PO-9312

Ombudsman's Determination

Applicant	Mr R
Scheme	Principal Civil Service Pension Scheme (**the Scheme**)
Respondents	Cabinet Office (**CO**)
	The Crown Prosecution Service (**CPS**)

Complaint summary

Mr R's complaint is that:

- his application for ill health retirement (**IHR**) benefits was not accepted;
- his application to the Civil Service Injury Benefits Scheme was rejected; and
- he wishes to receive benefits under the Civil Service Compensation Scheme (**CSCS**).

Summary of the Ombudsman's decision and reasons

Mr R's complaint should not be upheld because there is no evidence that his application for ill health early retirement was processed inappropriately. Mr R's application for Injury Benefits has now been accepted, so this part of the complaint falls away and I make no findings in respect of it. Lastly, I have no jurisdiction over a claim for benefits from the CSCS so cannot consider this part.

Detailed Determination

Material facts

1. On 22 December 2005, Mr R began employment as a CPS Case Progression Officer.

2. In July 2008, Mr R went on long term sick leave. Mr R said that he suffered from stress and anxiety, due to issues at work. These issues were related to the lack of career progression, after he was unsuccessful in his application to become a Legal Trainee, and he felt he was being discriminated against.

3. In December 2008 and June 2009, Mr R met with occupational health (**OH**). In June 2009, the OH physician advised CPS that, if Mr R could not return to work in a suitable role, CPS may want to consider the question of IHR. The physician said:

> "As things stand there is a stalemate in that he would not be expected to return unless there was a change of role. If no suitable role was available then, as he is unable to return for a long term health reason the department could consider referring him for the consideration of ill health retirement.
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> I have explained to him that the pensions adviser will note that he has not been on any medication for his low mood and has not seen a psychiatrist…and that may be seen as him not being treated fully yet (and therefore one cannot argue that he has failed to respond to a full treatment)."

4. CPS referred the matter to the Scheme Medical Adviser (**SMA**) to assess whether Mr R met the criteria for IHR. On 4 June 2009, aged 46, Mr R completed the relevant sections of the IHR application form. On 4 December 2009, Mr R was assessed by the SMA, and it issued its findings to CPS on 15 December 2009. The SMA said:

> "Having considered the application and evidence there is, in my opinion, reasonable medical evidence that [Mr R] is prevented from discharging his duties and the key issue in relation to the application is whether or not [Mr R]'s incapacitating health problems are likely to be permanent. On this occasion it is my opinion that the scheme definitions as outlined above are, on the balance of probabilities, unlikely to be met.
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> The medical evidence is that [Mr R] has suffered a breakdown in health that currently prevents him from undertaking his substantive duties. The key issue in relation to this application is whether [Mr R]'s current incapacity is likely to continue until normal retirement age and so fulfil the scheme definition of permanence. The breakdown in health appears to be a reaction to [Mr R]'s perception of work events. Such reactive conditions do not generally give rise to permanent incapacity. The medical evidence is that [Mr R] has not had the opportunity of specialist assessment. I can identify further treatment options that carry a reasonable prospect of benefit. I therefore think it is premature to conclude that [Mr R] has been fully investigated and that all reasonable

> treatment options have been utilised without benefit. I also note that opinions of the occupational physicians who have personally assessed [Mr R] to the effect that [Mr R] would be able to return to work if the employment issues were successfully addressed. In my opinion, there is no reasonable medical evidence that [Mr R]'s incapacity is likely to be permanent. The pension scheme criteria are therefore not satisfied."

5. On 4 February 2010, Mr R wrote to CPS to appeal this decision. He explained his interpretation of the Scheme brochure relating to the different tiers of ill health pension. Mr R stated, "I intend to seek the opinion of my medical advisers as to which proposition is most pertinent to my situation, I will forward their opinions to you in due course."

6. Within the Scheme, there is a two stage medical appeal process, whereby members can appeal the opinion of the SMA. On 22 March 2010, an SMA considered the Mr R's appeal and declined it. The SMA said:

> "I have reviewed the medical evidence that was considered when we provided our original advice. This most recent submission now contains information gathered at face-to-face consultation with an occupational health adviser at an occupational health assessment…This would be new medical information, but does not significantly add to my understanding of [Mr R]'s circumstances. I do not regard this new evidence as significant.
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> In my opinion, my colleague's original advice was not unreasonable. In the absence of new information I have no reason to recommend any changes to our previous advice."

