CAS-34344-K0D5

Ombudsman's Determination

Applicant	Mr S
Scheme	Greater Manchester Pension Fund
Respondent	Manchester Airport Group (**MAG**)

Complaint Summary

1. Mr S' complaint is that he has been incorrectly refused the early release of his deferred pension on the grounds of ill health.[1]

Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against MAG because it turned down Mr S' application for the early release of his deferred pension on grounds of ill health without necessary information. Its decision was therefore not properly made.

[1] Mr S has submitted a further application complaining that prior to leaving MAG it failed to provide him with information about ill health retirement and then threatened him with dismissal on medical grounds. As this is a separate matter it is not considered here.

Detailed Determination

Material facts

3. This is Mr S' second complaint. Mr S' first complaint (PO-18493) was determined on 31 July 2018. I found:-

   - MAG was under no obligation to consider Mr S for ill health retirement from active service as a Compromise Agreement terminated his employment and Fund membership prior to Mr S making an application for the release of his benefits. Mr S had been legally advised in signing the compromise agreement, which under the heading 'pension' obliged the employer only to notify the Fund of termination of employment.

   - MAG had properly considered Mr S' application for ill health retirement from deferred status.

4. In February 2018, Mr S submitted a fresh application for the early release of his deferred pension on the grounds of ill health. He was then aged 54. Mr S' normal pension age (**NPA**) is 67.

5. The relevant regulations are The Local Government Pension Scheme Regulations 2013 (SI2013/2356) (as amended) (the **2013 Regulations**). Extracts from the 2013 Regulations are provided in Appendix 1.

6. In July 2018 Mr S' GP, Dr Myneni, wrote an open letter in support of Mr S' application. Dr Myneni said:-

   - Mr S had ongoing issues with fatigue and temperature regulation, he was awaiting a two-level cervical disc replacement[2], suffered sleeping problems, chronic lower back pain and depression.

   - Mr S had not worked since leaving MAG due to the significant limitations to his movement and ongoing pain.

   - Mr S had been advised that a current medical report may be of benefit to his case.

7. Dr Myneni referenced 2016 reports from Miss Morgan (Orthopaedic Surgeon) and Dr Gidlow (an independent registered medical practitioner, **IRMP**) – specifically Miss Morgan's opinion that Mr S was "incapable of any form of work both currently and for the foreseeable future given his disabilities" and Dr Gidlow's view that Mr S was unlikely to be able to return to his previous role on a permanent basis[3].

[2] Mr S was informed that the spinal surgery could no longer be carried out with Warrington and Walton NHS Foundation Trust. Mr S transferred to Salford Royal NHS Trust and remained on the waiting list.

[3] Dr Gidlow said, on the balance of probabilities, it was very likely that Mr S would be able to undertake gainful employment within three years if he were to have remedial surgery on his neck.

8. Dr Myneni said:-

- In his and colleagues' experience the degree of symptomatic improvement from disc replacement surgery was highly unpredictable[4].

- It was clear that there was a variation in the degree of improvement in patients' conditions and while disc replacement could help, it was not a perfect cure and left many with very significant symptoms.

- Whilst he was happy to provide a report if required, given that Mr S' clinical picture had not significantly changed and that it already had reports from Miss Morgan and Dr Gidlow, he doubted a further report would add to MAG's perspective.

9. Dr Myneni continued:

"My professional opinion regarding this case is that given his current clinical state, [Mr S] is highly likely to be permanently incapable of doing the job he was doing when he left employment.

He is unable to work gainfully currently, and is still awaiting a date of surgery for his disc replacement. Even assuming this was done promptly, he would still have a long period of rehabilitation before it would be clear how much (if any) improvement he was likely to have. As mentioned above, the degree and speed of improvement from disc replacement is unpredictable, and thus the balance of probabilities is clearly tilted towards saying that he remains highly unlikely to return to gainful [employment] period [sic] within 3 years of this application for his benefit.

On balance of probabilities, the likelihood of him being capable of any gainful employment between now and normal pension age are very slim."

10. MAG referred Mr S to its occupational health (**OH**) adviser, HealthWork. Mr S was assessed by Dr Kisnha (an IRMP). In his August 2018 report Dr Kisnha noted:-

- The documentation provided: GP medical records to 19 June 2018, full medical records held by Healthworks and Dr Myneni's report.

- Mr S' current age, former role at MAG and that he had been unable to undertake any form of employment since February 2016.

