

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs Frances Bonner
Scheme	Local Government Pension Scheme (the Scheme)
Respondent(s)	Strathclyde Police

Subject

Mrs Bonner complains about Strathclyde Police's decision not to award her ill health early retirement.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against Strathclyde Police because they failed to follow the correct procedures in making their decision and also failed to identify and address the apparent inconsistencies in the medical advice obtained.

DETAILED DETERMINATION

Scheme Regulations

1. Relevant to this complaint are the Local Government Pension Scheme (Benefits Membership and Contributions) Regulations 2007, introduced with effect from 1 April 2008 (the **2008 Regulations**).
2. The relevant provision under the 2008 Regulations is contained regulation 20, set out in full at Appendix I to this Determination. There are three tiers of pension:
 - Tier 1 - Permanently incapable and no prospect of obtaining gainful employment before age 65 (can never work again). The pension is based on accrued membership plus enhancement of 100% of service to age 65.
 - Tier 2 - Permanently incapable and no prospect of obtaining gainful employment within three years of leaving but likely to before age 65. The pension is based on accrued membership plus enhancement of 25% of service to age 65.
 - Tier 3 - Permanently incapable of current job but able to obtain gainful employment within three years of leaving. The pension is based on accrued membership only with no enhancement. The pension would be suspended on re-employment and is subject to review after 18 months. The Regulations provide that Tier 3 benefits can be uplifted to Tier 2 benefits within three years of leaving employment.

Material Facts

3. Mrs Bonner was born on 23 February 1961. She joined Strathclyde Police on 3 February 1992.
4. She was employed as a member of police staff working at Force Communications – Govan and held the post of Communications Operator.
5. During her employment she had been absent on 38 occasions totalling 1725 days. She last worked on 7 April 2011.
6. Mrs Bonner made a claim for the early payment of her pension on the grounds of ill health with effect from 7 April 2011.
7. A report by Dr S, Force Medical Adviser, dated 13 June 2011 addressed to the HR Officer said

“I do not think Mrs Bonner is fit for her work at present and I am not sure that she would manage a less responsible post either at present...”

8. The report continued

“As you are aware, the pension criteria indicate that the person should have demonstrated that all reasonable treatments have been carried out and given sufficient time to take effect before the pension doctor would accept that the condition is likely to prevent the person from doing their job permanently. To this end, I have asked Mrs Bonner to ask her GP to refer her for to (sic) a mental health specialist and to book a further appointment to see me once she has been seen by the specialist”.

9. A further report by Dr S dated 6 July 2011 addressed to the HR Officer said

“Having discussed this with her, I think it is probably reasonable to say that she would be unfit for her current role, but I do not feel there is sufficient evidence to say that she would be unfit for other roles until her normal retiral age, i.e. 15 years time”.

10. Mrs Bonner’s claim for ill health retirement was referred to Dr W, Force Medical Adviser. He submitted his report on 29 July 2011. In his report he noted that Mrs Bonner’s GP had referred her back for a psychiatric assessment in connection with providing further supportive evidence to help with her application for ill health retirement.

11. His conclusion was as follows:

“Although I accept she has a long history of depression for which she has required treatment I do not see that there is sufficient weight of evidence to make me conclude that she is permanently incapable of undertaking her own job up to the date of her expected retirement at age 65”.

12. Dr W’s report made no reference to Mrs Bonner being able to appeal against his conclusion.

13. Mrs Bonner has made the following comments

- (a) When she was rejected by Dr W she was so distressed that she attempted to take her own life and had her daughter not found her this attempt would have resulted in her death according to mental health professionals.
- (b) On the very day that she attempted suicide (8 August 2011) the Strathclyde Police Personnel Officer had proposed a Force Attendance Management

Group (**FAMG**) meeting in order to instigate capability procedure with a view to Mrs Bonner's dismissal.

