

## Ombudsman's Determination

Applicant: Mrs S  
Scheme: Local Government Pension Scheme (**LGPS**)  
Respondent: Redcar & Cleveland Borough Council (the **Council**)

## Outcome

1. I do not uphold Mrs S's complaint and no further action is required by Redcar & Cleveland Borough Council.

## Complaint summary

2. Mrs S has complained that the Council awarded her Tier 3 ill health retirement benefits, in 2017, when a Tier 2 award would have been more appropriate.

## Background information, including submissions from the parties

### Background

3. Mrs S had been on long-term sickness absence since December 2016. In February 2017, it was agreed that she would be considered for ill health retirement. The relevant provisions are set out in The Local Government Pension Scheme Regulations 2013 (SI2013/2356) (as amended) (the **2013 Regulations**).
4. Briefly, the 2013 Regulations provide for three tiers of benefits for ill health retirement from active service. The appropriate tier depends upon the member's capacity for future employment as follows:-
  - Tier 1 the member is unlikely to be capable of undertaking gainful employment before normal pension age.
  - Tier 2 the member is unlikely to be capable of undertaking gainful employment within three years of leaving their employment, but will be capable of such employment before normal pension age.
  - Tier 3 the member is not immediately capable of undertaking gainful employment, but will be capable of such employment within three years of leaving their employment, or before normal pension age if this is sooner.

5. Gainful employment is defined as: “paid employment for not less than 30 hours in each week for a period of not less than 12 months”. Extracts from the 2013 Regulations are provided in Appendix 1.
6. As required by the 2013 Regulations, the Council sought an opinion from an independent registered medical practitioner (**IRMP**). It completed a medical referral form in February 2017. The Council listed the following conditions for Mrs S: prolapsed disc in back, bursitis on hip, anaemia, cervical spondylosis, irritable bowel syndrome, arthritis in toe, and bladder condition. It also listed the names of the specialists who were treating Mrs S for each condition.
7. The Council’s occupational health provider, Medacs Healthcare (**Medacs**), obtained reports from Mrs S’ pain management specialist, gastroenterologist and GP. Medacs also wrote to Mrs S’ consultant orthopaedic surgeon. He responded querying the surname used in Medacs’ letter and asking it to write to him at a different treatment centre. Medacs referred Mrs S’ case to an IRMP, Dr Parker. In June 2017, Dr Parker provided a report in which he recommended a Tier 3 award. Summaries of and extracts from the medical evidence relating to Mrs S’ case are provided in Appendix 2.
8. The Council met with Mrs S and informed her that, having considered the medical evidence and obtained a certificate from an IRMP, it had decided to award her Tier 3 benefits.
9. Mrs S appealed this decision via the two-stage internal dispute resolution procedure (**IDRP**). She pointed out that Medacs had misquoted her surname and sent its letter to her orthopaedic surgeon to the wrong address. Mrs S said she had undergone further investigation in April 2017 and was awaiting an appointment to discuss the results. She suggested that new medical evidence should be considered. Mrs S also said that her 2008 diagnosis of bipolar affective disorder had not been considered and no report about this had been requested. She said that she had attended an appointment with an urologist in May 2017 and had further appointments in June 2017. Mrs S said Medacs had cancelled a request for information from the urologist.
10. Dr Parker was asked to review Mrs S’ case. He responded, on 23 February 2018, saying that he had not changed his opinion. The Council issued a stage one IDRP decision, on 6 March 2018, declining Mrs S’ appeal.
11. Mrs S lodged a further appeal. A stage two IDRP decision was issued, on 11 September 2018, again declining her appeal.
12. Under the 2013 Regulations, the Council was required to review Mrs S’ Tier 3 benefits after they had been in payment for 18 months. This review was undertaken in January 2019. Mrs S’ case was referred back to Dr Parker. He provided a further report in which he expressed the view that the cumulative effect of Mrs S’ physical and mental health problems meant that she was unlikely to be able to undertake gainful employment within three years of leaving her employment.

