

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondent	St Thomas More Catholic High School ( <b>the School</b> )

## Outcome

1. Mrs N's complaint against the School 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, the School should pay Mrs N £500 for the significant distress and inconvenience caused to her by its mishandling of her case.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N's complaint is that she has been refused ill health early retirement (**IHER**).

## Background information, including submissions from the parties

4. From 8 January 2013, Mrs N was absent from work due to fibromyalgia.
5. On 24 April 2013, Occupational Health Unit (**OHU**) held that Mrs N would be unable to return to work in the near future.
6. The School managed Mrs N's absence via its Attendance Management procedure and, on 26 April 2013 and 11 June 2013, two Absence review meetings were held.
7. On 4 August 2013, a third Absence review meeting was held where it was confirmed that Mrs N was unable to return to work. It was agreed that there were no reasonable adjustments to Mrs N's role that would enable her to return to work and that, whether or not IHER was granted, her employment would be terminated on medical grounds.
8. In November 2013, Mrs N made an application for IHER.
9. On 25 February 2014, Mrs N was referred to Dr Roberts, an independent registered medical practitioner (**IRMP**). Dr Roberts took into account reports from Mrs N's general practitioner (**GP**), Dr Broome, dated 9 October 2013 and 13 November 2013; a report from the Consultant Nurse in the Pain Management Clinic, dated 14

February 2014; and a further report dated 17 February 2014. Dr Roberts certified that he was unable to support Mrs N's application for IHER as he did not think she was permanently incapable of discharging the duties of her employment or that she was incapable of carrying out alternative employments because of her ongoing ill health. He said that all treatment options had not been exhausted as Mrs N had yet to complete treatment regimes through occupational therapy, with CBT and the graded exercise programme. He further added that medication had only recently been advised and the Nurse Specialist had suggested that such medication could take up to 4-6 months to be effective in helping with pain relief.

10. On 7 March 2014, the School wrote to Mrs N confirming the decision of Dr Roberts and requested to meet her on 12 March 2014 to discuss the next steps.
11. On 12 March 2014, the School held a meeting with Mrs N and discussed Dr Roberts' recommendation and agreed to proceed to a mutual termination of Mrs N's employment.
12. On 14 March 2014, the School wrote to Mrs N confirming its decision not to accept her application for IHER, following the recommendation of the IRMP.
13. On 17 July 2014, Mrs N appealed the decision made by the School. Her appeal was dealt with by the School under stage one of the Scheme's internal dispute resolution procedure (**IDRP**).
14. On 9 January 2015, the School referred the matter to a new IRMP, Dr Gidlow. Dr Gidlow considered all the information contained within Mrs N's occupational health file and upheld the recommendation of the original IRMP, that at the point of leaving her employment Mrs N did not meet the criteria for IHER. However, he was of the opinion that Mrs N now met the criteria for IHER.
15. On 6 February 2015, the School issued its stage one IDRPs response to Mrs N. It referred to the report of Dr Roberts and Dr Gidlow and concluded that the correct procedures had been followed by the School when considering Mrs N's IHER entitlement under the Scheme Regulations. The decision maker said that although Dr Gidlow thought Mrs N now met the criteria for IHER, on the basis that she had now tried all the appropriate treatments, the decision maker also upheld Dr Roberts's opinion that at the point of leaving her employment Mrs N did not meet the criteria for IHER. Based on this, the School did not uphold Mrs N's appeal and it maintained that she did not meet the requirement for IHER at the time she left employment, so was not entitled to IHER.
16. On 4 August 2015, Mrs N appealed under stage 2 of the IDRPs.
17. On 25 April 2016, Cheshire West and Chester Council issued its stage 2 IDRPs response to Mrs N. The decision maker held that the decision not to award Mrs N IHER was reasonable given all the medical evidence, and he was satisfied that the Scheme Regulations had been applied correctly.

18. Cheshire West and Chester Council identified a number of concerns including delays by the School when handling Mrs N's case. The decision maker said that Mrs N was wrongly informed that she could appeal the decision to terminate her employment via the Regulations, in order to obtain IHER. In addition, the School incorrectly told her that she could access her pension via normal retirement channels and that this would not have an impact if an appeal was successful. Further, Dr Gidlow was incorrectly instructed and provided with a certificate for the wrong Pension Scheme Regulations. The decision maker said that the School should pay Mrs N £200 for the distress and inconvenience caused.

