CAS-52488-R2F3

Ombudsman's Determination

Applicant	Mr D
Scheme	Local Government Pension Scheme – Staffordshire County Council Pension Fund (**the Scheme**)
Respondents	Newcastle-Under-Lyme Borough Council (**the Former Employer**)
	Staffordshire County Council (**the Council**)

Outcome

1. Mr D's complaint against the Former Employer and the Council is partly upheld. To put matters right, the Former Employer and the Council should refer to paragraph 54.

Complaint summary

2. Mr D's complaint concerns the Former Employer's decision to decline his ill health early retirement (**IHER**) application. He believes that the opinion of an independent medical professional, who specialised in hearing loss, should have been sought before his application was declined.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. Mr D was employed as a Principal Development Control Officer (**PDCO**) by the Former Employer. He was a member of the Scheme, a defined benefit occupational arrangement.

5. On 2 December 2001, Mr D left the Former Employer and became a deferred member of the Scheme.

6. At the time Mr D became a deferred member, the Scheme was administered in accordance with the Local Government Pension Scheme Regulations 1997 (**the**

Regulations)[1]. The relevant provisions are contained under Regulation 31 which states:

> "(1) If a member leaves a local government employment (or is treated for these regulations as if he had done so) before he is entitled to the immediate payment of retirement benefits (apart from this regulation), once he is aged 50 or more he may elect to receive payment of them immediately.
>
> (2) An election made by a member aged less than 55 is ineffective without the consent of his employing authority or former employing authority (but see paragraph (6))…
>
> …
>
> (6) If a member who has left a local government employment before he is entitled to the immediate payment of retirement benefits (apart from this regulation) becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body—
>
> (a) he may elect under paragraph (1) before attaining the age of 50, and
>
> (b) paragraphs (2) and (4) do not apply."

7. 'Permanently incapable', under the Regulations, is defined as being unable to efficiently discharge the duties of the role held at the time of becoming a deferred member of the Scheme, due to ill health, up until their Normal Retirement Date (**NRD**).

8. Regulation 97, First Instance Decisions, states that:

> "(1) Any question concerning the rights and liabilities under the Scheme other than a Scheme employer must be decided in the first instance by the person specified in this regulation.
>
> (2) Any question whether a person is entitled to benefit under the Scheme must be decided by the Scheme Employer who last employed him.
>
> ….
>
> (9) Before making a decision as to whether a member may be entitled under regulation 27 or under regulation 31 on the ground of ill-health, the Scheme employer must obtain a certificate from an independent registered medical practitioner as to whether in his opinion the member is permanently incapable

[1] The Local Government Pension Scheme Regulations have since been revoked. However, the terms of Regulation 31 apply in Mr D's case by virtue of Regulation 3 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI2014/525).

of discharging efficiently the duties of the relevant local government employment because of ill-health or infirmity of mind or body."

9. In January 2019, Mr D contacted the Former Employer to query whether he could claim his benefits through an IHER application.

10. On 16 January 2019, the Former Employer responded to Mr D and explained the criteria that needed to be met in order to be granted ill heath retirement. It also said that he could claim his benefits through early retirement, albeit it with a percentage reduction for each year that his benefits were paid earlier than his NRD.

11. On 21 January 2019, Mr D submitted an IHER application to the Former Employer for the early payment of his deferred benefits. He explained that:-

- He suffered an inner ear infection which led to the discovery of an aneurism which was removed through surgery. However, after the surgery, the hearing in his right ear had diminished substantially and the hearing in his left ear had also diminished over the years.

- He worked three days a week for his own company which consisted of occasional one-to-one meetings and paperwork. He was unable to lead or participate in public meetings due to his hearing loss.

- After the surgery, he still occasionally gave speeches at planning committee meetings, through his private role, however he was unable to engage in any public discourse thereafter.

- He was formerly employed as a PDCO by the Former Employer and led a team of professional planners, technicians and support staff.

- At present, as a PDCO, he would no longer be able to attend or speak at planning committee meetings, present evidence at planning appeals or discuss planning matters in a public forum.

- He did not believe that he would be able to efficiently fulfil the duties of his former PDCO role if he were still in it.

12. Upon receipt of Mr D's IHER application, the Former Employer referred the application to Hobson Healthcare, its chosen occupational health provider. Dr How was appointed as the Independent Medical Adviser (**the MA**) responsible for reviewing Mr D's application.