7. Mr R met his GP and submitted new evidence to the SMA to consider under the second stage of medical appeal process. The GP report, dated 24 March 2010 said:

> "[Mr R]'s current state of health has been caused by a stress at work. It has subsequently been made worse by the way he feels he has been treated by his employers, whilst he has been signed off from work. His state of health in the future very much depends on the outcome of his situation at work. Even if the outcome is 'good' it is likely he will still have health issues for some time. If the outcome is deemed 'bad' then I am sure that his health issues will take much longer to resolve. I am unable to say how long these would go on for. I am also unable to say, with accuracy, whether he would be unable [to] undertake gainful employment until pensionable age.
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> In his current state of health I feel [Mr R] wouldn't be able to undertake his own job or similar. That is why he is signed of (sic) with a 'Med3 Certificate'. As mentioned above I am unable to say whether this situation will continue until pensionable age."

8. On 27 April 2010, the lead SMA considered the appeal and wrote to CPS. The SMA set out the criteria for IHR and explained the need to establish permanence. The lead SMA said:

> "Having completely reviewed [Mr R]'s appeal there is, in my opinion, reasonable medical evidence that he is prevented by ill health from discharging his duties.
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> The key issue in relation to [Mr R]'s appeal is whether or not his incapacitating health problems are likely to be permanent. Having completed my review, I advise that it is my opinion that there is no reasonable medical evidence to conclude that [Mr R]'s incapacitating health problems are likely to be permanent.
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> The medical and other evidence in this file appears to indicate that [Mr R] has negative perceptions of his employer. I note that he has raised a grievance, but that the outcome did not support his view of what has taken place. [Mr R]'s perceptions of his employer appear based on a perceived lack of progression to his career, that his qualifications have not been fully taken into account and that he does not have a suitable role within the organisation. It appears that [Mr R] has become very angry at certain events and that this anger is directed towards the employer."

9. Mr R's sick leave ended on 26 May 2010 and then he was on annual leave. Mr R did not return to work for a sustained period. On 13 September 2010, CPS referred Mr R back to OH to see whether further adjustments could be made. The OH reported back to CPS on 13 September 2010 with certain adjustment recommendations. The OH concluded, "I am unable to advise on the long term outlook as this would depend on further active treatment. Without further treatment [Mr R]'s condition will most likely continue for the foreseeable future."

10. On 6 October 2010, CPS started disciplinary proceedings. Mr R was unwell soon after, due to stress caused by the process, and expressed his dissatisfaction that CPS was not making the reasonable adjustments recommended by the OH in its report of 13 September 2010. He considered this to be another instance of CPS's discriminatory behaviour towards him.

11. On 19 October 2010, CPS asked Mr R to consent for his details to be released to Remploy (a third party risk assessor specialising in disabilities in the workplace) so that the adjustments, mentioned in the OH report of 13 September 2010, could be assessed. CPS also wrote to Mr R on 20 October 2010 to highlight the variety of options available that might accommodate his return to work.

12. On 20 October 2010, Mr R was informed of the disciplinary hearing, in which he was given a written warning. On the same day, Mr R enquired via his Union representative about Civil Service Injury Benefits Scheme. CPS sent the relevant forms to Mr R and asked him to return the completed forms, which it received on 29 October 2010.

13. On 21 October 2010, Mr R was again asked for consent to be given for Remploy to carry out the assessment. CPS asked Mr R to give consent by 22 October 2010 or it would undertake an internal risk assessment. Mr R responded saying that, as he was unwell physically and psychologically, he needed to meet his GP in order to discuss the matter. He said that he considered the deadline to be unfair.

14. CPS decided to carry out the internal risk assessment and informed Mr R that he needed to attend an appointment on 25 October 2010. Mr R responded saying, "As I have already made you aware, I am seeing my GP …Unless my GP signs me off, I will attend [the appointment] as instructed. Please make sure I am not left waiting in reception and that I do not have to run into people who formed part of my grievance."

15. CPS and Mr R continued to exchange correspondence, with CPS attempting to make adjustments for Mr R's return by asking for a risk assessment to be completed. Mr R had periods of sickness absences, signed off by his GP, which continued until 16 May 2012. Mr R has said he did not appreciate that CPS was attempting to carry out risk assessments during these periods.

16. During 2011, CPS undertook stages 1 and 2 of a Management Attendance Procedure (**MAP**) with Mr R.

17. On 29 June 2011, after one of the ET hearings, Mr R contacted CPS asking whether it would consider him for medical retirement. He said:

> "The tribunal having concluded that I will not, in any event, be able to return to work can you confirm whether the department is now recommending me for medical retirement?"