- (c) On that morning Mrs Bonner had contacted the Personnel Officer in order to enquire about her right to appeal the decision not to award her ill health retirement. She was told that there was no right of appeal. It was after this telephone conversation that she became upset and attempted suicide.
- (d) On 12 August 2011 Mrs Bonner had a home visit from the Personnel Officer to check on her welfare. However, Mrs Bonner believes that the only reason for the visit was to hand her a letter dated 9 August 2011 inviting her to the FAMG meeting in order to instigate capability and dismissal proceedings. She again asked if there was an appeal process and was told once again that there was no right of appeal.
- (e) The Personnel Officer referred to Dr W's statement that he was unable to conclude that she would be incapable of her current role until age 65 and pointed out that Mrs Bonner was only 50 at this time. Mrs Bonner did not understand the relevance of her age as she believed that if she was unfit to carry out her role her age would make no difference to whether she would be granted ill health retirement or not.
- (f) The FAMG meeting went ahead on 23 August 2011 at which Mrs Bonner was asked to sign a compromise agreement but was told that she would be dismissed whether she signed it or not. The question of an appeal process was again raised and she was again told that there was no right of appeal. The compromise agreement was facilitated so that Mrs Bonner could 'leave the business without further delay'.
- (g) In the weeks following the 23 August meeting Mrs Bonner contacted Strathclyde Pension Fund Office (**SPFO**) and was told that there was an appeal process which should have been instigated by her employer immediately after her original application had been rejected. Mrs Bonner contacted the Head of Corporate HR to report this and was told that it would be investigated further. However, she got the impression that they were more interested in having the compromise agreement drawn up so that she could 'leave the business as soon as possible'.

14. On 17 October 2011 the Head of Corporate HR wrote to Mrs Bonner to advise her that she had the right to appeal the decision of the Independent Medical Advisor (**IMA**) in relation to his rejection of her ill health retirement application and that she should submit this to the HR Department within ten days.

15. The letter also said:

“At the same FAMG meeting (on 23 August 2011) your Trade Union representative outlined, with your confirmation, that as a result of your condition you felt unable to engage with the force in respect to the attendance procedure, and you advised of the negative consequences in respect to your health.

It was agreed at FAMG that consideration would be given, rather than pursuing the capability procedure, to reaching a compromise which would allow you still to leave the force without further engagement in respect to your attendance under the formal force procedures.

...

The force are content to progress with the compromise agreement discussed given that it seeks to agree your departure from the force without further engagement under the terms of the capability and/or positive attendance management procedures, given the concerns in relation to your health that were outlined during FAMG. Essentially under the force’s normal procedure you would still be subject to capability proceedings and potential dismissal, regardless of whether you chose to appeal the decision by the IMA or not. This being the case the resolution agreed in respect to reaching a compromise agreement does not impede you in respect to appeal and therefore it is reasonable to continue to seek pragmatic resolution in respect to allowing you to depart from the force without further delay”.

16. Mrs Bonner appealed against the decision not to award her ill health early retirement on 31 October 2011. The wide ranging response to her appeal was provided by the Human Resources Department of Strathclyde Police on 21 November 2011.

17. The response confirmed that all the medical information held by Dr S and the HR Officer had been available to Dr W when he compiled his report. It also apologised for the fact that Mrs Bonner had previously been told that she had no right of appeal against the decision.

18. In reply to a specific point made by Mrs Bonner relating to the opinion put forward by Dr S that her condition rendered her incapable of carrying out her role efficiently, reference was made to the wording of Dr S's report dated 13 June 2011, i.e. "I do not think Mrs Bonner is fit for her work at present". The response said that by using the words "at present" Dr S had not concluded that Mrs Bonner was permanently incapable as she had suggested.
19. The response rejected her appeal, saying

"I conclude that I can find no substantive grounds by which the decision of the Independent Medical Advisor would be reversed".
20. Mrs Bonner says that it seems strange to her that her appeal was considered by someone who was not a medical professional and who had come to a decision without seeking the opinion of the doctor.
21. Following consultation with her Trade Union Mrs Bonner applied for the decision to be reconsidered. To support her case she submitted two further reports.
22. The first was a report from the Community Psychiatric Nurse for West Dunbartonshire Community Health & Care Partnership dated 28 October 2011 which said

"At this time Mrs Bonner is experiencing regular panic attacks and describing high levels of anxiety and impulsive behaviour and seems to be very vulnerable to social and occupational stressors. This may have an impact on her capacity to manage stressors in the sort (sic), medium and long term and I have started a C.B.T based 'management of crisis' treatment plan to start to address this".
23. The second was a letter from her GP dated 28 October 2011 which said

