CAS-49843-F2X3

Ombudsman's Determination

Applicant	Mrs T
Scheme	Local Government Pension Scheme (**LGPS**)
Respondent	Harrow Council (**the Council**)

Outcome

1. I do not uphold Mrs T's complaint and no further action is required by the Council.

Complaint summary

2. Mrs T's complaint concerns the Council's decision to award her ill health retirement pension (**IHRP**) Tier 2 benefits. She believes she should have been awarded Tier 1 benefits.

Background information, including submissions from the parties

3. As relevant, extracts from the Local Government Pension Scheme Regulations 2013 (**the Regulations**) are set out in the Appendix.

4. Briefly, the Regulations provide for three tiers of IHRP benefits depending upon the member's incapacity for future employment. In order to qualify for any IHRP benefits, the member must be deemed permanently incapable[1] of discharging the duties of their current employment and not immediately capable of undertaking any gainful employment[2]. If the member satisfies these conditions, the tier of benefits awarded depends upon their level of future incapacity as follows:-

   Tier 1 The member is considered unlikely to be capable of undertaking gainful employment before normal pension age (**NPA**).

   Tier 2 The member is considered unlikely to be capable of undertaking any gainful employment within three years of leaving employment, but will be capable of such before NPA.

[1] Defined in the Regulations to mean "that the member will more likely than not, be incapable until at the earliest, the member's normal pension age." Mrs T's normal pension age is 66.

[2] Defined in the Regulations as paid employment for at least 30 hours each week for at least 12 months.

Tier 3 The member is considered likely to be capable of undertaking gainful employment within three years of leaving employment (or before NPA if this is earlier).

5. Mrs T worked as a Teaching Assistant at a School (**the School**). In 2005, Mrs T suffered a brain injury from a road traffic accident. In 2015, Mrs T experienced a major relapse of her mental health.

6. On 16 July 2015, an Independent Registered Medical Practitioner (**IRMP**), Dr Fox issued his report to the School that said:

> "We have received a report from her consultant psychiatrist. Unfortunately, that has not got the information that we need regarding [Mrs T's] prognosis and I have written back to him for that reason.
>
> …
>
> In my view it would be premature currently to process [Mrs T's] case for retirement as this may place her at a disadvantage. I believe I need further comment from her consultant psychiatrist and also an understanding from her neurology specialists...
>
> I would be grateful for a letter from you confirming that it is [Mrs T's] wish for her case to be processed for an ill health retirement."

7. From late 2015 Mrs T was hospitalised. On 5 January 2016, Mrs T's Consultant Psychiatrist from the hospital issued a letter to Occupational Health (**OH**) confirming that Mrs T was currently their inpatient and did not have the capacity to deal with matters relating to her medical retirement.

8. On 27 June 2016, Mrs T's IHRP assessment went back to Dr Fox. Mrs T was age 38 at the time. Dr Fox said in summary:-

- Mrs T's previous psychiatrist was not able to provide a report as Mrs T was not able to demonstrate capacious consent. This contributed to delays in concluding Mrs T's case.
- Mrs T's current psychiatrist, Dr Shabbir, indicated in May 2016 that Mrs T was provided with a range of medications and had been hospitalised. Dr Shabbir was pessimistic about Mrs T's prognosis, and work pressure would impact on her mental health.
- He believed that there was, on the balance of probabilities, medical evidence to support Mrs T being considered permanently incapacitated from her substantive post until her NPA.
- The next matter to consider was whether Mrs T was immediately capable of undertaking any other gainful employment. Clearly, given the severity of her symptoms she was not. So, he needed to consider whether she was able to

undertake any form of gainful employment at any other point between now and her NPA. This was why he went back to Dr Shabbir in May 2016 to clarify that issue. He had now received a response from Dr Shabbir.

- Dr Shabbir was hopeful that Mrs T would regain a degree of psychological health stability that would enable her to undertake work, however this might not be for several years. Dr Shabbir said that the current date of the recovery was so precarious that any form of responsibility would be a great burden for her.