- Mr S' past medical history.

- Mr S had applied for the early payment of his deferred benefits on the grounds of ill health.

[4] Dr Myneni provided links to two studies.

11. Commenting on Mr S' current situation Dr Kisnha said:-

- It was clear that Mr S was very dissatisfied with the way his ill health applications had been dealt with over the last two years.

- Mr S had difficulty mobilising and even sitting in a chair for more than 15 or 20 minutes. Mr S said all his activities of daily living were severely limited and he required help with personal care. Despite anti-depression and analgesia medication he continued to experience very low mood and significant pain in his neck and lower back. Mr S said depression was the main cause of his current functional disability, but it was clear that the pain Mr S was experiencing from neck and lower back were also making a significant contribution.

- Mr S had been advised that the surgical procedure planned for his neck would no longer go ahead at his local hospital but had been given options to be referred outside of the area. Mr S had decided not to undergo the surgical procedure and felt the only action that would resolve his symptoms and functional disability was the release of his pension benefits.

12. Dr Kisnha went on to say:

"It is clear that [Mr S] is currently significantly disabled because of the medical conditions affecting his neck and his lower back as well as his severe anxiety and depression. Hence, it is my opinion that he is currently unfit for all work.

I note that [Mr S] has decided that he does not wish to have any further treatment for his neck and does not want to take up the option from his local NHS trust to be referred to the…to explore alternative treatment for his medical condition. In addition it would appear from the medical records available to me that [Mr S] has not explored all the options to treat his psychological symptoms. I have recommended to [Mr S] that he consults his GP and ask for further in-depth assessment of his psychological health and possible referral to a psychiatrist in order to obtain a clear diagnosis and more targeted psychological therapies.

In my opinion, [Mr S] has not fully exhausted all the evidence based treatment for his cervical and lumbar spine condition as well as his severe depression and anxiety.
…

In my opinion, [Mr S] is currently unfit for all work and on the balance of probabilities he is also permanently incapable to effectively discharge the duties with his former employer as an IT Communication Engineer. It is also my opinion that there are further treatment options available to [Mr S] which is likely to improve his functional

capacity and hence render him medically fit to undertake gainful employment. Appropriate duties [Mr S] could perform is light manual work and office based work."

13. In September 2018 Mr S emailed MAG with an update on his treatment. Specifically, in relation to any treatment / surgery on his neck. Initially he had elected to remain on the waiting list for surgery at Warrington Hospital. He then opted to transfer to Salford. The transfer did not occur and he was told he could remain under the care of Warrington Hospital. He was currently awaiting for an update from Warrington Hospital following an enquiry by the Royal College of Surgeons on spinal surgery at the Hospital. This was the most he knew about the offer or timing of any possible surgery or any alternate treatment. Mr S said his inclination was not to have the surgery and to explore any other alternatives. He said he most definitely did not infer to Dr Kisnha that he would not be considering any options at this present time.

14. On 20 September 2018 MAG wrote to Dr Kisnha requesting further clarification over limb two of the ill health criteria:

> "It is very clear from your report that, given [Mr S'] various conditions, he is unable to do the job as a Communications Engineer which he was doing before he left employment at the airport. It is also very clear that [Mr S] is currently unfit for any work.
>
> Your report mentions that there are further treatment options available to [Mr S] which is likely to improve the functional capacity and hence render him…medically fit to undertake gainful employment. In order for Manchester Airport to make a reasoned decision and to satisfy limb 2 of the qualification criteria, slightly more clarity is needed surrounding this point.
>
> [Mr S] is 53 years old. His Normal Pension Age is 67, some 14 years away. Therefore limb 2 of the test looks at the next three years and beyond. Could you confirm, in your opinion, that if [Mr S] did have further treatment, on the balance of probabilities, it would render him fit to undertake some form of gainful employment within the next 3 years?

15. MAG's letter enclosed a copy of a Personal Independence Payment (PIP) claim dated 31 March 2017 from the Department for Work and Pensions (DWP), Dr Myeni's July 2018 report, Dr Kisnha's August 2018 report, Mr S' September 2018 email and correspondence between Mr S and HealthWork pertaining to Mr S' complaint against Dr Kisnha. MAG asked Dr Kisnha to confirm that he had seen the documentation and if there was any information contained within it that would lead him to change his opinion.