13. The Council informed Mrs S that her ill health retirement benefits would be uplifted to Tier 2 with effect from 9 December 2018.
14. In response to Mrs S' queries about the process of obtaining medical reports, Medacs referred to consent forms she had signed and said she had listed five specialists and her GP. It said three of the specialists had been based at the same hospital. Medacs said the greater the number of people it wrote to, the more likely it was that there would be a delay because a number of specialists would request sight of her notes at the same time. It acknowledged that this might not be a problem when the notes were electronic. Medacs explained that Mrs S' GP had been approached first and it would have requested other reports if the GP had not provided sufficient information. It said the GP's report had provided sufficient information for it to recommend an uplift to a Tier 2 pension.

### **Mrs S' position**

15. Mrs S submits:-
  - The medical conditions she has are chronic and acute. There will be a deterioration of her physical health, as indicated by her GP and the Council's occupational health provider. She has these conditions for life and will not be cured. This is why she was opposed to the Tier 3 award.
  - In February 2019, she was awarded a Tier 2 pension. This should have been her initial award. She should have received a 25% enhancement of her lump sum and a higher monthly pension.
  - She is of the view that the Council's decision was influenced by financial considerations.
  - She found the whole process extremely frustrating and stressful. The Council is aware that she cannot cope with stress and yet it subjected her to this protracted process.
  - Dr Parker's reports make it evident that her situation did not change between 2016 and 2019. She has never been contacted by Dr Parker.
  - Medacs used an incorrect surname and sent the request for a report from her orthopaedic surgeon to the wrong hospital<sup>1</sup>. This resulted in a delay to the provision of reports and in some reports not being provided. She had informed Medacs of its error prior to her application for ill health retirement.

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<sup>1</sup> The occupational health provider responded to a complaint from Mrs S by explaining that it had taken her surname from the consent form she had signed (not seen). It said the consultant orthopaedic surgeon had been listed with three other consultants based at the hospital in question. It had confirmed that he was a consultant at that hospital.

## **The Council's position**

16. The Council submits:-

- It must consider all of the information available to it when deciding whether or not to award ill health retirement benefits in line with the LGPS Regulations.
- Having followed the opinions received from Dr Parker, it considers that it acted reasonably and on the basis of independent medical advice in awarding Mrs S her pension benefits at the appropriate tiers.

## **Adjudicator's Opinion**

17. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council because it had applied the 2013 Regulations correctly and its decisions were supported by the available medical evidence at the relevant times. The Adjudicator's findings are summarised below:-

17.1 Members' entitlements to benefits when taking early retirement due to ill health were determined by the scheme rules or regulations. The scheme rules or regulations determined the circumstances in which members were eligible for ill health benefits, the conditions which they had to satisfy, and the way in which decisions about ill health benefits had to be taken.

17.2 In Mrs S' case, the relevant regulations were the 2013 Regulations. In particular, Mrs S had to satisfy the conditions set out in Regulation 35 (see Appendix 1). This meant that, at the time her employment was terminated, Mrs S had to be:-

- permanently incapable of discharging efficiently the duties of the employment she had been engaged in; and
- not immediately capable of undertaking any gainful employment.

Provided Mrs S satisfied these conditions, she was entitled to receive a pension.

17.3 Regulation 36 made it clear that the decision as to whether Mrs S was entitled to a pension and, if so, at which tier was to be made by the Council after it had obtained a certificate from an IRMP. Acting on the advice of the IRMP, the Council had agreed that Mrs S satisfied the conditions for receiving a pension under Regulation 35. Mrs S' complaint concerned the Council's decision to then award her a Tier 3 pension.

17.4 Under Regulation 36, one of the questions which was to be asked of the IRMP was how long the member was unlikely to be capable of undertaking gainful employment. This was in order that the employer might determine which tier of pension was appropriate. The appropriate tier

depended upon the member's capacity for future employment as set out in paragraph 4 above. The Adjudicator noted Mrs S' comment that her medical conditions were life-long. However, eligibility for a pension under Regulation 35 was related to the member's expected future capacity for employment. It was possible that someone might have a long-term health condition but still be capable of some employment.

