CAS-38669-T5N6

Ombudsman's Determination

Applicant:	Ms E
Scheme:	Local Government Pension Scheme (**LGPS**)
Respondents:	Her Majesty's Prison and Probation Service (**HMPPS**)
	Greater Manchester Pension Fund (**GMPF**)

Outcome

1. I do not uphold Ms E's complaint and no further action is required by HMPPS or GMPF.

Complaint summary

2. Ms E has complained that her eligibility for ill health retirement has not been considered in a proper manner.

Background information, including submissions from the parties

Background

3. The relevant provisions are The Local Government Pension Scheme Regulations 2013 (SI2013/2356) (as amended) (the **2013 Regulations**). Regulation 35 provides for ill health retirement from active service. It provides for three tiers of benefits for ill health retirement depending upon the member's level of incapacity for future employment. Briefly:-

   - 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 any gainful employment within three years of leaving employment but is likely to be capable of such employment before normal pension age.
   - Tier 3 The member is likely to be capable of undertaking gainful employment within three years of leaving employment (or before normal pension age if earlier).

   Extracts from the relevant regulations are provided in Appendix 1.

4. As required by the 2013 Regulations, HMPPS obtained a certified opinion from an independent registered medical practitioner (**IRMP**). Dr Chapman provided a report on 25 September 2018. A summary of and extracts from Dr Chapman's report, together with other medical evidence relating to Ms E's case, are provided in Appendix 2. Dr Chapman advised that, in her opinion, Ms E was not permanently incapable of discharging efficiently the duties of her employment because of ill health or infirmity of mind or body.

5. On 19 November 2018, Ms E was notified that HMPPS had decided that she did not qualify for ill health retirement. HMPPS referred to Dr Chapman's report. In particular, it noted Dr Chapman's comment that, with continuing adjustments and further specialist treatment, it was reasonable to anticipate that Ms E would recover sufficiently to be fit for her normal employment before her 67th birthday (2031).

6. Ms E appealed the decision not to award her ill health retirement via the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). HMPPS sought an opinion from another IRMP. Dr Wladyslawska provided a report on 13 February 2019 (see Appendix 2). She advised that, in her opinion, Ms E was not permanently incapable of discharging efficiently the duties of her employment because of ill health.

7. HMPPS issued a Stage One IDRP decision on 29 March 2019. It declined Ms E's appeal on the grounds that she was not permanently incapable of performing her HMPPS role. In its decision, HMPPS responded to specific points raised by Ms E. These are summarised below:-

   - Dr Chapman's opinion had not been based on the balance of probabilities and contained incorrect, irrelevant and misleading information.
   - Her GP's report and the medical evidence supplied had been ignored.
   - She had two disabilities for which there was no known cure and both were deteriorating as time went by. Her ill health retirement pension should not be withheld on the off chance that medical science would provide an unforeseen cure in the future.
   - She struggled to maintain attendance at work due to flare-ups in her conditions caused by struggling to do her job with constant everyday symptoms. She struggled to do her work and meet targets, which caused her further stress and anxiety.
   - She was prone to relapses which could not be foreseen or prevented. She had struggled with her symptoms for the past eight years and they were getting worse. She had moved jobs and reduced her hours to try and alleviate her symptoms to no avail.

8. In response, HMPPS said an updated report had been obtained from Dr Wladyslawska, who had not previously been involved in Ms E's case. It said it was satisfied that Dr Wladyslawska had considered all of the occupational health reports,

letters from Ms E's GP and specialists and the additional evidence she had provided. HMPPS noted that Dr Wladyslawska had advised that Ms E had been referred to pain management but had not attended the appointment. It noted that Dr Wladyslawska had referred to an occupational health assessment which had advised that, with further adjustments, Ms E should be able to return to her contractual hours and duties. HMPPS said this corresponded to information submitted by Ms E's GP on a recent MED3[1] form.