"Due to the severity and enduring nature of Mrs Bonner's depressive illness, I would support her application to retire from her current post, on the grounds of ill health".
24. Mrs Bonner's appeal was submitted to the Scottish Public Pensions Agency (**SPPA**) which is the nominated body for the reconsideration by the Scottish Ministers of a disagreement made under Regulation 54 (applications to resolve

disagreements) of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

25. SPPA requested Workability Ltd, a provider of Occupational Health & Safety Support Services, carry out an independent medical assessment of Mrs Bonner.
26. SPPA wrote to Workability Ltd on 24 April 2012 referring to an email dated 18 April 2012 and reply dated 23 April 2012 in which it was agreed that Workability would provide an independent medical examination. The letter enclosed a copy of Mrs Bonner's job description, sickness records and previous medical reports.
27. The letter said that SPPA must now determine whether, on the balance of probabilities, Mrs Bonner was incapable of discharging efficiently the duties of her former employment by reason of permanent (to age 65) ill health and also whether or not there was no reasonable prospect of her obtaining gainful employment before normal retirement age.
28. SPPA said that the medical report would be required to contain a statement as to whether or not Mrs Bonner would be incapable of carrying out the duties as set out in her former job description and that if such factors were present at the time of the examination whether or not it was more probable than not that the condition
 - (a) existed on 7 April 2011
 - (b) would make Mrs Bonner incapable of carrying out efficiently the duties in question
 - (c) would not improve sufficiently before reaching normal retirement age (65) for her to be considered capable of carrying out those duties efficiently and that either
 - (d) there is no reasonable prospect of obtaining gainful employment before normal retirement age OR

there is a reasonable prospect of obtaining gainful employment before normal retirement age.
29. The report was prepared by Prof M on 10 May 2012. His conclusion was

“It is my view that this lady does have personality issues and a long-standing depression. She has only relatively (recently) seen a Psychiatrist despite her long history of depression and more

intensive support has subsequently been organised through treatment by Psychologist and CPN. In other words she is now receiving more intensive treatment for what are long-standing conditions, some of which have been since childhood.

My assessment is that there is scope to improve her mental health to a level where it would be better than it was when she was working.

From a functional capacity and evaluation viewpoint, she is ambulant and (I) think Mrs Bonner is fit to do call centre work when well”.

...

“I consider that her health potentially can be improved with the relatively recent active management of her condition. In that regard, I consider that Mrs Bonner was probably incapable of carrying out her duties as set out in her former job description because of the conditions that existed on 07/04/2011. Since then she has started more intensive treatment in the last few months and I consider that there is now the potential that Mrs Bonner’s health will improve sufficiently before reaching normal retirement age for her to be considered capable of carrying out those duties efficiently”.

30. SPPA wrote to Mrs Bonner on 21 May 2012. It concluded by saying

“Having regard to the independent medical advice they have received, the SPPA determine that you are not permanently incapacitated and therefore not entitled to receive ill-health benefits”.

31. Mrs Bonner questioned the use of the term “call centre work” in Prof M’s report. However, in a letter dated 28 May 2011 Prof M confirmed that he had carefully read the job description and understood the role. He reaffirmed his opinion that Mrs Bonner’s health would potentially improve sufficiently before normal retirement age for her to be considered capable of carrying out her previous duties efficiently.

32. Mrs Bonner subsequently provided three medical reports to SPPA

33. The first was a letter from her GP dated 14 June 2012 which said:

“Due to the severity and enduring nature of Mrs Bonner’s current mental health difficulties, I would entirely support her application to be retired from her current post on the grounds of ill-health.

I have enclosed a couple of letter (sic) from Mrs Bonner’s consultant psychiatrist which I think you may find helpful in understanding the nature of her condition. As you will see, the

psychiatrist has diagnosed her with a personality disorder featuring addictive and impulsive behaviours. Clearly, this is not a situation which is likely to change or improve”.

34. The second was a report from her Consultant Clinical Psychologist dated 2 July 2012. He said that he had met Mrs Bonner on nine occasions in relation to the on-going delivery of her psychological therapy. He set out his psychological formulation of Mrs Bonner’s difficulties in some detail and concluded:

“With regards to Mrs Bonner’s occupational functioning, she is clear about her ultimate goal to return to some level of structured employment, or at least engage in voluntary service. However, I agreed fully with her own view that she will be unable to return to work as a Communications Assistant, or any related role”

...

“It is my opinion that a return to this role or any related role would again lead to a progression in Mrs Bonner’s psychological symptoms. While she has made some progress at my clinic, our therapeutic aims are based on dealing better with general life stressors. It is my opinion that Mrs Bonner will never be able to successfully manage a role that involves a significant care or responsibility burden”.