- 17.5 Having obtained advice from an IRMP, the Council was not then bound by the IRMP's opinion. It was expected to come to a decision itself by weighing up the available relevant evidence.
- 17.6 That being said, the Council was entitled to rely on any advice it received from an IRMP unless there was a good reason why it should not do so, or should not do so without seeking clarification first. The Adjudicator said the kind of things she had in mind were errors or omissions of fact by the IRMP, a misunderstanding of the regulations or reference to an irrelevant matter. This was because the Council was only expected to review medical evidence from a lay perspective. It would not be expected to challenge a medical opinion as such. If there was a difference of opinion, say, between the IRMP and the member's own doctors, the Council could be expected to ask for an explanation from the IRMP, if one had not already been given. However, the weight which was given to any of the evidence was for the Council to decide, including giving some evidence little or no weight.
- 17.7 Mrs S had raised some concerns about the process by which Medacs had obtained reports from her specialists. In particular, she had pointed out that it had misspelt her surname and addressed a request for a report incorrectly. The report in question was that which Medacs had been seeking from Mrs S' consultant orthopaedic surgeon.
- 17.8 The Adjudicator said she wished to clarify that Medacs, itself, and the IRMP did not come within the Pensions Ombudsman's jurisdiction. They would be answerable to their own professional bodies and the General Medical Council. However, any irregularities within the Medacs' procedure should be queried by the Council where they might have an impact on the advice given. The failure to obtain sufficient, appropriate medical reports would be an example of this.
- 17.9 The Adjudicator noted that a report had been obtained from the orthopaedic surgeon at a later date. Having reviewed this report, it was her view that the failure to obtain it prior to Dr Parker's June 2017 review had not impacted greatly on the outcome for Mrs S. It was likely that the orthopaedic surgeon would have said the same in early 2017 as he did in February 2018; namely, that it was difficult to say whether there were any further treatment options. The orthopaedic surgeon had said he had referred Mrs S for gait re-education following surgery on her foot, but she had not attended for this and he had had no further contact with her since.

- 17.10 Although a decision-maker had to follow the proper procedure when making decisions about ill-health benefits, not all procedural irregularities would mean that a decision could not be allowed to stand. For example, if procedural failings occurred at an early stage in the process and the impact of the failing was corrected later, the Pensions Ombudsman might take the view that the procedural failings did not invalidate the decision. Given that the report from the orthopaedic surgeon had added little to the medical evidence and other information was available to the IRMP from Mrs S' GP, it was the Adjudicator's opinion that the Pensions Ombudsman would take this view in her case.
- 17.11 The Adjudicator said it remained for her to consider if the evidence available at the time of the Council's decision to award Mrs S a Tier 3 pension supported that decision. Since the Council had relied heavily on Dr Parker's advice. It would be appropriate to consider this in more detail.
- 17.12 Dr Parker had said he had considered whether Mrs S' medical conditions made her permanently unfit for her own job or any gainful employment. It was clear from this that Dr Parker had understood what was required under Regulation 35.
- 17.13 Dr Parker had noted Mrs S' bipolar disorder, gastro-intestinal condition, chronic back pain and bladder problem. He had also noted that she had recently had surgery to her foot. Dr Parker had explained that he had looked at recent reports and correspondence from Mrs S' pain management specialist, her gastroenterologist and her GP. He had said that each condition on its own would be unlikely to lead to permanent incapacity. He had explained that there was scope for further medical management of all of Mrs S' conditions, although he thought that her back pain was always likely to be present. Dr Parker had noted that the gastroenterologist had expressed optimism about Mrs S' condition. Dr Parker had expressed the view that Mrs S' mental health should be stable for long periods of time with appropriate medication and psychotherapeutic support.
- 17.14 Dr Parker had, however, acknowledged that the combination of conditions was difficult for Mrs S to cope with. He had concluded that the combination of the nature of Mrs S' work and the nature of her medical conditions meant that she should be considered permanently unfit for her own job. Dr Parker did not think that Mrs S would be unfit to undertake alternative gainful employment within three years. This was because he took the view that continued treatment would enable Mrs S to undertake a suitably adjusted semi-sedentary role.
- 17.15 The Adjudicator said she had not identified any error or omission of fact in Dr Parker's report. Nor did his report appear to be inconsistent with the reports from Mrs S' pain management specialist, gastroenterologist and GP. In the

Adjudicator's view, there had been no reason for the Council not to base its decision as to the tier of pension to award Mrs S on Dr Parker's advice.