18. In 2012, CPS drafted an OH referral form to seek advice on facilitating Mr R's return to work. Under the heading 'Reason for re-referral' the draft said:

> "To seek a prognosis on his condition and advice on facilitating a return to work, including reasonable adjustments."

19. The draft referral set out the background and summarised the medical evidence including the following observation:

> "From the accumulated medical evidence it appears [Mr R's] adjustment disorder is attributable to 'workplace issues'; there are no significant non work-related pressures competing for causation; he can recover from the effects of his disorder; but he will not do so without support and a satisfactory, or at least an acceptable, resolution of his workplace issues."

20. In the draft referral CPS put a series of specific questions to the OH physician. It asked:

> "What impact or effect does [Mr R]'s 'underlying condition' and/or his 'cognitive impairment' and/or his 'adjustment disorder' have on his ability to learn and

perform the role of Paralegal Officer to which he was assigned in his absence in July 2009? (Job Description and Person Specification attached)

What impact or effect does [Mr R]'s 'underlying condition' and/or his 'cognitive impairment' and/or his 'adjustment disorder' have on his ability to learn and perform the role of Complaints Coordinator as an alternative to the Paralegal Officer role? (Job Description and Person Specification attached)

Please could you provide advice on [Mr R]'s current condition and the prognosis for facilitating and sustaining a return to work, or should [Mr R] now be recommended for retirement on medical grounds?"

21. The draft referral was not sent as Mr R did not provide consent. He has said this was because he could not come to an agreement with CPS over the content of the draft referral.

22. Further MAP meetings were held which ultimately led to Mr R being dismissed from employment with CPS in February 2013. CPS has said that it dismissed Mr R "after a protracted Managing Attendance Process because he did not fulfil the requirements of an Attendance Improvement Notice."

Employment Tribunal claims

23. Between 2008 and 2013, Mr R made five applications to an employment tribunal against CPS. Generally speaking these complaints were based on disability discrimination, CPS' management of his sickness absence and CPS' facilitation of Mr R's return to work. Briefly the claims were:

- Claim 1 – the tribunal dismissed this on a legal point.

- Claim 2 – (2200425/2010) - this covered the period of employment between March 2009 and January 2010 regarding how the MAP was carried out. The tribunal concluded that it did not uphold the claim about career progression but did find that that the MAP was flawed. The Tribunal concluded that requesting a promotion was not considered a reasonable adjustment to facilitate an individual's return to work.

- Claim 3 – (2202755/2011) - this covered the period of employment from January 2010 to July 2011 and raised issues on disability discrimination and the MAPs during this period. It was held that Mr R's complaint of disability discrimination in respect of proceeding with a stage 2 MAP hearing on 13 June 2011 and the failure to offer medical retirement as an alternative was not well founded. In that context, the Tribunal made findings about a disagreement over a separate OH referral on 10 May 2011. The Tribunal found, "The responsibility for the lack of an Occupational Health report, when the Claimant was invited on 7 June [2011] to a Stage 2 meeting on 14 June, lay with the Claimant, and not the Respondent."

- Claim 4 – (2203847/2013) - this covered the period of employment from January to November 2012. The main issue raised was that CPS failed to make reasonable adjustments. The Tribunal held, "the reason the Claimant has not returned to work in that role [case worker/paralegal officer] is because he does not want to work in that role. That is an issue that cannot be reopened and the Claimant is estopped from raising that issue again."

- Claim 5 – (2346927/2013) - Mr R complained of unfair treatment and disability discrimination in respect of his dismissal because CPS did not offer alternative roles in light of his medical condition. The claim was dismissed on the basis that it sought to reopen issues previously litigated and had no reasonable prospect of success.

24. In 2015, Mr R asked to be reconsidered for IHR. As Mr R was no longer in employment, CPS treated this as an application for Retrospective Ill Health Retirement (**RIHR**). On 3 July 2015, CPS wrote to Mr R to say that CO would not allow it to consider an application for RIHR as it had fully considered his application for IHR in 2009 and it did not consider that there had been any errors or omissions in that process.

