

## Ombudsman's Determination

Applicant	Mrs R
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	Peterborough City Council ( <b>the Council</b> )

## Outcome

1. I do not uphold Mrs R'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 R's complaint is that she has been refused Tier 1 ill health pension benefits (**IHPB**).

## Background information, including submissions from the parties

4. On 4 October 2012, Mrs R was employed by the Council working as a Regulatory Officer.
5. On 26 August 2015, Mrs R commenced sickness leave and did not return to work.
6. The Council referred Mrs R to Heales Medical Ltd (**Heales Medical**). Dr Mullick an independent registered medical practitioner (**IRMP**), in his report to the Council dated 9 February 2017, did not support Mrs R's application for IHPB. Dr Mullick confirmed that he had considered Mrs R's Occupational Health (**OH**) report; Neurology report by Dr Iodice dated 20 January 2017; Dr Mittal's report dated 2 October 2016 and additional information provided by Mrs R. Dr Mullick said 'in order to be eligible for ill health retirement Mrs R needs to be permanently incapable of discharging efficiently the duties of her employment with her employer because of ill health. At this stage all treatment options have not yet been undertaken. If a long term holistic approach is taken involving the non-pharmacological measures that she has been given and CBT, then her specialist is of the opinion that the prognosis is positive. It should therefore be possible for her to be able to return to work in the future. She may need adjustments such as avoiding standing still, hot environments and flexible working times". Dr Mullick ticked box B2 indicating that Mrs R was not suffering from a condition that, more likely than not, rendered her permanently incapable of

discharging efficiently the duties of her previous employment because of ill health or infirmity of mind or body.

7. On 24 April 2017, Mrs R was dismissed from employment with effect from 19 May 2017, due to ill health.
8. On 26 April 2017, following Mrs R's appeal against the Council's decision, it referred the matter to a new IRMP, Dr Pritchard.
9. On 8 June 2017, the Council received a report from Dr Pritchard. Dr Pritchard took into consideration Mrs R's OH report, Dr Jacob's Neurology report dated 20 January 2017, Dr Mittal's report of 2 October 2016, and additional information provided by Mrs R, including nerve conduction studies dated 7 April 2017. Dr Pritchard was of the opinion that she thinks it is very unlikely that Mrs R condition would significantly improve such that she will be able to undertake gainful work within the next 3 years. In particular she did not consider that Mrs R would be able to undertake a role, even if seated because of her level of disability. However, she was of the opinion that it is possible that Mrs R's condition could improve such that it might be possible for her to be able to work in the future before her 65<sup>th</sup> birthday. She certified that in her opinion Tier 2 IHPB should be awarded.
10. On 29 June 2017, the Council issued its stage 1 internal dispute resolution procedure (**IDRP**) response to Mrs R confirming that based on Dr Pritchard's report, Mrs R was awarded Tier 2 IHPB, backdated to the date of her dismissal 19 May 2017.
11. On 29 August 2017, Mrs R appealed under stage 2 of the IDRP.
12. On 5 December 2017, the Administering Authority (LGSS Law Ltd), issued its stage 2 IDRP response to Mrs R. The decision maker upheld Mrs R's case on the grounds that Dr Pritchard, in her report dated 8 June 2017, was not clear from her comments that the correct criteria had been considered. In particular, Dr Pritchard gave an opinion as to what is possible rather than what is likely on the balance of probabilities; she referred to work rather than gainful employment; and referred to Mrs R's 65<sup>th</sup> birthday when the criteria should be reference to the date she attains her normal pension age (**NRA**), which, in Mrs R's case, is her 67<sup>th</sup> birthday, being the later of her 65<sup>th</sup> birthday and the date she attains her state pension age. Finally, the fact that the IRMP ticked Box C1 which confirmed as a result of Mrs R's ill health, she will be unable to continue in her current job and is unlikely to be capable of taking on any other paid work in any capacity appears to contradict her ticking Box B6, which confirmed that Mrs R is unlikely to be capable of undertaking gainful employment within the next 3 years but was likely to be capable of undertaking gainful employment at some time thereafter and before her normal pension age. Following this the decision maker referred the matter back to the Council and directed it to obtain the opinion of a different IRMP and reconsider Mrs R's IHPB.
13. On 12 February 2018, the Council referred Mrs R's case back to a third IRMP, Dr Halliday Bell.