35. The third was a report from the SD to the Consultant Psychiatrist for West Dunbartonshire Community Health & Care Partnership dated January 2012. This report provided a detailed assessment of Mrs Bonner’s condition, but gave no specific opinion on her fitness for employment.
36. SPPA referred these reports to Prof M on 13 July 2012. In his response dated 18 July he said:

“While I sympathise with situational problems Mrs Bonner finds herself in which can be related to her personality, it is clear that she is currently being treated for depression, therefore improvement is quite possible. [Dr W], her Clinical Psychologist, confirms that she has a capacity for work and agrees with Mrs Bonner’s view about the Communications Assistant role.

Having reviewed these reports I continue to be of the view that Mrs Bonner has conditions which are treatable and improvable and that she has a capacity for work in due course. I see no reason why she should not be able to return to the Communications Assistant role in future as she has proved capable of the role in the past prior to this more intensive treatment for her longstanding problems”.

37. SPPA responded to Mrs Bonner on 27 July 2012 and repeated its conclusion that based on Prof M's report it determined that she was not permanently incapacitated and therefore not entitled to receive ill-health benefits.

Summary of Mrs Bonner's position

38. Dr S, the Strathclyde Police Occupational Health Doctor, met with her on several occasions and said that in her opinion Mrs Bonner would not be likely to carry on her current role.
39. Dr W made his decision to reject her claim for ill health retirement without having ever met her. He acknowledged that she had mental health issues, but without specialist medical input he was unable to conclude that she would be incapable of her current role until age 65.
40. Over the years of her employment with Strathclyde Police she had recorded approximately 90 days per year of absence. Therefore the law of probability would suggest that she was not, nor would she ever be, capable of working for '30hrs per week in a 12 month period' which is the requirement from the SPFO website to qualify for a Tier 1 ill health retirement.
41. Following her attempted suicide and dismissal from employment Mrs Bonner was referred by her GP to mental health services as specialist help was required. She was referred to a psychiatrist who in turn referred her to a psychologist. Her psychologist believes that she will never be well enough to undertake her previous role nor any other role which carries any level of responsibility.
42. She was sent by SPPA to see Prof M who concluded that when well she was capable of undertaking her duties with Strathclyde Police. He did not take into account her sickness record and said that given time she would be well enough to undertake her role as before. SPPA questioned his decision as they appeared to recognise the pressured role. However, Prof M remained happy with his decision to reject her application. Mrs Bonner was surprised to find that Prof M's main aim, as described on the internet, was to get people back to work. This did not seem fair to her and she wondered if there was a conflict of interest.
43. Prof M's first report appeared to be more concerned with her arthritic condition and not her mental health condition which was the sole reason for her application for ill health retirement. He said that he believed that she would be able to return to her previous position as he thought that she was undergoing

more intensive treatment for her condition. However, her psychologist states that she 'will never be in a position to undertake her previous job or any other job which carries any level of responsibility'.

44. After the rejection of her appeal by Prof M she was given a further letter of support from her psychologist. She contacted SPPA to ask that in view of this the decision by Prof M be revised. However, it was Prof M who looked at the case again and as he had already rejected the appeal it could be argued that her application was not treated fairly or impartially.

Summary of Strathclyde Police's position

45. Towards the end of her service Mrs Bonner was on sickness absence from 29 September 2010 to 9 January 2011 (102 days) and again from 7 April 2011 to 31 October 2011 (208 days) with both absences being medically certified as Depression.
46. Mrs Bonner was assessed by Strathclyde Police's medical adviser, Dr S, on 13 June 2011 and 6 July 2011 for overall fitness for work and advice on ill health retirement. Dr S reported at that time that Mrs Bonner was not fit for work and advised that in her opinion, Mrs Bonner would probably not fulfil the criteria at that stage for ill health retirement but that did not prevent her from applying for it if she so wished.
47. Mrs Bonner did request that she be referred for ill health retirement and so was assessed by an independent doctor (Dr W, Strathclyde Police Medical Adviser) on 29 July 2011. In his report Dr W advises that he does not see that there is sufficient weight of evidence to make him conclude that Mrs Bonner is permanently incapable of undertaking her own job up to the date of her expected retirement at age 65.
48. Strathclyde Police do not consider that there was any inconsistency in the opinion provided by Dr S and that provided by Dr W, but in any event even if there was inconsistency between those views it was entitled to rely on the medical opinion provided by Dr W as he had had sight of and considered Dr S' views when giving his opinion.
49. Throughout this time Mrs Bonner remained on sick leave and was being managed via Strathclyde Police's attendance management procedures. However, during a scheduled Force Attendance Management Group meeting chaired by the Head of

Corporate HR Mrs Bonner and her Union representative advised that she was unable to engage with Strathclyde Police in respect of the attendance management procedures due to the negative consequences in respect of her health.

