payment to the date of actual payment; and
 - pay £500 to Mrs Y for the significant distress and inconvenience caused to her.
6. On 5 July 2017, Mrs Y responded to the Council and confirmed that she had completed the consent form. She further explained that she had already submitted her application and supporting information. She said she had suffered from stress, depression and panic attacks prior to, and since being made redundant in 2011. She also mentioned that she had to look after her two elderly parents and brother.
 7. On 19 July 2017, the Council acknowledged Mrs Y's letter and confirmed an OH appointment had been arranged for 16 August 2017. It explained that reports take ten days to prepare and that it hoped to hear back from OH by the end of August. After this the complaint would be reviewed by a chief officer, Colin Pettigrew (**CP**). The Council said it hoped to have a decision by 29 September 2017.
 8. On 31 July 2017, Mrs Y's GP wrote a letter to OH. The GP explained that Mrs Y had a longstanding problem with low mood and that her symptoms had been associated with low motivation, panic attacks and disturbed sleep. The GP stated that she had a son aged 17 still living at home and that she supported her parents, one of whom suffers from Alzheimer's.
 9. On 18 September 2017, the Council wrote to Mrs Y and acknowledged that there had been some delays in her GP submitting the required information. The Council explained that the OH appointment had been rearranged for 25 October 2017 and that it hoped to have a decision by 30 November 2017.
 10. On 29 September 2017, the Council wrote to Mrs Y apologising for the delays in processing her GP's invoice. The letter also explained that attendance at the OH appointment was a necessary part of the process of deciding whether to release her deferred pension benefits.
 11. On 9 October 2017, the Council wrote to Mrs Y in response to an email she had sent explaining that her meeting with OH would form an important part of its decision-making process.
 12. On 12 October 2017, Mrs Y emailed the Council to query why she must meet with OH as it was only a requirement for early release of a pension under permanent incapacity to work, and not on compassionate grounds.
 13. On 13 October 2017, the Council responded to Mrs Y's email reiterating the comments made in its previous letter of 9 October 2017.

14. On 6 November 2017, the Scheme provided the Council with the financial strain calculations if it chose to release Mr Y's pension early. It was calculated the strain would be £28,216.02 if the actuarial reduction was waived, and £22,356.02 if it was not waived.
15. On 14 November 2017, the Council wrote to Mrs Y and explained that information was being gathered for it to make a decision on whether to exercise its discretion and grant early payment of her retirement benefits. The Council confirmed that she had provided a letter from her GP and attended a meeting with OH. The Council explained that she was yet to give permission for the OH report to be released to the Council and she was urged to do so. The Council also requested supporting evidence of her financial status.
16. On 12 December 2017, the Council sent a letter to Mrs Y in response to her email. The letter explained that a chief officer would provide their view on whether she met the criteria for early release of her pension and that the OH report forms part of the evidence in relation to her current health. It confirmed that if she decided not to release the report, the decision would be made based on the available evidence.
17. On 3 January 2018, the Council, again, wrote to Mrs Y. The letter explained the relevant chief officer would provide their view as to whether the criteria for discretionary release of a pension on compassionate grounds was met, based on the information available, as Mrs Y had not given her permission for the release of the OH report.
18. On 30 January 2018, CP sent a letter to the Council which said that he had reviewed the case against the criteria for early release of pension benefit and that he did not believe discretion should be exercised in this instance.
19. On 31 January 2018, the Council's decision was communicated to Mrs Y. The letter sent to her confirmed that the decision had been made following additional information about caring responsibilities and health from Mrs Y and her GP, and an updated calculation of the strain to the Council. It confirmed that CP had reviewed the information against the criteria and had decided not to exercise discretion and release Mrs Y's pension early.
20. On 12 February 2018, a letter from the Council, in response to Mrs Y's emails, confirmed that all information provided was assessed against the criteria and that the additional costs to the Council were also considered.
21. On 12 February 2018, the Council wrote to this Office to explain that Mrs Y had provided further details of her state of health and that it had received a report from her GP. The Council said it had organised for Mrs Y to meet with OH but she had decided not to release the OH report. Therefore, it had used the available information and considered the additional costs of releasing her pension early and had decided not to exercise its discretion to release Mrs Y's pension early.

22. On 3 March 2018, Mrs Y wrote to this Office to explain that she did not feel that the Council had followed the findings of her previous complaint. She was unhappy with the time the Council had taken to reach a new decision and that she had to attend a meeting with OH, even though this was not a requirement under the Council's criteria to grant early release on compassionate grounds. She further stated that she was not given an opportunity to appeal the decision.