9. In conclusion, HMPPS said Dr Wladyslawska had indicated that there were further therapeutic options available to Ms E, preferably provided by specialist services, which should help her to manage her symptoms and increase her functional capacity. It said it was Dr Wladyslawska's opinion that such treatment, coupled with suitable workplace adjustments, should, on the balance of medical probabilities, result in sufficient improvement for Ms E to be capable of discharging efficiently the duties of her current role.

10. Ms E submitted a further appeal on 30 May 2019. She said she had missed the pain management appointment in 2012 because, having waited months for it, she had been able to bring her pain under control with the help of her GP and medication. Ms E explained she had been back at work after a 10-month absence and did not need the appointment. She said her everyday struggle was with chronic fatigue and "Fibro Fog".

11. Ms E said Dr Wladyslawska's report had focussed on treating her pain and her other debilitating symptoms. She said she felt that she was being treated as if she was not ill enough to retire on ill health grounds but ill enough to sack. Ms E said the warning letters she had received in connection with her frequent absences had added to her stress and left her vulnerable to flare-ups. Ms E explained that she had acted on the advice from the physiotherapists, had taken out gym membership and had been swimming. She said she had had to give this up because of chronic fatigue.

12. With regard to the occupational health assessment referred to by Dr Wladyslawska and HMPPS, Ms E said this had been a telephone assessment. She said the assessor had not known about her medical background and had written a generalised report which did not address her particular symptoms. Ms E said that, contrary to the occupational health assessment suggestion, she had not been able to return to full-time hours since April 2018. She explained that she had been using annual leave to reduce her weekly hours. Ms E said she had returned to work in October 2018 on a phased basis. She said this had originally been for seven weeks, but was extended to 10 weeks, and she had not been able to work three full days in any week.

13. Ms E said she felt the suggestions and assumptions made by Dr Wladyslawska were not backed up with medical evidence. She suggested that, in the absence of an

[1] Statement of fitness for work

unforeseen cure for fibromyalgia or osteoarthritis, it could only be assumed that both disabilities were long-term and would continue to deteriorate.

14. GMPF issued a Stage Two IDRP decision on 27 August 2019. Ms E's appeal was declined. The decision is summarised below:-

- HMPPS had declined Ms E's Stage One appeal on the grounds that she was not permanently incapable of performing her role and, therefore, did not meet the Regulation 35 conditions.
- HMPPS was satisfied that the IRMP had considered all the evidence provided.
- Dr Wladyslawska was of the opinion that there were further therapeutic options available to aid the management of Ms E's symptoms. These, in addition to suitable workplace adjustments, meant that it was likely that Ms E would be capable of discharging efficiently the duties of her employment before her normal pension age. This opinion was supported by an occupational health assessment and a statement of fitness to work completed by Ms E's GP.
- Ms E was still employed by HMPPS and was an active member of the LGPS. Regulation 35 required the member's employment to have been terminated by the employer on the grounds of ill health or infirmity of mind or body in order for the member to be eligible for ill health retirement benefits. As Ms E's employment had not been terminated, she did not satisfy this qualifying condition. She also did not satisfy the remaining conditions set out in Regulation 35.
- The Stage Two decision-maker was satisfied that HMPPS had applied the 2013 Regulations correctly and had not come to an unreasonable decision or one which no other decision-maker would be expected to make.

Ms E's position

15. Ms E submits:-

- Dr Wladyslawska and HMPPS should have stated what treatment options they were referring to, whether they were accessible and if they had the potential to improve her symptoms sufficiently. They should have taken into consideration the fact that she has three long-term disabilities; fibromyalgia, chronic fatigue and osteoarthritis. There are no cures for these conditions and flare-ups are unpredictable and not preventable.
- Dr Wladyslawska stated that, with adequate workplace adjustments, she expected her to have better management of her condition and resume work before her normal pension age of 67. She has had suitable workplace adjustments in place since 2012 as suggested by her GP when she was first diagnosed. Her GP reiterated this in every phased return to work note to ensure that they stayed in place. Further adjustments were added when needed over the years.
- She has exhausted all therapies over the years and has already explained this.

