

Ombudsman's Determination

Applicant	Ms S
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	London Borough of Hammersmith & Fulham (the Council) Capita

Outcome

1. Ms S' complaint is upheld and to put matters right the Council should consider whether Ms S satisfied the criteria for the early release of her deferred pension on grounds of ill health before 16 August 2016 and pay Ms S £1,500 for the distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms S' complaint is that she has not been awarded the early release of her deferred pension on the grounds of ill health.

Background information, including submissions from the parties

4. Ms S is a member of The London Borough of Hammersmith & Fulham Pension Fund (**the Fund**), which is part of the Scheme. The Council is both the Employing Authority and the Administering Authority for the Fund.
5. Ms S was employed by the Council as a full-time social worker. She was made redundant in October 2010.
6. On 12 March 2012, Dr Beider, a psychiatrist at Community Mental Health Resource Centre, West London Mental Health NHS Trust, wrote to the Council. He said Ms S had been an outpatient since May 2010. Her diagnosis was "Moderate Depressive Episode". He said he had been reviewing her regularly in clinic. Her depressive disorder had rendered her unable to work and her mental condition needed to be considered when settling her pension. He said Ms S' diagnosis remained guarded. She was receiving medication and was on the waiting list for more detailed

psychotherapy. It was difficult to estimate the length of time she required to make a full recovery.

7. On 7 September 2012, Ms S requested the early release of her deferred pension on grounds of ill health. She was then aged 55.
8. As relevant, extracts from 'The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007' (**the 2007 Regulations**), and The Local Government Pension Scheme (Administration) Regulations 2008 (**the 2008 Regulations**), are provided in the Appendix.
9. At that time Capita was contracted with the Council to provide administration services for the Fund. Capita asked Ms S to submit doctors' reports and informed her that once the information was received it would forward the details to the Council as it was at its discretion whether she was entitled to claim her pension early.
10. On 25 February 2013, Ms S asked for her deferred pension to be put into payment and submitted open letters from Dr Patel (GP), dated 14 December 2012, and Dr Osafo (a psychiatrist at Ealing Recovery West), dated 4 January 2013.
11. Dr Patel said Ms S was suffering from anxiety and depression and as a result she was unable to work. She had very little money to survive on and therefore was requesting the release of her pension. He said Ms S had not worked for two years due to her ill health and he could not see her returning to full time employment in the near future. She was not coping. To be able to withdraw her pension early would give her some financial support.
12. Dr Osafo confirmed Ms S' depressive condition and said it had been maintained/perpetuated by considerable financial stress. He said he strongly supported Mrs S' claim for the early release of her pension and believed improvement in her financial situation would impact positively on her mental health.
13. Capita sent Ms S a 'Consent to Obtain a Medical Report Form' to complete and return. Following its return a report was requested from Ms S' GP Practice by the Council's Occupational Health (**OH**).
14. On 20 June 2013, Dr Sandu (GP) replied. His response detailed Ms S' past medical history and the medications she was currently taking. Dr Sandu said:

"Her main symptoms are that she was diagnosed with the cancer of thyroid glands in 2004 following which she had an operation and has been taking medication [thyroxine] since then. She attends the oncology department regularly and was last seen in September [20]12.

In 2007 she started having various stress related problems resulting in mild to moderate depressive symptoms...She has been under the Community Mental Health & Resource Centre [consultant psychiatrist] for depression. She was last seen on the 29/4/13.

Recently she was very distressed due to the various reasons as her father is in a hospice and he has not got very long to live. Her mother has been diagnosed with uterine cancer. Her son had a baby recently who was born premature and was in intensive care.

Given her history, it transpires that she has lots of problems happening at the same time unfortunately and she is finding it very difficult to cope. Therefore, with all the things happening in her life as well as suffering from depression she is not in a position to work and I hope you will take the above into consideration for her early retirement.”

