



Neutral Citation Number: [2019] EWHC 51 (Ch)

Appeal Ref CH-2018-000093

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)

IN THE MATTERS OF THE PENSION SCHEMES ACT 1993, SECTION 151(4)

AND IN THE MATTER OF THE UNIVERSITIES SUPERANNUATION SCHEME

ON APPEAL FROM THE DETERMINATION OF THE PENSIONS OMBUDSMAN
DATED 23 MARCH 2018 (REF PO-15052)

Royal Courts of Justice
The Rolls Building
Fetter Lane, London EC4A 1NL

Date: 18/01/2019

Before:

ROSE J

Between :

UNIVERSITIES SUPERANNUATION SCHEME LIMITED

Appellant

and

(1) IAN SCRAGG

(2) UNIVERSITY OF DUNDEE

Respondents

Emily Campbell (instructed by DLA Piper UK LLP) for the Appellant
David E. Grant (instructed by Addleshaw Goddard LLP) for the First Respondent
The Second Respondent did not appear and was not represented

Hearing date: 17 December 2018

JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mrs Justice Rose:

1. This is an appeal on a point of law under section 151 of the Pension Schemes Act 1993 from a determination of the Pensions Ombudsman (Anthony Arter) dated 23 March 2018. I granted permission to appeal by order of 17 April 2018, pursuant to CPR rule 52.29(a).
2. The Appellant ('the Trustee Company') is the trustee and administrator of the Universities Superannuation Scheme ('the Scheme'). Mr Scragg is a member of the Scheme who complained to the Pensions Ombudsman ('the Ombudsman') about the Trustee Company's refusal to award him ill health retirement benefits. He was employed by the Second Respondent ('the University') latterly as Head of Safety Services. He was dismissed with effect from 27 December 2016 on the grounds of incapacity. The University is joined as a party but has not played any part in the appeal.
3. The appeal raises a narrow but important point of construction of Rule 15 of the Scheme Rules which are annexed to a deed dated 19 November 2015. The Scheme was originally established by a declaration of trust dated 2 December 1974. It is a multi-employer scheme to which many universities and colleges subscribe. Rule 15 concerns early retirement on grounds of incapacity. It provides as follows; the words italicised are italicised in the original to indicate that they are defined terms:

“15 EARLY PENSIONS ON INCAPACITY

15.1 Application of this rule

This rule applies to a *member* who satisfies all of the following conditions:

15.1.1 Service

The *member* has either:

(a) completed 2 years' *active membership*;

...

15.1.2 Employer agrees incapacity

In the *employer's* opinion the *member* is suffering from *incapacity* at the date of the relevant cessation of *eligible employment*.

15.1.3 Trustee company agrees incapacity type

The *trustee company* determines that the *member* is suffering from *total incapacity* or *partial incapacity*.

15.1.4 Reason for retirement or cessation of eligible employment

The *trustee company* determines that the *member* has *retired* or ceased one or more *eligible employments* on the grounds of *total incapacity* or *partial incapacity* before *normal pension age* and, in the case of *total incapacity*, without continuing in any other *eligible employment*.

15.1.5 Application to the trustee company

The *member* applies to the *trustee company*, in a form acceptable to the *trustee company* for benefits under this rule, unless the *trustee company* determines that regulation 8(3) of the *Preservation Regulations* is satisfied.

...

15.14 Determinations by the trustee company under this rule

Any determination made by the *trustee company* under this rule 15 shall be made on the balance of probabilities, having regard to a *medical opinion*".

4. According to Rule 1.1:
 - i) "Incapacity" is defined as "either *partial incapacity* or *total incapacity*";
 - ii) "Medical Opinion" is defined as "an opinion on the available evidence and on the balance of probabilities which is received by the *trustee company* from one or more of the registered medical practitioners (or other medical advisers determined by the *trustee company* to be suitably qualified) who are appointed by the *trustee company*".
 - iii) "Partial Incapacity" is defined as "ill-health of, or injury to, a *member* or *former member* not amounting to *total incapacity*, which causes that individual to be able for the long term to discharge the duties of neither an *eligible employment* currently held by that individual ...nor ... any other employment (whether or not available) which has a scope and a nature similar to" the employment currently held.
 - iv) "Total incapacity" is defined as "ill-health of, or injury to, a *member* ... which causes that individual to be able for the long term to discharge the duties of neither [his current employment] nor ... any other employment for which an *employer* would be likely to pay the individual more than a small fraction of the amount which would, but for the cessation of *eligible employment* have been that individual's *salary*".
5. Ill health early retirement benefits are more generous than ordinary early retirement benefits. According to Rule 15.2, a member who ceases eligible employment on the grounds of either partial or total incapacity is entitled to retirement benefits which are not reduced because he retires early, as they would be if the member retired early without incapacity. According to Rule 15.3, if the member retires on the grounds of