16. Dr Kisnha replied:

> "I note the content of your letter dated 20 September 2018 and confirm that I have seen and reviewed all documentation you referred to in your bullet points. Furthermore, I have read the email from [Mr S] to you dated 9 September 2018.
>
> I am pleased to hear that [Mr S] has now contacted his local hospital and hopefully he will be assessed and provided with treatment options. I also note he wishes to explore other alternatives to surgery if the latter is not his preferred option.
>
> I have carefully reviewed all medical evidence available to me including those listed in your bullet points and can confirm there is no compelling medical evidence to cause me to change my advice provided in my report dated 8 August 2018.
>
> In addition, as detailed in [Mr S'] email dated 9 September 2018, he is keen to seek further treatment for his debilitating condition and hence, in my opinion and on the balance of probabilities, his functional capacity is likely to improve within the next 3 years and enable him to undertake gainful employment as described in my previous report, including the ability to perform light manual work and office-based work."

17. MAG duly turned down Mr S' application

18. In December 2018 Mr S invoked the Fund's two-stage internal dispute resolution (**IDR**) procedure. At IDR stage 1 Mr S said:-

- It was known that he had been on Employment Support Allowance (**ESA**) since February 2016. If it was unable to consider this information why was that?

- It was not his fault that Dr Gidlow was wrong in predicting that he would be capable of gainful employment within three years of his initial application. Maybe Dr Gidlow should have considered the availability of surgery and the complexity of the surgery.

- Dr Kisnha had failed to explain exactly why he considered he would be capable of gainful employment within three years of applying for the benefit. What did Dr Kisnha base this on?

- Dr Kisnha did not know the current clinical state of his cervical stenosis. This would not be known until an MRI scan and reassessment. Cervical stenosis was a degenerative condition. He had yet to be referred to a specialist. Dr Kishna did not know what, if any, treatment would be considered appropriate, offered, when it may be available, or its outcome, which was classed as complex spinal surgery.

- During the assessment he had raised issues about the surgery but Dr Kishna promptly left.

- He and his wife found Dr Kisnha very rude and condescending and subsequently complained to Healthworks. Dr Kisnha's comment that there had been and were no issues with the availability of surgery was nothing short of ridiculous.

- In his report Dr Kisnha said he was pleased that he had now contacted W… Hospital. He had never not been in contact with the hospital and had responded to all correspondence and attended all appointments.

- Dr Kisnha said he had decided not to be seen outside the local area, have the surgical procedure performed, have any further treatment on his neck and did not want to take up the option of being referred to explore alternative treatment. This was false.

- He had serious symptomatic issues with his lower back. What exactly was Dr Kisnha basing the projected improvement on?

- Dr Kisnha failed to mention that he had received counselling for depression.

- He knew his body and mind far better than Dr Kisnha ever would. He would not be capable of gainful employment before his normal pension age. Dr Myneni's report supported his view and referenced two medical studies regarding the surgery.

- In light of his incapability of employment for the past three years and now his resulting financial position he would be grateful to be contacted to discuss all options, even simply returning his contributions.

- Would he have no option but to accept and undergo complex spinal surgery (if offered) with associated risks in order to become eligible for the release of his pension?

19. In February 2019, Mr S' MP wrote to MAG in support of Mr S' application:-

- He understood that Mr S had passed the first part of the two-part test for ill health retirement.

- Mr S' initial application had been made some time ago. At that time there may have been a possibility that Mr S could have undergone surgery, which may have meant that he could return to some form of employment. However, to date Mr S had not been able to do so due to ill health. Mr S had not been offered surgery and was still waiting for a referral. On assessment if the risks outweighed the benefits surgery might not be considered suitable.

- He understood it was approaching three years since Mr S was unable to continue working, he believed the release of Mr S' pension should again be considered with respect to the second part of the test.

- He noted that Dr Myneni supported that Mr S was highly unlikely of being able to return to gainful employment within three years of his application and the likelihood of him being capable of any gainful employment before his NPA was very slim.

- Dr Myneni also stated that Mr S' Orthopaedic Surgeon (Miss Morgan) had confirmed that Mr S was incapable of any form of work both currently and for the foreseeable future because of his disabilities.

- Mr S also wanted to know why he had not been considered for ill health retirement before being dismissed on medical capability grounds.

20. MAG's IDR stage 1 decision-maker turned down Mr S' appeal:-

- Mr S' complaint was a restatement of the same facts and grounds put forward in his initial application that had already been determined.