15. On 12 August 2013, Dr Cooper, an independent registered medical practitioner (**IRMP**) certified that Ms S was not permanently incapable of efficiently discharging her former Council duties. Dr Cooper concluded:

“There is no evidence to suggest that any of her conditions are likely to permanently prevent return to work as a social worker. Apart from the report of 20.06.13 from the GP there is no up-to-date medical information about [Ms S]’ medical condition. The report of 20.6.13 refers to [Ms S] as having been under the care of a psychiatrist but there are no psychiatric reports on the file giving details of her clinical condition since 2010.

Whilst Ms S may currently be unfit for work, there is insufficient medical information to conclude that on the date of her application [Ms S] was permanently incapable because of ill health or infirmity of body or mind, of discharging efficiently the duties of her former employment which gave rise to the deferred benefits.”

Dr Cooper ended her report saying:

“It may be appropriate for more detailed up-to-date medical evidence to be sought, so that [Ms S]’ case can be reassessed.”

16. On 12 September 2013, Capita wrote to Ms S informing her that her application had been turned down. No reason was given for the Council’s decision. The letter informed Ms S that if she was dissatisfied with any decision made in relation to the information provided she should write to the Head of Pension Operations South – Member Services at the Capita address.
17. On 12 December 2013, Ms Hayre from Community Mental Health Resource Centre wrote to Capita. She said:-
- Ms S had been under the care of its service since May 2010 for the management of a moderate depressive episode.

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- She was currently on an antidepressant and was on the waiting list for a more detailed psychological treatment. She was reviewed regularly in the clinic and followed up via home visits.
 - She had not been able to return to work.
 - They wished to appeal the Council's decision, which had impacted on Ms S' mental state.
 - Dr Osafo would be writing too.
18. On 13 December 2013, Dr Osafo wrote to Capita. He said Ms S remained significantly disabled by symptoms of her illness and had been expressing suicidal ideas. He said he was concerned about a significantly increased risk of suicide should her financial stress linger on. He asked that the early release of her pension be reconsidered.
19. No response was received from Capita. Ms S' sister (**Ms T**) duly contacted The Pensions Ombudsman (**TPO**), and was referred to The Pensions Advisory Service (**TPAS**). TPAS wrote to the Council on 14 August and 12 September 2014, requesting that Ms S' appeal be considered under the Fund's internal dispute resolution (**IDR**) procedure.
20. Capita contacted TPAS on 18 September 2014, and apologised for the delay in processing the December 2013 appeal. It said Ms S' appeal would be considered under IDR and requested the submission of any further evidence that existed at the time of the original decision.
21. In October 2014, TPAS informed Capita that it had been unable to draft Ms S' appeal as it had not heard back from Ms T.
22. On 31 October 2014, Ms T wrote to TPAS enclosing the following documentation in support of Ms S' appeal:-
- A letter from Dr Osafo to Dr Sandhu, dated 20 November 2012, advising a change to Ms S' medication.
 - An open letter from the West Recovery Team confirming that Ms S remained a patient and would continue to be reviewed and monitored by the service.
 - A letter from Dr Osafo to Dr Sanhu, typed on 30 May 2014, that he had seen Ms S on 3 April. The letter detailed: Ms S' medication, that she had "Passive death wishes. No actual suicidal thoughts", that her medication would continue, the GP was to do annual ECG and blood tests, she had been given emergency/crisis contact numbers should the need arise and she would be reviewed in four months.

- An appointment notification with Dr Beider at the Ealing Recovery Team West Clinic for 21 October 2014.
- A letter from Dr Thakker (GP) to TPAS, dated 27 October 2014, summarising Ms S' medical history and current medications. Dr Thakker advised: "Given her current situation, and gloomy prognosis, it is highly improbable that this lady will ever be able to work again."

23. Subsequently a report from Dr Beider, dated 4 December 2014, was obtained. He said:-

- On Ms S' condition when first diagnosed in 2010: "I would suggest that the diagnosis at the time was recurrent depressive disorder current episode moderate with somatic symptoms."
- On the nature of her current condition: "Currently she has a diagnosis of recurrent depressive disorder current episode severe with somatic symptoms."
- On whether he considered Ms S had become permanently incapable of discharging efficiently the duties of her employment: "At the current time she is certainly incapable of discharging efficiently the duties of her employment because of her severe depression."
- On the likelihood if Ms S being able to undertake any gainful employment before reaching normal retirement age or for at least three years:

"I certainly cannot foresee her being able to undertake any gainful employment for not less than 30hrs per week and for a period of not less than 12 months.

