

PO-274

Ombudsman's Determination

Applicant	Miss A Bywater
Scheme	Local Government Pension Scheme (LGPS)
Respondent(s)	Avon Pension Fund (APF) North Somerset Council (North Somerset)

Complaint summary

Miss Bywater has complained that payment of her ill health retirement benefits has not been backdated to the date she left employment and they have not been enhanced. She has also complained that the second stage of the internal dispute resolution procedure was not completed in a timely manner.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against North Somerset because they have not properly considered when Miss Bywater's benefits should have been paid from. The complaint should also be upheld against APF because they did not undertake the internal dispute resolution procedure in a timely manner.

Detailed Determination

Relevant LGPS Regulations

1. The relevant regulations in Miss Bywater's case are Regulations 20 and 31 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI2007/1166) (as amended).
2. At the time Miss Bywater's employment was terminated, Regulation 20 provided,
"20.—(1) If an employing authority determine, ...

(a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
(b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,

they shall agree to his retirement pension coming into payment before his normal retirement age ..."
3. "Gainful employment" is defined as "paid employment for not less than 30 hours in each week for a period of not less than 12 months". "Permanently incapable" is defined as "the member will, more likely than not, be incapable until, at the earliest, his 65th birthday". Regulation 20 then provided for benefits to be enhanced under certain circumstances.
4. Regulation 20 also provided that,
"(5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age"
5. At the time of Miss Bywater's request for early payment of her deferred benefits, Regulation 31 provided,
"31.—(1) Subject to paragraph (2), if a member who has left his employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body he may ask to receive payment of his retirement benefits immediately, whatever his age.

(2) Before determining whether to agree to a request under paragraph (1), an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether that condition is likely to prevent the member from obtaining* gainful employment (whether in local government or otherwise) before reaching his normal retirement age, or for at least three years, whichever is the sooner .

(3) In this regulation, “gainful employment”, “permanently incapable” and “qualified in occupational health medicine” have the same meaning as in regulation 20.”

6. Regulation 31 was amended by SI2010/2090, which came into force on 30 September 2010, so that “obtaining” gainful employment became “undertaking” gainful employment. The amendment was to have effect from 1 April 2008.
7. Regulation 50 of the Local Government Pension Scheme (Administration) Regulations 2008 (SI2008/239) (as amended) sets out the provisions for the commencement of pensions. At the time of Miss Bywater’s request for early payment of her deferred benefits, Regulation 50 provided,

“(4) The first period for which any retirement pension under regulation 31 (early payment of pension: ill-health) of the Benefits Regulations is payable begins on the date when the member became permanently incapable as determined under regulation 31 of those Regulations.”

Material facts

8. Miss Bywater was employed by North Somerset from January 2005 to December 2009. She was absent from work from October 2008 with stress. At the time, Miss Bywater was caring for her mother. She returned to work in March 2009 but was unwell again in May 2009. Miss Bywater was referred to North Somerset’s occupational health advisers at this time. A period of medical redeployment was agreed in August 2009. Following the death of her mother, Miss Bywater decided that she would prefer to work part-time. On 16 November 2009, her GP said that she was fit for work. She applied for two posts: CCTV Operator and Secretary. North Somerset sought advice from their occupational health advisers. The occupational health adviser said that the role of Secretary was unsuitable because it was full-time and she had indicated that she wished to consider a part-time role, and also it was likely to be stressful for Miss Bywater. He thought the role of part time (18 hours) CCTV Operator was something she could be considered for. Miss Bywater was offered the post but she decided not to take it up.