### **Adjudicator's Opinion**

19. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the School, except that the award for distress and inconvenience should be increased to £500. The Adjudicator's findings are summarised briefly below: -
- The Ombudsman's role was not to decide whether Mrs N was eligible for IHER; that was a matter for the School to decide after obtaining the required certification from an IRMP. Nor was it a matter for the Ombudsman to agree or disagree with any medical opinion.
  - The Ombudsman's role was to decide whether the School had abided by the Regulations, asked the relevant questions, considered all the relevant evidence and explained the reasons for its decision in a transparent way. If there were flaws in the decision making process, the Ombudsman could require the School to look at Mrs N's case again. However, the weight attached to any of the evidence was for the School to decide, including giving it little or no weight. It is open to the School to prefer the advice of its own medical advisers unless there was a cogent reason why it should not.
  - Mrs N said the School had failed to take into account all relevant evidence, such as medical reports by other medical practitioners not instructed by the School. However, it was for the School to attach weight (if any) to the relevant medical evidence. The School made its final decision based on Dr Robert's report, which made reference to Mrs N's GP report. As such, the Adjudicator was satisfied that the School had considered all the relevant information.
  - Mrs N said that the School gave her incorrect information. However, on 4 August 2013, at the absence review meeting held with Mrs N at the School, it was accepted by Mrs N that because she was unfit to return to her post under any circumstance, whether or not her ill-health retirement application was accepted, her employment would need to be terminated on medical grounds. As such, the Adjudicator was of the opinion that it was reasonable to expect Mrs N to know that her application for IHER might not be successful.

- The Adjudicator accepted that the School's decision making process initially fell short of what was expected of it. However, the medical opinion expressed by Dr Roberts correctly set out why Mrs N did not meet the criteria for IHER. As such, the evidence showed that the School had considered the available medical evidence properly before reaching its final decision.
- The Adjudicator sympathised with Mrs N. She agreed it was unfortunate that Mrs N was told that she could appeal the decision to terminate her employment via the Regulations, in order to obtain IHER. She also agreed that it was unfortunate that she was told that she could access her pension via normal retirement channels even if an appeal was successful; the Adjudicator said this incorrect information should have been corrected by the School. Further, the IRMP at IDR stage 1 was incorrectly instructed and completed a certificate under the wrong Pension Scheme Regulations. The Adjudicator was satisfied that the School had caused Mrs N significant distress and inconvenience. She said that the School should increase its award to £500 in order to reflect this.

20. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs 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 Mrs N for completeness.

### **Ombudsman's decision**

21. Mrs N has said that the School should have clarified the nature of Mrs N's untried treatments, and the probable effectiveness of such treatments, prior to making its final decision. However, I do not find that there is sufficient evidence to support this assertion. In Dr Roberts's report dated 25 February 2014, he reviewed the treatments that Mrs N had commenced and also considered the medication she had been prescribed. Dr Roberts noted that the nurse specialist had said that the medication could take between four and six months to be effective. He also commented that the "different treatment modalities have not been tried, completed or indeed exhausted." As such, the School could not say Mrs N was likely to have symptoms or functional impairment at a level sufficient to prevent any gainful employment until age 65.
22. Mrs N asserts that had the initial process and the appeals been conducted properly, then the conclusion would have been that her application should be sent back to the School to be reconsidered. Whilst I accept that the School's decision of 14 March 2014 fell short of what Mrs N was entitled to expect, it has since provided reports at IDR stages 1 and 2 which dealt adequately with the issue. In this particular case, looking at the whole process, from the time Mrs N challenged the IHER award to when the School issued its IDR stage 1 response, and Cheshire West and Chester Council issued its IDR stage 2 response, I find that the School has considered all the relevant facts and followed the procedure correctly. I acknowledge that Dr Gidlow incorrectly considered Mrs N again for IHER at the point she was referred to him. However, this was identified by the School at IDR stage 1 and Cheshire West and

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Chester Council at IDRPs stage 2, and the correct position was then confirmed. As such, I do not find that the process followed by the School was incorrect.

23. Given the way the matter has been handled by the School, I agree with the Adjudicator that the award should be increased to £500, to reflect the significant distress and inconvenience Mrs N has suffered.
24. Therefore, I uphold Mrs N's complaint in part.

**Directions**

25. Within 21 days of the date of this Determination: -

The School shall pay Mrs N £500 for the significant distress and inconvenience caused to her by its maladministration.

**Anthony Arter**

Pensions Ombudsman  
5 June 2018