This is my opinion because she has been very depressed for a number of years now and the trigger was work related stress. Even [were] she better than she is currently and in remission – and I certainly do not see this happening imminently – a return to gainful employment is likely to quickly lead to relapse were a return to work at this level [to] occur in the next three years."

24. TPAS submitted Ms S' IDR stage 1 appeal on 9 December 2014.

25. In January 2015, Capita upheld the appeal deciding that the Council should review its decision on Ms S' application:-

- The procedure used by the Council appeared to be totally reliant on the decision of the IRMP.
- The Council should consider the additional information submitted by Ms S.

- The Council's notification to Ms S did not give the grounds for its decision.
26. Capita offered Ms S £200 for its delay in making the stage 1 decision.
 27. In February and August 2015, Ms T asked Capita to review its compensation offer. She said Ms S had originally appealed the decision in September 2012 and the anxiety and distress that she had suffered had been severely exacerbated by Capita's failure to make a timely decision. In the same letter she asked the timeframe by which the Council would review its decision.
 28. Receiving no reply Ms T went back to TPAS who contacted Capita in November 2015, and was informed that the administration of the Fund had passed to Surrey County Council.
 29. After contacting TPO, Ms T separately complained to Capita and the Council on 4 July 2016.
 30. On 11 July 2016, the Council wrote to Ms T informing her that it had forwarded Ms S' request for the early release of her deferred pension to OH.
 31. Ms S was seen by Dr Sherry (IRMP) on 16 August 2016. In a report dated 15 September 2016, to the Council's Head of OH, Dr Sherry said she had reviewed and taken into account the information that the OH department and Ms S had provided. Ms S had a history of cancer of the thyroid but there was no evidence that it was impacting on her functional capacity, rather it was her protracted mental ill health. She had been suffering recurrent severe depression for a number of years and the aetiology appeared to be multifactorial. When assessed her PHQ score was indicating significant depression despite intensive psychological support including medication. She required support from her family and friends to carry out daily living activities, including managing her finances, housework and shopping. She had not worked since 2010 and was now age 59. Dr Sherry concluded:

“In my opinion based on my assessment of 16th August 2016 and the balance of probability that given the duration of this current depressive episode and poor response to treatment it is unlikely that [Ms S] will regain sufficient fitness to return and sustain gainful employment as a social worker within the next 12 months and again on the balance of probability the next five years.”
 32. In December 2016, Ms T wrote to the Council that Dr Sherry had assessed Ms S on 16 August 2016 and that the head of OH held the result, but to date she had not heard from anyone about Ms S' pension. Receiving no reply Ms T chased the Council in March 2017.
 33. The same month the Council apologised to Ms T for not acknowledging her December 2016 letter. The Council said following receipt of the letter it had requested OH to complete a certificate but to date had not received it. The Council said it had

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now chased for it. The Council said that as Ms S had attained age 60 (in December 2016) it had asked its Pension Service to write to her with her pension options. The Council said if after receiving the certificate from OH it decided that Ms S' pension should be brought into payment before age 60 her pension options at age 60 could be amended.

34. On 8 September 2017 the Council informed the TPO:-

- It had not been able to make a decision as it had not received the requested medical certificate from OH.
- The Pension Services at Surrey County Council had written to Ms S with her pension options for taking her deferred benefits at age 60 but had not received a reply.

35. On 13 September 2017 the Council informed TPO that it had now received a copy of Dr Sherry's certification.

36. Part A of the certificate stated,

"Date of application for early payment of deferred benefits: 11 July 2016".

37. In Part B, Dr Sherry selected 'B1' - that Ms S was "at the date of application for early payment of deferred benefits shown in Part A, and on the balance of probabilities permanently incapable" of discharging efficiently the duties of her former employment with the Council - and 'B3' - that Ms S had a reduced likelihood of being capable of undertaking other gainful employment within three years of the date of application shown in Part A. At 'B5' she entered 16 August 2016 as the date Ms S first became permanently incapable.