50. Therefore it was agreed that rather than pursuing the formal capability process, consideration would be given to reaching a compromise which would allow Mrs Bonner to leave Strathclyde Police without further engagement in respect of her attendance under formal Force procedures.
51. That compromise agreement was prepared and the parties agreed that Mrs Bonner's employment would terminate on 31 October 2011.
52. Thereafter Mrs Bonner appealed the decision of the Independent Medical Adviser via a letter dated 31 October 2011. Within this letter she makes reference to various work related issues and details that she believes that the independent doctor had made his decision regarding her suitability for ill health retirement without appropriate supporting documentation.
53. The response to Mrs Bonner's appeal was dated 21 November 2011. This confirmed that Dr W was in receipt of all the correspondence cited by Mrs Bonner as being pertinent information regarding her medical condition and that that information was fully considered by Dr W prior to making his decision regarding her suitability for ill health retirement.
54. In March 2012 Mrs Bonner applied to the Scottish Ministers for a reconsideration of the decision made by her employer not to retire her on the grounds of ill health. The SPPA requested information from Strathclyde Police in the form of Job Description, sickness records and previous medical reports, all of which were provided.
55. The SPPA appointed medical referee Prof M to consider Mrs Bonner's appeal and following his assessment of Mrs Bonner he concluded that there was the potential that Mrs Bonner's health would improve sufficiently before reaching normal retirement age.
56. Therefore, in a letter to Mrs Bonner dated 21 May 2012 SPPA determined that she was not permanently incapacitated and therefore not entitled to receive ill health benefits and the appeal was dismissed.

57. The determination of suitability for ill health retirement has been considered by two independent doctors (three if Dr S's initial assessment and opinion on Mrs Bonner's case is taken into account) all of whom reached the same conclusion in that Mrs Bonner is not permanently incapacitated and so the decision taken by Strathclyde Police not to award ill health retirement remains the right decision based on the medical information provided.

Conclusions

58. In order to be entitled to a pension under Regulation 20 of the 2008 Regulations, Mrs Bonner had to be permanently incapable of discharging efficiently the duties of her current employment and have a reduced likelihood of obtaining any gainful employment before her normal retirement age. 'Permanently' is defined as until, at the earliest, her 65th birthday. The decision as to whether Mrs Bonner met these requirements fell to her employer (Strathclyde Police) in the first instance.
59. Before making such a decision, Strathclyde Police needed to obtain a certificate from a suitably qualified independent registered medical practitioner. The certifying practitioner has to be "independent" in the terms set out in Regulation 56(1) of the Local Government Pension Scheme (Administration) Regulations 2008.
60. Dr W has provided such a certificate. However, I cannot help but consider that he should have had considerable difficulty in certifying that he was not acting for Strathclyde Police given that he was an Occupational Physician in the Occupational Health Department of Strathclyde Police who wrote his report on Strathclyde Police letterhead.
61. Strathclyde Police was also responsible for ensuring that Prof M provided a similar certificate even though it was SPPA which arranged his appointment. However, there is no such certificate on file and no evidence to suggest that one was obtained.
62. There is no evidence that Strathclyde Police, other than Dr W, was involved in the initial decision to reject Mrs Bonner's application. Mrs Bonner says that she was simply given a copy of Dr W's report and this is supported by the fact that there is no letter from Strathclyde Police to Mrs Bonner on file.