Adjudicator's Opinion

23. Mrs Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below:-
- The Council had demonstrated that it applied due diligence and acted in a fair and reasonable manner, when considering Mrs Y's application for the early payment of her pension on compassionate grounds.
 - The Council had taken measures to assess Mrs Y's current health circumstances by requesting a letter from her GP and arranging for her to meet with the OH.
 - Before the Council made its decision, it contacted Mrs Y to request that she release the OH's report and asked her to provide further information regarding her financial circumstances.
 - The Council had responded to Mrs Y's emails and confirmed on multiple occasions how its decision would be made.
 - Mrs Y was unhappy as she had to attend a meeting with the OH. However, the Council had explained that this was in order to help them ascertain her current health circumstances. The Adjudicator considered this to be reasonable.
 - The Adjudicator acknowledged there were delays in the Council's decision-making process, but saw them as a part of necessary communication between Mrs Y and the Council.
 - The Adjudicator said that the Council had reviewed afresh its decision to exercise discretion at stage 2 of the Scheme's Internal Dispute Resolution Procedure and had correctly referred Mrs Y to this Office if she was unhappy with the decision made.
24. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs 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 Mrs Y for completeness.

25. She said:-

- She did not refuse to release the OH report. She was prepared to release the report, following confirmation from the Council as to why her request had been processed under permanent incapacity to work due to ill health, and not early release of her pension on compassionate grounds as she had requested.
- The criteria for consideration of early retirement or early payment of deferred benefits on compassionate grounds says that the only medical evidence required is from her GP.
- The Council and the OH had confirmed that the referral to OH was made in line with permanent incapacity to work.
- The Council did not provide her with detailed reasons for the decision it had reached.
- The Adjudicator stated that she had not provided details of her financial situation. This was incorrect, as this had been provided.
- She had a right to appeal the decision at stage 2 IDRP, and as she was not allowed to do this maladministration had occurred.
- The Adjudicator focused on her health and did not consider her caring responsibilities.
- The OH report confirmed she was unfit to work.

26. Mrs Y provided emails in support of her appeal. The emails showed:-

- The Council had explained that OH would provide a report on the impact of her health on her ability to undertake sustained paid employment, and it would be used to help inform the Council's decision.
- Mrs Y emailed the Council to explain she had been sent information that related to a request for the release of her pension on the grounds of permanent incapacity to work.
- Mrs Y contacted OH to confirm the circumstances of her application, as the report referred to her long-term health prospects. It was confirmed that OH do not deal with the compassionate part of the decision.
- The OH told Mrs Y the Council needed a certificate of permanent incapacity to release pensions.

27. Mrs Y also provided a copy of her OH report and the letter sent to her from Dr Phipps, the OH Physician. The letter from Dr Phipps confirmed:-

- He was aware that she had requested early release of her pension on compassionate and not medical grounds.
- His role was to provide medical information that may affect her pension. For example, whether it would be more appropriate to consider an application under medical grounds.
- He had been asked to state whether she satisfied the medical criteria for early release of her pension on the grounds of ill health.
- He was unable to comment on whether she satisfied the criteria on compassionate grounds.
- He had not made any comment on any issues which would fall within the scope of compassionate grounds consideration and focused on the current medical conditions.

Ombudsman's decision

28. When exercising its discretion, the Council should ensure the decision reached is not perverse, that being one no other reasonable decision maker would make. It should take into consideration all relevant information and not consider any irrelevant factors. The decision to release a pension early on compassionate grounds is entirely discretionary. It does not prevent the Council acting in its own best interests when exercising its discretion.

29. Mrs Y did not agree that the OH report was relevant to the Council's decision, and elected not to release the report. The criteria for the information required to consider early retirement or payment of deferred benefits on compassionate grounds does not state that an applicant should supply an OH report. However, the Council were tasked with establishing Mrs Y's current health circumstances and I do not find that asking Mrs Y to meet with OH prior to making its decision to be unreasonable.

30. Mrs Y's correspondence with the Council consistently confirmed that her application was being considered on compassionate grounds, and that it would take the OH report into consideration during its decision-making process.

31. While I appreciate that Dr Phipps confirmed he had been asked to state whether Mrs Y satisfied the medical criteria for early release of her pension on the grounds of ill health. In the context of the full letter, it is made clear that Mrs Y's application was being considered under compassionate grounds and not ill health. However, the compassionate grounds can take account of Mrs Y's stated of health as well as the other factors of which the Council were already aware.

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32. In its IDRP stage 2 appeal response, the Council confirmed the information taken into consideration when making its decision. The Council has satisfactorily demonstrated that it considered all the relevant information, and no irrelevant factors when exercising its decision.
33. Therefore, I do not uphold Mrs Y's complaint.

Anthony Arter

Pensions Ombudsman
28 February 2019