total incapacity, he receives benefits which are not only not reduced by reason of being received early but are enhanced because he receives added years to put him in the same position he would have been in if he had retired at the normal retirement age.

6. The short point that the Ombudsman had to decide and which arises on this appeal is whether, as Mr Scragg contends, once the University has formed the opinion under Rule 15.1.2 that the member is suffering from incapacity at the date of the relevant cessation of eligible employment, the task of the Trustee Company under 15.1.3 is only to determine whether that incapacity is total or partial or whether, as the Trustee Company contends, the Trustee Company must and can determine for itself whether the member is suffering from incapacity at all and, only if the Trustee Company determines that he is, does it then go on to consider whether the incapacity is total or partial.
7. Mr Scragg served a Respondent's Notice on 8 November 2018 saying that he wished to uphold the Pension Ombudsman's determination that the Trustee Company consider the question of incapacity anew on three additional grounds. Those grounds, broadly, challenge the sufficiency of the medical opinion upon which the Trustee Company based its conclusion that Mr Scragg does not suffer from an incapacity and also challenge how the Trustee Company arrived at that conclusion. The Trustee Company submits that these are not matters which are properly raised by a Respondent's Notice but have provided a witness statement by Mr Christopher Bujac dated 13 November 2018 explaining the procedures followed by the Trustee Company in general and in Mr Scragg's case in particular. Mr Bujac is a Technical Adviser employed by the Trustee Company.
8. Mr Scragg completed his application form for incapacity retirement on 5 May 2016 proposing as his date of retirement 31 May 2016. On the form was a declaration by the University stating that the signatory confirmed that it was the opinion of the University that Mr Scragg was unable to carry out the duties of his post "which may be due to disability/ill-health". A medical report completed by the Deputy Director of Human Resources was attached to the form. The report gave Mr Scragg's job title as Head of Safety Services and described the duties involved in his job which he had performed since 15 April 2002. It recorded that he commenced his employment on 1 January 2000 but he had been on sick leave since 19 October 2015. It described the difficulties that Mr Scragg had experienced in carrying out those duties. It stated that in the light of recommendations from the occupational health physician, the University had considered whether there were any suitable redeployment opportunities for Mr Scragg that would not adversely affect his health. None had proved possible. A number of reports from physicians were also attached to Mr Scragg's application:
 - i) A letter from Mr Scragg's GP Dr Herrington dated 8 February 2016;
 - ii) Reports from Dr Audrey Morrison, a consultant psychiatrist dated 21 January 2015, 2 April 2015, 2 October 2015 and 14 January 2016;
 - iii) A letter from Dr Louise Reid, a clinical psychologist dated 4 February 2016;
 - iv) A joint report from Dr Morrison and Dr Reid dated 3 March 2016;