- 17.16 Mrs S had appealed the decision to award her a Tier 3 pension on the grounds that she had had or was awaiting further appointments with her specialists. She had suggested that new medical evidence should be considered. Mrs S had also said that her 2008 diagnosis of bipolar affective disorder had not been considered and no report about this had been requested.
- 17.17 It was not unusual for an applicant for ill health retirement to be under the continuing care of their treating physicians. However, a decision needed to be made as to their eligibility for a pension at a particular point. Of necessity, this meant basing the decision on the available evidence at a particular point in time. The reports considered by Dr Parker were reasonably up to date at the time of his advice to the Council. In the Adjudicator's view, there had been no reason for the Council to seek further medical evidence at that stage.
- 17.18 Nevertheless, the Council had asked Dr Parker to review Mrs S' case. It had also asked him to address Mrs S' concerns that he had not considered her bipolar condition. This was an appropriate approach in the circumstances.
- 17.19 Dr Parker had confirmed that he had had Mrs S' bipolar disorder "in mind" when reviewing her case. The Adjudicator noted that he had referred to it in his report. Dr Parker had also confirmed that the additional evidence he had been asked to review had not changed his opinion. The additional evidence comprised letters from a speciality mental health doctor, Mrs S' GP and her consultant orthopaedic surgeon. Dr Parker's advice was not inconsistent with the information contained in these letters.
- 17.20 One of Mrs S' concerns appeared to have been that a report on her mental health had not been sought. There was no hard and fast rule as to what medical evidence was sought. It was very much dependent upon the facts of a case and the professional judgment of the IRMP as to what evidence they required to give an opinion. Mrs S' bipolar diagnosis was longstanding and did not appear to have been a major factor in her incapacity for employment at that time. The speciality mental health doctor had confirmed that Mrs S had not been experiencing a relapse of her bipolar disorder. On that basis, in the Adjudicator's view, the absence of a report on Mrs S' mental health at the time of Dr Parker's 2017 and 2018 advice was not a reason for the Council not to rely on his advice.
- 17.21 In 2019, Dr Parker had advised that Mrs S was unlikely to be able to take up gainful employment within three years of her date of leaving employment with the Council. In other words, he had advised that she satisfied the conditions for a Tier 2 pension.

17.22 The Adjudicator said she appreciated that Mrs S would feel that this cast doubt on the veracity of Dr Parker's earlier advice. However, the purpose of a Regulation 37 review where someone was in receipt of Tier 3 benefits was to ascertain whether there had been any change in the person's circumstances. Mrs S' GP had advised that there had been a significant change in her health, both mentally and physically, which required constant attention from specialists. They had provided copies of recent correspondence relating to the current situation. This supported Dr Parker's change of view and hence the Council's decision to uplift Mrs S' pension to Tier 2.

18. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided further comments which are summarised in paragraph 19 below. I have considered Mrs S' comments but I find that they do not change the outcome. I agree with the Adjudicator's Opinion.

### **Mrs S' further comments**

19. Mrs S says there was no change to her medical information yet the Council changed her Tier 3 award to a Tier 2 award with no additional evidence whatsoever. She points out that her chronic illnesses will be with her for life. Mrs S says she has tried to work but she only lasted a few weeks because of her back and feet. She believes that she should have been given a Tier 2 award from the beginning.

### **Ombudsman's decision**

20. In order for Mrs S to qualify for Tier 2 benefits in 2017, a decision had to be made as to whether she satisfied the Tier 2 condition; that is, whether she was unlikely to be capable of undertaking any gainful employment within three years of leaving her employment, but likely to be able to do so before reaching her normal pension age. That decision had to be made at, or around, the point at which Mrs S' employment terminated in order that she could receive benefits immediately. It is a decision which has to be made on the balance of probabilities based on the evidence which is available at the time it is taken. In other words, it is based on the expectations for the member's likely future capacity for employment at that time.
21. The 2013 Regulations make provision for a decision to award Tier 3 benefits to be reviewed after they have been in payment for 18 months. There are three options available on review of a Tier 3 award. The employer can decide: (i) to continue paying the Tier 3 pension for a period up to the three-year maximum; (ii) to award Tier 2 benefits from the date of the review decision; or (iii) to cease paying the Tier 3 pension.
22. The fact that Regulation 37(7) includes the option to award Tier 2 benefits from the date of the review decision recognises that a member's health may not improve in the way it had been expected to at the time of the initial decision. A change from Tier 3 to Tier 2 does not, in and of itself, invalidate the earlier decision.