38. The next day the Council agreed the early release of Ms S' pension backdated to 16 August 2016, and emailed the agreement to the Pension Services at Surrey County Council.

39. The Council has subsequently informed TPO that Surrey County Council issued ill health calculations to Ms S later that month. Ms T queried these and Surrey County Council replied on 13 December 2017. Currently Surrey County Council is awaiting Ms S to return completed claim forms.

Adjudicator's Opinion

40. Ms S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised briefly below:-

- Under the 2007 Regulations Ms S may request early retirement and the Council has discretion to agree it after obtaining an IRMP's opinion on her eligibility.

- Under the 2008 Regulations a retirement pension, under regulation 31 of the 2007 Regulations, is payable from the date when the member became permanently incapable, as determined under regulation 31 of the 2007 Regulations.
- Clearly, the Council's decision to award Ms S ill health retirement was heavily influenced by Dr Sherry's certified opinion. It is therefore appropriate to consider her report in some detail.
- Dr Sherry saw Ms S on 16 August 2016. In her subsequent report, dated 15 September 2016, Dr Sherry said that when she assessed Ms S, on 16 August 2016, her PHQ score indicated "significant depression despite intensive psychological support including medication". Dr Sherry gave her opinion that given the duration of Ms S' current depressive episode and poor response to treatment it was unlikely that she would regain sufficient fitness to return and sustain gainful employment as a social worker within the next five years.
- Dr Sherry belatedly certified her opinion on 11 September 2017. On the certificate she entered 16 August 2016, as the date Ms S first became permanently incapable, coincidentally the date she assessed Ms S. However, on the same form Dr Sherry selected 'B1', which stated that Ms S was permanently incapable "at the date of application for early payment of deferred benefits shown in Part A". Namely, 11 July 2016.
- 11 July 2016 was the date the Council wrote to Ms T informing her that it had forwarded Ms S' request for the early release of her deferred pension to OH. But Capita's IDR stage 1 decision of 16 January 2016, required the Council to reconsider Ms S application for ill health retirement including the additional information she had supplied. TPAS submitted Ms S stage 1 appeal in December 2014, which included Dr Beider's 4 December 2014 psychiatric report.
- It is not clear from Dr Sherry's report that she considered at the time she saw Ms S the first date that Ms S became permanently incapable and her subsequent certification does not sufficiently clarify the matter.
- It is also not clear whether the Council saw Dr Sherry's report (or the medical evidence that Dr Sherry considered). Rather it appears to have relied on Dr Sherry's certified opinion. The Council should have queried with Dr Sherry why she was of the opinion that Ms S satisfied the eligibility criteria on the date she saw Ms S; rather than an earlier date, before it agreed the early release of her pension from 16 August 2016.
- Turning to the time the Council took to make its decision. While Capita issued its IDR stage 1 decision in January 2016, it was not until July 2016, after Ms T had chased both Capita and the Council about the matter, that the Council wrote to Ms T informing her that it had referred Ms S to OH. The Council next appear to have contacted OH only after receiving Ms T's letter in December 2016, that Ms S had

seen Dr Sherry in August 2016 and her assessment was with OH. The Council then took until September 2017 to obtain Dr Sherry's certification from OH.

