

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Police Pension Scheme ( <b>the Scheme</b> )
Respondents	Thames Valley Police ( <b>TVP</b> )

## Outcome

1. Mrs N's complaint against TVP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) TVP should pay £1,000 to Mrs N.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N complains that TVP, her employer, misled her about her ill health retirement (**IHR**) rights under the Scheme, and she relied on it to her detriment.

## Background information, including submissions from the parties

4. Mrs N joined TVP on 16 May 1988.
5. On 17 February 2014, Mrs N emailed TVP and said:

“I have never considered medical retirement and have no idea whether my case could be considered for this route, in any event I cannot continue to work due to the pain. I am seeking to retire by the 31st May 2014...I would be grateful if you could let me know who I should write to...whether my case is one which could be looked at in terms of medical retirement...”.
6. TVP replied the same day, saying that she could apply for medical retirement but the process could take months. TVP suggested that Mrs N should contact the Police Federation (**the Federation**) for advice. Mrs N responded that she had contacted the Federation.

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7. On 23 February 2014, Mrs N sent an email to Occupational Health, informing it of her intention to retire on the grounds of ill health. She said:

“Just to let you know that I have given notice of my intention to retire from TVP and will be seeking medical retirement in the first instance. My back pain has become considerably worse and the daily agony of the pain is not compatible with having to work or drive”.

8. However, due to the delay associated with applying for ill health retirement, Mrs N asked TVP about her retirement options. TVP asked Mouchel (the Scheme administrator) for guidance about this.
9. On 24 March 2014, Mouchel wrote to TVP. It set out what Mrs N’s benefits would be if she retired, on voluntary and on ill health grounds, on 31 May 2014. The letter went on to say:

“If [Mrs N] retires on normal retirement terms and then has a retrospective change to ill health terms this will constitute a second benefit crystallisation event which may result in additional tax charges being incurred on any additional lump sum paid”.

10. The letter incorrectly said that Mrs N’s pensionable service would be enhanced by 7 years (instead of 7/60ths) if she retired on ill health grounds on 31 May 2014.
11. On 31 March 2014, Mrs N met with Occupational Health to complete some IHR forms. She was told that her case would be referred for consideration as to whether she met the criteria for IHR. It was noted at the meeting that she had “put in an H1 application for IHR”.
12. On the same day, Mrs N emailed HR saying:

“I also met with [the Federation] this morning albeit briefly. I will write to [the Federation] today as I need to understand the process for retiring and then retrospectively claiming medical retirement as I am not well enough to continue working full time and I do not wish to ‘report sick’”.

13. HR replied by email later on 31 March 2014 (the TVP email) with the available retirement options and suggested discussing them with the Federation before handing in her notice to retire. The email appears to have been based on the information received from Mouchel.

Option 1 – retire normally and receive an estimated pension of £26,143.98 a year and a lump sum of £65,997.91;

Option 2 – medically retire and receive an enhancement of seven years’ service. Maximum commutation would result in pension of £26,798.46 a year and a lump sum of £183,033.48;

Option 3 – retire normally and retrospectively request/receive IHR which may incur additional tax charges.

14. Mrs N responded on 1 April 2014 and said:

“Thank you, this information is very helpful. It is likely I will opt for option 3 but I will speak to [the Federation] asap and will write to you soon”.

15. On 15 April 2014, Mrs N wrote to formally request retirement on 31 May 2014. The memo said:

“Please accept this report as my formal request to retire from [TVP] Force on 31st May 2014.

A previous email sent to you dated 17th February 2014 enquiring into possible ill health retirement resulted in a ill health injury retirement request sent via [the Federation] to [HR]. Although this process has begun I understand the process is likely to take a significant time. I am finding the need to continue working to be detrimental to my health and as such I have decided to retire at 26 years’ service and retrospectively seek ill health injury retirement.

[TVP] has provided me with the information needed and I am aware of the taxation implication in making this choice should an ill health injury retirement be awarded.

I would be grateful if you would activate the appropriate retirement process in order that matters are finalised for 31st May 2014”.

16. Mrs N retired on 31 May 2014 with 26 years of service.

17. On 23 June 2014, Mrs N submitted an application for an Injury on Duty award. She said:

“It was to my great sadness that I had to retire but I could not continue working in such pain. In February 2014 I contacted [TVP] to let [it] know that I needed to retire and that I would wish to be considered for [IHR]. I was informed...that this process could take months or even years to process. I did not want to report sick again and face the possibility of [an] unsatisfactory performance process (UPP) and I retired on 31st May seeking retrospective medical retirement”.

18. Mrs N’s case was not sent to the Selected Medical Practitioner (SMP) until January 2015.

19. On 16 February 2015, she had an appointment with the SMP. The SMP certified that Mrs N was permanently disabled from ordinary police duties.

