

Ombudsman's Determination

Applicant	Mr S
Scheme	Audit Commission Pension Scheme (the Scheme)
Respondent	Trustees of the Audit Commission Pension Scheme (the Trustees)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that his eligibility for Category 2 Incapacity benefits has not been properly considered.

Background information, including submissions from the parties

4. Relevant extracts from the Scheme Rules, and an extract from the Finance Act 2004, are provided in Appendix 2.
5. Mr S became a deferred member of the Scheme when he was TUPE transferred from the Audit Commission to Grant Thornton on 1 November 2012. In February 2015 his employment with Grant Thornton was terminated on grounds of mental and cognitive incapacity to do his job as a front line portfolio Audit Manager.
6. In April 2015 (at age 56), Mr S applied for ill health retirement, enclosing a Psychological Capacity Assessment (**PCA**) Report dated 24 October 2014, which Grant Thornton had commissioned. A summary of this and other medical evidence pertaining to Mr S' case is provided in Appendix 1.
7. Dr Cordell of Corporate Health, the Trustee's medical adviser, gave her opinion that Mr S was permanently incapable of the type of work normally undertaken by him or a reasonable alternative.
8. Before making their decision on Mr S' application the Trustees asked him to provide details of the type of work he had respectively undertaken with the Audit Commission and Grant Thornton. Mr S replied:-

- Whilst he had held an Audit Manager grade for 21 years at the Audit Commission he had never been employed in a front line portfolio Audit Manager capacity. His role had been that of a Support Audit Manager. As such he was involved in planning, managing, supervising, reviewing and reporting, the audit, and personally undertook stand-alone pieces of work, such as reviewing and testing financial systems, carrying out final accounts, opinion audit work, and conducting 'local value for money' projects. This had freed his portfolio managers to focus on high level management of the audit portfolio.
- The fact that he was employed in this role for the best part of two decades, consistently meeting his targets and required performance, was testimony that it was a role which was mutually beneficial to himself and the Audit Commission.
- Over his last few years with the Audit Commission he was displaced within the Audit Manager grade. He had a functional resource management role from July 2009 to March 2011, which then defaulted into a general auditor capacity up to his TUPE transfer.
- Within Grant Thornton there was no equivalent Support Audit Manager role. The focus was on using its Audit Managers in a default front line portfolio management capacity with an emphasis on:
 - maintaining high level client contact and developing sales opportunities for additional (non-audit) services; and
 - high level administration of the audit across a client portfolio.

This was markedly different from the Audit Commission portfolio Audit Manager role which was more hands on and across fewer audits. The role placed great demands on multi- tasking skills in managing the high level client officer and member relationship and delivery of an audit portfolio against key deadlines and financial/resource budgets, presenting the Audit Plan, Audit Update reports and the Annual Audit letter.

- He did not have the natural aptitude, or experience, or skills, for front line portfolio management, and Audit Commission management had taken the view, over many years, that he should not be exposed to frontline work.
- It was the ongoing demands around multi-tasking across a portfolio of audits which the PCA report highlighted that he had significant deficits in his cognitive functioning, working memory, attention and concentration. These difficulties were assessed as maybe longstanding and likely to be permanent.
- Grant Thornton had relied on the PCA assessment in confirming its view that there were no measures it could put in place to enable him to manage or mitigate the cognitive functional issues.

