Ombudsman's Determination

Applicant	Miss R
Scheme	Local Government Pension Scheme
Respondent	London Fire Brigade (**LFB**)

Outcome

1. I do not uphold Miss R's complaint and no further action is required by LFB.

Complaint summary

2. Miss R's complaint is that LFB has refused her ill health retirement from deferred status.

Background information, including submissions from the parties

3. Extracts from and summaries of the medical evidence are provided below and in the Appendix.

4. Miss R joined the London Fire Brigade (**LFB**) in June 1989 and became a member of the London Pension Fund Authority Pension Fund (**the Fund**), which is part of the Scheme. She was made redundant from her post of Area Administration Assistant on 19 April 2013, and became a deferred member of the Fund. Her normal retirement age is 65.

5. In March 2015, Miss R submitted her first application for the early release of her deferred pension on the grounds of ill health. The application was not successful and her subsequent complaint about the LFB's decision was not upheld by the then Deputy Pensions Ombudsman (Determination PO-12475).

6. In September 2017, Miss R submitted a new application. She was then age 57.

7. The relevant regulations are The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI2007/1166) (as amended) (the **2007 Regulations**). The 2007 Regulations were revoked by The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI2014/525). The 2007 Regulations continue to have effect so far as is necessary to preserve pension rights accrued prior to 1 April 2014.

8. As relevant, as at the date Miss R's employment ceased, Regulation 31 of the 2007 Regulations provided:

> "(1) This regulation applies to—
>
> (a) a member who has left his or her employment before he or she is entitled to the immediate payment of retirement benefits (apart from this regulation), …
>
> (2) … if a member to whom paragraph (1)(a) applies becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, the member may ask to receive payment of their retirement benefits whatever the member's age.
>
> …
>
> (4) Before determining whether to agree to a request under paragraph (2), the member's former employing authority or appropriate administering authority, as the case may be, 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 that 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.
>
> …
>
> (8) In this regulation, "gainful employment" , "IRMP" and "permanently incapable" have the same meaning as given to those expressions by regulation 20(14)."

9. 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, more likely than not, incapable until, at the earliest, the member's 65th birthday.

10. LFB referred Miss R's application to Health Management, its occupational health provider.

11. Dr Helliwell (an occupational health physician for Health Management) saw and examined Miss R. In his May 2018 report, Dr Helliwell gave his opinion that Miss R was permanently incapable of her former duties with LFB and was not capable of gainful employment for at least three years. Dr Helliwell asked Dr El-Nagieb at Health Management:

> "I would be grateful if you could appoint an appropriate doctor to make a decision under LGPS who is registered for London Fire Brigade purposes. I would be happy to answer any additional questions about the case if you wish to call me, and in addition my clinical records will be made available to you."

12. Health Management referred Miss R's case to an independent registered medical practitioner (**IRMP**) for the LFB, Dr Wallington (Consultant Occupational Health Physician).

13. In July 2018, Dr Wallington gave his certified opinion that Miss R was not permanently incapable of discharging efficiently the duties of her former employment with LFB.[1]

14. LFB accepted Dr Wallington's advice and turned down Miss R's application.

15. In October 2018, Miss R appealed the decision, invoking the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). In summary, Miss R said:-

    - She had difficulty sitting in the bath and could not stand for long when showering.
    - She could not run or walk fast.
    - She used a walking stick for balance.
    - She was unable to travel by air, rail, and sea or go on long car journeys due to swelling.
    - She could not carry heavy shopping bags or walk up or downstairs.
    - She was unable to walk for more than 30 minutes as she started to feel pain in her feet.
    - She was unable to take public transport due to her balance and unstable feet.
    - Her previous GP (Dr Pai) had informed her that she had permanent nerve damage in both feet, and she would often have ankle problems.
    - Her ankle and foot problems affected her knees, calves and thighs.
    - She had been to job interviews and assessments but had been unsuccessful due to her foot problems being considered a health and safety hazard.