- v) Reports from Dr Tom Scade, an Occupational Health Physician dated 27 January 2016 and 14 March 2016.
9. Mr Bujac describes the Trustee Company's procedure for considering an application for ill-health retirement. The application submitted by a member to the Scheme is intended to evidence the employer's opinion that the member is suffering from incapacity and to show that the member is applying for benefits under Rule 15. It also provides any accompanying medical reports on which the applicant relies and provides his consent for the Scheme to review that supporting medical evidence.
 10. The Scheme has appointed a panel of three registered medical practitioners with appropriate occupational health expertise to assist in the review and assessment of the application. Two of the panel doctors are involved in the initial assessment of a member's medical condition. They review the application and the supporting evidence, discuss each case and then provide their joint opinion to the Scheme. An opinion is usually provided by way of a short handwritten comment on a form provided by the Scheme. The panel doctors will express their opinion as to whether the member is suffering from total incapacity, partial incapacity or is not suffering incapacity. In some cases the panel doctors will request further medical evidence if they consider that it may be available and would assist in properly assessing the member's condition. When the Scheme receives the panel doctors' opinion, the application is then considered by a member of the Scheme's Pensions Operations management team who makes a determination having regard to the panel doctors' opinion. Mr Bujac says that members of the Pensions Operations management team will follow the panel doctors' opinion unless they consider that the doctors have not correctly directed their opinion in accordance with the Rules or have not made necessary further enquiries.
 11. The Scheme offers an Internal Dispute Resolution Procedure as required by the relevant pension regulations. In addition to that formal procedure, the Trustee Company has set up an informal process by which a member may appeal the initial determination if the issue is decided against him. Under this process, if the applicant so wishes, the Scheme arranges and pays for the member to be examined by an independent specialist in the condition from which the member claims to be suffering. Upon receipt of the specialist's report, the Scheme seeks an opinion from the third panel doctor who was not involved in the original determination. The third panel doctor is asked to provide an opinion based on the member's application, all supporting evidence and the independent specialist's report. Once the Scheme has received the third panel doctor's opinion the application is then again considered by a member of the Scheme's Pensions Operations team who makes a determination.
 12. Turning to the specific case of Mr Scragg, Mr Bujac says that his retirement application was determined in accordance with the usual procedure. He says that all the supporting medical evidence provided by Mr Scragg was considered by the two panel doctors. They were Dr Kumar who has been a member of the panel since 1 March 2003 and Dr Ford who was appointed to the panel on 11 December 2015. Dr Ford wrote a note of his opinion to Dr Kumar recording that he did not feel that the case for ill-health early retirement had been met at the full or partial level. He noted that the psychiatrist's report suggested that an alternative role would be possible for Mr Scragg and implied that further treatment might be possible including cognitive behavioural therapy. He noted further that there were other factors in Mr Scragg's life

which would affect his ability to work. These factors were not medical and would affect any job. The evidence suggested to him that redundancy/capability/non-medical early retirement were more suitable options if the University could not find an alternative role at his level. Dr Kumar then completed the form rejecting the application on both the partial incapacity and total incapacity basis. He said having carefully appraised the medical details presented including reports from psychiatrists and psychologists, it was considered that there was insufficient evidence to conclude that Mr Scragg suffers from long-term incapacity in carrying out the duties of his current post or one of similar scope and nature. Further there appeared to be scope for improvement in Mr Scragg's condition in the future with further psychological therapy and possible different medication which might allow him to continue working.

13. On 16 May 2016 the Trustee Company rejected Mr Scragg's application for incapacity retirement. On 19 May 2016 Mr Scragg wrote to the Trustee Company saying he wished to appeal against the decision. He made the point which he has made throughout which is that the Trustee Company's duty is limited to determining the type of incapacity suffered, not whether the member suffers from incapacity at all. That, he said, had already been decided by the University under Rule 15.1.2. Mr Scragg's letter was stated to be both an appeal under the informal process and an invocation of the first stage of the internal dispute resolution procedure. In the event, the informal process was not pursued, but Mr Scragg did pursue both the first stage and second stage of the formal IDRP. The Trustee Company did not change its decision.
14. On 26 September 2016 there was a hearing of a panel convened by the University to consider whether Mr Scragg should be dismissed because of his inability to work, his sickness absence record, his current role and the alternative options for ongoing employment. The report taking the form of a letter dated 28 September 2016 to Mr Scragg referred to the occupational health physician's view that for Mr Scragg to remain in his current role would be harmful to his health. Mr Scragg was dismissed with effect from 27 December 2016 on grounds of ill health.
15. On 8 November 2016 Mr Scragg complained to the Ombudsman. The final determination was issued on 23 March 2018. The Ombudsman agreed with Mr Scragg's interpretation of Rule 15.1. He said that the rule must be read in its entirety in order to establish whether Mr Scragg is entitled to incapacity pension or not. He held that the wording of Rule 15.1.3 was clear and that it did not "provide a power to override the decision made under Rule 15.1.2, that Mr [Scragg] is suffering from a medical incapacity.": see para [36]. That conclusion had already been reached by the University under Rule 15.1.2. The Trustee Company had no power to decide anything other than the issue of whether the incapacity was total or partial. At paragraph [36] of the determination, the Ombudsman accepted that neither the arrangement of the Rules nor any headings or subheadings were intended to affect the interpretation of the Rules. This was stated in Rule 1.2.2. However, he found it interesting that the headings highlighted the purpose of each Rule in shorthand. If it had been intended that the Trustee Company could either agree or disagree with the employer's opinion on incapacity, he said, one would have thought that the Rule heading would not simply refer to "incapacity type". He found that the sub-headings reinforced what was in his view the unambiguous wording of Rule 15.1.2 and 15.1.3. If the decision on

whether a member was incapacitated was one for the Trustee Company to take then it was completely unnecessary for that decision to have already been taken by the employer.