13. On 18 February 2019, the Former Employer told Mr D that Dr How had arranged for him to attend an in-person assessment with her on 22 February 2019.

14. On 22 February 2019, Mr D attended his appointment with Dr How. During the examination Mr D noted that Dr How did not perform any hearing tests to determine the extent of his hearing loss.

15. On 1 March 2019, Mr D contacted the Former Employer and explained that he was not confident that Dr How had any specialist knowledge regarding hearing loss.

16. Between March 2019 and April 2019, Mr D contacted the Former Employer several times to check on the progress of Dr How's review of his IHER application.

17. On 9 April 2019, Dr How sent her medical report (**the Report**) to the Former Employer and said that Mr D did not meet the criteria for an IHER pension. Dr How explained that:-

    - She had reviewed Mr D's GP notes which said that he had developed "sensorineural hearing loss secondary to bacterial labyrinthitis" this was graded as being "profound" in his right ear and "moderate" in his left ear.

    - He wore bilateral hearing aids with no further treatment planned despite struggling with his hearing.

    - He was originally employed as a PDCO after which he worked in the private planning sector until he set up his own business. She confirmed having received a copy of Mr D's job description. She noted that he struggled in noisy environments due to his hearing loss. However, no adjustments or special resources had been trialled to help with this.

    - On the balance of probabilities, if special adjustments were made, it was likely that he would be able to efficiently discharge the duties of a PDCO. Examples of adjustments included "a personal assistant, palantypist, or assistive technology such as a Roger Pen to help him to chair or participate in meetings".

    - Suitable adjustments could be made to help reduce any fatigue he felt from listening intensely. It was also likely that Mr D would also be able to obtain alternative forms of gainful employment.

18. On 25 April 2019, the Former Employer wrote to Mr D and said that it had reviewed the Report in conjunction with his IHER application. It did not agree that his current condition rendered him "permanently incapable of discharging efficiently the duties of [his] former employment". So, he was not entitled to the payment of his deferred benefits on IHER grounds.

19. On 10 June 2019, Mr D made an appeal under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) about the Former Employer's decision to decline his IHER application. He said that:-

    - The Former Employer should have sought a medical opinion from a hearing loss specialist, instead of an occupational health consultant. Dr How did not have any specific knowledge about hearing loss conditions which was evident during the assessment.

    - Dr How did not perform any basic hearing tests, nor did she review his hearing aids. Further, she seemed to only consider a loss of volume to be a reason why

he struggled at work, but it was also a loss in the clarity of his hearing that meant he was unable to sufficiently fulfil his role.

- Dr How had said that he was able to undertake other forms of gainful employment. However, he believed that she was only responsible for determining whether he was capable of his former PDCO role, anything thereafter should not have been taken into consideration.

- The Report incorrectly said that the hearing loss in his left ear was “moderate” when the GP notes actually said it was “moderate to severe”. There was a substantial difference between moderate and moderate to severe.

- He wore specialist hearing aids prescribed to him by a private Audiologist which enabled him to continue working three days a week. Despite his hearing aids, he was unable to actively participate in meetings in public spaces or outside due to “wind and often multiple noise sources”. He was also unable to use a conventional telephone. However, he was able to meet with people in small groups, use a mobile phone with a Bluetooth connection to his hearing aids and read and write reports.

- His hearing loss limited the range of work that he was able to undertake, and he experienced severe fatigue from the concentration needed when trying to hear and participate in meetings.

- The MA suggested the use of a “Roger Pen” may help, but he had used one in his current role with little success. Further, the suggestion that an assistant could be hired to help him during meetings for his PDCO role was at odds with the Regulations requirement for him to be able to efficiently carry out his duties.

- The GP’s notes were based on a hearing test in April 2018, between then and 2019 he believed that his hearing loss had worsened.

20. On 18 July 2019, the Former Employer responded to Mr D’s IDRP appeal and explained that it upheld its original decision to decline his IHER application. It had considered Dr How’s opinion and the Report and did not believe that he met the criteria for IHER.