16. Miss R submitted no new medical evidence with her appeal.

17. Miss R's appeal was not upheld. The Stage One decision-maker said:

    "I am satisfied that Dr Wallington is an Independent Registered Medical Practitioner (IRMP) within the definition set out in the LGPS.

    I note that the letters that you have provided from Dr James, D Mahdi-Rogers, Dr Pai and Mr Karolia, in support of your IDRP stage 1 appeal, had previously been submitted by you in support of your application for release of your

[1] A summary of and extracts from Dr Wallington's report and other medical evidence relating to Miss R's case is provided in the Appendix.

deferred pension benefits and therefore this information has already been considered by Dr Wallington.

I am satisfied that Dr Wallington was entitled to reach the conclusion that he did with regard to your capability for work - ie that on a balance of probabilities, you are not permanently incapable of discharging efficiently the duties of your former employment as a clerical officer.

The fact that you have not been successful in your applications for alternative work, is not relevant to the question of whether or not you are permanently incapable of discharging efficiently the duties of your former employment."

18. In error, the Stage One decision-maker referenced regulation 20[2] rather than regulation 31 of the 2007 Regulations in their decision.

19. In June 2019, Miss R submitted a Stage Two appeal. In summary, Miss R said:

- She had serious and permanent nerve damage to both feet, a right ankle injury and a soft tissue injury on her left foot. She was unable to balance when standing still for long and had to use a stick when walking. She was unable to walk for longer than 30 minutes.

- She had continuous pain in her feet, especially the right ankle, and continuous knee and calf pain.

- Her washing and dressing routine had slowed down. She had to do things slowly because she was not being able balance and poor mobility.

- She struggled most walking on wet and icy surfaces. Since moving she was unable to use public transport due to her poor and slow mobility. She took taxis everywhere.

- At times she depended on neighbours to help her at home.

- Climbing stairs was dangerous due to not being able to balance and her severe disability and injury.

- A podiatrist had to cut her toenails and callouses at home.

20. As part of her appeal, Miss R submitted letters from Mr Tulwa (Consultant Orthopaedic Surgeon) dated, 15 and 25 April and 8 May 2019, a letter from Dr Barnsley (GP) dated 21 May 2019 and an appointment letter from an Orthotics Clinic dated 28 May 2019.

[2] Regulation 20 provides for ill health early retirement from active status. Nonetheless, under both regulation 20 and regulation 31 the first part of the two-part test for ill health retirement is that the member is deemed permanently incapable of efficiently discharging the duties of their employment. So, the Stage One decision-maker's error did not affect the outcome.

21. Miss R's appeal was not upheld. The Stage Two decision-maker said:

> "In reaching my decision, I believe the outcome of your stage 1 IDRP appeal was correct In view of the medical evidence provided at the time and the regulations regarding ill health retirement.
>
> I have looked at the new medical evidence supplied to ascertain whether this changes the decision.
>
> In particular, I refer to the correspondence from Dr Barnsley which states 'it would be reasonable to conclude that this lady would not be able to carry out employment which was physically demanding'. However, this does not meet the requirement for LGPS regulation 5[3]."

22. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Miss R and LFB made further submissions that have been summarised below.

Miss R's position

23. Miss R submits:-

- She has suffered financial loss since July 2016 due to torn ligaments and bilateral nerve damage. She is unable to walk steadily and balance her feet.
- Her feet problems started in 2014. Her feet continue to give her severe pain and have reduced her mobility. She wears a special boot and cannot walk without the aid of a stick and not for more than 20 minutes before her feet start hurting.
- She had to sell her house and relocate as she could not afford the mortgage repayments. She moved to a bungalow as she cannot manage stairs.
- She was receiving Universal Credit and a Personal Independence Payment (**PIP**), which did not cover her cost of living.
- She has only been able to obtain temporary employment since her redundancy and suffered depression for a short time.
- The Stage Two decision-maker did not look carefully at the medical reports from her previous and current doctors. He did not see her and does not have medical knowledge.
- Her present doctors have informed her that her condition will worsen as she gets older. She has been advised against surgery.
- She has come to live with the pain and refuses to take any drugs.