16. The Ombudsman rejected the submission that his interpretation might create an inconsistency with the requirements of the Finance Act 2004. That states that the scheme administrator has to make the decision whether or not the member meets the criteria for ill-health retirement. All that the Finance Act 2004 required was that the scheme administrator receive evidence of ill-health from a registered medical practitioner. If there was potential for inconsistency between the Scheme Rules and the statutory requirements then the Trustee Company could review the process that employers follow when establishing incapacity or seek to amend the Rules. That should not affect the outcome of Mr Scragg's complaint.
17. The Ombudsman directed that within 21 days the Trustee Company shall decide whether Mr Scragg was either totally or partially incapacitated and backdate the benefits payable to the date he left the University. He also directed the Trustee Company to pay £500 to Mr Scragg for the significant distress and inconvenience that he has suffered.
18. On 17 April 2018 I granted permission to appeal against the Ombudsman's determination and on 11 June 2018 I made an order staying the directions given at the end of the determination.

The principles of construction

19. The parties were agreed as to the principles to be applied in construing the Scheme Rules. These are set out in the recent decision of the Supreme Court in *Barnardo's v Buckinghamshire and others* [2018] UKSC 55 which concerned the construction of pension scheme rules. Lord Hodge (with whom Lady Hale PSC, Lord Wilson, Lord Sumption and Lord Briggs JJSC agreed) referred to the trilogy of cases *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, *Arnold v Britton* [2015] AC 1619 and *Wood v Capita Insurance Services Ltd* [2017] AC 1173 in which the Court has given guidance on the general approach to the construction of contracts and other instruments. He stated that a pension scheme has several distinctive characteristics which are relevant to the court's selection of the appropriate interpretative tools: [14]. Those characteristics mean that court should give weight to textual analysis, by concentrating on the words which the draftsman has chosen to use and by attaching less weight to the background factual matrix than might be appropriate in certain commercial contracts. That focus does not derogate from the need to avoid undue technicality and to have regard to the practical consequences of any construction. The analysis involves a purposive construction where that is appropriate.

Discussion

20. In my judgment the Trustee Company's interpretation of Rule 15 is the correct one. The Trustee Company is not bound by the conclusion of the University as to whether Mr Scragg suffers from incapacity; it must come to its own decision as to whether he suffers from partial incapacity or total incapacity and that includes the possibility that it determines that he does not suffer from incapacity at all. I reach that conclusion for the following reasons.