- Based on all the available evidence, he was minded that, on the balance of probabilities, there were grounds to be optimistic that at some point in the future Mrs T may well be capable of undertaking low stress employment that was relatively straightforward.

- He saw no reason to conclude that this was likely to happen within the next three years but did not see any reason why it could not be achieved some time thereafter. He recommended that Mrs T was eligible for Tier 2 IHRP, but It was for the Council to determine at what level to award Mrs T her IHRP.

9. On 20 July 2016, following Mrs T's husband's, Mr T's comments, Dr Fox provided further comments:-

- He was interested to read Mr T's comments on the matter of age discrimination. In fact, age did need to be considered by the IRMP when providing an opinion. The IRMP was tasked to determine Mrs T's capacity to work until retirement age on the balance of probabilities.

- Regarding Mrs T's diagnosis of a schizoaffective disorder and its prognosis, he had reviewed E-Medscape. This was a reputable evidence-based medical resource. In their review of schizoaffective disorder, they commented that overall the "determination of prognosis was difficult".

- The Royal College of Psychiatrists indicated on its website, that taking medication regularly could help to control the most distressing symptoms of the disorder. In the event of an improvement, an individual with a schizoaffective disorder may feel well enough to look after themselves, their home and restart studies or work.

- In situations like this the view of the individual's treating psychiatrist was key. He had liaised with Dr Shabbir, who agreed that Mrs T's health picture would not be compatible with returning to a teaching or school environment.

- Dr Shabbir said that with treatment, and improvement, there may be the possibility of Mrs T undertaking some work that was of low stress and straightforward. He (Dr Fox) considered that low stress and straightforward duties would equate to predictable administrative/office type of work.

- There were a range of therapy approaches commended on the Royal College of Psychiatrists website, which would include medication, supportive psychotherapy and counselling, as well as cognitive behavioural therapy.

- Dr Shabbir indicated that Mrs T's medication had recently been changed and had been of some benefit. Other medication options were outlined. Obviously, the degree to which medication proved effective in the long term was not currently known.

- A further letter from Dr Shabbir, dated 12 July 2016, did not change his (Dr Fox's) view.

- Given the information available on E-Medscape, coupled with the comments from Dr Shabbir and other material, he remained of the opinion that, on the balance of probabilities, he could not rule out the possibility that Mrs T may be able to undertake some form of gainful employment before her NPA.

- He noted that Mr T said he was going to appeal under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). So, the IDRP would seek a second opinion from another IRMP.

10. On 17 November 2016, Mrs T's application was considered by another IRMP, Dr Marcus, who concluded in summary:-

    - He had seen medical reports from Mrs T's GP, Dr Shabbir and Dr Kohli (Consultant Psychiatrist) from 2015 and had noted earlier reports and clinical reports on the OH file.

    - Mrs T had a history of schizoaffective disorder. She also had normal pressure hydrocephalus and used asthma inhalers.

    - Having considered all the available information, his opinion was the same as Dr Fox's. Namely, Mrs T was eligible for a Tier 2 IHRP on the basis that there was the possibility she would improve sufficiently to take up alternative gainful employment before her NPA.

11. On 15 July 2016, the Council awarded Mrs T Tier 2 IHRP benefits.

12. On 2 September 2016, Mrs T's husband raised a complaint on her behalf, under the IDRP. He said in summary:-

    - Mrs T should have been awarded a Tier 1 IHRP.

    - He provided further medical evidence from Mrs T's treating Psychiatrist, Dr Kohli, who said the hospital consultants were unable to reach a definitive conclusion as to the likelihood of her being capable to work in the future.