23. Mrs S has suggested that the Council made the decision to award Tier 2 benefits in 2019 without the benefit of any additional information. This is not the case. A further report had been obtained from Mrs S' GP and he had provided information about recent referrals and investigations. The GP had said that there had been a significant change in Mrs S' health, both mentally and physically.
24. Before making a decision under Regulation 37(7), the Council was required to obtain a further certified opinion from an IRMP. It asked Dr Parker to review Mrs S' case. Regulation 37 specifically provides for the same IRMP who advised on the initial decision to provide an opinion on review.
25. Dr Parker reviewed the letter from Mrs S' GP and the copies of recent hospital letters. He noted that Mrs S was still undergoing investigation and treatment for her physical conditions. He also noted that she had experienced an exacerbation of her mental health problems and her medication had been reviewed. Dr Parker said the last letter from Mrs S' psychiatrist was reassuring, but her physical problems appeared to continue despite ongoing treatment. He concluded that the cumulative effect of Mrs S' physical and mental health problems meant that she was unlikely to be able to take up gainful employment within three years of her date of leaving. This opinion is clearly based upon the updated medical evidence supplied by Mrs S' GP. Dr Parker's change of view as to Mrs S' likely future capacity for work does not invalidate his earlier opinion. It simply recognises that Mrs S had not improved to the extent to which Dr Parker had previously expected her to in the period following the termination of her employment.
26. I find that both the Council's initial decision to award Mrs S Tier 3 benefits and its decision to subsequently award Tier 2 benefits on review were reached in a proper manner.
27. I do not uphold Mrs S' complaint.

**Anthony Arter**  
Pensions Ombudsman

18 July 2022

## Appendix 1

### The Local Government Pension Scheme Regulations 2013 (SI2013/2356)

28. At the time Mrs S left her employment with the Council, Regulation 35 provided:

“Early payment of retirement pension on ill-health grounds: active members

- (1) An active member who has qualifying service for a period of two years and whose employment is terminated by a Scheme employer on the grounds of ill-health or infirmity of mind or body before that member reaches normal pension age, is entitled to, and must take, early payment of a retirement pension if that member satisfies the conditions in paragraphs (3) and (4) of this regulation.
- (2) The amount of the retirement pension that a member who satisfies the conditions mentioned in paragraph (1) receives, is determined by which of the benefit tiers specified in paragraphs (5) to (7) that member qualifies for, calculated in accordance with regulation 39 (calculation of ill-health pension amounts).
- (3) The first condition is that the member is, as a result of ill-health or infirmity of mind or body, permanently incapable of discharging efficiently the duties of the employment the member was engaged in.
- (4) The second condition is that the member, as a result of ill-health or infirmity of mind or body, is not immediately capable of undertaking any gainful employment.
- (5) A member is entitled to Tier 1 benefits if that member is unlikely to be capable of undertaking gainful employment before normal pension age.
- (6) A member is entitled to Tier 2 benefits if that member -
  - (a) is not entitled to Tier 1 benefits; and
  - (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment; but
  - (c) is likely to be able to undertake gainful employment before reaching normal pension age.
- (7) Subject to regulation 37 (special provision in respect of members receiving Tier 3 benefits), if the member is likely to be capable of undertaking gainful employment within three years of leaving the employment, or before normal pension age if earlier, that member is entitled to Tier 3 benefits for so long as the member is not in gainful

employment, up to a maximum of three years from the date the member left the employment.”