- Her GP provided a statement of fitness to work in October 2018 because she was being threatened with dismissal. The note was for a phased return over seven weeks. The GP had previously completed a P72 form but felt she needed to be back in work to continue with her ill health retirement appeal. If she had been dismissed, she would not have been able to continue with the appeal because she would no longer be employed by HMPPS.

- HMPPS say she is not eligible for ill health retirement because she is still employed by it and an active member of the LGPS. She is confused because she thought she was not entitled to apply for ill health retirement if she was no longer employed by HMPPS.

- She would like the Ombudsman to consider whether HMPPS has applied the 2013 Regulations correctly and whether her application was treated in accordance with the Equality Act 2010.

HMPPS' position

16. The Ministry of Justice has responded on behalf of HMPPS. It submits:-

- Prior to HMPPS making its decision, an IRMP had assessed Ms E's case and advised that she did not meet any tier of ill health retirement under the LGPS regulations.

- The P72 form which appeared to show an IRMP authorising ill health retirement at Tier 1 was most likely completed by Ms E's GP.

- Following Ms E's appeal, her case was again assessed by an IRMP. The decision to reject Ms E's appeal was based upon the assessment by this IRMP.

- Ms E has said that her GP only reluctantly completed a statement of fitness for work. However, the IRMP and HMPPS can only go by what medical evidence is presented to them.

GMPF's position

17. GMPF has referred to its IDRP decision (see paragraph 14 above). In addition, it says Ms E is mistaken in thinking she is not entitled to apply for an ill health retirement pension if her employment is terminated. It says a member is able to apply for an ill health retirement pension if her/his employment is terminated by her/his employer on the grounds of ill health or infirmity of mind or body. GMPF also says that a member's employment can be terminated for reasons of medical capability but s/he may not meet the remaining conditions to be eligible for an ill health retirement pension.

Adjudicator's Opinion

18. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by HMPPS or GMPF. The Adjudicator's findings are summarised below:-

- 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.

- In Ms E's case, the relevant regulations were Regulations 35 and 36 of the 2013 Regulations (see Appendix 1). In order to be considered for a pension under Regulation 35, Ms E's employment had to be terminated by her employer on the grounds of ill health before she reached her normal pension age. In order to qualify for a pension, she had to then satisfy two conditions:-

  - She had to be permanently incapable of discharging efficiently the duties of the employment she was engaged in because of ill health; and

  - She had not to be immediately capable of undertaking any gainful employment.

- Gainful employment was defined as paid employment for not less than 30 hours in each week for a period of not less than 12 months. It did not have to be the same or similar to the work Ms E undertook for HMPPS. Permanently incapable was defined as, more likely than not, being incapable until, at the earliest, the member's normal pension age. In Ms E's case, this was age 67.

- Under Regulation 36, the decision as to whether Ms E was entitled to a pension under Regulation 35 was for HMPPS, as the Scheme employer, to make. Before making its decision, HMPPS was required to obtained a certificate from an IRMP as to whether Ms E satisfied the two conditions set out above and, if so, how long she was unlikely to be capable of undertaking gainful employment. HMPPS was not, however, bound by the IRMP's opinion; it had to come to a properly considered decision of its own.

- HMPPS had referred Ms E's case to an IRMP, Dr Chapman, in 2018. She had advised that, in her opinion, Ms E was not permanently incapable of discharging efficiently the duties of her employment because of ill health or infirmity of mind or body. In other words, she did not consider Ms E to have satisfied the first of the two conditions set out above. If Ms E did not satisfy the first condition, there was no need for Dr Chapman to consider whether she satisfied the second; Ms E has to satisfy both in order to qualify for a pension under Regulation 35.

- Having said that it was not bound by the IRMP's opinion, it was open to HMPPS to accept the opinion unless there was a good reason why it should not do so, or

should not do so before seeking clarification. The Adjudicator said the kind of reasons she had in mind were errors or omissions of fact or a misunderstanding of the relevant regulations on the part of the IRMP. The reason had to be obvious to a lay person. HMPPS would not be expected to challenge a medical opinion. It should, however, look to the IRMP for an explanation if it appeared that the IRMP's opinion was significantly at odds with those expressed by the member's own physicians. For the avoidance of doubt, an IRMP did not come within the Ombudsman's jurisdiction in the matter of her/his medical opinion. S/he would be answerable to her/his own professional bodies and the General Medical Council.