- This was because they were merely her consultants while she was in hospital and had little knowledge of how her condition affected her, or was likely to affect her in day-to-day life.
- It was the haste of the Council and the threats that were made to proceed with Mrs T's dismissal on the grounds of capability while she remained ill in hospital which led to the involvement of the hospital consultant and the Council's erroneous decision to award her Tier 2.
- He believed Mrs T was discriminated against based on her age.
- Dr Kohli was of the view that if Mrs T engaged with medical treatment, which consisted of continued hospitalisation and acute support and intervention for a period of several years and under the constant supervision of a medical treatment team, she may be able to undertake some form of work.
- This was expressed by Dr Kohli, today on 2 September 2016.
- Given Mrs T's unwillingness to engage with this course of hospitalised detention and treatment, he believed that, on the balance of probabilities, Mrs T was unlikely to be capable of or maintain gainful employment.

13. On 16 March 2017, the Council issued its stage one IDRP decision that said in summary:-

- It apologised for the excessive time taken to respond and was disappointed that its usual high standards had not been maintained in this instance.
- It confirmed it had received a report from Dr Marcus which had enabled it to fully consider Mrs T's case.
- The appeal process and the subsequent second assessment by Dr Marcus would only consider the information that was available at the date of the original assessment made by Dr Fox.
- There was no scope within the Regulations that a review of Tier 2 would be made, and so any new medical evidence could not be taken into account when an IRMP issued their opinion.
- Both Dr Fox and Dr Marcus were optimistic that Mrs T would be capable of some form of gainful employment before her NPA.
- It saw no reason to conclude that this was likely to happen within the next three years, but it did not see any reason why it could not be achieved some time thereafter.
- It acknowledged there was no evidence provided to support these recommendations. However, the IRMP must make a recommendation on the balance of probability, taking into account several factors, on the possibility of

gainful employment being secured at some point before NPA. It was satisfied that this had been done to the best of their ability and as a result it saw no reason to contradict their recommendations of Tier 2 benefits.

14. On 4 February 2020, Mr T further appealed on behalf of Mrs T.

15. On 18 February 2020, the Council issued its stage two IDRP decision that said in summary:-

- While the appeal was received outside the six months' time limit for submission, it had reviewed the process that had been undertaken.
- Having reviewed all the medical evidence, including a report from Dr Kholi and both IRMPs' reports, it confirmed that Tier 2 was appropriate and would continue for Mrs T.
- Both IRMPs had insight into medical evidence available at the time of the assessments and both concluded that Mrs T was eligible for Tier 2 on the basis that there was the possibility she would improve sufficiently to undertake some form of lighter work in the future.
- That was to say she was not capable of undertaking gainful employment within the next three years but was likely to be capable of undertaking gainful employment at some time before her NPA.

16. Subsequently, Mr T, on behalf of Mrs T, referred the complaint to The Pensions Ombudsman (**TPO**). Both the Council and Mr T, on behalf of Mrs T, provided submissions to TPO and these have been summarised below.

Summary of the Council's position

17. The Council submits:-

- It noted that the complaint was made outside of the time limits set out in the Regulations, but TPO decided to use its discretion to accept it for investigation.
- It sought opinions of two IRMPs, Dr Fox and Dr Marcus. Both reports were shared with Mrs T.
- It referred to the Secretary of State's Statutory Guidance, that the IRMP "is required to judge member's capability of undertaking any gainful employment and not the type of local government post formerly held by the member."
- The gainful employment test is applied regardless of whether the member has worked full-time or part-time. The assessment being made is whether the member is likely or unlikely to be capable of undertaking gainful employment and not whether the member would actually want to.
- The IRMP should also consider whether the member would be capable of further treatment. The fact that the member might choose not to accept such treatment

should not be a relevant factor. Treatment can include lifestyle changes such as weight loss and stopping the use of harmful substances such as tobacco or alcohol.