21. On 23 September 2019, Mr D contacted the Former Employer and asked for his appeal to be reconsidered under stage two of the Scheme’s IDRP. Broadly, he reiterated the same comments raised during his stage one IDRP appeal. He provided a copy of a report from the Dove Hearing Centre (**the Second Report**), dated 18 September 2019, the provider of his hearing aids (see appendix). He said that his IHER application had not been considered fairly by either Dr How or the Former Employer. This was because the MA did not specialise in hearing loss, nor were any opinions sought from any independent hearing loss specialists.

22. On 27 January 2020, the Council responded to Mr D’s stage two IDRP appeal and explained that:-

- The Council was appointed to conduct an independent review of his stage two IDRP appeal. It was unable to overturn the Former Employer's decision to decline his IHER application. Instead, it was required to ensure that the IHER process had been followed correctly, and, if it had not been, then it would refer the application back to the Former Employer to reconsider in the proper manner.

- Regulation 97(14)(b) states that the MA, for the purposes of an IHER application, must hold a diploma in occupational medicine, or an equivalent qualification. Dr How held a diploma and an advanced diploma in occupational health. So, it was satisfied that Dr How met the requirements of the Regulations.

- The Regulations did not provide any provisions for the appointed MA to retain specialist knowledge or expertise in specific areas.

- It had contacted Dr How to clarify several remarks in the Report. Dr How had confirmed that she understood that she was only required to provide an opinion on whether Mr D could fulfil his PDCO role. She was also aware that the hearing in Mr D's left ear was "moderate to severe". She described it as moderate in the Report in an attempt to be concise.

- Dr How's opinion remained the same and she had reiterated that, if adjustments were made to support Mr D, it was likely that, on the balance of probabilities, he would be able to fulfil his PDCO role up until his NRD.

- Dr How had only taken into account relevant information and applied the correct tests for incapacity when drafting the Report and summarising her opinion.

- It was the MA's responsibility to decide whether the medical criteria for IHER was satisfied. But it was the Former Employer who held a regulatory obligation to decide whether the question of ill health entitlement, based on the opinion provided by the MA, was satisfied.

- There were several delays in providing a response to his stage one appeal by the Former Employer, this was primarily down to staff sickness. Further, the Former Employer had failed to provide him with regular updates about his stage one appeal, which the Council believed amounted to maladministration.

- The Council was unable to award any compensation in recognition of any identified maladministration. However, it asked the Former Employer to consider a payment for distress and inconvenience in recognition of the delays and lack of updates during his stage one appeal.

23. On 11 February 2020, the Former Employer contacted Mr D and offered him an award of £500 in recognition of delays and lack of updates he experienced during his stage one IDRP appeal process. Mr D accepted and was paid the £500.

24. Mr D's position:-

- The MA had made an error in the Report about the severity of his hearing loss in his left ear. So, he believes that the MA's opinion on whether he could undertake his former PDCO role was incorrect.

- He did not understand how the Former Employer could make a fair decision on his IHER application when the Report contained an incorrect assessment of his hearing loss.

- He was not provided with the opportunity to appoint an independent medical professional who specialised in hearing loss, to review his IHER application. This would have allowed an impartial review of his circumstances to have been undertaken.

- The Council did not appear to have considered the Second Report, nor did it appear to have forwarded it onto Dr How to review.

25. The Council has said that it did review the Second Report during the IDRP stage two appeal in conjunction with Mr D's comprehensive appeal of 23 September 2019. The Council believed that Dr How had already taken into account all of the relevant information and had performed the correct test for IHER. So, there was no need to refer the Second Report to Dr How to consider.

Adjudicator's Opinion

26. Mr D's complaint was considered by one of our Adjudicators who concluded that there was maladministration, and that further action was required by the Former Employer and the Council. The Adjudicator's findings are summarised in paragraphs 27 to 39 below.

27. As a deferred member of the Scheme Mr D's IHER application was governed by Regulation 31 which required Mr D to be permanently incapable of his PDCO role up until his NRD. As the decision maker, it was for the Former Employer to decide whether Mr D met the eligibility requirements of Regulation 31. This was a finding of fact, Mr D either did, or did not, meet these requirements. Before coming to a decision, the Employer was required to obtain a certified opinion from an MA, as required by Regulation 97(9).