[3] Again, as per the Stage One decision-maker, the incorrect regulation was referenced. That is regulation 20, rather than regulation 31. Nonetheless, the first part of the two-part test under both regulations is the same. So, the error did not affect the outcome.

24. Commenting on LFB's submissions (see paragraph 28 below), Miss R submits:-

- She disagrees with LFB's formal response to TPO. If LFB want her to see Health Management again she is willing to do so.
- Dr Halliwell saw and examined her. Dr Wallington did not. How could Dr Wallington give his opinion not having seen the condition of her feet?
- Her mobility is so poor she cannot use public transport. She has to rely on a friend or a taxi to travel.
- Her feet will never recover. She may need a walking aid or a wheelchair for future use.

LFB's position

25. LFB submits:-

- In making the decision to refuse Miss R the early release of her deferred pension on the grounds of ill health consideration was given to both the IRMP's opinion and the medical evidence submitted by Miss R from her own treating doctors. While the latter confirms the pain and discomfort caused by her condition, it does not evidence that she is permanently incapable of discharging the duties of her former role. In May 2019, Mr Tulwa recommended that Miss R's condition would be best managed by "appropriate footwear that adapts to the shape of the foot". The same month, Dr Barnsley found that "it would be reasonable to conclude that this lady would not be able to carry out employment which was physically demanding". So, it was duly determined that Miss R was not permanently incapable of efficiently discharging her former duties.
- The decision was taken having followed the correct statutory process, taking account of relevant factors only (with irrelevant factors disregarded).
- Miss R's complaint bears negligible, if any, material distinction from her first complaint, which the Deputy Pensions Ombudsman determined in its favour (see paragraph 8 above). As such, it is vexatious and has little prospect of being successfully upheld.
- The decision does not preclude Miss R from claiming her pension on a reduced basis.

Adjudicator's Opinion

26. Miss R's complaint was considered by one of our Adjudicators who concluded that no further action was required by LFB. The Adjudicator's findings are set out below in paragraphs 27 to 49.

27. Firstly, Miss R had submitted medical evidence pertaining to her current health. The Adjudicator said he had set this aside as it was not available to LFB and post-dated LFB's initial decision (on Miss R's September 2017 application) and its decisions under the IDRP.

28. Members' entitlements to benefits when taking early retirement due to ill health were determined by the scheme rules or regulations. The scheme rules or regulations determine the circumstances in which members were eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.

29. In Miss R's case, the relevant regulation was Regulation 31 of the 2007 Regulations. Under Regulation 31, to qualify for a pension, Miss R had to be deemed, on a balance of probabilities, permanently incapable of discharging efficiently the duties of her former employment at LFB because of ill-health or infirmity of mind or body, and, if so, have a reduced likelihood of being capable of any gainful employment before her NRA or for at least three years, if sooner. If Miss R met the criteria the decision to award the early release of her pension was at LFB's discretion.

30. Before making its decision, LFB was required to obtain a certificate from an IRMP. The IRMP was required to give an opinion on whether the member met the test under Regulation 31. LFB was not, however, bound by the IRMP's opinion and was expected to come to a decision of its own.

31. In coming to its decision, LFB was expected to consider all of the relevant information which was available to it. However, the weight which it attached to any of the evidence was for LFB to decide, including giving some of it little or no weight. It was open to LFB to accept the advice it received from the IRMP; unless there was good reason why it should not do so, or should not do so without seeking clarification. The Adjudicator said the kind of things he had in mind were errors or omissions of fact, or a misunderstanding of the 2007 Regulations on the part of the IRMP.