- It was of the view, that Tier 2 should stand. This was not subject to any review under the Regulations.
- It was not able to provide complete medical evidence on which the original decision was based for the reasons stated below:-
  - The original decision was taken before Mrs T's retirement date of 16 July 2016.
  - Mrs T worked at the School, so this information would have been held by the School.
  - The colleagues who worked in Human Resources (**HR**) who advised on her case, no longer worked for the Council.
  - It had also reorganised the HR team significantly, involving two TUPE transfers. One when staff moved to a shared service with Bucks County Council, which had subsequently ceased and a further TUPE transfer of some HR staff to the Council. Inevitably, some older records would have been archived at various stages of those changes.
  - Finally, remote working as a result of the Covid-19 pandemic had made it difficult to retrieve and view old paper.

18. Following TPO's requests to the Council to retrieve information from the School, the Council was unable to provide any more information such as medical evidence or correspondence pertaining to how the decision to award Mrs T Tier 2 benefits was reached.

Summary of Mr T's position on behalf of Mrs T

19. Mr T submits:-

- He had provided medical evidence referring to Mrs T's current condition and her condition at the time of her application for an IHRP in around 2015/16.
- He believed the Council should have requested further medical evidence. It purely relied on the IRMPs' opinions and the hospital consultants, without asking Mrs T's Neurosurgeon for an opinion.
- Mrs T did not have the capacity to deal with the matters relating to her IHRP application as she was hospitalised.
- During Mrs T's appointment on 2 March 2020, with her Neurosurgeon, she was asked if she had been medically retired. He confirmed to the Neurosurgeon she was in 2016. However, the Neurosurgeon said the Council should have

approached them for their opinion at the time. The Neurosurgeon confirmed that the brain scan from 2015 showed that her enlarged ventricles were irreversible which could lead to serious symptoms.

Adjudicator's Opinion

20. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below, in paragraphs 21 to 35.

21. Members' entitlement to benefits when taking early retirement due to ill-health is determined by the scheme rules or regulations. The scheme rules or regulations determine the circumstances in which members are eligible for ill-health benefits, the conditions they must satisfy and the way in which decisions about ill-health benefits must be taken.

22. In Mrs T's case the relevant regulations were regulation 35 and 36 of the Regulations (see Appendix). Regulation 36 states that: "A decision as to whether a member is entitled under regulation 35…to early payment of a retirement pension…shall be made by the Scheme employer… after that authority has obtained a certificate from an IRMP." In this case, the Council, as Mrs T's employer, was the decision-maker.

23. The Council, after obtaining a certificate from an IRMP, needed to consider Mrs T's IHRP application in line with the Regulations and properly explain why her application could, or could not, be approved. It must ask the right questions and consider only relevant information before reaching a reasonable decision. However, the Adjudicator was not provided with the initial decision and so they reasonably took the Council's IDRP decisions as evidence and considered any flaws in the process. The Adjudicator also considered the available IRMPs' reports and decided whether they had applied the test under the 2013 Regulations correctly.

24. As relevant, regulation 35 states:

> "(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."

25. If Mrs T met the two conditions, the Council would then consider which tier of benefits she should receive. The tier of benefits awarded depended upon the likelihood that Mrs T would be capable of undertaking gainful employment at some time before her NPA of 66.

26. The first IRMP, Dr Fox, in his report of 16 July 2015, said that he did not have sufficient evidence regarding the prognosis of Mrs T's condition and so he wrote to

her specialists requesting this information. In June 2016, Dr Fox was provided with more medical evidence from Mrs T's psychiatrist, Dr Shabbir. Dr Shabbir was hopeful that Mrs T would regain a degree of psychological health stability that would enable her to undertake work, albeit this might not be for several years. Dr Shabbir said that the current date of the recovery was so precarious and that any form of responsibility would be a great burden for Mrs T.

27. However, Dr Fox noted that Dr Shabbir said that Mrs T's medication had recently been changed and had been of some benefit.

28. While Dr Fox agreed that Mrs T was permanently incapable of returning to her teaching duties and was unlikely to be capable of gainful employment within three years, based on all the available evidence, he was minded that, on the balance of probabilities, there were grounds to be optimistic that prior to her NPA Mrs T may be well enough to undertake low stress, straightforward, office type employment.