28. The Former Employer was expected to consider all relevant information available to it while ignoring any irrelevant information. However, the weight which was attached to any of the evidence was for the Former Employer to decide. This included giving some of it little or no weight. It was open to the Former Employer to prefer the advice of its own MA's unless there was a cogent reason why it should not or should not without seeking clarification. The Former Employer and the Council were only expected to review the medical evidence from a lay perspective; they are not expected to challenge medical opinions. Therefore, the kind of things they can be expected to look out for are errors or omissions of fact on the part of the MA, or a misunderstanding of the relevant Regulations.

29. As far as their medical opinions are concerned, MAs are not within the Ombudsman's jurisdiction. They are answerable to their own professional bodies and the General Medical Council. However, if there had been an error or omission of fact on the part of the MA, the Former Employer, as the decision-maker, was expected to seek clarification. So, the Adjudicator believed it appropriate to review Dr How's report as it was claimed that Dr How made two errors in the Report, that is, an error about the degree of hearing loss in Mr D's left ear and a comment on his ability to undertake alternative employment. Mr D believed that these errors could have affected the outcome of his IHER.

30. Dr How was of the opinion that, on the balance of probabilities, Mr D was able to efficiently discharge the duties of his previous employment, and any other form of employment with suitable adjustments in place. The suitable adjustments that Dr How recommended were the employment of a personal assistant/palantypist for Mr D, installing assistive technology such as a Roger Pen to help him to chair or participate in meetings. These adjustments would likely help reduce any fatigue Mr D experienced in having to concentrate intensely.

31. The Adjudicator believed that Dr How had considered all of the available medical evidence at the time of the application and that she understood the criteria that needed to be met for an IHER application. While the comment about Mr D's ability to undertake other forms of employment was unnecessary, it did not affect the overall outcome of his application. So, Dr How had applied the correct test under Regulation 31. Thereafter, the Former Employer accepted Dr How's opinion without question, as at the time, there was no obvious reason not to.

32. Under the stage two IDRP appeal Dr How clarified that she was aware that Mr D's hearing loss, in his left ear, was "moderate to severe" not "moderate" as she had previously said in the Report. Dr How had explained that the term moderate was only meant as an attempt to be concise and did not affect her overall opinion on Mr D's condition. Consequently, the Adjudicator was satisfied that any errors or omissions of fact had been remedied. It was clear that this did not affect the outcome as Dr How did not feel the need to provide a revised opinion when questioned about the two errors.

33. The Adjudicator believed that further consideration should have been given to the Second Report due to the nature of Mr D's condition. This was because the Second Report was provided by a hearing loss expert and explained that under the PDCO role, it would be particularly difficult for Mr D to chair meetings with multiple participants speaking with varying levels of clarity, volume and frequency. On-site visits would be particularly challenging due to external background noises, the wind, and multiple speakers in an open environment.

34. Ultimately, the hearing expert believed that Mr D was unable to fulfil his former PDCO role. However, the Adjudicator noted that it was not clear whether the author of the Second Report had been provided with a copy of Mr D's job description, or if their opinion was given in reference to the Regulations.

35. As a general rule, a difference of opinion between a scheme's MA and the member's own doctors is not sufficient for the Pensions Ombudsman to find that a decision has not been made in a proper manner. However, by not referring the Second Report onto Dr How to consider, it was unclear whether Dr How's opinion would have changed, or remained the same, based on the contents of the Second Report. It was also unclear whether any of the recommended adjustments, made by Dr How in the Report, would still be considered relevant if she had been provided with the Second Report.

36. It was unreasonable for the Council, and subsequently the Former Employer, to decide to attach little to no weight to the opinions expressed in the Second Report without asking Dr How to consider it first. Given the specialist nature of the Second Report, and the Former Employer's ability to review medical evidence from a lay person's view, it was unclear why an additional opinion was not sought from Dr How by referring the Second Report to her. The Adjudicator's opinion was that the Former Employer's actions in not making the Second Report available to Dr How amounted to maladministration.

37. The error in Mr D's IHER application was further exacerbated when, during the stage two IDRP appeal, the Council took the view that Dr How had already taken into account all of the relevant information and also decided the Second Report was irrelevant. The correct process should have been to refer the application back to the Former Employer to ask for Dr How's view on the Second Report and then to reconsider Mr D's IHER application afresh.

38. There is no requirement under the Regulations for the Former Employer and/or the Council to allow a member to appoint their own medical professional. As a matter of good practice, members are allowed to submit any evidence which they consider to be relevant to their application and, having done so, the Former Employer and/or the Council should review this as part of the decision-making process.