- Dr Kisnha found that Mr S was likely to be capable of further meaningful employment in the next three years, including light manual work and office-based work.

- Mr S' depression was a new ground for ill health retirement that was not considered in his original application. Mr S had been asked for further information, but this had not been provided - albeit it was understood that Mr S had received, or was receiving, counselling and cognitive behavioural therapy.

- Mr S had asked whether he had no option but to undergo complex spinal surgery with the associated risks in order to become eligible for the release of his pension. Mr S had to satisfy the ill health early retirement condition that he was incapable of meaningful employment in the next three years.

- The Stage 1 decision-maker said his assessment of Mr S' application was dependent on the medical evidence provided and the opinion of the IRMP. At present, it had been made clear that the neck surgery was a possible treatment for his condition and that Mr S did not satisfy the eligibility criteria for Ill health early retirement. It was reasonable for him to take into account this possible treatment and to conclude that Mr S remained ineligible for the early release of his pension.

- Regarding Mr S' pension options, a refund of his contributions was not possible. He may apply for early retirement at age 55, but this would be discounted for early payment.

21. At IDR stage 2 Mr S said:-

- His complaint was not a restatement of the same facts and grounds put forward in his initial application.

- The assessment conducted by Dr Kisnha was a farce.

- At no point had he been asked for more information about his depression and MAG had full access to his medical records. He had been taking M… since December 2016 and had attended counselling without success.

- In his previous application MAG had wanted Dr Gidlow to speak to Miss Morgan for further information and likely timescales. What had changed?

- No attempt had been made to address specific issues raised in his stage 1 appeal letter. Namely, the uncertainty of any treatment, lower back issues and depression.

- Neck surgery would only be considered if it was deemed absolutely necessary. This was clearly stated by Dr Larner[5].

- Dr Kisnha had absolutely no idea whether the surgery was considered appropriate, when it might happen or the outcome.

- He failed to see the impact any surgery would have on the issues with his lower back and his depression.

22. The Appointed Person for the Fund turned down Mr S' final appeal:-

- Both HealthWork and MAG had sought clarification from Dr Kisnha. Dr Kisnha confirmed that none of the more recent medical evidence would be sufficient for him to change his decision. He understood that Dr Kisnha's report was peer reviewed by another occupational health professional who had reached the same conclusion as Dr Kisnha. Consequently, he was satisfied that Dr Kisnha had fulfilled his responsibilities as an IRMP.

- Mr S had not provided any additional medical information to MAG that was evidence his condition had deteriorated.

- The opinion was that there were outstanding treatments available for Mr S' pain and depression that could, on the balance of probabilities, mean he was capable of gainful employment before his NPA. Therefore, on reassessment, MAG had turned down Mr S' application.

[5] Mr S submitted a letter from Dr Larner to his GP practice dated 10 May 2019. Dr Larner says most recent imaging has shown no definite changes in Mr S' neck compared with the previous imaging of August 2016. "Hence there is no absolute indication for referral for a neurosurgical opinion, but if it is [Mr S'] wish to go forward with this then I am happy to make a referral".

- He could find no fault with MAG's procedure or with the decision reached.

Summary of Mr S' position

23. Mr S has requested an Oral Hearing.

24. Mr S says:-

- MAG denied him the opportunity of an ill health pension from active status.
- There is a serious conflict of evidence between Dr Kishna's opinion and the opinions of Drs Myeni and Larner.
- Dr Kisnha's assessment was a shambles. On two occasions he requested if he could leave following heated exchanges.
- Dr Kisnha's comment that he did not want to be referred to W…Centre was a lie. He was referred there, hence Dr Larner's subsequent report.
- He personally handed Dr Kisnha a letter from W…Hospital dated 29 November 2017 which clearly stated he would be reassessed, and any treatment or timing of treatment would be dependent on clinical urgency.
- It was not right that two IRMPs from HealthWork were used to carry out the assessments.
- The specific treatment for his neck is two-level cervical disc replacement. This surgery carries major risks and was still suspended at W…Hospital following several incidents including deaths. He does not believe that he should be expected to undergo surgery (that has not even been proposed) of this complexity and risk in order to fulfil the requirement of the Fund.
- Dr Gidlow was wrong when predicting he would be capable of gainful employment within three years of his initial application. MAG said it wanted Dr Gidlow to write to Miss Morgan to ask the likelihood of being offered surgery and the prospects post-surgery within the next three years. HealthWork informed him that this was not something Dr Gidlow would do. This was the main reason for his initial complaint not being upheld. What has changed in respect of his current application that is different to his previous application?
- Dr Larner clearly stated in his report dated 10 May 2019 that there was no absolute indication for referral for neurosurgery.
- If spinal surgery was offered and considered appropriate and recommended, he would obviously consider it. But to date it has not been.
- He has been in receipt of ESA since he left MAG and in February 2019 he was awarded a PIP to 2022. Whilst neither require permanent incapability they are

both time-determined, as is the second limb of the criteria for ill health retirement under the 2013 Regulations.

