

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr David Anderson
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondent	Northumberland County Council (NCC)

Subject

Mr Anderson complains that NCC, as Administering Authority of the Scheme, delayed carrying out the review of his ill health pension appeal. In particular, Mr Anderson says that maladministration led to unacceptable delays and he is due compensation for financial loss and distress and inconvenience.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against NCC because Northumberland Fire and Rescue Service (**NFRS**), Mr Anderson's former employer, did not follow the proper procedure for dealing with his ill health pension appeal and contributed to the delays. This caused Mr Anderson distress and inconvenience.

DETAILED DETERMINATION

Material Facts

Regulation H1

“The question whether a person is entitled to any and if so what awards shall be determined in the first instance by the fire and rescue authority...before deciding...the authority shall obtain the opinion of an independent qualified medical practitioner [IQMP]...and the opinion of the [IQMP] shall be binding on the authority”

Rule H1 Guidance – “...Rule H1(2) requires the fire and rescue authority, before arriving at their determination under Rule H1(1), to obtain the written opinion of an [IQMP] selected by them. Having selected an [IQMP] and obtained his/her opinion, that opinion is binding on the fire and rescue authority. This means that the fire and rescue authority cannot seek alternative opinions if they are not content with the one provided. This does not mean that the [IQMP] decides the award. The power to determine the award rests with the fire and rescue authority under Rule H1(1). To decide the award they will take non-medical issues not covered by the opinion into account, too”.

1. Mr Anderson was employed by NFRS on 20 May 1983 and retired on medical grounds on 21 June 2010. He was seen by the IQMP on 12 March 2010. The IQMP said that Mr Anderson was permanently incapable of fire-fighting duties but was capable of undertaking regular employment. NFRS wrote to Mr Anderson on 25 March 2010, informing him that he was entitled to a lower tier ill health pension. To be eligible for a higher tier ill health pension, Mr Anderson would have needed to additionally be certified as incapable of undertaking any regular employment.
2. On 1 April 2010, Mr Anderson appealed the decision to only award him a lower tier ill health pension. He said that, with his medical condition, it would be impossible for him to gain full time employment. The Chief Fire Officer (**CFO**) of NFRS conducted a review and wrote to NCC on 8 July 2010 with his decision to award Mr Anderson a higher tier ill health pension. He said he had taken into account that the IQMP could not clarify when Mr Anderson would be able to take up any employment, and was less certain of the amount of hours Mr Anderson would be able to work.

3. NCC suspended payment of the higher award. They sought advice from their internal legal team as they were uncertain if the CFO had taken purely non-medical factors into account. The internal legal advice was that the CFO had potentially acted outside of the Scheme rules by considering medical issues addressed by the IQMP. NCC then sought external legal advice. The advice received said that as no persuasive non-medical reason to award a higher benefit had been shown, Mr Anderson was only entitled to a lower tier benefit.
4. NCC received the external advice on 6 December 2010 and wrote to Mr Anderson on 20 December 2010. From July to December 2010, Mr Anderson says that he made several calls to NCC and was informed of the issue regarding the interpretation of the Scheme rules but he did not receive any letters or updates. NCC say that Mr Anderson was informed of his right of appeal against the original decision to award him a lower tier pension, and he chose to await the outcome of the legal advice being sought.
5. Mr Anderson complained to the Pensions Advisory Service (**TPAS**) and then this office, and was told to complete the internal dispute resolution procedure (**IDRP**) under the Scheme. He complained to NCC on 27 June 2011 that NCC had failed to comply with the award of the higher tier pension and had taken an “excessive timescale” to seek legal advice on the issue. NCC wrote to the Department for Communities and Local Government (**DCLG**) in August 2011 to find out if Mr Anderson could appeal to the National Medical Appeal Board (**the Board**) as the normal six-month time limit within which to appeal the ill health award had expired. DCLG asked NCC to contact Health Management Limited (**HML**) who handled appeals on behalf of the Board. HML informed NCC by email on 16 August that the Board could hear the appeal.
6. NFRS wrote to Mr Anderson on 31 August and 6 September 2011 to let him know that he could now appeal the decision of the IQMP to the Board and he would need to complete some paperwork. Mr Anderson completed the notice of appeal on 28 September 2011 and NFRS requested medical evidence on 4 October. Complete medical evidence was not received until February 2012 and NCC submitted the formal appeal to the Board on 3 April 2012.