9. Miss Bywater's employment was terminated on 9 December 2009 on the grounds of capability due to ill health. She appealed on 15 December 2009. An appeal hearing was set for 5 March 2010 but Miss Bywater withdrew her appeal on 25 February 2010. She has explained that she was too unwell to attend.
10. She wrote to North Somerset on 15 June 2010 requesting early payment of her benefits on the grounds of ill health. Miss Bywater said that her Job Seeker Allowance was about to finish and she would not have any form of regular income.
11. North Somerset responded on 6 July 2010 saying that, at the time Miss Bywater's employment had been terminated, their occupational health advisers had recommended redeployment. They said that, if Miss Bywater's health had deteriorated since, they would consider referring her to their occupational health providers. In response, Miss Bywater said that she had been told at her recent annual check-up that her medication was to be increased, her check-ups would be increased, she should consider extra care housing and her doctors would support an application for Disability Living Allowance.
12. Miss Bywater was seen by Dr Szweda on 11 August 2010. He wrote to North Somerset saying that he had seen her and had requested a report from her GP so that he could come to a conclusion as to prognosis and whether she was "permanently incapable of undertaking paid employment". Dr Szweda went on to say that he could report the following:
 - Miss Bywater did suffer from the reported medical conditions.
 - He considered the most salient to be chronic obstructive pulmonary disease (**COPD**), for which she was under the care of her GP.
 - Miss Bywater had told him that her COPD was deteriorating.
 - She continued to engage in all treatment offered.
 - There were no specific investigations outstanding.
 - It was his opinion that all reasonable treatment options had been tried.
 - It was his opinion that Miss Bywater was currently unfit to undertake work in any capacity.
13. Miss Bywater's GP wrote to Dr Szweda on 25 August 2010. He said that she had ongoing medical problems which included asthma and COPD. The GP said that Miss Bywater had been diagnosed with COPD in June 2006 and had been admitted to hospital in December 2006 with pneumonia. He said that she had been seen at the local cardiology clinic in 2007 and had reported being troubled by shortness of breath. The GP said that Miss Bywater's shortness of breath had been attributed to chronic asthma. He said that a lung function test in 2008 had shown moderate obstructive pulmonary disease. The GP said that Miss Bywater also had a history of eczema, anaphylactic shock and a stress related problem in 2006. He went on to say

that, from his records, there had been no deterioration in Miss Bywater's COPD since December 2009.

14. Dr Szweda wrote to North Somerset on 7 September 2010 saying that the GP's report had confirmed the history given by Miss Bywater and that he had completed form LGPS 18A. He said he considered Miss Bywater to be permanently incapable of undertaking paid employment. On the form 18A, Dr Szweda ticked a box to certify that Miss Bywater was, on the balance of probabilities, permanently incapable of discharging efficiently the duties of her former employment because of ill health. He also certified that the date Miss Bywater became permanently incapable was 16 July 2010 and "that this was discoverable at that time based on evidence available at that time". A note on the 18A form stated that the above date could be earlier than, and need not correspond with, the date of the person's application for early payment. It also stated that the date would be used as the date from which the deferred benefits would be payable.
15. Dr Szweda was subsequently asked why he had selected 16 July 2010 as the date Miss Bywater became permanently incapable of discharging the duties of her former employment. He said that he had considered the information available from previous appointments Miss Bywater had had with other occupational physicians. Dr Szweda said that it was always difficult to pick a date at which an individual could be said to be permanently unable to do their job. He said he had noted a letter dated 23 July 2009 had said that Miss Bywater did not feel able to return to her job because it incorporated new responsibilities and that she was finding it difficult to make decisions at that time because of her mother's health. Dr Szweda also referred to further correspondence in November 2009 which recorded that redeployment was being considered but it was felt that Miss Bywater would not be able to undertake a role which involved certain stressful duties. Dr Szweda said that he had seen Miss Bywater in September 2010 (he meant August) but had noted that her application was from 16 July 2010. He said that he considered permanent incapacity was discoverable from that date. The date, 16 July 2010, had been entered in Part A of the 18A form by North Somerset.
16. North Somerset agreed to the payment of Miss Bywater's deferred benefits from 16 July 2010 on the grounds of ill health.
17. APF are the relevant administering authority. Miss Bywater wrote to them, on 14 January 2011, saying that she did not understand why 16 July 2010 had been chosen. She said that she had been dismissed on 9 December 2009 and thought that her benefits became payable because of that dismissal. Miss Bywater said that, under Regulation 31, she could claim immediate payment of her benefits. She also said that, from 1 July 2010, she had qualified for Higher Rate Mobility and Medium Rate Care Disability Living Allowance payments. Miss Bywater said that she thought that, because of her disability, she was entitled to a "top up" to her pension.