32. While LFB was expected to review the medical evidence, including the IRMP's opinion, it could only do so from a lay perspective. It would not be expected to query a medical opinion. If, however, the IRMP's opinion differed significantly from the views expressed by the member's own doctors, LFB should seek an explanation; if one had not already been given.

33. The Adjudicator said he had examined the medical evidence that Miss R submitted in relation to her application at that time. In chronological order, Dr Pai (GP) said, in an open letter dated 15 March 2017 for consideration for a PIP, that he considered Miss R was not currently in a fit state to work.

34. Dr Mahdi-Rogers (Consultant Neurologist) commented, in a referral assessment dated 5 September 2017, that Miss R had mild problems with her ankles and was prone to falls. He recommended that Miss R try an ankle-foot brace.

35. In November 2017, Mr James (Consultant Foot and Ankle Surgeon) said, in a letter to Miss R, that there was no doubt that she was struggling in terms of her daily function and her weakness with HMSN (Charcot-Marie-Tooth disease) was likely to be ongoing for the foreseeable future. Mr James said he had arranged to have some orthotics made for Miss R.

36. In an open letter, dated 24 April 2018, Mr Karolia (Podiatrist) observed that Miss R had painful bilateral pes cavus foot with limited ankle movement, generally walking was difficult and painful and she had to use a stick, and standing for periods of time caused pain and balance problems. Mr Karolia said the long-term treatment would be modified footwear with orthosis.

37. None of these documents commented on Miss R's ability to discharge her former role with LFB.

38. Prior to the referral of Miss R's application to an IRMP, Dr Helliwell (a Health Management occupational physician) was asked for his view. Dr Helliwell examined Miss R and after considering the medical evidence gave his opinion that Miss R was permanently incapable of her former role with LFB as she was not capable of sitting or standing for a prolonged period of time.

39. Following due process, Miss R's application was referred to an IRMP. Dr Wallington noted, Miss R's former clerical role with LFB, the criteria for the early release of a deferred pension on the grounds of ill health under the 2007 Regulations, and considered the medical evidence, including Dr Helliwell's report.

40. Referring to the medical evidence, Dr Wallington noted that the reports from Miss R's GP and Specialists confirmed her foot condition but made no reference to her ability to work in a sedentary role. Commenting on Dr Helliwell's report, Dr Wallington said while Dr Helliwell considered that Miss R was unfit for her previous role, he had not explained his reasons why Miss R was incapable of a sedentary role with reference to her medical condition.

41. Dr Wallington accepted that Miss R suffered from foot problems and Charcot Marrie Tooth but found no evidence that she had been receiving any form of analgesic medication or that she had been referred to a pain management clinic.

42. Dr Wallington said he could find no contemporaneous evidence that Miss R was medically incapable of a sedentary or semi sedentary role and while he agreed with Dr Helliwell that the Equality Act was likely to apply to her case, he considered that reasonable adjustments would have enabled Miss R to continue in her former role. Dr Wallington added that he could find no evidence that Miss R was incapable of sitting. For these reasons, Dr Wallington certified that Miss R was not permanently incapable of her former role with the LFB.

43. LFB duly issued its decision turning down Miss R's application for the early release of her deferred pension on grounds of ill health.

44. Miss R had queried how Dr Wallington could give his opinion without seeing and examining her. Dr Wallington was an expert on occupational health. It was for him to decide whether he required a consultation with Miss R. Clearly, he considered the medical evidence was sufficient to make his assessment.

45. It should also be noted that a difference of medical opinion between doctors (in this case Dr Helliwell and Dr Wallington) was not sufficient for the Ombudsman to say that LFB's acceptance of Dr Wallington's opinion meant that its decision was not properly made.

46. As part of her Stage Two IDRP appeal, Miss R submitted letters from Dr Tulwa (Consultant Orthopaedic Surgeon) dated, 15 and 25 April and 8 May 2019, a letter from Dr Barnsley (GP) dated 21 May 2019 and an appointment letter from an Orthotics Clinic dated 28 May 2019. Again, none of these commented on Miss R's ability to discharge her former role with LFB.