39. While there were errors in Dr How's initial opinion, they were of little consequence and did not affect the outcome of his application. However, by not referring the Second Report to Dr How, the process followed in deciding to decline Mr D's application was flawed. So, the Adjudicator believed that the matter should be referred back to the Former Employer for reconsideration.

40. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which do not change the outcome. I generally agree with the Adjudicator's Opinion, setting out where my reasoning differs below, and note the additional points raised by Mr D which are:-

    - Dr How did not undertake a technical assessment of his hearing loss during the in-person assessment. Further, the assessment was conducted in a small room with good acoustics, so the true extent of his hearing loss would not have been apparent.

- There was a profound difference in Dr How incorrectly describing his hearing loss, in his left ear, as moderate, instead of moderate to severe. After being questioned about the error, Dr How did not take the opportunity to review her opinion. Instead, she choose to "double down" on her error, claiming it was an attempt to be concise in the Report and that it did not affect her opinion. This demonstrated, in his view, that Dr How was incapable of assessing the medical evidence regarding his hearing loss.

- The measures that Dr How had suggested, to help enable a return to his PDCO role were unfeasible or had been unsuccessful in the past. It was highly unlikely that the Former Employer would elect to pay for a personal assistant to help him fulfil his PDCO role. He previously used a Roger Pen; however, it has to be passed from speaker to speaker and cannot convey the mood of a meeting. He was unaware of any instrument that could help him participate in meetings, in large rooms, or in outside spaces.

- He provided the Second Report's author with a list of tasks that he performed/undertook during his employment as a PDCO. So, the Second Report was drafted while considering these tasks, however, it did not take into consideration the Regulations.

- The errors in the Report impacted the overall decision to decline his IHER application and highlighted that Dr How was ill equipped to deal with an application regarding hearing loss. In order for his IHER application to be properly considered, an expert in hearing loss should be appointed as the MA.

Ombudsman's decision

41. Mr D's complaint concerns the Former Employer's decision to decline his IHER application. He believes that the Second Report should have been considered during his stage two IDRP appeal, which it was not.

42. Regulation 97(2) states that any question concerning a member's rights and liabilities under the Scheme is for the Scheme Employer to decide upon. This includes the payment of an IHER pension. So, in Mr D's case, the appropriate decision maker is the Former Employer. Consequently, I am satisfied that Mr D's IHER application has been considered by the appropriate decision maker.

43. As the decision maker, the Former Employer was required to obtain a certified opinion from an MA. Upon receipt of an MA's opinion, I would only expect the Former Employer to review the information provided from a lay perspective. Generally, I would not expect the Former Employer, or the Council, to question a medical opinion, unless there was an error, omissions of fact, or misunderstanding of the relevant Regulations.

44. In this case, I understand that there was one substantive error in the Report regarding the severity of hearing loss in Mr D's left ear – in essence editorialising the "moderate

to severe" description, found in Mr D's GP notes, to "moderate" in the eventual Report. In my view, as this goes to the degree of hearing loss, this error was sufficiently serious to warrant the Former Employer seeking clarification during the appeal process, once the error was brought to its attention, and then considering the Report afresh once that clarification was received.

45. Similarly, Dr How also said that Mr D was capable of other forms of employment. While this was an unnecessary comment, in that it did not go to the test that the Former Employer had to answer, it did not affect the outcome of the IHER application. This is because Dr How had still applied the correct test for IHER. That is, asking the question of whether Mr D was capable of undertaking his PDCO role, up until he reached his NRD,

46. I agree with the Adjudicator that, in the light of the apparent errors in the report, set out above, and particularly that concerning the severity of Mr D's hearing loss, it was right that Dr How was contacted to seek clarification and her report reviewed afresh. That happened during stage 2 of the Scheme's IDRP, by which time the Second Report had also been provided by Mr D.

47. At that stage, I agree that the Second Report should also have been referred onto Dr How. Ultimately, it is correct to say that it is for the Former Employer, and the Council on appeal, to decide how much weight to attribute to any one piece of evidence. However, in this case, the Second Report was provided by an audiologist with a detailed understanding of Mr D's incapacity. I find that it is unclear why the Former Employer, and subsequently the Council, saw no benefit in referring the Second Report onto Dr How.