18. APF forwarded Miss Bywater's letter to North Somerset, who responded on 5 May 2011. They said that Miss Bywater's employment had been terminated on grounds of capability due to ill health and not ill health retirement. North Somerset said that, at that time, their occupational health provider had recommended redeployment and she was not considered permanently incapable of undertaking paid employment. North Somerset said that their occupational health provider considered that Miss Bywater's condition had further deteriorated and that she was permanently incapable of undertaking all paid employment from 16 July 2010.
19. Solicitors acting for Miss Bywater wrote to North Somerset on 17 May 2011. They asked that North Somerset reconsider their decision to pay Miss Bywater's benefits from 16 July 2010. They noted that the occupational health adviser had considered Miss Bywater could be considered for the role of CCTV Operator but said that, as a result of her COPD, she would not have been well enough to be considered for this role. The solicitors said that the occupational health adviser was not a specialist in respiratory diseases and North Somerset should have considered Miss Bywater's COPD when making the decision to dismiss her.
20. On 17 June 2011, Miss Bywater wrote to APF saying that North Somerset had failed to make any decision with regard to topping up her pension. APF acknowledged Miss Bywater's letter and said it had been referred to their Pensions Technical Manager.
21. North Somerset responded to Miss Bywater's solicitors on 22 June 2011. They said that they had followed their Health and Disability policy and enclosed a copy. North Somerset said that their occupational health adviser had recommended redeployment. They said he considered Miss Bywater unfit to return to her substantive post but well enough to undertake an alternative role. They said Miss Bywater was not considered to be permanently incapable of undertaking paid employment at this time. North Somerset went on to say that subsequently it was considered that her condition had deteriorated and she was considered permanently incapable of undertaking any paid employment from 16 July 2010.
22. Miss Bywater also contacted the Pensions Advisory Service (**TPAS**) for assistance. On 21 January 2012, she wrote to APF asking for her case to be dealt with under the internal dispute resolution (**IDR**) procedure. TPAS also wrote to APF, on Miss Bywater's behalf, on 12 March, 7 April, 16 May and 9 July 2012.
23. APF wrote to Miss Bywater, on 3 August 2012, apologising for the delay and saying that they had been in touch with North Somerset seeking clarification about the termination of her employment. APF went on to explain that her benefits could only have been paid from the date she left employment if North Somerset had decided to terminate her employment on the grounds that she was permanently incapable of discharging efficiently the duties of that employment and had a reduced likelihood of being capable of undertaking any gainful employment before her normal retirement age. APF said that they had been seeking clarification from North Somerset as to what evidence had been used to make the original decision to terminate Miss Bywater's employment. APF said that they had informed North Somerset that,

because of the delay, if they did not receive a response by 10 August 2012, they would deal with the matter at stage two of the IDR procedure.

24. APF also noted that Miss Bywater had not been receiving her benefits since 16 July 2010. They said that these were due to her regardless of the appeal. APF said they had sent Miss Bywater some forms to complete in November 2010 and had not received them back. They enclosed further copies. Miss Bywater completed and returned the forms and payment of her benefits commenced in September 2012.
25. On 14 September 2012, APF sent Miss Bywater a “timeline” of events which they had compiled from the information supplied by North Somerset. They asked her to agree the details and indicate anything she wished to disagree with or add to.
26. On 26 November 2012, APF wrote to Miss Bywater setting out their “response to [her] enquiries as to decisions made under the LGPS regulations”. APF said that there were two separate decisions to be made under the LGPS Regulations: the first was the decision to terminate her employment on the grounds of capability, and the second was to review her case a few months later to see if her condition had deteriorated. They said it was as a result of this review that the decision to pay her benefits was made.
27. APF said that, to retire from employment on the grounds of ill health, the conditions set out in Regulation 20 must be met. They then quoted Regulation 20. APF said that, because the occupational health advisers had recommended redeployment, it had been decided that Miss Bywater did not meet the condition in Regulation 20(1)(b). APF said that Miss Bywater had then been eligible for deferred benefits payable at normal retirement age. They explained that deferred benefits could be paid early under Regulation 31 and quoted the regulation. APF went on to explain that North Somerset had agreed to the early payment of Miss Bywater’s benefits and that the date of 16 July 2010 had been chosen because this is when their medical adviser had said that she met the criteria set out in Regulation 31.
28. APF noted that Miss Bywater had not made any enquiry about her benefits until her application, in June 2010, to draw her deferred benefits early. They noted that she had enquired about the decision made under Regulation 31 and that a response had been sent by North Somerset. APF went on to say that, although IDR had been mentioned, they were not aware of any formal inquiry being requested or that North Somerset had completed stage one of the process. APF said that they could not undertake stage two until this had happened.
29. On 2 December 2012, Miss Bywater submitted an application to the Pensions Ombudsman Service. When contacted about completion of the IDR process, APF said that they could find no evidence that this had taken place.
30. Having been advised that she would need to go through the IDR procedure before approaching the Ombudsman, Miss Bywater contacted North Somerset by e-mail dated 4 June 2013. They issued a stage one decision on 19 June 2013. APF say

