

Ombudsman's Determination

Applicant	Mr I
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Kirklees Council (Kirklees)

Outcome

1. Mr I's complaint against Kirklees 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, Kirklees should pay Mr I £500 for the significant distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr I has complained about the process Kirklees undertook in reassessing his eligibility for ill health benefits as at November 2008, and the basis for the Independent Registered Medical Practitioner's (**IRMP's**) opinion.

Background information, including submissions from the parties

4. The extensive background of Mr I's complaint is set out in detail on an associated case which was also determined. There is no need to repeat those circumstances here. What is significant however, is what has happened since that determination.
5. On 17 December 2015, the Ombudsman directed Kirklees to do the following:-

"Within 28 days of the date of this determination, Kirklees will ask Dr Jefferson to clarify whether the opinion he gave as to Mr [I]'s eligibility for benefits in 2008 was the opinion he would have given had he been asked in 2008.

On receipt of Dr Jefferson's response, Kirklees will provide a copy for Mr [I] and notify him as to whether their decision remains the same."
6. On 31 March 2016, Kirklees wrote to Health Management Ltd, Dr Jefferson's employer at the time of his opinion, to clarify his position. Health Management Ltd responded on 1 April 2016 confirming:-

“Dr Jefferson has not worked for Health Management for over a year now, I am unaware of exactly which organisation he is now employed by.”

7. Following this, Kirklees contacted this Office for clarification on how to proceed given the Ombudsman’s direction could not be followed. Kirklees was informed by the Adjudicator for Mr I’s previous case that appointing an alternative IRMP would not be unreasonable in the circumstances.
8. The matter was referred to a new IRMP, Dr Boag, who issued his response on 7 June 2016. On consideration of Mr I’s circumstances Dr Boag concluded:

“Based on the information supplied in these records it is likely that as an IRMP I would have been of the opinion that even under the 2007 Regulations Mr [I] could not be considered permanently disabled from his role and certainly not incapable of any other work.”
9. The report was issued to Mr I and there were subsequent discussions between him and Kirklees regarding a consent form, allowing Dr Boag to issue a copy of the report to Kirklees. On the basis of Dr Boag’s report Mr I was not awarded ill health pension benefits.
10. Dissatisfied by the outcome of Dr Boag’s report, Mr I complained to Kirklees. It responded referring Mr I back to the Ombudsman’s previous decision and highlighting that the decision was binding on both parties and subject only to appeal on a point of law.

Adjudicator’s Opinion

11. Mr I’s complaint was considered by one of our Adjudicators who concluded that some further action was required by Kirklees. The Adjudicator’s findings are summarised briefly below:
 - Kirklees had taken too long to act on the Ombudsman’s decision, and ought to have sought to resolve the situation with urgency. The delay in providing Mr I with an answer on the point identified within the determination will have caused him significant distress and inconvenience and a payment of £500 in recognition of this was warranted.
 - On discovering that Dr Jefferson was not available to comment on his prior review, Kirklees had acted reasonably by contacting this Office and seeking additional direction. Requesting the opinion of a new IRMP was reasonable in the circumstances, however Kirklees ought to have informed Mr I of the circumstances and the next steps. But, even if Kirklees had asked Mr I, it seemed more likely than not that a new IRMP would have needed to be appointed anyway. The Adjudicator did not think that Kirklees not informing Mr I had ultimately disadvantaged him or changed the eventual outcome.

- The Adjudicator considered that the new IRMP, Dr Boag, had considered all of the relevant information, and nothing irrelevant, answered the correct questions and reached a conclusion that was not irrational or perverse. In the circumstances the Adjudicator could not conclude that Dr Boag had made any procedural errors.
 - The Adjudicator highlighted that Dr Boag was not required to consider the three tiers within Regulation 20 because he had not concluded that Mr I had a reduced likelihood of obtaining any gainful employment before his normal retirement age. This was an overarching requirement before a consideration of the three tiers was required.
 - The Adjudicator acknowledged Mr I's concerns over his dismissal and the employment tribunal, but said that they could not be considered by this Office.
 - Dr Boag was not able to consider the earlier IRMPs' reports, his role was to look at Mr I's condition at the time he left employment and was not able to consider later events. Medical opinion is subjective and different doctors can reach contrasting conclusions. However the Dr Boag's opinion was not illegitimate.
 - In respect of Dr Boag's decision, the Adjudicator could find no reason to say that there had been any maladministration.
12. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I provided his 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 Mr I for completeness.

Ombudsman's decision

13. Mr I's additional submissions focus on why the Adjudicator should consider the circumstances of his dismissal and events at the employment tribunal. As was confirmed to Mr I in the earlier determination and by the Adjudicator, these are employment matters and outside the scope of this Office.
14. Additionally, any events prior to the Ombudsman's earlier determination cannot be reconsidered under this complaint. Those events have already been determined. The Adjudicator, and in turn I, can only look at the events since that determination. I agree with the Adjudicator that Kirklees took too long to act on my directions, and a distress and inconvenience award of £500 is warranted.
15. I also agree that in Dr Jefferson's absence, Kirklees acted reasonably by seeking a new IRMP's opinion. Dr Jefferson was no longer employed by the company that he had worked for, and whilst it may have been possible to locate him elsewhere, there is no guarantee that he would have been able to provide an informed opinion on his prior comments from some time earlier. In these circumstances I think it was reasonable for a new IRMP to be appointed to consider the evidence.

16. In response to the Opinion, Mr I has commented that Dr Boag's report is unreliable as it failed to mention the findings of physicians that considered his health after he was dismissed. However, Dr Boag was not required to consider those findings, or explain differences in opinion, as they occurred after Mr I's dismissal.
17. I appreciate that other physicians may have reached different conclusions to Dr Boag, but medical opinion is subjective and opinions differ. However, I agree with the Adjudicator that Dr Boag undertook the process correctly, considering the relevant evidence, asking the right questions and reaching a rational decision. In the circumstances Dr Boag's opinion is valid and Kirklees could rely upon it when reaching the conclusion that Mr I was not eligible for ill health retirement.
18. Therefore, I uphold Mr I's complaint in part only.

Directions

19. Within 28 days of this determination Kirklees should pay Mr I £500 for the significant distress and inconvenience caused.

Karen Johnston

Deputy Pensions Ombudsman
1 September 2017