29. Regulation 36 provided:

“Role of the IRMP

- (1) A decision as to whether a member is entitled under regulation 35 (early payment of retirement pension on ill-health grounds: active members) to early payment of retirement pension on grounds of ill-health or infirmity of mind or body, and if so which tier of benefits the member qualifies for, shall be made by the member's Scheme employer after that authority has obtained a certificate from an IRMP as to -
  - (a) whether the member satisfies the conditions in regulation 35(3) and (4); and if so,
  - (b) how long the member is unlikely to be capable of undertaking gainful employment; and
  - (c) where a member has been working reduced contractual hours and had reduced pay as a consequence of the reduction in contractual hours, whether that member was in part time service wholly or partly as a result of the condition that caused or contributed to the member's ill-health retirement.
- (2) An IRMP from whom a certificate is obtained under paragraph (1) must not have previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested.
- (2A) For the purposes of paragraph (2) an IRMP is not to be treated as having advised, given an opinion on or otherwise been involved in a particular case merely because another practitioner from the same occupational health provider has advised, given an opinion on or otherwise been involved in that case.
- (3) If the Scheme employer is not the member's appropriate administering authority, it must first obtain that authority's approval to its choice of IRMP.
- (4) The Scheme employer and IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation and regulations 37 (special provision in respect of members receiving Tier 3 benefits) and 38 (early payment of retirement pension on ill-health grounds: deferred and deferred pensioner members).

30. Regulation 37 provided:

“Special provision in respect of members receiving Tier 3 benefits

- (1) A member in receipt of Tier 3 benefits who attains normal pension age continues to be entitled to receive retirement pension and ceases to be regarded as being in receipt of Tier 3 benefits from that date, and nothing in the remainder of this regulation applies to such a person.
- (2) A member who receives Tier 3 benefits shall inform the former Scheme employer upon starting any employment while those benefits are in payment and shall answer any reasonable inquiries made by the authority about employment status including as to pay and hours worked.
- (3) Payment of Tier 3 benefits shall cease if a member starts an employment which the Scheme employer determines to be gainful employment, or fails to answer inquiries made by the employer under paragraph (2), and the employer may recover any payment made in respect of any period before discontinuance during which the member was in an employment it has determined to be gainful employment.
- (4) A Scheme employer may determine that an employee has started gainful employment for the purposes of paragraph (3) if it forms the reasonable view that the employment is likely to endure for at least 12 months and it is immaterial whether the employment does in fact endure for 12 months.
- (5) A Scheme employer must review payment of Tier 3 benefits after they have been in payment for 18 months.
- (6) A Scheme employer carrying out a review under paragraph (5) must make a decision under paragraph (7) about the member's entitlement after obtaining a further certificate from an IRMP as to whether, and if so when, the member will be likely to be capable of undertaking gainful employment.
- (7) The decisions available to a Scheme employer reviewing payment of Tier 3 benefits to a member under paragraph (5) are as follows -
  - (a) to continue payment of Tier 3 benefits for any period up to the maximum permitted by regulation 35(7) (early payment of retirement pension on ill-health grounds: active members);
  - (b) to award Tier 2 benefits to the member from the date of the review decision if the authority is satisfied that the member -

- (i) is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either
    - (ii) is unlikely to be capable of undertaking gainful employment before normal pension age, or
    - (iii) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age; or
  - (c) to cease payment of benefits to the member.
- (8) A member whose Tier 3 benefits are discontinued under paragraph (3) or (7)(c) is a deferred pensioner member from the date benefits are discontinued and shall not be entitled to any Tier 3 benefits in the future.
- (9) A Scheme employer which determines that it is appropriate to discontinue payment of Tier 3 benefits for any reason shall notify the appropriate administering authority of the determination.
- (10) A Scheme employer may, following a request for a review from a member in receipt of Tier 3 benefits or within 3 years after payment of Tier 3 benefits to a member are discontinued, make a determination to award Tier 2 benefits to that member from the date of the determination, if the employer is satisfied after obtaining a further certificate from an IRMP, that the member is permanently incapable of discharging efficiently the duties of the employment the member was engaged in, and either -
- (a) is unlikely to be capable of undertaking gainful employment before normal pension age; or
  - (b) is unlikely to be capable of undertaking any gainful employment within three years of leaving the employment, but is likely to be able to undertake gainful employment before reaching normal pension age.
- (11) The IRMP who provides a further certificate under paragraphs (6) or (10) may be the same IRMP who provided the first certificate under regulation 36(1) (role of the IRMP).
- (12) Where the member's former employer has ceased to be a Scheme employer, the references in paragraphs (5) to (7), (9) and (10) are to be read as references to the member's appropriate administering authority."