they issued a stage two decision on 23 May 2014 and have provided a copy. Miss Bywater says that she did not receive this.

Summary of Miss Bywater's position

31. Miss Bywater says she has not been awarded enhanced benefits or payment of her benefits from her leaving date. She says that she has requested an enhancement to her pension on the grounds of ill health. Miss Bywater refers to a letter sent to her at the time she applied to purchase some additional pensionable service. This stated that, in the event of ill health retirement, she would be credited with all of the added years. Miss Bywater has also referred to a page from a members' booklet which referred to the amount of enhancement a member could expect to receive on early retirement through illness.
32. Miss Bywater says that she did not receive APF's stage two IDR decision and the only copy she has seen is not on headed notepaper. This is the copy supplied by APF with their response to Miss Bywater's complaint to the Ombudsman. Miss Bywater says that she would have expected APF to send it to her "to be signed for" because she had not received previous correspondence from them and they were aware of this.
33. Miss Bywater says that this has been a difficult period for her, as a disabled person with long-term health impairment. She says that, when redeployment was discussed, she was not in a position to make such an important decision.
34. Miss Bywater has explained that the temporary post she had been undertaking came to an end on 31 August 2009. She says that she was told that her substantive post had changed while she had been on secondment and she could not return to the team she was familiar with. She disagrees that North Somerset identified a number of suitable alternative roles for her and that she did not wish to undertake them. She has explained that one of the roles would have involved carrying heavy ledgers upstairs and one required her to push trolleys of books. She feels that neither of these were suitable for someone with COPD. With regard to a third role (CCTV Operative), Miss Bywater says that this would have involved viewing anti-social behaviour and would not have helped her recovery from stress and the loss of her mother. She says that the role would have involved giving evidence in court and she does not understand why the occupational health adviser thought it did not involve contact with the public.

Summary of North Somerset Council's position

35. North Somerset say Miss Bywater did not ask for her benefits to be backdated in her original request dated 15 June 2010.
36. North Somerset say that they sought advice from an occupational health physician. They say that, as a result of the advice from Dr Szweda and their knowledge of Miss Bywater's case, they decided to allow the early release of her benefits from 16 July

2010. They say they responded to Miss Bywater's request for backdating on 5 May 2011. They also say that they responded to the further request for backdating by Miss Bywater's solicitors on 22 June 2011.

37. North Somerset say that they received Miss Bywater's IDR application on 4 June 2013 and they agreed to consider it even though it was not received within the six month time period. They say they issued their IDR stage one decision on 19 June 2013.
38. North Somerset say the basis of their decision was as follows:
- At the time of her dismissal, Miss Bywater was not permanently incapable of discharging the duties of her employment and there was no likelihood of her being incapable of undertaking any gainful employment before retirement.
 - The reason Miss Bywater had been absent from work was the emotional stress of caring for her mother and her mother's subsequent death. This did not lead them to believe that there was any permanency in the situation. Their occupational health adviser, Miss Bywater's GP and Miss Bywater herself considered redeployment possible.
 - Miss Bywater's health deteriorated for a reason which was not the one for which she was dismissed. Having taken medical advice, they believed that, as a result of her COPD, her health was now such that ill health retirement had become appropriate.
 - Payment of Miss Bywater's benefits was backdated to the point recommended by Dr Szveda. This was around the time that her Job Seeker's Allowance ended. This suggests that she was well enough to seek employment up to that time. Her Disability Living Allowances were also increased from 1 July 2010.
39. North Somerset say that Miss Bywater requested part-time work because she thought that was in her best interests. They say that she told them that she was looking for other part-time work at the time. They say that there was a full-time role available (of the same type of work) but Miss Bywater asked not to be considered for this. They say that it is clear from the paperwork that they thought she was capable of either full-time or part-time work.
40. North Somerset have asked what the situation would be if they review the date from which they pay Miss Bywater's benefits and the IRMP concludes that she should not be receiving benefits on the grounds of ill health. They say that the medical evidence is conflicting and one of the reports suggests that they should not be paying the benefits.