Internal Dispute Resolution Procedure

25. On 7 July 2015, Mr R complained through the internal dispute resolution procedure (**IDRP**). Given the prior involvement of CO in the refusal to allow his application for RIHR his complaint was fast-tracked to stage 2 of IDRP. Salient statements from Mr R's letter are:

> "Having been certificated as unfit for work due to 'workplace stress and anxiety' since July 2008, suffering continuing stress and remaining under the care of West London Mental Health NHS Trust, it is disgraceful that I should have to argue so assiduously for my entitlement to an ill health pension and have been denied the same since 2009."
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> …
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> "Between 2009, when the only application for ill health retirement was submitted and rejected, and February 2013 when my employment was terminated on grounds connected with my health, I was assessed by numerous specialists, participated in various forms of therapy and treated with anti-depressant medication.
>
> In June 2011 an Employment Tribunal found me to be disabled for employment purposes with effect from March 2009 and that my employer discriminated against me."
>
> …

> "Four years after the 2009 ill health retirement application was made and rejected, neither medical experts responsible for my care and treatment in the intervening period, OH, nor scheme medical advisers, were consulted as regards ill health retirement in my case."

26. On 28 October 2015, CO upheld CPS's decision not to refer Mr R to the SMA to reconsider IHR before dismissing him. CO concluded that Mr R could have applied for IHR, as he was aware of the procedure in 2009. CO said:

> "…I think it is reasonable for CPS not to refer your case to the SMA to reconsider IHR before they dismissed you. Had you felt that your health was such that IHR was a possibility, you could have reapplied for it at any time before your dismissal date. CPS could also have put you forward for it, and may have done so had you consented for an OH referral and OH advice had recommended that course of action. However, given that your ET [Employment Tribunal] applications were largely based on terms for your return to CPS employment and that your GP was issuing fit for work certificates from May 2012 I do not accept that COS made an error or omission when they did not put you forward for IHR ahead of deciding to dismiss you."

27. With regards to the application for RIHR CO said:

> "…RIHR is not a provision under the scheme rules. CO will allow RIHR applications in restricted and exceptional circumstances. For the reasons set out above I agree with the CO decision already taken that your case does not present exceptional circumstances such that CPS should consider RIHR for you."

Civil Service Injury Benefits Scheme

28. On 1 May 2012, MyCSP wrote to Mr R to explain that his absences were not classed as a qualifying injury under the Scheme rules, so he would not be awarded Injury Benefits. Mr R challenged this decision through the IDRP process. MyCSP then reversed its decision and awarded this benefit. It notified Mr R of this in February 2016.

Civil Service Compensation Scheme

29. In his application to this Office, Mr R has said that he has suffered a loss in benefits under this scheme.

Summary of Mr R's position

30. Mr R has said in support of his position that:

> "[CPS] failed to obtain any occupational health advice after September 2010, not even in response to my GP's letter of 7 February 2013 specifically asking

> that they obtain occupational health advice and that they do so having submitted my medical records to the occupational health physician in advance of any consultation."

31. With regards to whether incapacity has been considered, Mr R said:

> "The scheme medical adviser has not been asked to consider whether the breakdown in my health, involving incapacity for employment, is permanent since being asked to do so in 2009, albeit incapacity was the reason given for my dismissal in 2013."

32. In reference to the referral to OH, Mr R said:

> "The Cabinet Office decision notes that agreement could not be reached over the content of a referral to occupational health without noting that it is a requirement for both parties to agree the content of a referral nor (sic) the reasons for the lack of agreement, namely my former employer's refusal to provide the occupational health physician with my medical records in advance of a consultation, not even after my GP asked that it do so by his letter of 7 February 2013".

33. Mr R says that the alternative role found for him was unsuitable, something his GP, he says agreed with:

> "I also note the Cabinet Office finding that my GP provided fit notes from May 2012 indicating I may be able to return to work with adjustments including a suitable change of role. It was my GP's suggestion that I should do so in order to prevent my employers from terminating my employment. What the Cabinet Office does not note is my GP's letter of 7 February 2013 stating that the only alternative role offered to me after he began providing Fit Notes in May 2012, that of Complaints Coordinator, was categorically unsuitable for me."

34. Mr R disagrees with CO and CSP, in that he does not believe that he should have been the only party to consider ill health retirement. He said:

> "…how can the Cabinet Office possibly be correct to conclude that the onus was upon me to ask my employer to do something it should have done as a matter of course when considering alternatives to my dismissal, i.e. to reconsider the medical circumstances pertaining to my suitability for medical retirement and to obtain medical advice in this regard?"

35. Mr R believes that any decision made by the Ombudsman about IHR benefits could impact the existing payment of his Injury Benefits.