## Appendix 2

### Medical evidence

31. Dr Milligan, consultant in pain medicine, 14 March 2017

In his response to Medacs, Dr Milligan said an MRI scan in 2015 had shown desiccation and narrowing of the L4/L5 disc and a minimal broad based disc bulge which was non-compressive. He said Mrs S also had bursitis of the left hip. Dr Milligan outlined the treatment which Mrs S had undergone and confirmed that only a pain management programme remained to be tried. He expressed the view that it was unlikely that Mrs S' chronic back pain would improve significantly before normal retirement age and that there would be gradual deterioration over time.

32. Mrs S' GP, 3 April 2017

In their response to Medacs, the GP listed Mrs S' medical conditions. They said they were enclosing copies of specialists' information about the treatment and investigations Mrs S was undergoing. This included correspondence from: a consultant urologist, Mr Fulford; a consultant gastroenterologist, Dr Ramadas; and a consultant orthopaedic surgeon, Mr Mackenney.

33. Dr Ramadas, consultant gastroenterologist, 12 May 2017

In their response to Medacs, Dr Ramadas said they had seen Mrs S in January 2017 and outlined the results of tests she had undergone. They said the overall prognosis was generally favourable and they did not have a reason to suspect any other underlying pathology. Dr Ramadas said they had not seen Mrs S recently and had not had any further contact from her GP.

34. Dr Parker, IRMP, 6 June 2017

Dr Parker confirmed that he was an appropriately qualified and approved IRMP and that he had read Mrs S' occupational health file. He noted that Mrs S had been diagnosed with bipolar disorder and that this had affected her capacity to remain in work reliably over the years. He noted that Mrs S also had a gastro-intestinal problem, chronic back pain and a bladder problem. He noted that she had recently had surgery to her foot. Dr Parker confirmed that he had looked at recent reports and correspondence from Mrs S' pain management specialist, her gastroenterologist and her GP. He said:

"I have to consider whether [Mrs S'] medical conditions make her permanently – to normal retirement age – unfit for her own job or any gainful employment (as defined in the Regulations). The difficulty in a case such as this is that each of her medical conditions (on their own) would be unlikely – at the 51% level – to lead to permanent incapacity. There is scope for further medical management of all of her conditions, although her back pain is always likely to be present. Her gastroenterologist expresses optimism and her mental health

should be stable for long periods of time with appropriate medication and psychotherapeutic support.

However, the combination of conditions is clearly difficult for [Mrs S] to cope with at present. I am also mindful of the relatively recent history (September 2015) of an interpersonal issue at work leading to a stressful investigation process.

The history of referrals to occupational health and the reports from the occupational physicians indicate that [Mrs S'] ability to attend work reliably and efficiently has been increasingly impaired. The combination of the nature of her work and the nature of her medical conditions leads me to conclude that [Mrs S] is permanently unfit for her own job. However I take the view that with continued psychological input and treatment for her bladder and bowel problems, together with continued mobilisation and pain management, she would be fit to undertake alternative suitably adjusted semi-sedentary gainful employment within three years."

35. Dr Chauhan, speciality doctor at the mental health service, 4 August 2017

In a letter to Mrs S' GP, Dr Chauhan described a recent review with Mrs S. They said Mrs S appeared to have sleep problems without major alteration of mood and that personal events had led to her emotional upheaval; it was not a relapse of her bipolar disorder. Dr Chauhan outlined future treatment via Mrs S' GP and said no further appointments had been offered to Mrs S at that time.

