

Ombudsman's Determination

Applicant	Miss N
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	North Tyneside Council (the Council) Stephenson Memorial Primary School (the School)

Outcome

1. I do not uphold Miss N's complaint and no further action is required by the Council and the School.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss N's complaint against the School and the Council is that its review of the original decision not to backdate her ill health retirement pension, (IHRP), to 30 November 2010 when she left her employment with the Council, was flawed.

Background information, including submissions from the parties

4. The Deputy Pensions Ombudsman issued her determination on 31 October 2014 and directed the School to reconsider Miss N's application and then decide whether or not she satisfied the criteria under regulation 20 of 2007 Regulations. In reaching its decision the School must comply with the Administration Regulations.
5. On 17 November 2014, the Council sent a letter to Miss N informing her that it would request a new independent registered medical practitioner, (IRMP), to consider her eligibility as at 30 November 2010. It enclosed a consent form for Miss N to complete and return to the Council.
6. Miss N wrote to the School raising a query with regard to her COT3 agreement. She said:

"Should the outcome be that I have qualified for ill health retirement as at 30 November 2010, would it be at all possible to repay the COT3 payment from the resulting lump sum? I realise this would be from the Pension Fund and

that my permission would be required to allow this money to be repaid directly to School.”

7. On 11 December 2014, the School responded to Miss N in relation to her query saying:

“The direction from the Ombudsman is clear and provides that if the reason for your employment ending could have been through ill health, then the payment of resulting benefits will be made subject to you repaying the sum received under the COT3 agreement...there is no legal way in which we could guarantee this, so therefore we don’t believe that we could agree to have the monies paid back after the pension lump sum has been paid to you”.

8. On 11 December 2014, Dr Czekaj from Occupational Health wrote a report saying:

“In my opinion, Miss N meets the medical criteria for early ill health retirement at the higher tier because on the balance of probabilities she is likely to be unfit to undertake the duties of her own post in the future”.

9. Dr Czekaj attached a certificate confirming this was in line with regulation 20 of the Scheme rules.

10. The School sent Miss N an undated letter that informed her that it is currently awaiting further clarification with regard to the report from Dr Czekaj.

11. On 19 December 2014, the School sent an email to Dr Czekaj seeking additional clarity surrounding the information she has used to form her opinion. The email said:

“In your report you have advised that you have taken into account more recent information, and also referred to reports from consultants dated 9.11.2011 and 17.05.2011. In addition to this you have also referred to the fact that Miss N is currently in receipt of her ill health pension on deferred grounds...Please can you clarify that you have not used any information that is dated or available after the 30th November 2010?”

12. On 8 January 2015, Dr Czekaj responded to the School’s email saying:

“...I can confirm that I did read all the medical information provided. I put the reports from consultants dated 09.11.2011 and 17.05.2011 in my reviewing notes as they both indicated condition’ [sic] progress”.

13. On 23 January 2015, Miss N raised her concerns with the School. She wanted to know why the School was seeking clarification from the IRMP with regard to her report when she has already issued an opinion.

14. On 30 January 2015, the School sent a letter to Miss N addressing her concerns. It said:

“The IRMP report provides a medical opinion as to whether you are permanently unfit from your local government employment. It does not confirm

that your pension should be released as this decision is made by the School, after considering all of the information available to them...The School has asked for clarification that the IRMP has used only information that was available prior to the 30th November 2010. As you have had a copy of the report dated 11th December 2014, you will be aware that they have made reference to reports dated post November 2010”.

15. On 4 February 2015, HR Manager wrote to Miss N acknowledging her comments and apologising that the process was causing Miss N anxiety.
16. On 5 February 2015, Miss N wrote a letter to HR Manager saying that in her view Dr Czekaj based her opinion on the medical evidence available prior to 30 November 2010.
17. On 16 February 2015, a new IRMP, Dr Blatchford was instructed by the School to provide her medical opinion including a certificate.
18. Dr Blatchford’s report said:

“In my opinion, at the date of 30/11/2010 Miss N could not be considered, on the balance of probabilities, to be permanently disabled for the role of a Teaching Assistant...In reaching this opinion I have considered only the medical evidence that would have been available at 30th November 2010”.
19. On 24 March 2015, the School sent a letter with a decision to Miss N saying:

“...even with the benefit of hindsight there were numerous treatments outstanding that would have resulted in a likely return to work...I confirm as your employer representative, I have made a decision, on the balance of probability, that you do not meet the criteria set down in the Pension Regulations and therefore your pension will not be released as of 30 November 2010”.
20. On 27 March 2015, Miss N appealed against the decision and wanted to invoke the two-stage internal dispute resolution procedure, (IDRP).
21. On 1 April 2015, the Council sent a letter to Miss N informing her that the Deputy Pensions Ombudsman represents the final stage of the complaints process.
22. Miss N contacted the Pensions Ombudsman Office, (TPO), to express her dissatisfaction about the way the review of her IHRP was conducted. A senior adjudicator at TPO subsequently sent an email to the School saying:

“Obviously her original complaint has gone through the IDRP but her complaint about how the review was undertaken has not. Miss N’s complaint is now about how the review was undertaken rather than the initial decisions taken in 2010/11. This latest complaint is therefore a completely different issue to the previous one, albeit on the same subject matter...As a result, the latest complaint should go through the Scheme’s IDRP”.