36. Mr R thinks the fact that Injury Benefits have been awarded shows that he was dismissed on ill health grounds and is an acceptance that his breakdown in health resulted in incapacity for employment. He adds that his medical records show that he was and remains incapacitated for any work.

37. Mr R has said the Ombudsman has not been asked to determine on what basis he was dismissed, but whether the lack of consideration of IHR upon his dismissal in 2013 was acceptable.

38. Mr R finds the ET findings irrelevant when considering IHR. He notes the Scheme rules say that consideration of IHR is only based on the SMA's opinion.

Summary of respondents' position

- Having applied for IHR in 2009 there is no doubt that Mr R was aware of the provision, and familiar with the application and appeal process. If Mr R was not already aware of the pension scheme criteria for IHR he would have been so by the end of the medical appeal.

- In order to submit an ill health application to the SMA CPS would have needed to obtain OH advice regarding incapacity. CPS attempted to obtain that advice in 2012 but Mr R could not reach agreement with CPS about the contents of a referral document.

- Mr R neither applied for IHR nor would he allow CPS to ask for OH advice which might have led them to put him forward for IHR.

- The Tribunal noted that the main stumbling block to Mr R's return to work was that CPS would not promote him to a grade that he felt was fitting his level of academic qualifications.

- Employers can dismiss civil servants due to inefficiency, which can include irregular attendance due to ill health.

- CPS was correct to consider the post dismissal application under RIHR principles which meant they could not consider it without Cabinet Office approval, which they did not have.

Conclusions

39. The Scheme rules state[1] that, if a member is dismissed on ill health grounds, the employer, in this case CPS, should consider them for IHR. Contrary to what Mr R contends. Mr R contends that he was dismissed on ill health grounds but Mr R's poor attendance was the reason his employer gave for his dismissal. By May 2012, Mr R's GP was issuing fit for work certificates on the basis of a phased return to work to a

[1] Annex 6J, Section 2.3 of the 'Ill Health Retirement – Procedural Guidance for Employers' states:

> "Employers must refer cases to the SMA 'when either management or the person concerned, consider that the causes of poor performance or poor attendance may make retirement on medical grounds appropriate' (Civil Service Management Code (CSMCC): November 2016, para. 6.3.2c)."

suitable role. Alternative roles were offered. In his representations, Mr R has raised the argument that his employer declined to offer him a role considered suitable by his GP. However, I am not willing or able to reopen the dispute about whether alternative employment offered was suitable because that issue has been fully litigated through multiple claims in the Employment Tribunal with full findings of fact resulting in a judicial finding that the claimant is estopped from raising the issue again. In conclude that when Mr R's employment came to an end he and his employer had a difference of opinion about the reason that was so. That disagreement had been longstanding and persists now.

40. Given the history of Mr R's application for IHER, I conclude that CPS was not required to reconsider Mr R for IHER when it terminated his employment in 2013. I note that CPS's refusal to consider IHER as an alternative to disciplinary proceedings was raised as an issue in claim 3 before the Employment Tribunal and the point was not upheld there either. Mr R states that it is not the role of the Ombudsman to make findings about the reason for dismissal. However in order to make a finding whether there was a failure to appropriately consider him for IHR as an alternative to dismissal (the point which he does want me to consider) I am bound to consider the reason for dismissal as it must have appeared to the employer at the relevant time.

41. I appreciate Mr R disagrees with CPS's view about the reason his employment was terminated, but I am bound to take their view of the reason into account, along with any relevant findings of fact already made by the Tribunal, when I consider whether CPS did what they were required to do under the Scheme rules. I conclude that over the course of the protracted process of managing absence which culminated in dismissal in 2013, CPS did what the rules required them to do in respect of considering Mr R for IHR.

42. Mr R has criticised CPS for not obtaining up to date OH reports or for gathering up to date medical information, in particular the treatments and medication he had received for his condition after his appeal was refused in 2010. However, in 2013 there was no live application before CPS which required it to obtain this evidence and I do not consider that to be CPS's fault.

43. It is clear that Mr R and CPS had engaged from 2010 to 2012 to establish whether Mr R was fit to return to work. This was complicated by the fact that Mr R had raised grievances against CPS, but I do not consider those complications caused any failure by CPS to consider Mr R for IHR when they should have done so.CPS made several attempts after 2009 to refer Mr R to OH for new reports, but Mr R did not give his consent. CPS tried to get an OH opinion, in 2012, which specifically included the question of whether Mr R was eligible for medical retirement.

