

Legal update

The complexities of ill-health pensions

Ill-health retirement is still one of the areas that generate the most complaints to the Pensions Ombudsmanⁱ, particularly in relation to public service schemes.

This is not surprising really, given the complexities of the regulations governing qualification for an ill-health retirement pension and the distress and uncertainty that an individual often faces when retirement on ill-health grounds is being considered. In many cases there will have been a long build up to an application for an ill-health pension. It usually follows a period of long-term sick leave and a number of occupational health reports on prognosis and whether the individual may recover sufficiently to return to work.

The first major step in deciding whether an individual qualifies for an ill-health pension is to instruct an IQMPⁱⁱ. On instructing an IQMP there still seems to be some misconception that it is the IQMP who decides on eligibility for an ill-health pension. The relevant regulations for each of the main Firefighters' Pension Schemes (that is the '1992 Scheme'; the '2006 Scheme' and the '2015 Scheme') broadly provide that it is the Fire & Rescue Authority (FRA) which decides whether a person is entitled to any, or if so, what awards.

Before the FRA can decide on eligibility for an ill-health pension, the regulations require it to obtain a report from an IQMP. The IQMP must provide an opinion on whether the individual is 'permanently disabled' within the meaning of the regulations relevant to the scheme in which the individual is an active member at the time the ill-health pension is being considered. The regulations also state that the opinion of the IQMP shall be binding on the FRA. However, this does not mean that the FRA can blindly follow the decision of the IQMP.

In a recent Pensions Ombudsman determination involving the Barclays Bank UK Retirement Fundⁱⁱⁱ, the Pensions Ombudsman decided that Barclays Bank was required to understand the reasons for the medical advisor's opinion and that where there is a shortfall, such as an omission, in the medical advisor's report Barclays should not 'blindly accept it'.

Mrs B joined Barclays in 1988. She commenced long-term sickness in 2010. Her condition was diagnosed as fibromyalgia. In July and August 2011 Barclays received two separate conflicting medical reports, but proceeded to dismiss Mrs B in October 2011 on the grounds of capability due to ill health. However, Barclays turned down her application for an ill-health pension because she did not meet the criteria. Barclays included with the determination letter a copy of the medical opinion that advised it was not unreasonable to expect further improvement in Mrs B's condition and, therefore, she was not permanently incapable of carrying out any employment.



Following appeal by Mrs B, further medical advice was obtained by Barclays on a couple of separate occasions. The first of the additional medical opinions supported the first medical report Barclays had relied upon. The medical advisor determined that it was reasonable to expect further improvement in Mrs B's condition. However, the report did not identify suitable treatments options or explain why the medical advisor considered there would be an improvement. The second additional medical opinion determined that treatment options had not been exhausted, however the report failed to address what treatment the medical advisor had in mind, or why he considered it would enable Mrs B to return to work.

As well as there being omissions in these additional medical reports, they also conflicted with the medical evidence provided by Mrs B's treating doctors.

Given the apparent difference in medical opinions and the fact that there were important omissions from the medical reports obtained by Barclays, the Pensions Ombudsman upheld Mrs B's complaint and determined that Barclays should request a further medical opinion from a medical advisor not previously involved in the case.

This case is a useful reminder that when a FRA considers an application for an ill-health pension it can not simply rely on the decision of the IQMP. It needs to consider the full medical report provided by the IQMP and test it against:

- The requirements of the relevant set of Firefighters' Pension Scheme Regulations;
- Any medical information the FRA holds on file, such as occupational health reports;
- Any medical reports provided by the individual (such as GP reports and treating specialist reports); and
- Common sense – is there any information missing, questions unanswered and/or ambiguous information?

FRA's are not expected to be medical experts, but if a medical report is incomplete or misunderstands the 'test' under the relevant regulations or there is conflicting medical evidence, then the FRA should obtain clarification from the IQMP before making a decision as to whether an individual qualifies for an ill-health pension. Particularly if there is conflicting medical evidence, the FRA should ask the IQMP to determine which medical evidence he or she prefers and why? The same will apply in relation to medical opinions obtained when considering an injury on duty award.

As part of the ill-health retirement process we know that some FRA's do not even receive a fully copy of the IQMP report. This is purportedly due to data protection and/or the process advised by their medical advisors. However, without sight of the complete report it will be very difficult for an FRA to determine, as it is required to do so under the regulations, whether a person is entitled to any, or if so, what awards.

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- i Pensions Ombudsman Annual Report and Accounts 2018/19
- ii Independent qualified medical practitioner
- iii Mrs B v Barclays Bank (PO-9253)