9. Following Mr S' comments the Trustees sought further legal advice and then wrote to Corporate Health on 24 September 2015, asking whether it believed that Mr S was now no longer capable of doing the job of a Support Audit Manager based on his explanation of his role with the Audit Commission.
10. In March 2016, after obtaining the opinion of Dr Hull (Psychologist), Dr Cordell confirmed Dr Hull's opinion that, on the balance of probabilities, Mr S would be capable of undertaking satisfactorily his previous role with the Audit Commission if suitable adjustments were made.
11. The following month the Trustees turned down Mr S' ill health application. Mr S duly invoked the Scheme's two-stage internal dispute resolution (**IDR**) procedure. He made the following arguments:-
 - No Support Audit Manager role existed at Grant Thornton and no adjustment was proposed to create one before he was dismissed.
 - Concerning the Support Audit Manager role as it was at the Audit Commission:
 - the Audit Commission had closed down;
 - he last undertook the role in June 2009;
 - it was unreasonable to rely on a hypothetical assertion that he could perform a role that did not actually exist; and
 - it would be difficult for him to secure an appointment with any other organisation where such a role might exist as the selection process would be competitive and likely to note his health issues.
 - It was only reasonable to look at the current circumstances. That he was dismissed by Grant Thornton and no reasonable adjustment was offered on the grounds that it was unlikely to be successful in meeting his needs and the business needs of Grant Thornton.
12. Mr S' appeal was accelerated to IDR stage 2. In May 2016 the Chair of Trustees rejected Mr S' appeal.

Mr S' position

13. Mr S says the key arguments in his appeal to The Pensions Ombudsman focus narrowly on the three conditions for meeting the test for an award under the Scheme:-
 - "Normal job" - this must be his role at Grant Thornton when he was dismissed and consequently applied for an ill health/incapacity pension.
 - "Reasonable alternative" – he does not consider his role as a Support Audit Manager to be a reasonable alternative. Such a role did not exist at Grant

Thornton. It was an informal and unique role that had been specifically tailored for him at the Audit Commission to make best use of his skills, experience and strengths whilst managing and mitigating his areas of weakness. It was therefore reasonable to surmise that the role does not exist within the wider external public sector audit labour market.

- “Deterioration” - the Trustees had provided no medical evidence to support their claim that his condition has not deteriorated whilst a member of Scheme.

The Trustees’ position

14. The Trustees say:-

- To assess whether a deferred member meets the definition of Category 2 Incapacity they must determine:
 - i. the “type of work normally undertaken” by the member;
 - ii. whether the member has suffered a “physical or mental deterioration“, which is sufficient to “incapacitate” him from the type of work normally undertaken or “a reasonable alternative”; if so
 - iii. whether the incapacity is likely to be permanent (that is to the member’s Normal Retirement Date); and if so
 - iv. whether the statutory incapacity test in the Finance Act 2004 is also satisfied.
- They decided Mr S’ normal type of work was his Support Audit Manager role at the Audit Commission, on the grounds that Mr S undertook the role for the longest part of his employment history, it was the role he said he had performed successfully and he had admitted he had never been able to perform the duties of an Audit Manager with Grant Thornton.
- In his September 2015 letter (before the original decision), Mr S was clear that he was not and had never been an Audit Manager; and in his IDR appeal had said that he had been defaulted by Grant Thornton into a front line Audit Manager role.
- They did not accept Mr S’ conclusion that the work normally undertaken by him must be the role he was employed to do most recently. “Normally undertaken” allowed for the fact that a person might undertake different kinds of work at different times. Whilst they accept the normal starting point would be the person’s last job, in Mr S’ case it is implausible that the work normally undertaken by him was work which:
 - he had not done for the vast majority of his career;
 - he vigorously protested he was neither suited to nor capable of doing; and