47. The Adjudicator noted that Miss R was in receipt of a PIP at the time of her application. The criteria for a PIP were less stringent than the criteria for the early release of Miss R's deferred pension on the grounds of ill health under the 2007 Regulations.

48. While the Adjudicator empathised with Miss R and understood that she would find it very disappointing, his view was that there were no grounds on which the Ombudsman would require LFB to consider again Miss R's September 2017 application for ill health retirement.

49. The Adjudicator said if Miss R considered that her condition / health had worsened, she may submit a new application to the LFB for the early release of her pension on the grounds of ill health.

50. Miss R did not accept the Adjudicator's Opinion and the complaint was passed to me consider. Miss R has provided her further comments which do not change the outcome, I agree with the Adjudicator's Opinion and note the additional points raised by Miss R.

Ombudsman's decision

51. Miss R asks why the Adjudicator went back to her September 2017 application. She says:-

- The Adjudicator did not seem to realise how bad the condition of her feet is due to her disability with Pes Cavus.
- Her mobility issues are life changing. Dr Tulwa said her feet would worsen with age and she is getting to that stage.
- She is unable to use public transport as she cannot climb stairs and she cannot walk for long as her balance is very poor. She has to use taxis to go shopping, or

order online shopping when she is unable to walk, especially when weather conditions are wet or icy.

- Her health has worsened. She has high blood pressure due to a stroke in 2023 and has to be careful with her heart condition.

52. The complaint accepted for investigation pertains to Miss R's application for ill health retirement in September 2017. So, the Adjudicator could only consider (from a lay perspective) the medical evidence that was available to LFB at the time of its initial decision and its decisions at Stage One and Two of the IDRP. Hence, why the Adjudicator set aside medical evidence concerning Miss R's current health post September 2017.

53. While I really empathise with Miss S concerning her current state of health, the matter for me to decide is whether LFB properly considered her application for ill health retirement.

54. I have considered the relevant evidence, including the medical evidence pertaining to Miss R's condition at the time she applied and appealed for ill health retirement, and for the same reasons as given by the Adjudicator (see paragraphs 29 to 47 above), I find that LFB's acceptance of Dr Wallington's certified opinion, having considered all relevant factors and having ignored irrelevant ones, meant that its decision not to award Miss R ill health retirement was reached in a proper manner.

55. As the Adjudicator explained, Miss R may submit a new application to LFB for the early release of her deferred pension on the grounds of ill health. This will consider Miss R's current health.

56. I do not uphold Miss R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
26 July 2024

Appendix

Medical evidence

Dr Pai (GP), 15 March 2017

1. In an open letter outlining Miss R's medical circumstances for consideration for a PIP, Dr Pai said:

> "[Ms R] is 57 years old and has been experiencing long-standing problems with bilateral ankle pain and instability. So far she has had an MRI scan of her ankle and foot which shows osteoarthritis and tendonitis in both feet and ankles. More importantly her feet are very small for her height and she is currently being investigated by specialists at … hospital for the possibility of congenital foot deformity. The size and deformity of her feet make her prone to ankle and foot pain, ankle instability falls and recurrent soft tissue swelling and injuries around the foot and ankle. She is very limited in her walking distances and often finds it difficult to walk and balance herself. She is under the care of physiotherapy and she is also under an orthopaedic surgeon and neurologist and is awaiting further appointments.
>
> Given the above problems I don't think that she is currently in a fit state to work and her limited poor mobility is affecting her mental state and she is feeling anxious and depressed about it…"