48. By not to referring the Second Report onto Dr How, there was, a flaw in the decision-making process during the appeals process. That is because a piece of relevant specialist medical evidence was treated as irrelevant. As I have explained, the Former Employer and the Council should only look at medical information from a lay perspective. Given the in-depth nature of the Second Report I do not find that it was reasonable for both parties to form the view that it would not have changed Dr How's overall opinion. Neither party can be sure that this would have been the outcome without consulting Dr How on the matter. Consequently, I agree that the actions of the Former Employer and the Council amount to maladministration. In order to remedy this, the Second Report should be referred to Dr How to determine whether its contents does, or does not, affect her initial opinion.

49. Mr D submits that Dr How, or any other MA under Hobson Healthcare, lack the required specialist knowledge to assess, and understand, his condition, and its impact of his working life. He believes a hearing loss specialist should be appointed as the MA, if his IHER application if re-reviewed.

50. I disagree with Mr D's assertion. The Regulations require for the decision maker to appoint an MA before any decisions are made on IHER applications. The Former Employer's chosen occupational MA is Hobson Healthcare. The Regulations do not

provide that the appointed MA should be a specialist in one field other than that of occupational health. Dr How holds both a diploma and an advanced diploma in occupational health. So, for the purpose of the Regulations, Dr How has satisfied the necessary requirements to review an IHER application such as Mr D's.

51. It was for Mr D to provide any supporting information regarding his condition during his initial application. Based on the information provided, Dr How was not of the opinion that he was permanently incapable of fulfilling his PDCO role. There is no guarantee that the outcome would have been any different if the case was reviewed by an occupational health physician who specialised in hearing loss. That being said, once the Second Report is forwarded onto Dr How, in accordance with my findings in the paragraphs above, it is possible that her opinion may change, though it is also possible that it may not. In any case, I am satisfied that Dr How, or any other MA under Hobson Healthcare would be able to effectively reconsider Mr D's application, when taking into consideration the Second Report.

52. I appreciate that this may not be the outcome that Mr D hoped for. However, the appointment of an MA, without specialist hearing loss knowledge does not amount to maladministration on the part of the Former Employer.

53. I partially uphold Mr D's complaint.

Directions

54. Within 21 days of the date of this Determination, the Former Employer shall pay:-

- Refer the Second Report to the MA to review and provide a fresh opinion on whether the contents of the Second Report changes her opinion on Mr D's IHER application.
- In considering the Second Report, the MA should provide a clear opinion explaining why the Second Report does, or does not, change her opinion on Mr D's IHER application.
- The Former Employer should then review its decision based on the MA's response and notify Mr D accordingly.
- The Former Employer and the Council should each pay Mr D £250, in addition to the £500 already paid to Mr D by the Former Employer, in recognition of the serious distress and inconvenience he has suffered.

Pensions Ombudsman

26 April 2023

Appendix

Dove Hearing Centre's Report

"I have worked as a Hearing Aid Dispenser for 18 years and run my own independent hearing business (Dove Hearing Centres) for the last 15 years. I have worked with thousands of hearing-impaired clients and I have a very good grasp on the problems faced by people with hearing loss. I am registered with HCPC, Health Care Professions Council, a member of the British Society of Hearing Aid Audiologists and a Registered Hearing Aid Dispenser.

[Mr D] has had hearing loss from childhood resultant from problems with ear drum formation and he tells me he has worn hearing aids of some form for 20 years. In December 2014 - January 2015 he suffered an inner ear infection to his right ear which pretty much destroyed what hearing function he had in that ear before the infection. This dramatic further loss of hearing occurred after he had been discharged from hospital pretty much overnight. Following on from this [Mr D] took advice from me as his NHS hearing aids were unable to cope with this new situation and he was desperate thinking that his professional working life was at an end.

I have discussed his hearing problems and tested [Mr D's] hearing a number of times in recent years and I can confirm that since his inner ear infection in January 2015 he now has the following hearing disability:

- a profound hearing loss for both low and high frequencies on the right ear
- a severe low frequency hearing loss with severe/profound high frequency hearing loss on the left ear.

He currently wears private hearing aids with a power amplifier which also link directly through Bluetooth connections to mobile phone allowing the streaming of phone calls and media directly to his hearing aids.

