

PENSION SCHEMES ACT 1993, PART X

DETERMINATION BY THE PENSIONS OMBUDSMAN

Complainant : Mr M Ramshaw
Scheme : The Firefighters' Pension Scheme
Administrator : The Tyne and Wear Fire and Civil Defence Authority (**Tyne and Wear**)

THE COMPLAINT (dated 16 August 2000)

1. Mr Ramshaw alleged injustice, caused by maladministration on the part of Tyne and Wear, involving financial loss, in that he was improperly refused an injury enhancement to his pension. Mr Ramshaw also claimed compensation for distress and inconvenience caused to him by Tyne and Wear's attitude to his complaint.

MATERIAL FACTS

2. Mr Ramshaw had been a firefighter for 25 years. He went on sick leave on 29 July 1999 and retired on ill-health grounds on 20 February 2000. Mr Ramshaw applied for his pension benefits to be enhanced due to his having been injured on duty. This was refused.
3. Mr Ramshaw wanted to complain about the refusal to enhance his pension. The Scheme authorities were required to operate a two-stage internal dispute resolution (**IDR**) procedure and to inform all members of this. The first stage IDR decision had to be given within two months of the complaint being made. The decision had to include:
 - a statement of the decision,
 - a reference to any part of the Scheme Rules, trust deed or legislation relied on in making the decision and where a discretion had been exercised, a reference to the relevant part of the Scheme Rules conferring it,
 - a reference to the complainant's right to ask for the complaint to be reconsidered within the appropriate time limit.

The complaint had to be reconsidered on receipt of an application from the member within six months of the date of the first stage IDR decision. The second stage IDR decision had to be given within two months of receipt of the application from the member. The second stage IDR decision had to include:

- a statement of the decision and an explanation as to whether and, if so, to what extent it either confirmed or substituted the previous decision,
- reference to any part of the Scheme Rules, trust deed or legislation which formed the basis of the decision,
- information about, and the address of, the Pensions Advisory Service (**OPAS**) and my office.

*(Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 (SI 1996 Number 1270) (the **Dispute Regulations**).*

4. Scheme Rules H2 and H3 gave members additional avenues for pursuing complaints. Rule H2 allowed for complaints concerning ill-health applications to be referred to a medical referee. Rule H3 provided for complaints regarding the payment of benefits to be referred to the Crown Court or an appeal tribunal appointed by the Secretary of State.
5. The guidance notes on complaints issued by Tyne and Wear stated that IDR did not apply if a member complained to a medical referee under Rule H2 or if a complaint had already been made to me.
6. On 20 December 1999 Tyne and Wear sent Mr Ramshaw the appropriate form to enable him to complain under the Scheme's IDR procedure. Tyne and Wear stated:

“Further, you are required to attend for an interview in my office on Thursday 13 January 2000 at 0900 hours when the appeal will be heard. I must receive your written submission prior to the date of the interview.”

Mr Ramshaw completed the form on 6 January 2000 and returned it with a written submission. The form stated that IDR could not be used if the complaint was to be referred to an independent medical referee under Scheme Rule H2, or if I had

commenced an investigation into the complaint. Mr Ramshaw asked which route he should follow. Mr Ramshaw attended the meeting on 13 January 2000.

7. On 19 January 2000 Tyne and Wear sent Mr Ramshaw a “notice of appeal” form.

Tyne and Wear stated:

“It is now apparent that your appeal is based on a medical question that can only be resolved through the appeals mechanism of the Scheme itself.”

Although Mr Ramshaw had asked for guidance on the correct route to follow, no reference was made to the statutory requirement for Mr Ramshaw’s IDR complaint to be properly determined.

8. Mr Ramshaw wrote to Tyne and Wear on 27 January 2000, requesting that his complaint be progressed through the IDR procedure. Mr Ramshaw also sought assistance from OPAS. On 1 February 2000 Tyne and Wear wrote to Mr Ramshaw, stating that his complaint was one for a medical referee to determine. Mr Ramshaw instructed a solicitor, who considered that a referral to the Crown Court under Scheme rule H3 was probably the correct procedure.