7. HML confirmed receipt of Mr Anderson's appeal to him on 11 June 2012. He followed up the progress of the appeal by email to HML on 14 June 2012 and 8 January 2013. HML informed him on 17 January 2013 that his appeal would be heard on 19 April.
8. The hearing took place on 19 April 2013 and Mr Anderson was informed of the decision in a letter of 13 May. The Board decided that Mr Anderson "was permanently incapacitated for any form of work as at the date of his original assessment by the IQMP". Mr Anderson was paid the higher tier pension from 21 June 2013, backdated to his retirement in June 2010.
9. Mr Anderson then complained to NFRS on 24 June 2013 asking to be compensated for his expenses, financial loss and the distress and inconvenience caused to him. He also pointed out that the original form sent to the IQMP did not contain Section G: Certificate of Independence.
10. In the Stage One decision dated 22 July, NFRS awarded him his expenses for attending the Board hearing, but rejected his claim for the interest he would have earned on the ill health higher tier pension in the meantime. They said that the issue of the IQMP had been dealt with in considering his appeal to the Board. NFRS regretted the delay, but stated that it was appropriate to have sought advice. The main delay they said was with waiting for the Board hearing.
11. Mr Anderson appealed to the Disputes Panel under Stage Two on 16 August.
12. The Disputes Panel wrote to Mr Anderson on 26 November 2013 with the Stage Two decision. They said that there had been undue delay in dealing with his claim for a higher tier award. They noted the failure to process his medical appeal of April 2010 properly as a result of a "well-meaning but ultimately misguided attempt by the Fire and Rescue Service to resolve the matter internally rather than follow the appropriate course of action through the formal medical appeal process". They said that the more significant delay with the Board was not within NFRS's control. They recommended that Mr Anderson should refer the matter to this office for consideration of compensation as they did not feel that they were the appropriate body to consider the matter.

Northumberland County Council's representations

13. In its submissions to this office, NCC accepts that Mr Anderson should receive some compensation, but do not accept that he is entitled to substantial compensation as he is now receiving the pension he is entitled to under the regulations.
14. NCC say that it was reasonable to seek legal advice during July – December 2010 and Mr Anderson was told to appeal to the Board if he wanted to challenge the medical opinion. NCC say that it appears Mr Anderson was pursuing his claim with TPAS December 2010 – June 2011 and did not progress his appeal. It was only after this office asked him to complete IDRPs that Mr Anderson submitted a complaint under IDRPs. The delay in convening the Disputes Panel from August to November was due to some staff being on leave and being unfamiliar with the procedure because the Panel had only been convened twice in the last 14 years.

Mr Anderson's representations

15. Mr Anderson says that he was not told about the problems NCC encountered from October 2011 to February 2012 in gathering medical evidence for the Board. If he had been he may have been able to help in obtaining the responses. He says that NCC and NFRS have admitted that mistakes have been made and procedures have not been followed.

Conclusions

16. The facts of the complaint are not in dispute. There have been delays in dealing with Mr Anderson's ill health pension award. When he appealed against the decision to award him a lower tier benefit, the usual process would have been for the matter to be referred to the Board. Instead, the CFO (on behalf of NFRS) reviewed the matter and proposed to award the higher tier benefit. The Scheme rules do allow NFRS to decide the level of award but, in this case, the CFO appeared to disagree with the opinion of the IQMP on medical issues. NFRS can take non-medical issues into account and pay a higher tier benefit but that is not what appears to have happened in Mr Anderson's case. It was therefore reasonable for NCC to seek legal advice to clarify the legal position, although the length of time it took to do so i.e. July to December 2010, appears disproportionate. As an aside, I also think that, since NFRS had thrown some

doubt on the IQMP's report, NCC could possibly have taken steps to clarify the report in the meantime.

17. Mr Anderson suspended his original appeal pending the outcome of the legal advice and I do not think that was an unreasonable decision. The CFO had reviewed the case and informed him that he was entitled to a higher tier ill health pension. If the legal opinion was positive, then he would have saved himself a lengthy appeal to the Board. Besides, Mr Anderson could not have anticipated that NCC would take until December 2010 to provide the legal opinion.
18. Mr Anderson did not pursue his appeal to the Board until six months later in June 2011, when he was asked by this office to complete the IDRPs with the Scheme.
19. However, the most significant delay occurred from April 2012 to April 2013 when HML were arranging for the appeal to be heard by the Board. I do not hold NCC responsible for this. Mr Anderson was in direct contact with HML during this time and I note that he was able to chase them up himself.
20. NCC acknowledges that there was a holdup in receiving medical evidence from October 2011 to February 2012. The amount of time it takes for medical practitioners to respond to requests is, to an extent, outside the control of NCC. But, I do accept Mr Anderson's point that he may have been able to assist had he been informed of the reason for the delay.
21. Overall therefore, NCC was responsible for only some of the delays experienced.
22. NCC and NFRS accept that compensation is due to Mr Anderson and the only question is how much. The higher tier benefits were backdated to Mr Anderson's retirement date. Mr Anderson believes that he should be compensated for the interest that he could have earned on the higher amount had his appeal been dealt with in a timely way. I cannot say now what Mr Anderson would have done with the extra amount he would have received each month from the higher tier benefit award. He may have saved it, or he may have spent it. But a result of the delays he was denied the opportunity to do either, until much later, and so I consider that it would be reasonable for NCC to compensate him for this by paying him interest on the amount he was due. I have set out how to calculate this in my direction below.

23. It is my view that Mr Anderson has experienced some distress and inconvenience as a result of the delays, and that NCC were responsible for some of these delays. I have taken all the circumstances of this case into account in making an appropriate direction below.

Directions

24. Within 28 days of this determination, NCC should pay £350 to Mr Anderson to compensate him for the distress and inconvenience caused to him by their omissions to follow the proper appeal process and for the delays they contributed to.
25. Within 28 days of this determination NCC should pay Mr Anderson simple interest, at the rate for the time being declared by the reference banks, on the difference between his higher and lower tier pension from the date his higher tier pension was backdated to until the date of actual payment.

Kim Parsons
Deputy Pensions Ombudsman

28 October 2014