- The Adjudicator said she had not identified any obvious error or omission of fact in Dr Chapman's report. The question which Dr Chapman had responded to in her report was: "Is the member suffering from a condition that, more likely than not, renders them permanently incapable of discharging efficiently the duties of their employment because of ill health or infirmity of mind or body?". This corresponded to the first condition which Ms E had to satisfy under Regulation 35 and indicated that Dr Chapman had a clear understanding of the relevant regulations. Ms E had suggested that Dr Chapman had not arrived at her decision on the balance of probabilities. In the Adjudicator's view, the phrase "more likely than not" was an acceptable rephrasing of "on the balance of probabilities".

- Ms E had also suggested that Dr Chapman had ignored medical evidence; in particular, her GP's report. The Adjudicator noted that the evidence, including the GP's report, was listed by Dr Chapman. The fact that Dr Chapman had come to a different view to that of Ms E's GP did not indicate that she had ignored any of the evidence presented to her. Having said this, the Adjudicator acknowledged that Dr Chapman did not refer specifically to the GP's report in her conclusions. Nor did she offer an explanation as to why she had apparently reached a different opinion. In the Adjudicator's view, HMPPS should have sought clarification from Dr Chapman before proceeding to a decision on the basis of her opinion. However, if procedural failings, such as this, occurred at an early stage in the process and the impact was corrected later, the Ombudsman might take the view that the procedural failings did not invalidate the decision. It remained, therefore, to consider whether this was the case here.

- Having received an appeal from Ms E, HMPPS had obtained a further opinion from Dr Wladyslawska, who had not previously been involved in the case. The Adjudicator noted that Dr Wladyslawska had responded to the same questions as Dr Chapman. In her view, it was safe to say, from this, that Dr Wladyslawska had also had a clear understanding of what was required under Regulation 35. The Adjudicator noted that she too had listed the medical evidence which had been presented to her and that this included the GP's report and a P72 form he had completed. Dr Wladyslawska had referred specifically to the GP's report in her conclusions. She had also noted that the GP had signed a fitness for work statement, in October 2018, suggesting Ms E might be fit for work with adaptions; such as, regular breaks from her desk and screen, avoiding noise and a

manageable workload. Dr Wladyslawska's conclusion, that Ms E was not permanently incapable of discharging the duties of her HMPPS role, appeared to be compatible with the most recent evidence from her GP. In the Adjudicator's view, Dr Wladyslawska's report had adequately compensated for the gaps in Dr Chapman's report.

- The Adjudicator acknowledged that Ms E was of the view that her GP had only reluctantly signed the fitness for work statement. The fact remained, however, that he had done so and it was not unreasonable for Dr Wladyslawska and HMPPS to take this into account.

- The Adjudicator noted that Ms E felt that Dr Wladyslawska and HMPPS should have explained what treatment options they had in mind in concluding that, with better management of her condition and adequate workplace adjustments, there was a likelihood of her resuming her employment before her normal pension age. Dr Wladyslawska did, however, mention referral to a pain management clinic. This was an option which Ms E had been provided with in the past but which she had not taken up at the time, having been able to control her pain by other means by the time the appointment came through. It was a well-established treatment option offered to individuals with Ms E's conditions and it did not appear unreasonable for Dr Wladyslawska to have suggested it. As to its likely efficacy, HMPPS was entitled to rely on advice from Dr Wladyslawska in this respect, since this was a matter of medical opinion and her advice had not been obviously incompatible with the rest of the evidence.