Dr Mahdi-Rogers (Consultant Neurologist), 5 September 2017

2. In a referral assessment, Dr Mahdi- Rogers said:

> "…[Miss R] has a clinical assessment of neurophysiology (demyelination) consistent with Charcot Marie Toot Disease Type 1. Her identical twin has the same problem.
>
> She has mild problems with her ankles since childhood and prone to falls. She has seen orthopaedic surgeons about the cavo-varus deformity in her ankles but opted for conservative management. She was a high[-]top trainer, which has been modified by orthotics. She has seen [a] physiotherapist.
>
> Apart from the cavo-varus deformity of her ankles, there was a mild weakness of ankle dorsiflexion and impaired vibration at her toes.
>
> I thought her ankles needed more stability so I recommended she tried the…Ankle-Foot brace.
>
> …requested genetics for PMP22 gene deletion…
>
> Her BP was 182/113 today. I suggest her GP monitor this and manage accordingly.
>
> I have discharged her from this clinic but happy to see her again if needed."

Mr James (Consultant Foot and Ankle Surgeon) November 2017

3. Following a clinic appointment on 31 October 2017, in a letter to Miss R completed on 15 November 2017, Mr James said:

> "…The comments I made were a generalisation in terms of how you had been; however, it would appear that I have underestimated the real disability that you are currently suffering with. There is no doubt that you are struggling in terms of your daily function and, because of the weakness you have with your "HMSN[4]", a neurological condition that gives rise to weakness, it is very likely that this will be ongoing for the foreseeable future. I have arranged for you to have some orthotics made for you, but currently we would rather not head down the route of surgery…
>
> …
>
> As you are aware, also a neurologist, [Dr Mahdi-Rogers], has also suggested too that he does not think surgery is in your best interest."

Mr Karolia (Podiatrist), 24 April 2018

4. In an open letter Mr Karolia said:

> "[Miss R] presented herself…and the following was observed;
>
> Painful Bilateral pes Cavus foot with limited ankle dorsiflexion and plantarflexion and any movement palpation causes pain.
>
> Both feet Hallux is in a trigger position and is non-weight bearing position. There is a heavy bilateral callus on the 5th MPJ and lack of fibrofatty padding. Both heels are inverted.
>
> On examination of her gait it was evident that the restriction in joint movement has altered her normal gait pattern hence she walks in a wobble fashion…
>
> Generally walking is difficult for her as its painful and has to walk with a walking aid. [Miss R] also finds it difficult standing for periods of time as it causes pain and is unable to balance. Any pressure to the ankle causes pain. Her lower muscle strength seems to be fairly weak which is also contributing to abnormal gait.
>
> At some point it might be advisable to have a weight bearing x-ray to see the congruity of the foot joints.
>
> Long term treatment would be modified footwear with orthosis."

[4] Hereditary motor and sensory neuropathy. Also known as Charcot-Marie-Tooth disease.

Dr Helliwell, (Health Management, Occupational Health Physician), 11 May 2018

5. In a report to Dr El-Nagieb of Health Management, Dr Helliwell said:

> "Thank you for asking me to assess this former employee of the London Fire Brigade. Specifically I was instructed to not be the decision maker, but rather to provide information that would assist another in the organisation to make a decision with regard to LGPS. You will be aware that I am registered with a wide range of other authorities for LGPS services.
>
> …I have seen documentation that relates to [Miss R's] former application in 2015, and the subsequent [IDRP]. I have not considered these as part of the process, but have relied instead on [Miss R's] statement and, reports from her treating specialists and podiatrist, together with her GP. I have taken the opportunity to medically examine her…In terms of the written submissions of medical evidence, there is an update medical report which comes from Mr Jones in the musculoskeletal clinic dated 31/10/2017. There is a report dated 05/09/2017 from a treating urologist, and from her podiatrist…dated 24/04/2018. There is also a report from her GP where the primary purpose was to give evidence for her [PIP] – I understand she has been successful in obtaining this.
>
> …From examination she looks to have had 'club feet' present from when she was born, this was not treated. This has then started to put pressure on parts of her foot which should not have had that sort of pressure. The end result is that she has nerve damage, and potential bone deformity which relate to this condition. The diagnosis is of Charcot Marie Toot – specifically type 1.
>
> She continues to follow the medical advice that she needs to walk a little bit, sit a little bits [sic] and not do anything for prolonged periods of time. She has deliberately downsized house, and moved to a single level…She is not currently in receipt of fit notes, but is in receipt of PIP benefits.
>
> If she were a continuing employee under LGPS, I would need to consider whether she met the criteria of 'gainful employment'…My opinion is that she is not fit for this degree of work. However, in this situation you will need to consider whether she meets the criteria for permanent ill-health for payment of her pension benefits. She is in my opinion permanently incapable of the job that she formerly undertook with the Brigade – she undertook an administrative role in an office environment. She is not capable of sitting or standing for a prolonged period of time, which is required in this type of role. In my opinion she is unlikely to be capable of any gainful employment within three years of applying for the benefit…her normal pension age is later, and so the test should be for a three year period following the application.
>
> In considering the Equality Act, she likely would be a disabled person, however I cannot envisage any potential adjustments which would enable her back into the work place. I think it is unlikely that she is going to re-enter the labour force.