36. Mrs S' GP, 11 October 2017

In an open letter, Mrs S' GP explained that she had been diagnosed with bipolar affective disorder in 2008 and was on long-term medication. They said she had last been reviewed by a psychiatrist in August 2017 and they were enclosing copies of letters from the psychiatrist. The GP said Mrs S suffered from chronic lower abdominal pain and bladder problems. They said she was under the care of a consultant urologist and they were enclosing copies of correspondence. The GP explained Mrs S also suffered from chronic back pain, migraine and a painful right foot. They said Mrs S had been seen by an orthopaedic surgeon and a rheumatologist and they were enclosing the correspondence relating to this. The GP also explained that Mrs S was under the care of a consultant gastroenterologist and enclosed correspondence from them.

37. Mr Mackenney, 5 February 2018

In his response to Medacs, Mr Mackenney described Mrs S' diagnosis and treatment. He said it was difficult to say whether there were any further treatment options. Mr Mackenney said he had referred Mrs S for gait re-education following the surgery on her foot, but she had not attended and he had had no further contact with her since.

38. Dr Parker, 23 February 2018

In his supplementary report for the Council, Dr Parker said that he had reviewed Mrs S' occupational health file again to ensure that he had not missed anything when he had assessed her case in 2017. He said, on the evidence which he had had in June 2017, his assessment had been consistent with the medical facts. Dr Parker confirmed that he had reviewed additional evidence submitted by Mrs S.

Dr Parker said that Mrs S had foot pain associated with arthritis in her right big toe, which had not eased with orthotics. He noted that she had had surgery which had been technically successful, but she had transfer pain and had been referred for physiotherapy. Dr Parker noted that Mrs S' orthopaedic surgeon had said that he did not know what the long-term prognosis for her foot pain might be and he had not seen her since the referral for physiotherapy.

Dr Parker said the evidence indicated that Mrs S continued to suffer from abdominal pain, bladder problems, back pain and pain in her left leg. He noted that she experienced mood disturbance associated with a diagnosis of bipolar disorder which was made worse by adverse life events.

Dr Parker acknowledged that he had not previously referred to Mrs S' longstanding history of mental health problems, but said that he had had these in mind at the time of his 2017 review. He explained that he had taken the view that none of Mrs S' conditions would, in themselves, be likely to cause permanent impairment for work, but he thought that, in combination, they made her unfit for her job with the Council.

Dr Parker said he had looked at the new information provided by Mrs S. He said he had no doubt that she had a number of different medical conditions, but there was ongoing treatment available and she was receiving appropriate advice. He concluded:

"I have not changed my opinion. My view is that [Mrs S] is permanently unfit for her previous job (because of the cumulative effect of her physical problems and her underlying mental health problems) and that she was not immediately – in June 2017 – fit for other gainful employment. However I still take the view that with continued medical treatment and a period of physical and emotional 're-conditioning' after leaving her job, she would be fit to undertake alternative gainful employment. I would have expected that to be within three years of her leaving her employment with [the Council]."

39. Mrs S' GP, 27 December 2018

The GP said that, since their previous letter, Mrs S' mental health condition had exacerbated and she had been referred to secondary mental health services. They said Mrs S had been seen in August 2017 and November 2018, and was still under the care of the psychiatric services. The GP said they were enclosing copies of correspondence with the mental health service. They said Mrs S remained under the care of an urologist and a gastroenterologist, and had been referred to a



gynaecologist. They enclosed a letter from the gynaecologist. The GP said Mrs S had been referred to a spinal clinic and had undergone investigation, including an MRI. They said spinal injections were planned and that they were enclosing correspondence. The GP concluded by saying there had been a significant change in Mrs S' health condition, both mentally and physically, which required constant attention from the specialist clinics.

40. Dr Parker, 14 January 2019

Dr Parker said he had seen an up-to-date report from Mrs S' GP and copies of recent hospital letters. He noted that Mrs S was still undergoing investigation and treatment for abdominal pain, urinary tract problems and back pain. He noted that she had experienced an exacerbation of her mental health problems and her medication had been reviewed. Dr Parker said the last letter from Mrs S' psychiatrist was reassuring, but her physical problems appeared to continue despite ongoing treatment. He said:

“I conclude that the cumulative effect of her physical and mental health problems mean that she is unlikely to be able to take up gainful employment within three years of her date of leaving.”