63. Dr W concluded that there was insufficient weight of evidence to persuade him that Mrs Bonner was incapable of undertaking her own job. However, he offered no reason to support this conclusion in his report and therefore, Mrs Bonner was not given the opportunity to refute this assertion.
64. His opinion appears to be at odds with Dr S' view expressed in her report dated 6 July 2011 which said that Mrs Bonner was unfit for her current role.
65. Strathclyde Police say that they were entitled to rely on the medical opinion provided by Dr W as he had had sight of and considered Dr S' views when giving his opinion. Whilst I accept that they were so entitled I consider that given the apparent contradiction between the two views it would have been prudent to have at least questioned Dr W's conclusion. The fact that they did not do so strengthens my view that no-one at Strathclyde Police was involved in the initial consideration of Mrs Bonner's application.
66. Mrs Bonner says that on at least three occasions she was told that she had no right of appeal. Whilst this was corrected in Strathclyde Police's letter to her dated 17 October 2011, I note that there is no apology in that letter for the previous errors, although there is a belated apology in the response to her appeal.
67. These errors constitute maladministration on the part of Strathclyde Police.
68. I note the comments made by Mrs Bonner regarding the fact that Strathclyde Police appeared to be more intent on progressing the compromise agreement than on dealing with her ill health retirement application. However, having considered the letter to her dated 17 October 2011 I am persuaded that the intention was to cause her the minimum amount of distress possible.
69. At the Stage I review the appointed person referred to the report by Dr S dated 13 June 2011 as confirmation of the view that Mrs Bonner was not permanently incapable. However, he appears to have ignored Dr S's report dated 6 July 2011 which said that she thought it probably reasonable to say that Mrs Bonner would be unfit for her current role although there was insufficient evidence to say that she would be unfit for other roles until her normal retirement age. Had he considered this later report properly the difference in opinion between Dr S and Dr W would have been apparent.

70. As a result of these failings I have concerns about the approach taken as once again there is no evidence that Strathclyde Police sought to question why there was such a discrepancy between the view of Dr S and the report from Dr W.
71. There was an opportunity for the decision to be reviewed under Stage 2 of the IDR procedure. Mrs Bonner provided some additional information, including a report from the Consultant Clinical Psychologist which stated quite categorically that she would be unable to return to work as a Communications Assistant, or any related role.
72. Although this report was provided to Prof M he concluded that he could see no reason why Mrs Bonner should not be able to return to the Communications Assistant role in future. The apparent discrepancy between these two points of view was not questioned.
73. As has been identified, this case hinges on the permanence aspect of Mrs Bonner being incapable of her duties and whether further medical treatment(s) may enable her to return to work at any time before her normal retirement date, which is her 65th birthday.
74. There is clearly a difference in opinion on the prospects or otherwise of the untried treatments and how successful they might be at controlling Mrs Bonner's condition.
75. Decision makers are often faced with conflicting evidence, including medical evidence. Generally it is for the decision maker to weigh the evidence. The decision maker may prefer one doctor's opinion over another's and may rely on its own medical advice. But that does not mean that Strathclyde Police did not need to consider critically the advice (including advice of a medical nature) it received, and decide whether it could reasonably be relied upon or whether further enquiry was needed. That they failed to do so is maladministration.
76. It was not open to Strathclyde Police to decide against Mrs Bonner because there was insufficient evidence of permanence. As possible future treatments had been identified Strathclyde Police needed to consider what their likely effect would be. If Mrs Bonner's ill-health was likely (that is, on the balance of probabilities) not to be permanent if those treatments were undertaken, then they could reach a conclusion that it was probably not permanent at the time of

the application. But I have seen no evidence throughout the entire process that Strathclyde Police asked themselves that question.

77. Insofar as SPPA are concerned it is not their role as the Stage 2 IDRPs decision maker to question the opinion given by the independent registered medical practitioner. It is their role to consider the process undertaken and ensure that all relevant matters and evidence have been taken into account. In my judgment SPPA ought to have recognised at Stage 2 of IDRPs that proper certification had not been obtained and that Mrs Bonner's application had not been considered properly and remitted the matter back to Strathclyde Police at that time. That is what should happen now.
78. In summary, I find that Strathclyde Police failed to properly consider Mrs Bonner's eligibility under Regulation 20 and that this amounts to maladministration on their part. It is not open to me to come to a decision of my own as to her eligibility; Strathclyde Police remain the decision maker under the Regulations. I am, therefore, remitting the decision for reconsideration.
79. I have also given some thought to the effect the maladministration of her application will have had on Mrs Bonner. I find that it will have caused her a considerable measure of distress and inconvenience and that this should be recognised.