I would be grateful if you could appoint an appropriate doctor to make a decision under LGPS who is registered for London Fire Brigade purposes. I would be happy to answer any additional questions about the case if you wish to call me, and in addition my clinical records will be made available to you."

Dr Wallington (IRMP), 4 July 2018

6. Dr Wallington noted:-

- The criteria for the early release of a deferred pension on the grounds of ill health.

- The medical evidence considered. Namely: occupational health and GP records which together contained reports from treating specialists, and Dr Helliwell's report of 11 May 2018.

- Miss R held a clerical officer role with LFB until her position was made redundant. She had previously worked in an administrative role for the GLC and as a civil servant for two years with the Food Standards Agency. Since being made redundant by LFB she had held a number of temporary posts in administrative /clerical roles. Currently she was unemployed.

7. Under 'Background to the case', Dr Wallington said:

"[Miss R] has a longstanding history since childhood of a bilateral foot condition (query clubbed foot) which was untreated. She has more recently been diagnosed with Charcot Marie Tooth Disorder Type 1 on genotyping.

In her application for the early release of deferred pension benefits, she cites that she is unable to work because of "excruciating pain 24 hours a day" and an inability to walk for more than 30 minutes before needing to sit down.

I note that she is able to use public transport but uses taxis for longer journeys and to attend medical appointments. She also cited that she was unable to fly due to ankle swelling and bruises.

I note that her previous application for the release of deferred pension benefits was rejected as it was considered that she was capable of a semi sedentary role with adjustments as necessary.

I have considered reports from her GP and specialists who have assessed her while she lived in London. These confirm her foot condition but make no reference to her ability to work in a sedentary role.

I have also considered a more contemporaneous report from a consultant occupational physician Dr Helliwell dated 11/05/2018. This rehearses the medical information regarding her feet. Dr Helliwell went on to consider that she was unfit for her previous role and considered that she is unfit for work for 30 hours per week.

However this report does not explain his reasons as to why she is incapable of a sedentary role with reference to her medical condition."

8. Under 'Opinion', Dr Wallington said:

"There is no doubt that [Miss R] suffers from bilateral foot problems and Charcot Marie Tooth Type 1.

This reportedly causes her excruciating pain but I can find no contemporaneous evidence in the GP records that she is receiving any form of analgesic medication and neither has she been referred to a pain clinic for management of her pain. If pain is the limiting factor to her employment I would expect this level of treatment to be provided to her with every expectation of it allowing her to work in a sedentary role.

I can find no contemporaneous evidence as to why she is medically incapable of a sedentary or even semi sedentary job where she can alter her position at will.

Whilst I agree with Dr Helliwell that the Equality Act is likely to apply in her case, I consider that reasonable adjustments would have enabled her to have continued with her work with LFB if it had been available as it was a largely sedentary role. I can find no evidence that she is incapable of sitting as would be required in an administrative role.

