PENSION SCHEMES ACT 1993, PART X

DETERMINATION BY THE PENSIONS OMBUDSMAN

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

THE COMPLAINTS (dated 8 August 2000 and 2 December 2000)

1. Mr Coakley 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 Coakley also claimed compensation for distress and inconvenience caused to him generally and, in particular, as a result of being required by Tyne and Wear to attend an oral hearing on 11 January 2000.

MATERIAL FACTS

2. Mr Coakley had been a firefighter since 1969. He went on sick leave on 28 July 1999 and retired on ill-health grounds on 16 January 2000. Mr Coakley applied for his pension benefits to be enhanced due to his having been injured on duty. This was refused.

3. Mr Coakley 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 Pensions 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 17 December 1999 Tyne and Wear sent Mr Coakley 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 Tuesday 11 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 Coakley completed the form on 2 January 2000 and returned it with a written submission. He attended the interview on 11 January 2000. Tyne and Wear

maintained that, at the interview, Mr Coakley expressed the view that IDR was not suitable for his complaint, which would be better dealt with by an independent medical referee. Mr Coakley stated that this was "absolutely untrue" in a letter to my office dated 13 February 2001.

7. On 19 January 2000 Tyne and Wear sent Mr Coakley 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."

No reference was made to IDR. On 25 January 2000 Mr Coakley stated that he wanted to take his complaint to the Crown Court. On 27 January 2000 Tyne and Wear responded, stating that the complaint was one for a medical referee to determine. Mr Coakley wrote to Tyne and Wear on 27 January 2000, stating that he considered that stage one of IDR was complete and he now wanted to have his complaint reconsidered under IDR stage two. Mr Coakley sought assistance from the Home Office, OPAS and the Occupational Pensions Regulatory Authority (**OPRA**). On 7 February 2000 Mr Coakley wrote again to Tyne and Wear, asking for his complaint to be dealt with under IDR stage two. The Home Office wrote to Mr Coakley on 8 February 2000, stating that such disputes were "required to be heard under Rule H3 in the Crown Court ... the independent dispute resolution procedure (IDRP) could also be used prior to starting court proceedings." Mr Coakley sent Tyne and Wear a formal IDR stage two application on 16 February 2000, but Tyne and Wear returned it as "it was not considered relevant to your case."

8. On 30 March 2000 Tyne and Wear wrote to Mr Coakley, stating that:

> "Unfortunately, throughout the process you have had personal difficulty in accepting that these procedures have followed existing practices and, on many occasions, you have formed your own contradictory views...Clearly this is a medical question which can only be determined by the Home Office Medical Appeals Board...the decision of the Board is binding on both parties..."

9. Mr Coakley asked OPAS for guidance. On 10 April 2000 OPAS advised Tyne and Wear that "you are almost certainly bound to continue IDRP." Tyne and Wear

responded on 12 April 2000, refusing to continue IDR and stating that the complaint had to be determined by the Home Office Medical Appeals Board. Following a further letter from OPAS, Tyne and Wear wrote to Mr Coakley on 22 May 2000, offering to refer the complaint to an independent doctor and confirming that:

> "At present, your appeal lies through the IDRP/Rule H3 procedures."

However, the letter went on to say:

> "There would not appear to be any benefit in pursuing the matter through IDRP Stage 2 since, if the matter were resolved in your favour, the outcome would be simply be for a direction to be issued to the Chief Fire Officer, requiring the matter to be revisited after obtaining the written opinion required under the 1992 Firemen's Pension Scheme Order, i.e. the same procedure as that proposed above."

10. Mr Coakley wrote to Tyne and Wear on 22 May 2000, stating:

> "I have been trying to progress an appeal since 19 January 2000, by exercising the statutory rights given to me under the Pensions Act 1995, and you have constantly refused to accept the appeal, even though your role in IDRP ended on 11 January, when stage one ended.
>
> It is an offence to refuse to implement IDRP."

On 9 June 2000 Tyne and Wear confirmed to Mr Coakley that it considered his complaint would go through IDR and then, if appropriate, to the Crown Court under the provisions of Scheme Rule H3. Tyne and Wear stated that it failed to understand why Mr Coakley was involving OPAS. On 12 June 2000 Mr Coakley wrote to Tyne and Wear, pointing out that it had "continually refused to implement IDRP stage two." Mr Coakley asked "is it any wonder that I have asked OPAS to help me?" On 12 July 2000 Mr Coakley wrote to Tyne and Wear, stating:

> "I have been advised to send to the Fire Authority, this formal reminder that stage one of the internal dispute resolution procedure (Section 50 of the Pensions Act 1995) came to an end on 19 January 2000. I did not agree with the decision that you came to at stage one of the above procedure, and on 16 February 2000 I made an application to continue to stage two. You unlawfully refused to implement stage two of the internal dispute resolution procedure, and you returned my appeal application on 23 February 2000. I made several attempts to continue my appeal but you continued to refuse. On 22 May 2000 City Legal Services informed me that IDRP was after all the correct method of appeal, and that the Fire Authority was prepared to continue to stage two. Unfortunately the same letter

> informed me that there was no point in doing so, because even if the appeal was resolved in my favour, I would not have gained an injury pension. I would only have gained a further medical examination even though IDRP is a non-medical appeal process. The Fire Authority was telling me that they had already decided the outcome of my appeal!...I serve official notice that I still intend to continue to stage two of IDRP but I require the following information to enable me to prepare my appeal submission: the clear and specific reason why you decided that I do not qualify for an injury pension."