23. On 10 June 2015, the School sent a letter to Miss N saying:

“...we are agreeable for this to be dealt with through the IDRP...Our HR provider has arranged for a named person to assess your concerns (as per Step 1 of the appeals process) relating to the review of your pension determination...”

24. On 23 June 2015, Miss N provided her comments to the School.

25. On 13 August 2015, the School sent Miss N a response under IDRP stage 1 that said:

“I have as the employer representative reviewed the information provided and confirm my agreement that the review in question was undertaken appropriately by the School in line with the directions outlined in the Ombudsman’s report from October 2014”.

26. On 19 August 2015, the School sent a letter to Miss N informing her of her right to consider stage 2 of the IDRP.

27. On 8 January 2016, the Council sent a letter under IDRP stage 2 to Miss N stating that it had extensively reviewed the process and addressed her concerns.

28. On 7 February 2016, Miss N brought the complaint to the TPO.

29. On 10 March 2016, the TPO received a formal response from the School that said:

“Having considered your case in detail...I find that the School has followed a lawful procedure in making their decision and made a decision which I cannot consider to be perverse. For this reason, I hereby dismiss your appeal”.

Miss N’s position:

30. The injustice found by the Deputy Pensions Ombudsman in her determination of 31 October 2014 has not been corrected.

31. Miss N is unhappy with the way the School has undertaken its review.

32. Both Dr Stuckey and Dr Czekaj have confirmed that she meets the criteria for IHRP at the higher tier.

33. The School is ‘cherry picking’ a more favourable option for themselves.

34. Too many HR advisors have been involved in her case.

The School's position:

35. The review process was conducted in accordance with the directions which were given by the Deputy Pensions Ombudsman in her determination.
36. There was no reason to question Dr Blatchford's report as she gave her opinion based on all the available medical as at 30 November 2010.
37. The School did not value one professional opinion over another but arrived at the decision with no flaws.
38. The fact that Dr Blatchford's medical opinion is different to Dr Czekaj's, does not mean it is incorrect.

Adjudicator's Opinion

39. Miss N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council or the School. The Adjudicator's findings are summarised briefly below.
 - It was the Adjudicator's view that the School has not reached another perverse decision following its review of its original decision.
 - The School has followed the Deputy Ombudsman's directions correctly by nominating a new IRMP, Dr Czekaj, who had no prior involvement in the case. However, the School recognised that Dr Czekaj made reference to reports post-dated 30 November 2010, which was incorrect. So the Adjudicator's view was that the School acted reasonably in nominating another independent IRMP, Dr Blatchford who had no prior involvement with Miss N's case.
 - It was the Adjudicator's view that it is clear from Dr Blatchford's medical report that it considered all Miss N's medical evidence and she has found no significant flaws by the School during its review process to justify remitting the matter back for another reconsideration.
 - It is not for this Office to reach its own decision on Miss N's suitability for an IHRP. However, the School needed to consider the case again in line with the Scheme Regulations and properly explain why her application either can or cannot be approved.
 - Miss N has commented that too many HR advisors were involved in the decision making process. However, the number of advisors involved in Miss N's IHRP application has no relevance to the outcome.
 - The Adjudicator also noted that the School has responded to Miss N's questions throughout the process and apologised for any delays caused.

- The Adjudicator appreciated that the School's decision may not be satisfactory to Miss N. However, Dr Blatchford and subsequently the School had considered Miss N's entitlement to an IHRP at the date she left her employment correctly.
 - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
40. Miss N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Miss N for completeness.
41. Most of Miss N's comments refer to the events prior to the Pensions Ombudsman's determination dated 31 October 2014. I can only consider Miss N's comments relating to the events post determination.
42. Miss N contests that Dr Blatchford did not appear to understand her complex condition. She says that Dr Blatchford completely reversed the decision of Dr Czekaj.
43. Miss N also referred to her discovery of a recent report of a Random Controlled Trial, completed in 2011, that considers the effectiveness of treatments on other patients suffering from chronic fatigue syndrome.

Ombudsman's decision

44. As stated by the Adjudicator in her Opinion, Dr Blatchford's report had no flaws. I have not seen any evidence to show otherwise. Dr Czekaj's report referred to reports prepared subsequent to the relevant date, 30 November 2010, so her opinion took into account irrelevant evidence, so it could not be relied upon. I disagree with Miss N's assertion that Dr Blatchford did not understand her condition.
45. Miss N has referred to a report of a Random Controlled Trial that she thinks may have a bearing on her case. However, this is new evidence which has not been previously considered by the Council so Miss N will need to raise this directly with the Council first before the matter is considered by TPO.
46. Therefore, I do not uphold Miss N's complaint.

Anthony Arter

Pensions Ombudsman
26 July 2017