- Ms E had referred to the Equality Act 2010. Disability was a protected characteristic under the Equality Act 2010. An individual was protected if s/he had a physical or mental impairment which had a substantial and long-term adverse effect on her/his ability to carry out her/his normal day to day activities. The Equality Act 2010 provided individuals with protection against discrimination, both direct and indirect, harassment and victimisation. Ms E had not explained in what way she considered there to have been any discrimination, harassment or victimisation by HMPPS in the conduct of her case. The evidence did not indicate any breach of the Equality Act 2010 provisions on the part of HMPPS during its decision-making process in relation to Ms E's case. A decision that a member did not qualify for ill health retirement was not, in and of itself, evidence of discrimination, harassment or victimisation.

19. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion.

Ms E's further comments

20. Ms E refers to Dr Wladyslawska's comment that, in her opinion, there were further therapeutic options available, preferably provided by specialist services, which should help her to manage her symptoms and increase her functional capacity. She refers to

Dr Wladyslawska's view that such treatment, coupled with suitable workplace adjustments, should, on the balance of medical probabilities, result in sufficient improvement for her to be capable of discharging efficiently the duties of her current role until age 67.

21. Ms E says Dr Wladyslawska should have stated in her report what these therapeutic options were, if they were accessible and which specialist services could provide them. She says Dr Wladyslawska should have said if the treatment options had the potential to sufficiently improve the symptoms of her three long-term disabilities: Fibromyalgia; Chronic Fatigue; and Osteoarthritis, either long term, short term or cure them.

Ombudsman's decision

22. In order to receive a pension under Regulation 35, Ms E must satisfy the conditions set out in that regulation. In particular, Ms E must be: permanently incapable of discharging efficiently the duties of her HMPPS employment; and not immediately capable of undertaking any gainful employment.

23. The decision as to whether Ms E does satisfy the Regulation 35 conditions is for HMPPS to make, having first sought an opinion from an IRMP. It is not my role to review the medical evidence and come to a decision myself as to whether Ms E is eligible for a pension under Regulation 35. My concern is with the decision-making process undertaken by HMPPS. If I find that decision-making process to be flawed, I can direct HMPPS to retake its decision.

24. In accordance with the 2013 Regulations, HMPPS obtained an opinion from Dr Chapman. She advised that, in her opinion, Ms E was not permanently incapable of discharging the duties of her HMPPS employment. HMPPS is not bound by the opinion it receives from an IRMP, but it is entitled to rely on the opinion in reaching a decision; unless there is a good reason why it should not do so. My Adjudicator explained that the reasons might include things like errors or omissions of fact, or a misunderstanding of the LGPS regulations. There was no such reason why HMPPS should not have relied on Dr Chapman's report.

25. HMPPS perhaps should have asked Dr Chapman to explain why she had come to a different opinion to that of Ms E's GP. That being said, Dr Chapman is a specialist in occupational health and the questions to be addressed under Regulation 35 relate to Ms E's capacity for employment. Arguably, Dr Chapman was better placed to form a view as to Ms E's capacity to undertake her role at HMPPS, or any other gainful employment, than the GP. In any event, HMPPS decided to obtain a further opinion from Dr Wladyslawska.

26. I note Ms E's comments about Dr Wladyslawska's report. Ms E argues that Dr Wladyslawska should have stated which options she had in mind when she concluded that there were therapeutic options which should help Ms E to manage her symptoms and increase her functional capacity. Dr Wladyslawska suggested referral

to a pain clinic; something which had been offered to Ms E in the past but not taken up at the time. Ms E has explained why and I accept that her reason for not taking up this option at the time is understandable. It is, however, an indication that such a referral was considered an appropriate option in her circumstances. Dr Wladyslawska was not suggesting something which might be considered unusual or unreasonable for someone with Ms E's conditions.

27. Ms E appears to be looking for more detail as to what this treatment option might entail and how she might access it. This is not the role of the IRMP. It is for Ms E's GP to make the appropriate referral for her to access her local services. It is sufficient for the IRMP to identify a potential treatment option and comment on its likely efficacy. Unless there is evidence that the treatment suggested by the IRMP is at odds with views expressed by the member's own treating physicians, HMPPS is entitled to take the advice at face value.