21. First it is not the case that the different parts of Rule 15 are applied in sequence, since the application form is dealt with in Rule 15.1.5 but must be submitted before the Trustee Company can make a determination under Rule 15.1.3. In any event, the sequence of the conditions set out in the Rule does not help in determining what the stage described by Rule 15.1.3 comprises. Certainly, in terms of timing, the Trustee Company's determination will most likely come after the employer has formed the opinion that the member is suffering from incapacity since that opinion is expressed through the application form. That does not, however, mean that when the Trustee Company comes to make the determination required, it cannot form its own view on the matter on which the employer has already formed an opinion.
22. Secondly, I do not agree with the Ombudsman's conclusion that if the Trustee Company revisits the question of incapacity that makes it completely unnecessary for that opinion to have been formed by the University. The view of the University may well be an important element of the evidence considered by the doctors and by the Trustee Company in making its determination both as to the existence of partial incapacity or total incapacity and to its determination under Rule 15.1.4 on the reason for retirement or dismissal. The weight of that element will depend on the quality of the evidence provided by the member or the University. Mr Scragg provided a great deal of evidence in support of his application but that will not always be the case since the Rules are silent as to how the employer is to form its opinion under Rule 15.1.2. It is significant in my judgment that Rule 15.1.2 refers to the employer's "opinion" as to whether the member is suffering from incapacity whereas the language used for the decisions of the Trustee Company refers to a "determination" of whether total or partial incapacity is established.
23. Thirdly, I accept the submission of Ms Campbell, appearing for the Trustee Company, that the Ombudsman's construction creates a serious problem for the operation of the Scheme, as has arisen in this case. Rule 15.14 stipulates that the determination of the Trustee Company shall be made having regard to medical opinion. Medical opinion is defined as limited to an opinion which is received by the Trustee Company from medical practitioners or other medical advisers who are appointed by the Trustee Company. There are no provisions in the Scheme stipulating how the employer comes to form its opinion that the member is suffering from incapacity, yet according to the Ombudsman's interpretation, the doctors appointed by the Trustee Company are bound by that opinion and can only opine on whether the incapacity is partial or total. If the doctors cannot form the opinion, based on the evidence they see, that the member suffers from any incapacity, they cannot give an opinion as to whether that incapacity is partial or total. It then becomes very difficult for the Trustee Company to make its own determination on that issue as required by Rule 15.1.3. It cannot be intended that the appointed doctors are required to assume that there is incapacity if, in their independent assessment of the evidence, there is none. Such a suggestion is inconsistent with the definition of "medical opinion" which requires the doctors to form an opinion on the "available evidence" and on the balance of probabilities. This does not indicate that they are bound to accept the opinion of the employer as to the existence of some kind of incapacity.
24. Mr Scragg argues that the construction put forward by the Trustee Company creates a different dilemma namely that a member may be dismissed on the grounds of ill health but yet not be entitled to early retirement on the preferable terms available for

those suffering from total or partial incapacity. However, that is a possibility that arises under either construction, since the test that the employer may apply under its employment contract with the member when deciding whether to dismiss the member may not be the same as the test for incapacity under the Scheme. An employer dismissing an employee on the grounds of ill health may be entitled to do so even if the test for partial incapacity is not satisfied. This could occur for example where the member might be able to undertake work of a similar scope and nature to the work currently done by the member but where no such work is available with that employer (subject, of course, to compliance with any applicable disability discrimination rules). The member would be dismissed for ill health but the employer would not be able to support the application for early retirement, if it correctly applied the test in Rule 15.1.2.

25. Fourthly, the balance between the interests of the employer and those of the body of funders of the Scheme favours the interpretation put forward by the Trustee Company. An employer may well be inclined to support the application for ill health retirement in order to maintain good relations with an employee who is being dismissed and who has given loyal service. The employer does not bear the burden of making the enhanced payments under the Scheme; or at least it bears that burden only in a very diluted form as one of the many contributors to the pension fund. It is the task of the Trustee Company to safeguard the assets of the fund by making sure that the valuable benefits available under Rule 15.2 and 15.3 are paid out only where the test for partial or total incapacity is shown to have been satisfied.
26. Fifthly, the Ombudsman was wrong, in my judgment, to rely on the sub-headings and the reference in the sub-heading to Rule 15.1.3 to “incapacity type”. He acknowledged that Rule 1.2.2 of the Scheme Rules specifically states that the headings and sub-headings do not affect the interpretation of the Rules. However, he was influenced by the headings even though they are clearly an inexact paraphrase of the content of the rule. For example, the use of the word “agrees” in the headings to both Rule 15.1.2 and 15.1.3 fails to reflect the significant difference between forming an opinion and making a determination. Further, the predecessor to Rule 15 in the 2003 version of the Scheme Rules set out the same requirements without any sub-headings. Mr Grant appearing for Mr Scragg referred me to an extract from *Lewison on Interpretation of Contracts* (6th edn & supp) para 5.13 which states that where the contract states expressly that the headings are not to affect its interpretation the cases are divided as to whether they can be used as an aid by the court. The two cases cited there where the court did take account of headings despite a contractual provision stating that they were for convenience only, *SBJ Stephenson v Mandy* [2000] FSR 286 and *Doughty Hanson & Co Ltd v Roe* [2009] BCC 126 do not, in my view, assist Mr Scragg. In the former case, the heading of a post-termination non-disclosure clause in an employment contract referred to “Confidential information” but the wording of the clause imposed a prohibition on disclosure simply of information, without the qualifying adjective that it protected only confidential information. A challenge to the width of the clause on the grounds that it purported to restrict disclosure of all information was rejected on the grounds that convenience included telling the reader at a glance what the clause is all about. Mann J in the latter case referred to the heading being convenient because it is descriptive of what the clause is about. In the present case Mr Scragg is trying to rely on the sub-heading for much more than an

indication of what Rule 15.1.3 is generally about, namely the Trustee Company's stage of the application.