11. Tyne and Wear replied on 4 August 2000, stating that referral to an independent medical adviser was the best way forward, but "as you are insisting that your stage two IDRP appeal be allowed to continue, then arrangements will be made and I shall be obliged if you would confirm that 11 September 2000 is convenient for you." Mr Coakley wrote to my office on 14 September 2000, stating:

> "The Fire Authority arranged for my IDRP application to be decided on 11 September, in the full knowledge that I would not be attending. They have now cancelled it, purportedly because I would not attend. Attend what? IDRP consists only of a written application for a disputed decision to be reviewed, and there should be a written response giving the result. There is no need to attend, and I have always said that I would not be attending."

12. My office wrote to Tyne and Wear on 18 September 2000, pointing out that IDR was a legal requirement. Tyne and Wear responded on 18 September 2000, stating that Mr Coakley had not initially wanted to use the IDR procedure. Tyne and Wear confirmed that it had declined to deal with Mr Coakley's application for a stage two IDR decision and the application had been returned to him. Tyne and Wear stated that it cancelled the stage two IDR interview due to the involvement of my office. My office responded on 20 September 2000, pointing out that Tyne and Wear could not compel Mr Coakley to attend an oral hearing for IDR.

13. On 3 October 2000, Tyne and Wear wrote to Mr Coakley, stating that an IDR stage one response had been provided on 19 January 2000 and IDR stage two would be considered on 13 November 2000. Tyne and Wear stated "I note you still do not wish to attend the hearing." Subsequently Mr Coakley decided to attend.

14. Following the hearing, Tyne and Wear decided that Mr Coakley had suffered a qualifying injury and his pension benefits should be enhanced accordingly. This decision was formally communicated to Mr Coakley in a stage two IDR decision on 6 December 2000.

CONCLUSIONS

15. Mr Coakley'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 Coakley's complaint to Tyne and Wear is concerned, Mr Coakley 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 Coakley's statutory rights. Nor could Tyne and Wear decline to deal with certain types of complaint under IDR.

16. Mr Coakley complained in accordance with the Dispute Regulations and requested a stage one IDR decision. Whatever Mr Coakley may have said at the interview on 11 January 2000, it is plain that he did not withdraw his complaint. He was therefore entitled to a stage one IDR decision. Tyne and Wear declined to provide one. Tyne and Wear's letter to Mr Coakley dated 19 January 2000, which it later claimed was a stage one IDR decision, gave no decision on Mr Coakley's complaint and did not comply with the Dispute Regulations in any respect. Tyne and Wear even returned Mr Coakley's stage two application to him, in clear breach of the Dispute Regulations.

17. Mr Coakley repeatedly pressed for his complaint to be dealt with in accordance with the Dispute Regulations and Tyne and Wear declined to do so. Tyne and Wear could, as part of the IDR process, have referred Mr Coakley's complaint to an independent medical examiner if they wished. However, the IDR procedure laid down in the Dispute Regulations had to be followed. Had Tyne and Wear correctly explained the IDR procedure to Mr Coakley at the outset and then followed it through in

accordance with the Dispute Regulations, the confusion and delay that existed throughout would have been avoided.

18. Tyne and Wear's guidance notes on IDR (paragraph 5) were misleading. IDR applies to all complaints and both stages usually have to be completed before a complaint is made to me. Mr Coakley's complaint to me did not prevent Tyne and Wear from completing IDR stage two. On the contrary, it made the completion of stage two all the more important.

19. 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 Coakley could not be required to attend an oral hearing or interview in respect of either stage of IDR. I accept that being required to attend on 11 January 2000 placed additional stress on Mr Coakley. When Tyne and Wear eventually agreed to deal with Mr Coakley's second stage IDR complaint, it still seemed intent on requiring Mr Coakley to attend an oral hearing.

20. Tyne and Wear's failings identified in paragraphs 15 to 19 constituted maladministration, which undoubtedly caused Mr Coakley distress and inconvenience, in respect of which he is entitled to appropriately modest compensation.

DIRECTION

21. I direct that Tyne and Wear shall, within twenty-eight days of the date of this Determination, pay Mr Coakley £500 as compensation for the distress and inconvenience caused to him.

DR JULIAN FARRAND
Pensions Ombudsman

15 May 2001