- Inevitably this delay caused Ms S significant distress and inconvenience. In the Adjudicator's view the Council should pay Ms S £1,000 for this unnecessary delay.
- While the Council contracted Capita to provide administration services for the Fund, as the Administering Authority, responsibility for the Fund's administration lies with the Council.
- Ms S requested the early release of her deferred pension in September 2012. Capita requested that Ms S submit doctors' reports. At the end of February 2013, Ms S submitted reports from Dr Patel and Dr Osafo. In late June 2013, OH received a requested report from Dr Sandu. In August 2013, Dr Cooper (IRMP) certified that Ms S did not satisfy the criteria for the early release of her pension on grounds of ill health and the following month Capita informed Ms S that her application had been unsuccessful, albeit without any reason(s) given.
- In December 2013, Community Mental Health Resource Centre wrote to Capita requesting that the decision be reconsidered. Dr Osafo said Ms S remained significantly disabled by symptoms of her illness and had been expressing suicidal ideas. He said he was concerned about a significantly increased risk of suicide should her financial stress linger on.
- Hearing nothing further, at the end of May 2014, Ms T contacted TPO and was referred to TPAS. TPAS wrote to Capita in August and September 2014, requesting that Ms S' appeal be considered under the Fund's IDR procedure. Capita apologised for the delay in considering the December 2013 appeal and requested the submission of any further medical evidence that existed at the time of the decision. TPAS duly submitted various medical evidence at the end of October 2014, and in December 2014, Dr Beider's psychiatric report, together with Ms S' first stage appeal. The following month Capita upheld Ms S' appeal.
- Capita took nine months to acknowledge Ms S' appeal and over this period no action appears to have been taken by either Capita or the Council in respect of it. In my view the Council should pay Ms S an additional £500 for the further delay.
- The Adjudicator was of the opinion that:-
 - Within 14 days of the finalised Opinion the Council should:
 - (i) ask Dr Sherry whether Ms S satisfied the criteria for the early release of her deferred pension on grounds of ill health before 16 August 2016 and to provide her reason(s); and
 - (ii) pay Ms S £1,500 for distress and inconvenience caused.

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- Within 21 days of receiving Dr Sherry's opinion the Council should consider whether to backdate Ms S pension prior to 16 August 2016, and notify Ms of its decision with its reason(s).

41. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S provided her further comments which do not change the outcome except in respect of the sum awarded for the distress and inconvenience which Ms S has suffered.

Ombudsman's decision

42. Ms S does not think the amount of £1,500 is sufficient compensation for the distress and inconvenience she has been caused. Her representative says the Council has failed in its duty of care to Ms S as an employer for the following reasons:-

- The time it has taken to deal with her situation is unacceptable.
- It would have been aware of regulation 31 of the 2007 Regulations.
- It was kept informed of Ms S' illness and it was provided with her medical evidence.
- The length of time to refer Ms S to an IRMP was unacceptable.
- Its inability to recognise and deal with Ms S' situation has impacted on her both as a person and her mental health.

43. My starting point for an award for significant distress and inconvenience is £500. In some circumstances a higher award is merited.

44. I have considered the points made by Ms S representative. The delays and repeated failure to respond in a timely manner is inexcusable, as is the completely unprofessional way in which Ms S' application has been handled over the many years. This must have been extremely distressing to Ms S, especially given her medical condition, causing her further unnecessary suffering. Therefore I have decided that the award should be £2,500 for the very significant distress and inconvenience that Ms S has suffered.

45. I uphold Ms S' complaint.

Directions

46. To put matters right:-

- Within 14 days of the finalised Opinion the Council shall:

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- (iii) ask Dr Sherry whether Ms S satisfied the criteria for the early release of her deferred pension on grounds of ill health prior to 16 August 2016, and to provide her reason(s); and
 - (iv) pay Ms S £2,500 in respect of the very significant distress and inconvenience which she has suffered.
- Within 21 days of receiving Dr Sherry's opinion the Council shall consider whether to backdate Ms S pension prior to 16 August 2016 and notify Ms S of its decision with its reason(s).

Anthony Arter

Pensions Ombudsman
22 March 2018

Appendix

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007'

47. Regulation 31 states,

“(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, whatever his age.

(2) Before determining whether to agree to a request under paragraph (1), an employing authority must obtain a certificate from an IRMP as to whether in the IRMP's opinion the member is suffering from a condition that renders the member 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 the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age, or for at least three years, whichever is the sooner.

(3) In this regulation, "gainful employment", "IRMP" and "permanently incapable" have the meaning as given to those expressions by regulation 20(14).”

48. Regulation 20(14) states,

“In this regulation-

"gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

"permanently incapable" means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and

"an independent registered medical practitioner ("IRMP") qualified in occupational health medicine" means a practitioner who is registered with the General Medical Council and-

(a) holds a diploma in occupational health medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA state; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983; or

(b) is an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA state.

**The Local Government Pension Scheme (Administration) Regulations
2008**

49. Regulation 50(4), 'Commencement of pensions', states,

"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."