44. I have considered Mr R's email from 2011 in which he asks CPS whether, in light of the recent Tribunal findings, it would then consider him for IHR. I note the findings of the Tribunal handed down with its reserved judgment on June 7 2011:

> "on the evidence and on our findings of fact we conclude that the Claimant would not have returned to work, even if the Respondent had handled the return to work process in the way that the Claimant contends for"

45. That is not, as Mr R represented it to CPS, a finding that he will not be able to return to work; it is simply a statement that he would not. Although I understand that Mr R considers otherwise, I conclude that this finding did not require CPS to reopen the question of IHR at that point.

46. Mr R has explained his refusal to cooperate with the OH referral process in 2012 by saying that he wished to amend the chronology of the background information, but that this could not be agreed with CPS. Mr R has further said that CPS would not allow his medical information to be sent to the OH physician for review before his proposed appointment. Against that, CPS contends that Mr R would not have attended in any event and refers to earlier findings of the Tribunal in support of this proposition.

47. In claim 3, it was found that the responsibility lay with Mr R for the lack of OH report in 2011. However, there is no Tribunal comment that I can see regarding the lack of OH meeting in 2012, nor a finding about the reasons Mr R was putting forward at that time. I have therefore considered these questions.

48. Given Mr R's actions in 2011, as evidenced by the Tribunal proceedings and the preconditions he placed on the attempt to refer in 2012, I conclude that in 2013 he would probably (more likely than not) have continued to be unwilling to cooperate in an OH referral for any reason connected with the MAP and a return to work. I have considered separately the question of whether CPS should have asked Mr R to visit the OH solely for eligibility assessment purposes for IHR prior to making the decision to terminate his employment. I can find no reason to conclude CPS should have done this. I am mindful that by then the parties had been locked in litigious dispute for some years, which had tested Mr R's reasons for not returning to work quite extensively. In the course of those proceedings Mr R had raised many procedural issues relating to the processes which CPS had taken him through. In 2012 he again raised procedural issues in relation to the proposed OH referral, but he did not make a fresh application for IHR or ask CPS to refer him to the OH physician exclusively for this purpose, nor did he do so in 2013. In those circumstances, I can see no basis to conclude that CPS was itself bound to initiate a process for that exclusive purpose.

49. Mr R did apply for IHR after his dismissal but Cabinet Office decided there were no exceptional circumstances which justified considering that application. CPS was aware of and applied the published guidance about RIHR for employers, including the need to consider any errors or omissions which were made when handling an employee's exit for instance, where the employer failed to consider IHR when an individual was dismissed for reasons connected with health but was not made aware of their right to apply for IHR. Even if Mr R's dismissal is accepted to be for reasons '*connected with* health' *[my emphasis],* plainly he was aware of his right to apply for

IHR and he did not make a new application at that time. Given the history of the matter, including Mr R's previous application for IHR, I consider that Cabinet Office's response to Mr R's RIHR application was within the range of reasonable responses and I see no basis upon which to interfere with it.

50. Mr R was awarded Injury Benefit when he took his complaint about the initial refusal of his application to IDRP. Complainants are generally required to pursue IDRP before they bring a complaint to the Ombudsman and where a full remedy is provided during that process I will not consider a further award.

51. Mr R has expressed concern that an Ombudsman Determination on the claim for IHR could impact the payment of his Injury Benefits, however the two benefits are not linked. The fact that the two benefit types are not linked in any way is also the reason why an acceptance of Injury Benefit does not automatically lead to an acceptance of IHR benefits, as Mr R has argued ought to be the case. The two are assessed independently. For complete clarity and the avoidance of any doubt, I have not considered the criteria for Injury Benefit and make no finding of fact that should be considered material to or binding in respect of that separate claim. Also for the avoidance of doubt, because Mr R has expressed doubt on the point, I make no decision at all about nature and permanence of Mr R's incapacity for work. My findings are limited to the correctness of the procedures followed by CPS when considering Mr R's eligibility for IHR.

52. In the course of representations Mr R has clarified that he wants to pursue the IHR complaint rather than his concerns regarding the CSCS claim. In any event I consider I have no jurisdiction in respect to a claim to compensation under the CSCS because that is a claim to an employment benefit under a separate scheme concerned with redundancy terms rather than being a complaint about an occupational pension scheme.

53. For the reasons given above, I do not uphold this complaint.

Karen Johnston

Pensions Ombudsman
16 March 2018