28. Ms E argues that Dr Wladyslawska should have said if the treatment options had the potential to sufficiently improve the symptoms of her three conditions; either in the long term, short term or to cure them. In fact, Dr Wladyslawska did say she expected better management of Ms E's condition would enable her to resume her duties before her normal pension age. This addresses the questions asked by Regulation 35. Dr Wladyslawska did not need to go any further. She did not need to advise whether Ms E's conditions could be cured; she was simply required to consider whether there was a likelihood that Ms E would be capable of undertaking her HMPPS duties before she reached her normal pension age.

29. In summary, I do not find HMPPS' decision-making to be flawed and I do not uphold Ms E's complaint.

Anthony Arter
Pensions Ombudsman

10 August 2020

Appendix 1

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

30. Regulation 35 provides:

(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."

31. Regulation 36 provides:

> "(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)."

32. "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". "Permanently incapable" is defined as: "the member will, more likely than not, be incapable until at the earliest, the member's normal pension age".

Appendix 2

Medical evidence

34. Dr Abraham, specialist registrar in rheumatology, 29 February 2012

In a letter to Ms E's GP, Dr Abraham said she continued to be very symptomatic with pain in her neck and lower back. He described Ms E's symptoms. Dr Abraham said examination had shown no evidence of inflammatory or degenerative joint disease and Ms E had full range of movement in all joints. He said he had not found any evidence of neurological deficit and Ms E had had normal blood tests and MRI scan of her lumbosacral spine and sacroiliac joints.

Dr Abraham said he had discussed a diagnosis of fibromyalgia with Ms E and had explained that there was no evidence of inflammatory arthritis or osteoarthritis. He said he had explained that it was unlikely that Ms E's pain would go away completely and the aim of management would be to help her cope with her symptoms. Dr Abraham made some recommendations for medication and said Ms E had been referred for physiotherapy. He said he did not see a need for her to be followed up routinely at the rheumatology clinic and he had discharged her.

35. Dr Edwards, GP, 20 July 2018

On 20 July 2018, Dr Edwards completed a P72[2] form. He ticked the box indicating that, in his opinion, Ms E was suffering from a condition which, more likely than not, rendered her permanently incapable of discharging efficiently the duties of the employment she was engaged in because of ill health. He also ticked the box indicating that, in his opinion, Ms E was unlikely to be capable of undertaking gainful employment before her normal pension age.

36. Dr Edwards, 10 September 2018

In a letter to Dr Chapman, Dr Edwards confirmed that Ms E had been diagnosed with fibromyalgia in 2012. He described her symptoms and medication. Dr Edwards said Ms E had been referred to physiotherapy for pain in her knees and x-rays had shown some arthritic changes. He said Ms E had been diagnosed with irritable bowel syndrome and gastritis/duodenitis, for which she took medication. Dr Edwards said Ms E had needed to take a lot of time off work because of fatigue and pain. He said he did not know the full extent of her functional restrictions. He said Ms E's fibromyalgia symptoms had flared up in the past after viral illnesses in response to stressful life situations. Dr Edwards concluded:

> "The prognosis for [Ms E's] Fibromyalgia is difficult to predict. As you will know this is a condition that does not have a clear satisfactory cure but is managed with analgesia, exercise and lifestyle measures. She has no further treatments posed or available. Given the amount of time that she has needed to be off in

[2] Pro-forma IRMP's certificate published by GMPF

> the past it is reasonable to predict that she will have on-going problems with her functional ability affecting her ability to do her job."

37. Dr Chapman, IRMP, 25 September 2018

Dr Chapman listed the medical evidence relating to Ms E's case as follows:-

- Ms E's occupational health records, including a report dated 14 May 2018
- A report dated 10 September 2018 from Ms E's GP (see paragraph 36 above)
- A letter from a specialist registrar in rheumatology, Dr Abraham, dated 29 February 2012 (see paragraph 34 above)
- Letters from physiotherapists dated 9 May 2012 and 13 January 2016

In response to the question: "Is the member suffering from a condition that, more likely than not, renders them permanently incapable of discharging efficiently the duties of their employment because of ill health or infirmity of mind or body?", Dr Chapman said: "No". In response to the question: "Is the member immediately capable of undertaking any gainful employment?", Dr Chapman said "N/A".

