

## Ombudsman's Determination

Applicant	Miss A
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondents	Ministry of Justice ( <b>MoJ</b> )

## Ombudsman's Determination and reasons

1. Miss A's complaint is upheld and to put matters right MoJ should consider the matter again and provide Miss A with a detailed explanation regarding her application for early release of her deferred pension on grounds of compassion. Further in recognition of the distress and inconvenience Miss A has experienced, MoJ will pay her compensation of £500.
2. My reasons for reaching this view are explained in more detail below.

## Complaint summary

3. Miss A has complained that MoJ delayed implementing the Deputy Pensions Ombudsman determination and once it did, it still refused to pay her pension on compassionate grounds. MoJ did not consider the evidence she submitted with her application and continue to say that cost is the reason why it will not release her pension.

## Background information, including submissions from the parties

4. The Deputy Pensions Ombudsman issued her determination, on 24 January 2014 and directed MoJ to reconsider Miss A's application for early payment of her benefits on compassionate grounds, after seeking additional information as appropriate.
5. Miss A submitted extensive evidence to MoJ as to why she should receive her pension early on compassionate grounds. Further, the evidence she supplied was in line with MoJ's policy for early release of the pension on compassionate grounds. MoJ sent its decision to Miss A in July 2015 and gave its reasons:

"Thank you for the further information you submitted in support of your application for the early payment of your Local Government Pension. I apologise for the length of time that it has taken for a decision to be made, but you will appreciate that any application that could result in a considerable cost

to the department – and hence the public purse- has to be very carefully considered. In this case the cost would have exceeded £50,000.

As you are aware the department is under no obligation to fund the early payment of your pension. Nevertheless it has given full consideration to your application and has carefully reviewed all the evidence that you provided about personal circumstances.

You will remember that your original application was turned down on cost grounds. Having fully re-considered your application in light of your additional information the department has concluded that the original decision was correct. In the current economic climate the department is not prepared to authorise the expenditure of more than £50,000 of public money to allow your pension to be paid early.”

6. Miss A remains unhappy with MoJ’s decision and would like this Service to consider its decision perverse and direct MoJ to release the pension. She said in support of her application the following:

“...The MoJ have a policy to deal with bringing pensions into payment on grounds of compassion. At no point in my case have the MoJ rejected that my circumstances justify compassion.

...Previously, the MoJ were making a decision without any information from me as per their policy. Now that the MoJ had that information, they still made the same decision. The MoJ’s present decision is fettered, against the weight of the evidence and thus perverse.

...In conclusion, it would be more than apparent to an independent reasonable decision maker that the MoJ have fettered themselves and have made a perverse decision which the Pensions Ombudsman should interfere with, clearly having the power to do so. My case clearly requires this course of action and I ask that the Pensions Ombudsman directs the MoJ to put my pension into payment, backdates it to 15<sup>th</sup> April 2012 with interest and recompenses me for the 9 month delay in reaching a decision.”

## **Adjudicator’s Opinion**

7. Miss A’s complaint was considered by one of our Adjudicators who concluded that further action was required by MoJ. The Adjudicator’s findings are summarised briefly below:
- MoJ’s second decision was perverse as it did not take into account the Deputy Pensions Ombudsman’s comments.
  - MoJ did not give a detailed explanation as to why the information Miss A supplied did not meet the requirements to release the pension on compassionate grounds.

- MoJ relied on cost as the reason in refusing to release the pension on compassionate grounds. Cost cannot be used as the reason to decline her application when no reference was made to the information Miss A submitted.
  - It is not for this Service to interfere with the decision making and direct MoJ to pay Miss A the pension.
  - MoJ were asked again to review the decision based on the information Miss A supplied and were asked to pay Miss A £500 as compensation for the distress and inconvenience she suffered.
8. Miss A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss A provided her further comments many of which were not new. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Miss A- for completeness.

### **Ombudsman's decision**

9. MoJ have accepted the Adjudicator's Opinion. It is prepared to consider the matter again and agreed to pay the compensation suggested in the Opinion.
10. Miss A disagrees with the Opinion because she believes that MoJ will still come to the same perverse decision. She would like me to intervene and direct MoJ to pay the pension.
11. The Deputy Pension Ombudsman upheld the initial complaint because cost was the only factor which the MoJ considered, contrary to their own policy and to the general principles for the exercise of a discretion. I uphold the current complaint against MoJ because:
- MoJ issued its decision after the Determination and again citing cost as the sole reason why it will not release the pension. It did not provide a detailed explanation as to why the information submitted by Miss A was not persuasive enough to release the pension on compassionate grounds.
  - MoJ has adopted policy for its own decision making and failed to have regard to it. The policy does not state that cost is the only factor that must be considered before a decision is reached.
12. I will direct MoJ to review the matter again and provide a detailed response as to why the pension can or cannot be released on compassionate grounds.
13. It is not for me to interfere at this stage and direct a pension to be paid. Although I acknowledge Miss A's concerns I consider there is still a reasonable prospect of the decision being made properly and it would be premature for me to assume the role of the decision maker.

14. The time taken for MoJ to issue the second decision after the initial complaint was Determined, has caused Miss A significant distress and inconvenience. I agree with the Opinion that £500 should be paid by MoJ as compensation.
15. Therefore, I uphold Miss A's complaint.

## **Directions**

16. Within 28 days MoJ will provide Miss A with its decision as to whether she should be awarded a pension on compassionate grounds. It must reconsider the information Miss A submitted and provide a detailed explanation as to why she does or does not meet the criteria for release of her pension on compassionate grounds.
17. Within 14 days of this Determination, MoJ will pay Miss A £500 as compensation for the distress and inconvenience she has suffered.

**Karen Johnston**

Deputy Pensions Ombudsman  
7 June 2016