29. The second IRMP, Dr Marcus, in his report of 17 November 2016, concluded that having considered all the available medical evidence that was available in 2015, his view was the same as Dr Fox's, that Mrs T was likely to be capable of undertaking gainful employment before her NPA. This equated to Tier 2 benefits. Specifically, Dr Marcus, having regard to the specific requirements of the Regulations, was of the view that Mrs T was "not capable of undertaking gainful employment within the next three years but is likely to be capable of undertaking gainful employment at some time thereafter and before her normal retirement age. (Tier 2)".

30. Having considered the IRMPs' reports, it was the Adjudicator's view that the test under the Regulations was applied correctly. Both IRMPs were of the view that although Mrs T was not permanently capable of doing her teaching assistant job, she was likely to be capable of undertaking low stress office-type employment before her NPA. Dr Shabir was optimistic that with treatment, and improvement, there might be the possibility of Mrs T undertaking such work.

31. The Adjudicator noted that Mrs T was arguing that the Council should have requested further medical evidence from her treating psychiatrist Dr Kohli at the time. Mrs T referred to his opinion of 2020, which had referred to her condition back in 2015 as being permanent. She also provided medical evidence from 2021 supporting her application for Tier 1 benefits. But this medical evidence post-dated the IHRP assessment in 2015/16. As such, it was applying the benefit of hindsight. The IRMPs were required to consider the medical evidence that was available at the time of her assessment in 2015.

32. The Adjudicator was satisfied that both IRMPs considered the evidence available at the time. Dr Fox requested the further opinion of Dr Shabbir, which clarified his final opinion to recommend Tier 2. Essentially, it was for the IRMP to consider all the available medical evidence and decide whether the evidence was sufficient for them to issue an opinion in line with the Regulations. In the Adjudicator's view, this happened in Mrs T's case. Although the Adjudicator was not provided with the

medical evidence, they were satisfied that the IRMPs reports demonstrated that they considered the available evidence. The Adjudicator she did not see any reason why the Council should not have accepted the IRMPs' opinions to make a decision regarding Mrs T's eligibility for Tier 2 benefits. In the Adjudicator's view, the reports addressed the right questions and provided sufficient detailed reasoning and there did not appear to be a difference of opinion between the IRMPs and Dr Shabbir. But even if there had been, that was not sufficient for the Pension Ombudsman (**the PO**) to say that by accepting the IRMPs opinions that the Council's decision was not properly made.

33. Mrs T also argued that she was not in the right state of mind at the time the Council awarded her Tier 2 benefits. However, Mrs T provided her consent to be assessed for an IHRP at the time. The Adjudicator also noted that Mr T represented Mrs T through her IDRP appeals.

34. Regarding the issue of limited evidence. Most of the evidence would have been held by the School and dated back to 2015/16. The Adjudicator was satisfied that the explanation provided by the Council, for why it was not able to obtain the evidence from the School, was not unreasonable given the passage of time.

35. While the Adjudicator had great sympathy for Mrs T's circumstances, in her view, based on the limited evidence, it appeared that the Council considered all the relevant evidence, abided by the Regulations and considered the relevant factors in arriving at its decision to grant Mrs T Tier 2 benefits. So, the Adjudicator did not find any grounds to say that the Council's decision was not properly made. Consequently, it was the Adjudicator's opinion that this complaint should not be upheld.

36. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T, on behalf of Mrs T provided his further comments which do not change the outcome. Mr T's further comments are summarised below:-

- He requests that the PO directs the Council to reconsider the decision by requesting further medical reports from Mrs T's treating doctors.
- He reiterated Mrs T's complaint points, specifically that the Council should have requested further medical evidence from Mrs T's consultant psychiatrist before it made its decision.
- The Council's failure to provide all correspondence and medical evidence means that it is hiding its failings.
- Given Mrs T's mental and physical health problems, she will not be able to resume gainful employment before her NPA.
- The IRMPs were not Mrs T's treating doctors, did not examine her personally and did not seek further medical evidence to understand the permanence of her incapability.