14. On 28 February 2018, Dr Halliday-Bell, in her report, confirmed that she had considered, Dr Hagen's report dated 8 June 2017, MRI scan of spine dated 24 August 2017, Mrs R's GP reports, Dr Mittal's report dated 2 October 2016 and 14 February 2017, Dr Jacobs report dated 20 January 2017, nerve conduction studies dated 7 April 2017, Dr Mullick report dated 9 February 2017, Dr Pritchard's report dated 8 June 2017, and additional information provided by Mrs R. Dr Halliday Bell was of the opinion that although Dr Mittal had said it would be unlikely that Mrs R will be able to undertake any long term meaningful work this is not substantiated with information relevant to Ehlers Danlos Hypermobility (**EDS**), that confirms its severity, abnormal objective laboratory tests, or the administration or completion of the courses of recognised treatment. On that basis she did not support or uphold the appeal of Mrs R's for a higher tier of IHPB and said Tier 2 applies.
15. On 28 March 2018, the Council reviewed all of the relevant information and following the recommendation from Dr Halliday Bell made the decision to award Mrs R Tier 2 IHPB.

### **Adjudicator's Opinion**

16. Mrs R'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 Ombudsman's role is not to decide whether Mrs R was eligible for Tier 1 IHPB; that was a matter for the Council to decide after obtaining requisite certification from an IRMP. Nor is it for the Ombudsman to agree or disagree with any medical opinion.
  - The Ombudsman's role is to decide whether the Council 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 were flaws in the decision-making process, the Ombudsman can require the Council to look at Mrs R's case again. However, the weight attached to any of the evidence was for the Council to decide, including giving some of it little or no weight. It was also open to the Council to prefer the advice of its own medical advisers unless there was a cogent reason why it should not.
  - Mrs R says Dr Mittal's reports, dated 2 October 2016 and 14 February 2017, seems to have been ignored. However, there is a difference between ignoring evidence and considering evidence but attaching little or no weight to it. It is for the Council to apportion weight (if any) to the relevant medical evidence as it sees fit. The Council had made its final decision based on Dr Halliday-Bell's report and the Adjudicator could see that in her report she has made reference to both of Dr Mittal's reports. As such, she was satisfied the Council has considered all the relevant information.

- Dr Halliday-Bell certified that Mrs R is unlikely to be capable of undertaking any gainful employment within the next three years, but is likely to be capable of undertaking gainful employment at some time thereafter and before her NRA. She said that with further recognised treatments Mrs R's condition could improve.
  - Mrs R disagreed with Dr Halliday-Bell's assessment, the Adjudicator appreciated that Dr Mittal supports Mrs R's application. However, in her view, that was not sufficient for the Ombudsman to say that the Councils' decision was perverse.
  - Mrs R says that the IRMP's did not take into account the long-term effect of her condition. The Adjudicator did not see any evidence to show that Dr Halliday-Bell did not review any aspect of Mrs R's concerns or condition. Dr Halliday-Bell's opinion took into account all the relevant evidence. She appreciated that Mrs R disagrees with the conclusions reached, and presented her counter arguments, but said this was not a sufficient reason for her to remit the matter back to the Council for the application to be reconsidered.
17. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R 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 R for completeness.

### **Ombudsman's decision**

18. Mrs R has said that she gave Dr Halliday-Bell her consent to contact her GP consultants which she failed to do. However, I find that Dr Halliday-Bell's report took into account Mrs R's GP reports and relevant medical evidence, and as such she provided the Council with a comprehensive opinion allowing it to reach an informed decision. There is no evidence that it failed to review Mrs R's concerns or medical condition properly. I appreciate that Mrs R disagrees with the Council's decision not to grant her IHPB. However, Mrs R's disagreement is not a sufficient reason for me to remit the matter back to the Council for her application to be reconsidered.
19. Mrs R has said Dr Mittal's report explains the severity of her condition without a definitive treatment or cure. However, as explained by the Adjudicator in the Opinion, my role is not to review the medical evidence and come to a decision of my own but to consider the decision making process. In this particular case, looking at the whole process from the time Mrs R challenged the IHER award, to when the Council issued its IDRP stage 2 response, I find that it has considered all the relevant facts and followed the procedure correctly. As such there are no justifiable grounds for me to find that the Council's decision was perverse or that the process undertaken to reach its decision was flawed.

**PO-22413**

20. Therefore, I do not uphold Mrs R's complaint.

**Anthony Arter**

Pensions Ombudsman

22 March 2019