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20. On 20 February 2015, TVP informed Mrs N that it had accepted that her condition was permanent but her pension would not be enhanced as she was no longer an employee. TVP said that an IHR pension enhancement was only available to current employees. It said that it would consider her application for an Injury on Duty award.
21. Mrs N's application for an Injury on Duty award was turned down on 2 April 2015.
22. Mrs N appealed the IHR decision not to grant her an enhancement, under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
23. Mrs N's appeals at stage 1 and 2 of IDRP were unsuccessful. TVP said that Mrs N emphasised her desire to retire on 31 May 2014. As this was just over three months from when it was first notified in February 2014, it was not enough time to progress a medical retirement. It said that Mrs N did not indicate that there was any flexibility over her retirement date. It maintained that the three options provided to her in the TVP email were factually correct and Mrs N did not raise any questions about them. It said that Option 3 would have been applicable if Mrs N had been awarded an Injury on Duty award.
24. It agreed that while no one appears to have told Mrs N that she cannot get an enhancement if she retired normally, this information was in the members guide. It maintained that Mrs N said that she was getting support from the Federation and it seems improbable that she did not seek advice about the three options from the Federation. It said that it did not appear that Mrs N sought clarification from the Scheme administrators. It concluded that Mrs N's focus was on a retirement date of 31 May 2014 and no further information would have influenced her decision.
25. Mrs N brought her complaint to us. She says that she was unaware at the time that she would only be entitled to an enhancement under Option 2.
26. Mrs N says that TVP did not tell her that she needed to stay in service, and see the SMP prior to retiring, to be eligible for a medical pension. She says that she was not told to contact the Scheme administrator; rather, TVP contacted it on her behalf and passed on the requisite information. She said that she was under no obligation to retire when she did, and she could have carried on or commenced sick leave until she saw the SMP. She says that although she had some discussions with the Federation, she did not request any specific advice on IHR from it.

## **Adjudicator's Opinion**

27. Mrs N's complaint was considered by one of our Adjudicators who concluded that further action was required by TVP. The Adjudicator's findings are summarised briefly below:
  - Mrs N commenced her IHR application (with the assistance of the Federation), and she received information from other sources about retrospectively applying for

IHR after her retirement. It is not clear where she received this information from but it was before the TVP email.

- The TVP email was lacking in sufficient detail about Mrs N's retirement options and, unfortunately, it contributed to her misunderstanding of her options.
  - The complaint of maladministration was upheld against TVP.
  - It is unclear that Mrs N would have carried on working through her pain or taken sick leave for an undetermined length of time. On the balance of probabilities, it was the Adjudicator's opinion that Mrs N would probably have retired when she did.
  - The complaint should be partially upheld, but only to the extent that TVP contributed to Mrs N's misunderstanding of her retirement options. TVP should pay £1,000 to Mrs N in respect of its maladministration.
28. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
29. Mrs N says that the information provided by the TVP email was incorrect, not incomplete. Had she known this, she would have waited and remained in service while the IHR process was on going. She says that she could have reported sick or TVP could have put in place reasonable adjustments to allow her remain at work.
30. Mrs N says that she would not have given up the significant financial benefit available to her from waiting for the IHR process.
31. Mrs N's further comments do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N for completeness.

### **Ombudsman's decision**

32. The information in the TVP email gave the impression that Mrs N would still receive the IHR enhancement if she retired and retrospectively applied for IHR. TVP makes the distinction that Mrs N could have applied for the Injury on Duty award and this is what it referred to under Option 3. However, this is not what Option 3 said. It refers to retrospectively request/receive IHR. There is no mention of an injury on duty award. This was not just a matter of insufficient information being provided, it was wrong, and misleading in referring to IHR and the risk of additional tax charges.
33. So, I agree with the Adjudicator that TVP did not go far enough to clarify this. Nevertheless, the TVP email did not expressly say that Mrs N would receive the IHR enhancement under Option 3. The enhancement was only mentioned under Option 2. Importantly, TVP also advised Mrs N to seek advice from the Police Federation before making any decision concerning her retirement. I would have thought that Mrs N would want clarification on what was meant by the reference to additional tax

charges, no financial figures were provided under Option 3. Such enquiry should have enlightened her concerning the options available to her.

34. Prior to receiving the TVP email, Mrs N appears to have already been under the impression that she could retrospectively apply for IHR. She has not said where she got that understanding from but I have not seen any evidence that it was from TVP. Therefore, to Mrs N, the TVP email appeared to corroborate her already mistaken belief that she could retire and apply for the IHR enhancement retrospectively.
35. I appreciate that Mrs N could have taken the decision to report sick for the period while she was waiting for the IHR referral. There are obligations on TVP to follow a proper procedure in such circumstances. The question I have to consider is had Mrs N been given the correct information would she have gone ahead with her retirement on 31 May 2014.
36. Having reported sick previously, on other occasions, I am satisfied that Mrs N was familiar with the process and aware of TVP's obligations to her. Accordingly, she would have been aware of the support that she was entitled to if she were to report sick again. It is with this in mind that, having already expressed an unwillingness to again report sick, I cannot rule out the fact that she could still have decided to retire when she did.
37. I cannot assume that Mrs N would have had the benefit of hindsight and known that her IHR application would have been successful. She also would not have known how long the IHR process would take. She had been informed that it could be over a year and, in actual fact, it was almost a year following her application that Mrs N finally met the SMP. I consider that she would have taken the potential waiting period into account in any decision made.
38. Mrs N says that, because of her medical history and physical abilities, it was very likely that her IHR application would have been successful. However, IHR applications are not as straight-forward as Mrs N assumes and, in any event, that is a decision for TVP to make, on the recommendation of the SMP. Mrs appears to have been similarly confident of the Injury on Duty award application but, as she knows, that was declined.
39. Of course, it is difficult to know what any of us would do in a hypothetical situation such as this. However, I base my finding on a balance of probabilities.
40. Bearing in mind the approach of Mrs N to taking sick leave, and for the reasons already given by the Adjudicator, I cannot be certain that Mrs N would have carried on working for an indefinite period until the conclusion of the IHR process. I do not consider that Mrs's decision would have been solely based on the possible financial benefits of staying in employment and claiming the IHR enhancement if her IHR application was successful.
41. Therefore, I partly uphold Mrs N's complaint.

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**Directions**

42. Within 21 days of this determination, TVP should pay £1,000 to Mrs N in respect of the significant distress and inconvenience caused by the maladministration identified above.

**Anthony Arter**

Pensions Ombudsman  
23 January 2017