In terms of her mobility I note that she is able to walk for 30mins before needing to sit down. This would be entirely appropriate in an administrative type role where the ability to walk is not a major requirement. In addition facilities such as the Access to Work programme are likely to be able to provide assistance if her ability to travel was the only issue in her ability to work.

There is no evidence that I have reviewed which indicates that [Miss R] is incapable because of a medical condition affecting her feet from her being able to perform a clerical based semi sedentary role where she can alter her posture at will.

I am unaware of any other chronic medical conditions which would permanently disable her from performing an administrative type role for the required 30 hours per week.

In conclusion therefore I consider she does not meet the medical criteria for the early release of pension benefits and have completed the necessary certification as required of me."

Dr Tulwa (Consultant Orthopaedic Surgeon), letter to GP, 15 April 2019

9. "**Impression:**

This lady has got a problematic foot. She has got Charcot Marie Tooth leading to the deformed foot and on top of that she has got arthritis in the ankle and mid-foot.

Plan:

She has been referred with a view to consider surgery. I know that her usual role is a ward clerk. I explained to [Miss R] that surgery is not an option here. She has got a fairly small foot and we could offer her fusion of her ankle and mid-foot which would make her foot even smaller. The joints are already stiff any way. She would be best managed by appropriate surgical footwear and custom made shoes or boots…[Miss R] had some discussion and some queries regarding her employment ability. I have explained that I am seeing her as a foot and ankle surgeon and not as an employment doctor. However, I can comment that her condition is something that is permanent and is genetically linked. This has certainly led her to have this foot condition. He arthritis, which is noted on the MRI scan, is also something that will make matters worse.

Overall, the current condition is highly unlikely to get any better at all and it is possible that it will worsen over the course of time but it is highly unlikely that it will be in a position where the current functional limitation is improved on."

Dr Tulwa, letter to Miss R, 25 April 2019

10. "Further to my review of your case I have noted that all the investigations that we have relate to your left ankle. In fact, your GP letter indicates that there is a problem with your left ankle. However, when you attended you indicated that it was your right ankle causing a problem. Based on all this I think it would be sensible to get some updated imaging of your right ankle and foot. I have therefore requested for an x-ray of your right ankle and right foot to be carried out. You should get an appointment to attend…for that."

Dr Tulwa, letter to GP, 8 May 2019

11. "[Miss R] complained about ongoing pain in her right ankle which had all the features of Charcot Marie Tooth when assessed clinically. Her x-rays confirm the deformity secondary to the condition. She has got a pronounced cavus foot with deformity of her toes as well…

…Correction of a deformity would involve a fairly significant mid-foot osteotomy leaving her with a smaller foot which will still be stiff. She does not have any significant plantar callosities and on that basis surgery is not advisable and does not balance regarding risks and benefits. My advice is that this condition is permanent and any surgical attempt to correct it has got some significant risk. It should be best managed by appropriate footwear that adapts to the shape of the foot."

Dr Barnsley (GP), letter to HR Employment Relation (LFB), 21 May 2019

12. "I have been asked by [Miss R] to provide a letter regarding her ongoing medical condition and how this may affect her ability to undertake employment.

In 2014 this lady developed a complex left foot and ankle condition following a mechanical fall. Since then she has been under the care of the orthopaedic

department in…[Miss R] states she has difficulty walking and climbing stairs due to pain when weight bearing thus making her mobility somewhat limited.

An MRI taken in 2017 revealed moderate arthritis affecting the ankle joint and the talonavicular joint. She was later confirmed as having Charcot Marie Tooth leading to the deformed foot.

[Miss R] was reviewed in April of this year by Mr Tulwa (Consultant Orthopaedic Surgeon)…Mr Tulwa advised that due to the nature of her condition it is highly unlikely to improve, if anything it may get worse over time. He also stated that surgery was not an option…

Taking into account the complexity of this lady's condition and the information provided by Mr Tulwa then it would be reasonable to conclude that this lady would not be able to carry out employment which was physically demanding."