Summary of Avon Pension Fund's position

41. APF say that there were two decisions to be made in relation to Miss Bywater's benefits: the award of deferred benefits on 9 December 2009, and the decision to award early payment and from which date. They note that Miss Bywater did not appeal the decision to award deferred benefits on leaving employment. They say that a decision to award ill health benefits with any enhancement would have been made at this stage.
42. APF say that, when determining when to commence payment of deferred benefits, it is not clear in some cases when permanency is reached. They say that the date determined by North Somerset does not appear to be unreasonable. They say that the close proximity of benefits being awarded on leaving and subsequent early payment has resulted in the issues of each becoming intertwined. They say they explained this to Miss Bywater in their letter of 26 November 2012.

Conclusions

43. Miss Bywater's complaint concerns the payment of her deferred benefits early on the grounds of ill health under Regulation 31. She is of the view that North Somerset should have considered enhancing her benefits and backdated them to the cessation of her employment.
44. Regulation 31 allows a deferred member, such as Miss Bywater, to apply for the early payment of their benefits on the grounds that they have become permanently incapable of discharging efficiently the duties of their former employment because of ill-health. An employing authority can agree to early payment but there is no provision for enhancing the benefits. Thus, North Somerset have agreed to the early payment of Miss Bywater's benefits but have not increased the benefits in any way. The information Miss Bywater has referred to relates to retirement from active service; it does not apply when the member has requested early payment of deferred benefits.
45. The date for the commencement of payment of Miss Bywater's benefits falls to be determined under Regulation 50. Payment should begin on the date when Miss Bywater became permanently incapable as determined under Regulation 31.
46. North Somerset took advice from Dr Szweda. The question for Dr Szweda and North Somerset was when did Miss Bywater become permanently incapable of discharging efficiently the duties of her former employment because of ill-health.
47. Dr Szweda saw Miss Bywater in August 2010 and signed a certificate in September 2010. When asked why he had said Miss Bywater became permanently incapable of discharging her former duties from 16 July 2010, Dr Szweda said that he had noted that this was the date of her application for early payment of her benefits. The form 18A noted that the date of commencement could be earlier than the date of application. In fact, Miss Bywater had applied for payment of her benefits in June 2010; the date on the form 18A had been input by North Somerset.

48. Dr Szweda also referred to previous occupational health records and, in particular, to correspondence from July and November 2009. He said he had formed his opinion from the previous occupational health records and the report from Miss Bywater's GP. The correspondence related to Miss Bywater's redeployment and it records that she did not feel that she could return to her former post because of certain stressful duties. This view was supported by North Somerset's occupational health adviser when he was asked about the two posts Miss Bywater had applied for. The post he thought Miss Bywater could be considered for was a part-time role.
49. Dr Szweda advised North Somerset, in August 2010, that Miss Bywater was at that time unfit to undertake work in any capacity. He identified her COPD as the most salient of her medical conditions and confirmed that all reasonable treatment options had been tried. Dr Szweda said that he was writing to Miss Bywater's GP so that he could come to a conclusion as to prognosis and whether she was "permanently incapable of undertaking paid employment". This is not the question Dr Szweda should have been asking; either to advise North Somerset on the question of whether to agree to early payment or to determine the date for commencement.
50. Regulation 31 required North Somerset to ask Dr Szweda whether, in his opinion, Miss Bywater was permanently incapable of discharging efficiently the duties of her former employment because of ill-health and, if so, whether her condition was likely to prevent her from undertaking "gainful employment" before reaching her normal retirement age or for at least three years. Gainful employment is specifically defined in the LGPS Regulations and is not the same as "paid employment". There is no reference to gainful employment in any of Dr Szweda's reports so it is not possible to be sure that he had the correct test in mind when assessing Miss Bywater's case.
51. North Somerset did not query this with Dr Szweda. Had they done so, they might have pointed out to Dr Szweda that the role recommended for Miss Bywater by their occupational health adviser in November 2009 was a part-time role and, therefore, suggested that, even at that time, there was some doubt as to whether she was capable of undertaking gainful employment as defined in the Regulations. They might also have queried why, if he was of the view that Miss Bywater was permanently incapable of undertaking paid employment because of her COPD and her GP said there had been no deterioration since December 2009, he chose 16 July 2010. I acknowledge that Miss Bywater told North Somerset that her condition had deteriorated. However, this was in response to a letter from them stating that they would only refer her case to their occupational advisers if that was the case.
52. As it stands, the evidence suggests that Dr Szweda chose that date because that was the date entered on the form 18A as the date of application. In other words, it had nothing to do with when Miss Bywater became permanently incapable of discharging the duties of her former employment.
53. When North Somerset terminated Miss Bywater's employment, they took the view that she was not eligible for ill health retirement under Regulation 20. Therefore, they must have taken the view that she was not permanently incapable of discharging