Directions

80. I direct that within 28 days of this determination Strathclyde Police shall obtain such further reports as may be needed and reconsider whether Mrs Bonner was entitled to benefits under Regulation 20 in April 2011 in particular having regard to what untried treatments have been identified and whether these are in fact likely to render her condition less than permanent, in particular taking account of the opinion of the Consultant Clinical Psychologist, and issue a further decision.
81. In the event that it is decided that she was so entitled, the benefits shall be put into payment as soon as is practicable and, if they are payable from a past date, simple interest is to be paid on any benefits from the due date of each payment to the date of actual payment.
82. The interest referred to above is to be interest as prescribed in Regulation 47 of the Local Government Pension Scheme (Administration) (Scotland) Regulations 2008.

83. Strathclyde Police shall pay Mrs Bonner £750 in compensation for the considerable distress and inconvenience she has suffered resulting from its maladministration as summarised above.

JANE IRVINE

Deputy Pensions Ombudsman

10 May 2013

Appendix

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

20. (1) If an employing authority determine, in the case of a member who satisfies one of the qualifying conditions in regulation 5-
- (a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
 - (b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,
- they shall agree to his retirement pension coming into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.
- (2) If the authority determine that there is no reasonable prospect of his obtaining any gainful employment before his normal retirement age, his benefits are increased-
- (a) as if the date on which he leaves his employment were his normal retirement age; and
 - (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.
- (3) If the authority determine that, although he cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased-
- (a) as if the date on which he leaves his employment were his normal retirement age; and
 - (b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.
- (4) If the authority determine that it is likely that he will be able to obtain any gainful employment within three years of leaving his employment, his benefits-
- (a) are those that he would have received if the date on which he left his employment were the date on which he would have retired at normal retirement age; and
 - (b) unless discontinued under paragraph (8), are payable for so long as he is not in gainful employment.
- (5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in

occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age...

- (7) (a) Subject to sub-paragraph (c), once benefits under paragraph (4) have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.
- (b) If he is not in gainful employment, the authority shall obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).
- (c) Sub-paragraph (a) does not apply where a person reaches normal retirement age...
- (11) (a) An authority which has made a determination under paragraph (4) in respect of a member may make a subsequent determination under paragraph (3) in respect of him.
- (aa) A subsequent determination under paragraph (3) must be made within three years of the date that payment of benefits is discontinued under paragraph (8), or before the member reaches the age of 65 if earlier.
- (b) Any increase in benefits payable as a result of any such subsequent determination is payable from the date of that determination.

...

- (14) In this regulation-

"gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months;

"permanently incapable" means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and...

- (15) Where, apart from this paragraph, the benefits payable to a member in respect of whom his employing authority makes a determination under paragraph (1) before 1st October 2008 would place him in a worse position than he would otherwise be had the 1997 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force instead of the preceding paragraphs of this regulation."

The Local Government Pension Scheme (Administration) Regulations 2008

- 44.—(1) An administering authority may require an administering or employing authority from which payment of any amount due under regulations 39 to 42 (employers' contributions or payments) or regulation 86 (changes of fund) is overdue to pay interest on that amount.

- (2) The date on which any amount due under regulations 39 to 41 is overdue is the date one month from the date specified by the administering authority for payment.
 - (3) The date on which any amount due under regulation 42 (other than any extra charge payable under regulation 40 or 41 and referred to in regulation 42(1)(c)) is overdue is the day after the date when that payment is due.
 - (4) Interest due under paragraph (1) or payable to a person under regulation 45(5) (deduction and recovery of member's contributions), 46(2) (rights to return of contributions) or 51 (interest on late payment of certain benefits) must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.
- (55) First instance decisions - general
- (1) Any question concerning the rights or liabilities under the Scheme of any person other than an employing authority must be decided in the first instance by the person specified in this regulation.
- ...
- (4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.
 - (5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.
 - (6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the employing authority which last employed him...
- (56) First instance determinations: ill-health
- (1) Subject to paragraph (1A), an independent registered medical practitioner ("IRMP") from whom a certificate is obtained under regulation 20(5) of the Benefits Regulations in respect of a determination under paragraph (2), (3) or (4) of that regulation (early leavers: ill-health) must be in a position to declare that-
 - (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
 - (b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case,
 and he must include a statement to that effect in his certificate.
- (1A) Paragraph (1)(a) does not apply where a further certificate is requested for the purposes of regulation 20(7) of the Benefits Regulations...

- (3) The employing authority and the IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation, and-
- (a) in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations; or
 - (b) in the case of the IRMP, when expressing an opinion as to the matters set out in regulation 20(5) and regulation 31(2) (early payment of pension: ill health) of those Regulations.”