Dr Chapman noted that Ms E had been diagnosed with fibromyalgia in 2012 and had been referred to a pain management programme, which she did not attend. She noted Ms E's sickness absences in 2016 and 2017, and that she had been absent from work since May 2018. Dr Chapman noted Ms E had osteoarthritis in her right knee and had difficulty climbing stairs. She noted that Ms E had a history of irritable bowel syndrome and gastritis/duodenitis, for which she took medication. Dr Chapman listed Ms E's symptoms and noted that adjustments had been provided at her work. She said:

> "She is on medication to reduce her pain related symptoms but has not had the benefit of attendance at a multidisciplinary rehabilitation programme where a holistic bio-psycho-social assessment and interventions are provided. Psychological therapy will help her cope better and lessen her perception of pain.
>
> Fibromyalgia is a condition that tends to fluctuate in severity. [Ms E] has been working full time since the diagnosis. With continuing adjustments as advised by occupational health and further specialist treatment as described above it is reasonable to anticipate that she will recover sufficiently to be fit for her normal employment as a Case Administrator, before her 67th birthday."

38. Dr Wladyslawska, IRMP, 13 February 2019

Dr Wladyslawska listed the medical evidence she had considered. In addition to that referred to by Dr Chapman, Dr Wladyslawska listed the following:-

- A P72 form dated 20 July 2018 signed by Ms E's GP

- A letter dated 30 September 2018 and a statement dated 3 December 2018 from Ms E
- A P60 form for the year ending April 2013[3]
- MED 3 statement of fitness for work forms dating from April 2012 to October 2018
- Correspondence from HMPPS

In response to the question: “Is the member suffering from a condition that, more likely than not, renders them permanently incapable of discharging efficiently the duties of their employment because of ill health or infirmity of mind or body?”, Dr Wladyslawska said: “No”. In response to the question: “Is the member immediately capable of undertaking any gainful employment?”, Dr Wladyslawska said “N/A”.

Dr Wladyslawska noted that Ms E reported two disabilities; fibromyalgia and osteoarthritis. She noted that Ms E reported struggling with her symptoms on a daily basis and felt her health had deteriorated. She described Ms E’s symptoms. Dr Wladyslawska noted that Ms E had had recurrent absences in recent years due to flare-ups of her fibromyalgia symptoms. She noted that Ms E’s GP had reported a worsening of her condition in the past due to viral infections or stressful life situations. Dr Wladyslawska said Ms E had been given advice about mobilising and strengthening exercises and hydrotherapy. She noted that Ms E had been referred to a pain management team but had not attended the appointment.

Dr Wladyslawska said Ms E’s right knee osteoarthritis affected her ability to climb stairs. She noted that Ms E had received physiotherapy, acupuncture and insoles for her arthritis. She noted that Ms E was receiving appropriate treatment for her irritable bowel syndrome, gastritis and duodenitis.

Dr Wladyslawska referred to occupational health assessments and noted that it had been advised that, with further adjustments, Ms E should be able to return to her contractual hours and duties. She noted a reduction in workload and targets had been suggested. Dr Wladyslawska referred to the GP’s letter of 10 September 2018. She noted that the GP had indicated that Ms E was likely to have ongoing problems with functional ability. She noted that the GP who completed the Med 3 form on 18 October 2018 had suggested Ms E might be fit for work with adaptions; such as, regular breaks from her desk and screen, avoiding noise and a manageable workload. Dr Wladyslawska noted that a phased return to work and altered hours had been suggested.

Dr Wladyslawska concluded:

[3] Submitted by Ms E in response to Dr Chapman’s report to show that she had worked part-time from 2012 to 2015

> “In my opinion there are still therapeutic options available, preferably provided by specialist services, including Pain Clinic, which have not been explored but should help her to manage her symptoms and increase functional capacity.
>
> I expect that with better management of her condition and adequate workplace adjustments there is likelihood of resuming her employment of Case Administrator before her normal pension age of 67.”