efficiently the duties of her then current employment; and that she did not have a reduced likelihood of undertaking any gainful employment before her normal retirement age. When North Somerset agreed to the early payment of Miss Bywater's deferred benefits (some seven months later), they must have taken the view that she was then permanently incapable of discharging efficiently the duties of her former employment because of ill-health.

54. Therefore, North Somerset must consider Miss Bywater's health to have deteriorated between 9 December 2009 and 16 July 2010. The evidence for this cited by North Somerset is:

- The reason Miss Bywater had been absent from work was stress related to caring for her mother and they did not consider this to be permanent.
- Their occupational health adviser had recommended redeployment.
- Miss Bywater's health has deteriorated for a different reason to that for which her employment ceased.
- Miss Bywater is now permanently incapable of discharging the duties of her former employment because of her COPD.
- The date chosen for commencement of payment was recommended by Dr Szweda and coincides with cessation of her Jobseeker's Allowance.
- The payment of Jobseeker's Allowance indicates that she was well enough to seek employment up to that time. Her Disability Living Allowances were also increased from 1 July 2010.

55. North Somerset take the view that Miss Bywater was not incapable of discharging the duties of her former employment in December 2009 because she had been on sick leave for stress and because their occupational health adviser had recommended redeployment. Neither of these, in and of themselves, show that Miss Bywater was capable of discharging the duties of her former employment in December 2009. In fact, the recommendation of redeployment tends to suggest the opposite. It should also be borne in mind that, in order to qualify for benefits under Regulation 20, Miss Bywater had to have a reduced likelihood of obtaining any gainful employment; she was not required to have no likelihood of (then) obtaining gainful employment.

56. North Somerset say that Miss Bywater is now permanently incapable of discharging the duties of her former employment because of her COPD. This is the advice they received from Dr Szweda. North Somerset are required, under Regulation 31, to seek the opinion of an independent registered medical practitioner qualified in occupational health medicine. However, North Somerset are not bound by any advice they receive from their medical adviser. I accept that it will rarely be the case that an authority will disagree with their medical adviser but they should not accept the advice given blindly. They are entitled to rely on the advice unless there is good reason why they

should not. In other words, relying on the advice of the medical practitioner should be the result of a careful weighing up of all the available, relevant evidence.

57. In view of the flaws in Dr Szweda's reports to North Somerset, I do not find that they could safely rely on his advice in determining the date for the commencement of Miss Bywater's benefits.
58. With regard to the cessation of Miss Bywater's Jobseeker's Allowance, this is not evidence that she was capable of discharging the duties of her former employment or of undertaking "gainful employment" in December 2009. The definition of gainful employment refers to paid employment for not less than 30 hours in each week for a period of not less than 12 months. The eligibility criteria for Jobseeker's Allowance are that the individual is available for and actively seeking "work" and not working for more than 16 hours per week. Miss Bywater could have been incapable of discharging the duties of her former employment (which was a full-time role) and of undertaking gainful employment (30 hours per week) and still have qualified for Jobseeker's Allowance.
59. I do not find that North Somerset have properly considered the appropriate commencement date for payment of Miss Bywater's benefits. This amounts to maladministration on their part. Miss Bywater has suffered injustice in consequence because it is not clear that her benefits have been paid from an appropriate date. I uphold her complaint against North Somerset.
60. The decision as to when Miss Bywater's benefits should have been paid from is for North Somerset. The proper course of action is for me to remit the decision for North Somerset to reconsider.
61. North Somerset have asked what the situation would be if they were to ask another IRMP to review Miss Bywater's case and he is of the view that payment of her benefits under Regulation 31 is not appropriate. This is not the question they should be asking the IRMP. North Somerset have made the decision to pay Miss Bywater her benefits early under Regulation 31. All that remains for them to determine is the date from which payment should commence. There are no provisions within the LGPS Regulations for North Somerset to review their decision to pay Miss Bywater's benefits under Regulation 31.
62. I have said that Miss Bywater's complaint concerns the early payment of her deferred benefits under Regulation 31. However, as APF have commented, this decision became intertwined with the earlier decision not to award benefits under Regulation 20. APF have, quite rightly, pointed out that Miss Bywater did not appeal this at the time. I note that she was in poor health at the time, having recently lost her mother.
63. In the course of investigating Miss Bywater's current complaint, it has become apparent that North Somerset's interpretation of not only Regulation 31 but also Regulation 20 is or was flawed. In view of this, I am strongly recommending that they also consider reviewing their decision not to award ill health retirement benefits under