27. Mr Grant referred to the 2003 version of the Scheme Rules because those were the subject of an earlier ruling of the Ombudsman in *B v Universities Superannuation Scheme* (PO-5467) on 16 September 2015. That decision construed the 2003 version of the Rule in the same way as the Ombudsman in the current case and for broadly the same reasons. The Ombudsman in *B* ruled that the decision whether the member is incapacitated is made by the university and the Scheme only considers whether the member is either totally or partially incapacitated. Mr Grant points out that the current version of the Rules was adopted in November 2015, shortly after the decision in *B*. He argues that if the Trustee Company had disagreed with the construction placed on the rule in *B*, it would have changed the wording in the new version of the rules to make clear that it was open to the Trustee Company to determine that the member suffered from neither partial or total incapacity. In my judgment that is the kind of interpretative tool which the Supreme Court has disapproved in *Barnado's*. The fifth characteristic of pension schemes that Lord Hodge referred to at [14] was that members of the pension scheme may not have easy access to expert legal advice or be able readily to ascertain the circumstances which existed when the scheme was established. This should lead the court construing the scheme rules to concentrate on the words used and attach less weight to the background factual matrix than might be appropriate in commercial contracts.
28. I therefore find that the wording of the Rules, consistent with the proper operation of the Scheme entitles and requires the Trustee Company to determine for itself, based on medical opinion as defined, whether the member is suffering from a total incapacity or a partial incapacity. That entitles and requires the Trustee Company to determine whether he is suffering from any incapacity at all.

The Respondent's Notice

29. The Respondent's Notice served on 8 November 2018 states that if the court accepts the Trustee Company's construction of Rule 15.1, the appeal should be dismissed and the Ombudsman's determination that the Trustee Company consider the question of incapacity anew should be upheld on three further bases:
- i) The hand written notes on which the Trustee Company relied did not constitute a medical opinion within the meaning of the Rules;
 - ii) The Trustee Company misdirected itself because it must only 'have regard' to any medical opinion from its panel of medical advisers;
 - iii) The medical opinion received did not entitle the Trustee Company to reject Mr Scragg's application for incapacity pension.
30. I extended time for the lodging of the notice; this was not opposed by the Trustee Company although it reserved the right to argue that the matters raised by Mr Scragg were not properly the subject of such a Notice.
31. In my judgment the determination made by the Ombudsman was that Rule 15.1.3 did not permit the Trustee Company to decide for itself the existence of any incapacity,

whether total or partial. The directions that the Ombudsman made, namely that the Trustee Company should decide whether Mr Scragg was partially or totally incapacitated and pay him £500 for distress and inconvenience were not separate determinations but directions flowing from the determination of the construction of the Rules. There was no appeal by the Trustee Company against those directions although of course, if it is successful on its appeal against the determination, the directions will fall away. Although the Ombudsman's ruling refers to the medical opinion of the panel doctors, there was no challenge before the Ombudsman to the sufficiency of the medical evidence or to the way in which the Trustee Company assessed it. The Respondent's Notice seeks to raise completely new issues not addressed by the Ombudsman. It cannot properly be described as seeking to uphold the determination on additional grounds, rather it is asking the appellate court to make an entirely different determination.

32. I agree with Ms Campbell's submission that to allow these matters to be raised in a Respondent's Notice on appeal undermines the framework set by the pensions legislation that requires disputes between a member and the scheme to be addressed first by the internal dispute resolution procedure established by the scheme. It is common ground that section 50 of the Pensions Act 1995 applies here so that the Trustee Company is obliged to secure that dispute resolution arrangements are made and implemented. Mr Scragg followed that procedure and raised only the question of the proper interpretation of the Rules. According to the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (SI 1996/2475) reg 3, in a case to which section 50 applies, the Ombudsman must not investigate or determine a dispute unless written notice of a decision in respect of that dispute has been issued under the dispute resolution procedure. In the present case there has been no reference to the internal dispute resolution procedure about the adequacy of the medical opinion provided by the panel doctors or the manner in which the Trustee Company assessed that evidence. It is not appropriate therefore for this court to consider the matters raised in the Respondent's Notice.
33. In conclusion, the appeal is allowed.