25. Mr S has submitted:-

- A copy of an open letter from Dr Larner dated 3 January 2020 commenting on his [Mr S'] current health.
- A copy of his complaint letter to HealthWork dated 2 February 2020 about Dr Kisnha's assessment and Healthwork's reply.

Summary of MAG's position as presented by DLA Piper.

26. DLA Piper says the latest medical assessment provided by Dr Kisnha did not result in a finding of partial or total incapacity such that the Trustee could not release Mr S' pension.

27. Dr Kisnha considered all relevant matters, was pushed on his position/opinion by MAG and re-confirmed his opinion.

Decision

28. I will begin with Mr S' request that I hold an oral hearing. I have the power to hold an oral hearing under the procedural discretion contained in Section 149(4) of the Pension Schemes Act 1993. However, I tend not to exercise my discretion unless I am of the view that a complaint cannot adequately and appropriately be determined without me hearing directly from the parties. For example, I might require clarification of the parties' statements or there is some ambiguity in the evidence presented to me. I do not consider that is the case here. Therefore, I have decided not to hold an oral hearing in this case.

29. Mr S says he has been denied the opportunity of an ill health pension from active status. I have set this point aside, as I considered this matter in Determination PO-18493, not upholding Mr S' complaint. I cannot revisit matters which have already been the subject of a previous Determination.

30. I have also set aside Dr Larner's January 2020 report, commenting on Mr S' current health, as it post-dates MAG's decision.

31. Mr S says it is not right that two IRMPs from HealthWork, Dr Gidlow (PO-18493) and now Dr Kisnha, have considered his application. But this is not contrary to the requirements under the 2013 Regulations.

32. For Mr S to receive benefits under regulation 38, on the balance of probabilities, he must be deemed:

- permanently incapable of discharging efficiently the duties of the employment that he was engaged in at the date he became a deferred member; and

- unlikely to be capable of undertaking gainful employment before his NPA, or for at least three years, whichever is the sooner.

33. Permanently incapable means that Mr S is likely to be incapable at least until his NPA. Gainful employment means paid employment for at least 30 hours a week for a period of not less than 12 months.

34. The decision as to whether Mr S meets the eligibility requirements is for MAG to make. It is a finding of fact; Mr S either meets the conditions set out in regulation 38 or he does not. If MAG determines that Mr S meets both conditions, it is then required to decide whether or not to agree to Mr S' request. This is a discretionary power exercisable by MAG.

35. Before making its decision, MAG is required to obtain the certificate of an IRMP as to whether Mr S met the eligibility criteria under regulation 38(3).

36. When reviewing an IRMP's advice, MAG would not be expected to challenge matters of medical opinion. Whilst it can be expected to review all the available medical evidence, it can only be expected to do so from a lay perspective. This is the approach that I would take. However, the law and the facts are not matters of medical opinion. They are matters on which the decision-maker is expected to draw its own conclusions. If it appeared that the IRMP had made an error of law or omitted to consider a relevant fact when forming an opinion, I would expect MAG, as the decision-maker, to seek clarification before basing a decision upon it. Additionally, if an IRMP's opinion is very different to those held by the member's treating physicians, I would expect a decision-maker to be able to give reasons for preferring it. In this case I consider that there were factual omissions in the evidence available to MAG which required clarification before a decision could properly be based upon it. For the avoidance of doubt, in drawing the conclusions which I do, I intend to express no opinion on the complaint which Mr S has made about Dr Kisnha who is not within my jurisdiction.

37. In his August 2018 report Dr Kisnha accepted that Mr S was currently unfit for all work and permanently incapable of effectively discharging the duties of his former employment. That left to be considered whether it was likely that Mr S would be capable of gainful employment within three years of his application.

38. Dr Kisnha said while Mr S had informed him that depression was the main cause of his current functional disability it was clear that the pain he was experiencing from his neck and lower back were also making a significant contribution.