Without good quality digital hearing aids [Mr D] would find it almost impossible to communicate in any environment, on a one to one basis he may be able to get some clarity through his left ear if the voice was clear, loud and slowly spoken with no noise in the background. In any environment where there would be multiple speakers, I would expect [Mr D] to not hear with any benefit and if any background noise was added to this situation then [Mr D] would not be able to hear at all. [Mr D] would also not be able to hear media such as the television, telephone (which is not connected to his hearing aids) or cinema because of the speed of speech and variable environments.

Obviously as the last paragraph it makes clear that [Mr D] would not be able to communicate or operate in normal working or social environment without hearing aids at all and as I mentioned earlier, he has worn the hearing aids I

prescribed for him in 2018. It is important to understand (as a person with normal hearing maybe) that hearing aids cannot and never will bring hearing back to where it was when we were younger and when faced with a profound hearing loss there will only be a partial benefit.

The degree of amplification required to correct [Mr D's] hearing impairment means that in nosier environments and with multiple speakers there is a lot of enhanced volume having to be dealt with by [Mr D's] brain and this generally leads to confusion and lack of clarity as the brain tries to sort out speech from noise. Moreover, it is often the case that in these situations no matter how hard a patient tries they are unable to get sufficient clarity or volume of sound to take any active part in such meetings. This is what [Mr D] reports to me too. Patients such as [Mr D] complain of extreme tiredness brought on by their intense concentration trying to hear. In a quiet environment with a single clear voice, I would expect a good degree of benefit but again with quicker speakers and those with poor pronunciation I would expect significant clarity issues. Again, this is precisely what [Mr D] reports to me during our consultations and is to be expected in his case.

By wearing hearing aids for a long period of time [Mr D] would have also created his own network of skills to benefit his hearing aids, such as lip reading, watching facial expressions, positioning the person he is listening to into the best environment and watching body language. All these skills give the impression that [Mr D] is hearing better than he may be and is further enhanced by the wearing of the latest hearing technology where phone calls and media can be heard directly in the hearing aids giving the impression that there is no hearing problem. In my opinion, [Mr D] hears better than many other clients I have with similar hearing loss, but this is essentially down to the longevity of wearing hearing aids and how his brain processing has developed, and abilities created above.

When we look directly at [Mr D's] work as a Town Planner there are many areas where he would struggle with his hearing even when wearing his current advanced hearing devices. He has spoken to me about communication being at the core of the job that he does. Initial meetings with a client, applicant, councillor or member of the public with no background noise should not pose too many problems and this is indeed what he reports to me as that is why he can still work as a planning consultant. He can manage small scale meetings in a quiet room, desk based work in his office and phone calls to and from his enhanced mobile phone with a special application for his hearing aids. This indeed is what he presently does.

However, site visits where there is wind, background noise, multiple speakers scattered over an area and varied speed of speech would be extremely difficult if not impossible for him. Meetings in town halls, planning meetings or group discussions will again give [Mr D] some real and likely insurmountable problems with the clarity of hearing he gets as people are not speaking directly

to him and as a result will speak at varying levels and again in this situation I would expect him to struggle greatly. This is indeed what he confirms to me.

The ‘loop’ audio system offers little or no help to [Mr D] with his hearing loss and he tells me he does not use it for that reason. [Mr D] reports to me that he could not now lead or attend meaningfully planning meetings on behalf of [the Former Employer], lead site visits or planning hearings or inquiries all of which he tells me he used to do while working for [the Former Employer]. He also reports to me a linked loss of confidence in larger meetings as he misses the interplay between participants and feels he cannot contribute to or gain from these meetings as he should. He believes that he could no longer manage a planning team. Again, all of these physical and emotional responses are to be expected in patients with [Mr D’s] severe hearing loss and disability. I can only agree with [Mr D’s] assertion that he no longer has the hearing ability to lead as a PDCO because I would not expect him to be able to do the things set out above.

Ultimately, [Mr D] has a profound hearing loss which will slowly deteriorate with age, the wearing of the best hearing technology (which he now has) will help this situation but will never give back the clarity and volume of hearing function which people without a hearing loss benefit from. In my opinion, too it makes it unlikely that he could perform a lead or main management function as a Town Planner within [the Former Employer] planning department to either his own or his employers standards or needs.”