- Mrs T lacked capacity to deal with her pension matters at the time the Council was making a decision.
- The PO should consider whether the Council's decision to proceed without further evidence and the test of "balance of probabilities" applied amount to maladministration.

Ombudsman's decision

37. It is not my role to review the medical evidence and come to a decision of my own as to Mrs T's eligibility for payment of benefits under the Regulations. I am primarily concerned with the decision making process. Medical (and other) evidence is reviewed in order to determine whether it supported the decision made. The issues considered include: whether the relevant regulations have been correctly applied; whether appropriate evidence has been obtained and considered; whether the correct questions have been asked; and whether the decision is supported by the available relevant evidence.

38. The weight which is attached to any of the evidence is for the Council to decide (including giving some of it little or no weight). It is open to the Council to prefer evidence from its own advisers; unless there is a cogent reason why it should not without seeking clarification. For example, an error or omission of fact or a misunderstanding of the relevant regulations by the IRMP. If the decision making process if found to be flawed, the appropriate course of action is for the decision to be remitted for the Council to reconsider. However, it must ensure that any medical advice upon which it places weight has addressed the right questions under the Regulations.

39. I appreciate the Council is not a medical professional itself and can only review the medical advice from a lay person's perspective. The same applies for me and my staff. The questions the Council might be expected to ask of its IRMPs are only those which a reasonably informed lay person might ask. In order to arrive at a reasonable decision about an IHRP, the Council is required to satisfy itself whether or not, on the balance of probabilities, Mrs T was likely to be able to return to work before her NPA and must be able to provide reasons for that conclusion.

40. While not ideal, it is not unreasonable that the Council has not been able to provide full case file for the reasons it provided. I have carefully considered the limited information provided and I agree with the Adjudicator for broadly the same reasons as set out in paragraphs 21 to 35. I find that the Council made its decision concerning Mrs T's IHRP application in the correct way and it was allowed to put the weight on its IRMPs' opinions as they are qualified practitioners to make IHRP assessments.

41. Regarding Mr T's argument that the Council should have requested further medical evidence from Mrs T's treating consultant psychiatrist, it is for the IRMP to decide whether they have sufficient evidence in front of them to make a recommendation as to the eligibility to an IHRP. I find that Dr Fox requested further information from Dr

Shabbir at the time, which clarified Mrs T's condition and prognosis at the time. I find that there was no error of law in the IRMPs' assessments and so the Council's decision to have relied on its IRMPs' opinions was not unreasonable.

42. I find that the Regulations have been correctly applied and that the relevant medical evidence available at the time was considered. The evidence that Mr T referred to post-dates the date of the IHRP assessment and so it cannot be considered.

43. I appreciate that this outcome will be disappointing to Mrs T, however the IRMPs and the Council have acted in accordance with the relevant Regulations. At the time of her IHRP application, she met the criteria for Tier 2 benefits.

44. I do not uphold Mrs T's complaint.

Dominic Harris

Pensions Ombudsman
19 January 2025

Appendix

1. Regulation 35, "Early payment of retirement pension on ill-health grounds: active members" 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."

2. Regulation 36, "Role of the IRMP" 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.[3]

(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.[4]

(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)."

[3] Reg. 36(1)(c) substituted (with effect in accordance with reg. 1(2)(b) of the amending S.I.) by The Local Government Pension Scheme (Amendment) Regulations 2015 (S.I. 2015/755), regs. 1(2), 13(a)

[4] Reg. 36(2A) inserted (with effect in accordance with reg. 1(2)(b) of the amending S.I.) by The Local Government Pension Scheme (Amendment) Regulations 2015 (S.I. 2015/755), regs. 1(2), 13(b)