39. Dr Kisnha noted that Mr S had been assessed by a neurosurgeon who felt that he might benefit from surgery on his neck, but this had not been carried out because of problems at the local hospital. Dr Kisnha said Mr S had informed him that he had decided not to have further treatment for his neck and did not want to take up the option of referral to another neurosurgical unit outside the area (the Walton Centre) to explore alternative treatment.

40. On that basis Dr Kisnha said Mr S had not yet fully exhausted all the evidence-based treatment for his cervical and lumbar spine. However, Dr Kisnha did not identify the treatments he had in mind or their availability to Mr S and did not comment on their likely efficacy in terms of outcome for Mr S and how that would affect his ability to undertake gainful employment within three years. Given the absence of any evidence from treating clinicians about whether surgery was available or recommended for Mr S it is difficult to see the factual basis on which he formed his opinion on that point.

41. In respect of Mr S' depression, Dr Kisnha said Mr S had not explored all the options to treat his psychological symptoms. Dr Kisnha said he had recommended to Mr S that he consult with his GP and ask for a further in-depth assessment and possible referral to a psychiatrist. Again, Dr Kisnha did not comment on the treatments he had in mind, their availability to Mr S and likely efficacy.

42. MAG asked Dr Kisnha to clarify his position. Specifically, it asked Dr Kisnha, if Mr S had further treatment would it likely render him fit to undertake some form of gainful employment within the next three years?

43. I find that MAG's question was insufficient to elicit the necessary clarification about Mr S' prognosis. It asked only for confirmation of Dr Kisnha's opinion addressing the correct standard of proof. It did not ask what treatments were available which were likely to produce the improvement that Dr Kisnha anticipated. That was a question of fact. MAG was aware that Mr S was challenging the factual understanding which Dr Kisnha had formed about whether he was willing to be referred, and that he had questioned the availability of surgical treatment for his neck. These matters needed clarifying before MAG could make a decision which took account of all relevant facts.

44. Dr Kisnha replied that he was pleased that Mr S had contacted his local hospital and was hopeful that he would be assessed and provided with treatment options. Again, Dr Kisnha did not say what these might be, when they were likely to be available, or comment on what outcome they were likely to produce for Mr S and how that would affect his ability to undertake gainful employment within three years.

45. It is also unclear to me from reading Dr Kisnha's medical evidence, and I conclude that it cannot have been clear to MAG, the extent to which Dr Kisnha's opinion was based on a belief that Mr S was in fact refusing suitable treatment. It is not wrong for a medical opinion to take such a refusal into account, and it may on some facts be proper to conclude that if only a person would undergo recommended treatment they would probably get better, but before a decision-maker can base a decision upon unreasonable refusal of treatment they must have some evidence from which to conclude that a particular treatment option exists, that it is recommended for the applicant, and that the applicant unreasonably declines to undergo it. In a case involving complex surgery that requires the evidence of a treating clinician.

46. I find that MAG turned down Mr S' application without obtaining the necessary factual information about the treatment options which were actually available to him, without evidence about the effect which particular recommended treatments were likely to

have on his functional recovery, without drawing conclusions about whether he was refusing recommended treatments in fact and whether any such refusal was reasonable. I therefore find that its decision was flawed and remit the matter back to MAG to consider again.

47. This matter has caused Mr S significant distress and inconvenience; and he now faces a further period of uncertainty while awaiting MAG's fresh decision. In recognition of this MAG shall pay Mr S £500.

Directions

48. Within 14 days of the date of the final determination MAG shall:-

- Request the certified opinion of an IRMP, who has not previously advised on Mr S' application, on whether Mr S is likely to be capable of gainful employment within three years of Dr Kisnha's 2018 certified opinion. MAG shall ask the IRMP to seek information from Mr S' treating physicians on all his conditions (neck, lower back and depression) and all planned or recommended treatments, including their current availability, their likely effects on Mr S' functional recovery, any risks associated with treatment, Mr S' attitude to any treatments which have been offered to him, and the timescales associated with any recovery which is considered likely if he were to undertake those treatments which his treating clinicians can offer and consider advisable.

- Pay Mr S £500 for distress and inconvenience caused.

49. Within 21 days of receiving the IRMP's certified opinion MAG shall then consider all the medical evidence and inform Mr S of its decision in writing and explain the reasoning behind it.

Karen Johnston

Deputy Pensions Ombudsman
22 April 2020