Regulation 20 in December 2009. I should make it clear that this is no more than a recommendation since this decision is not the subject of Miss Bywater's complaint to me. Nor should it be taken as an indication that I find that decision to be incorrect. I have not reviewed all the evidence relating to that decision, since it is not the subject of the current investigation, and I make no finding as to its veracity.

64. I move now to consider Miss Bywater's complaint about the conduct of the appeal/IDR procedure. Miss Bywater wrote to APF on 21 January 2012 asking for her appeal to be considered under the IDR procedure. North Somerset issued a stage one decision on 19 June 2013. APF issued a stage two decision on 23 May 2014. Miss Bywater says that she did not receive the latter.
65. The time taken from the date of Miss Bywater's initial request to invoke the IDR procedure to the date of North Somerset's stage one decision was some 17 months. APF said that they had been in touch with North Somerset but it is not clear that they had passed Miss Bywater's IDR request on to them. It took a further 11 months for the stage two decision to be issued. In total, the time taken to complete the IDR procedure amounted to an extraordinary 28 months.
66. APF are the second stage decision makers. When they received Miss Bywater's request to invoke the IDR procedure, they should have referred the matter to North Somerset. It appears, from the correspondence, that there was some contact between APF and North Somerset. In their letter of 3 August 2012, APF said that they had been seeking clarification about the terms under which Miss Bywater's employment had been terminated. This does not explain, of course, why they failed to refer the matter to North Somerset to deal with in the first instance, why they did not contact Miss Bywater between January and August 2012 and why they failed to respond to the letters from TPAS.
67. APF did write to Miss Bywater on 14 September and 26 November 2012. These letters set out their understanding of the relevant regulations but did not amount to a decision under IDR. As a result, when contacted by the Pensions Ombudsman Service in March/May 2013, APF said that the IDR procedure had not been completed. This is despite having told Miss Bywater that they would deal with the matter as a stage two decision in August 2012. I find that this amounts to maladministration on the part of APF. Their approach has meant that the process became unnecessarily prolonged and stressful for Miss Bywater and I uphold her complaint against APF.
68. Whilst the unnecessarily prolonged IDR procedure has not caused Miss Bywater any direct financial loss, it will have caused her distress and inconvenience; as will North Somerset's failure to properly consider the early payment of her deferred benefits.

Directions

69. I direct that, within 28 days of the date of my final determination, North Somerset will reconsider the date from which they should commence paying Miss Bywater's deferred benefits. Before making a decision, they are to seek advice from an independent registered medical practitioner who has not previously been involved in the case. Having reviewed their decision, North Somerset are to write to Miss Bywater setting out their reasons for whichever date they have chosen. Should North Somerset determine that the appropriate date of commencement is earlier than 16 July 2010, Miss Bywater is to receive arrears of her pension, together with interest as provided for in the LGPS (Administration) Regulations 2008.
70. Within the same 28 days, North Somerset and APF are each to pay Miss Bywater £250 to compensate her for distress and inconvenience caused by, in North Somerset's case, the failure to consider the payment of her deferred benefits properly, and in APF's, the failure to carry out the IDR procedure in a timely manner.

Tony King
Pensions Ombudsman

8 May 2015