9. On 23 February 2000 Tyne and Wear wrote to Mr Ramshaw, reiterating that his complaint had to be referred to a medical referee under Scheme Rule H2. No mention was made of the outstanding stage one IDR decision. On 22 March 2000 Tyne and Wear wrote again, stressing that Mr Ramshaw’s complaint would not be dealt with unless he completed the “notice of appeal” form. On 30 March 2000, Tyne and Wear wrote to Mr Ramshaw, stating that he had made “strong representations” at the meeting that he did not want IDR to be used. Mr Ramshaw stated, in a submission to me, that at the hearing he had queried the correct appeal route, as he had “never previously heard of IDRP ... and realised that H2 and IDRP could not run together.”

10. Mr Ramshaw wrote again to Tyne and Wear on 11 April 2000. By now Mr Ramshaw was confused as to what route he should take and he stated that “you

cannot realistically resurrect IDR as your legal adviser has told you that it is not the correct route ...” Mr Ramshaw also stated:

“... you required me to attend an IDR interview in your office. Fire Service Circular 2/1997 has no such requirement. The whole appeal is conducted in writing, probably so that any future claims of strong representations can be proved or disproved.”

11. On 19 April 2000 Tyne and Wear replied, refusing to continue IDR and stating that Mr Ramshaw’s complaint had to be determined by the Home Office Appeals Board. Mr Ramshaw continued to write to Tyne and Wear regarding his complaint and Tyne and Wear continued to insist that he complete the “notice of appeal” form. Tyne and Wear set a deadline of 5 June 2000 for this.
12. Mr Ramshaw then complained to me and, after making enquiries of Mr Ramshaw, my office notified Tyne and Wear of the complaint on 24 October 2000, on the basis that there was no likelihood of IDR being completed. On 25 October 2000 Tyne and Wear sent Mr Ramshaw an IDR stage two form, stating that “the Authority is prepared to accept an IDR stage two application out of time.” On 4 December 2000 Tyne and Wear wrote to Mr Ramshaw, agreeing to enhance his pension benefits on injury grounds.

CONCLUSIONS

13. Mr Ramshaw’s principal complaint, that he was improperly refused an enhancement to his pension, has of course now been resolved by Tyne and Wear’s agreement to pay it. So far as the handling of Mr Ramshaw’s complaint is concerned, Mr Ramshaw had a right to have his complaint considered in accordance with the Dispute Regulations. The Scheme Rules afforded additional avenues for the consideration of complaints, but these did not take precedence over Mr Ramshaw’s statutory rights. Nor could Tyne and Wear decline to deal with certain types of complaint under IDR. Referral to a medical panel may well have been necessary, but this could have easily formed part of the IDR procedure, which was initiated by Mr Ramshaw on 6 January 2000.

14. Although Mr Ramshaw was unsure as to the correct route to follow, due to the confusing and inaccurate information provided by Tyne and Wear, including incorrect guidance notes and IDR forms, it is plain that he did not withdraw his complaint. Mr Ramshaw complained in accordance with the Dispute Regulations and was entitled to a stage one IDR decision. Mr Ramshaw pressed for his complaint to be dealt with and I accept that the lack of progress must have been frustrating for him. Had Tyne and Wear correctly explained the IDR procedure to Mr Ramshaw and then followed it through in accordance with the Dispute Regulations, the confusion and delay that existed throughout would have been avoided.
15. Although it might sometimes be desirable to suggest a meeting to a complainant as part of the IDR process, it is essentially a written procedure and Mr Ramshaw could not be required to attend a meeting in respect of either stage of IDR.
16. Tyne and Wear's failings, identified in paragraphs 13 to 15 above, constituted maladministration, which undoubtedly caused Mr Ramshaw distress and inconvenience, in respect of which he is entitled to appropriately modest compensation.

DIRECTION

17. I direct that Tyne and Wear shall, within twenty-eight days of the date of this Determination, pay Mr Ramshaw £250 as compensation for the distress and inconvenience caused to him.

DR JULIAN FARRAND
Pensions Ombudsman

2 May 2001