- had not performed successfully over the short period he was employed by Grant Thornton.
- While the role of a Support Audit Manager no longer existed following the abolishment of the Audit Commission that did not mean the work normally undertaken by Mr S must be something completely different. Job opportunities and work patterns constantly change and those affected by such changes do not automatically become entitled to an incapacity pension.
- After deciding the type of work that Mr S normally did they had then considered whether he was incapacitated from carrying out that work. Corporate Health concluded, after reviewing Dr Hull's report, that there was no evidence raised about Mr S' cognitive performance before his transfer to Grant Thornton and he would be capable of undertaking a Support Audit Manager role if appropriate adjustments were made.
- The medical evidence was clear that Mr S' condition had essentially remained unchanged for many years. He had been capable of performing the role of a Support Audit Manager for many years with suitable adjustments. Accordingly, they concluded, on the balance of probabilities, that Mr S was capable of carrying out the work normally undertaken by him. Therefore, he did not satisfy the criteria for Category 2 Incapacity.
- While they could have stopped at that stage they also considered whether Mr S was capable of "reasonable alternative" work and whether he would have received an incapacity pension if the work normally undertaken by him was as an Audit Manager at Grant Thornton.
- On the first point Mr S clearly has skills and abilities that are valued in the job market and Dr Hull was of the opinion that his weakness placed Mr S "at slightly below the population mean", whilst his strengths "fall within the superior range and within the highest 10% of the population". By his own admission Mr S carried out the role of Support Audit Manager with success for many years so he was clearly capable of a similar role. The Rules did not say that the "reasonable alternative" had to be a role with his current/most recent employer or that they were required to identify a particular role with a particular company for Mr S to take-up. So even if they had been wrong in deciding that Mr S' normal undertaken work was that of a Support Audit Manager they would not have decided he was incapable of suitable alternative work.
- On the second point, if it was accepted that Mr S' work normally undertaken was in fact that of an Audit Manager at Grant Thornton the question was whether his incapacity for the role had arisen from a physical or mental deterioration. But as he had never been capable of this work (as conceded by Mr S and in accord with the

analysis of the medical advisers), there could not have been any deterioration as required for Category 2 Incapacity.

Adjudicator's Opinion

15. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-

- The relevant Scheme rules were applied by the Trustees and consideration was given to all the medical evidence.
- To qualify for a Category 2 Incapacity benefits Mr S must pass a three part test. Firstly, he must have suffered a physical or mental deterioration sufficient to mean that, on the balance of probabilities, he is permanently (that is to age 65) incapable of work that he had normally undertaken. Secondly, he must be permanently incapable of reasonable alternative work. Thirdly, he must satisfy the Finance Act 2004's ill health condition.
- The central dispute in this matter is what constituted Mr S' "work normally undertaken". Mr S says it was his role as a front line portfolio Audit Manager at Grant Thornton. The Trustees say it was his role as a support Audit Manager at the Audit Commission. "work normally undertaken" is not defined in the Scheme Rules. Consequently the term should be given its ordinary and everyday meaning.
- Whilst Mr S held the grade of an Audit Manager at the Audit Commission his roles within that grade were not that of a front line portfolio Audit Manager. Rather he performed a bespoke support role for nearly two decades to June 2009. He then was a resource manager from July 2009 to March 2011, and lastly a general auditor, with no audit management responsibility, from April 2011 until he was transferred under TUPE to Grant Thornton. At Grant Thornton his role was that of a front line portfolio Audit Manager until his dismissal in February 2015.
- Clearly, the role he performed for most of his career was that of a support Audit Manager. My view is that this role fulfils the ordinary and everyday meaning of "work normally undertaken". It was also the role he undertook for the majority of his time at the Audit Commission, which would satisfy the argument that his eligibility should be assessed against the work he normally undertook for the Scheme Employer.
- To pass the first part of the test for Category 2 Incapacity Mr S must have suffered a physical or mental deterioration sufficient to mean that he was permanently no longer capable of work that he had normally undertaken.
- The medical evidence is that Mr S' 'weaknesses' existed whilst he was a support Audit Manager. But they do not appear to have impinged on his ability to do that

job as evidenced by the duration he successfully maintained that role at the Audit Commission.

- Mr S says it is unreasonable that the Trustees relied on a hypothetical assertion that he could perform a role that does not actually exist following the closure of the Audit Commission. But it neither matters whether such work is available or likely to be offered to Mr S. What is important is his capability to do such work.
 - Therefore, it was reasonable for the Trustees to conclude, on the balance of probabilities, that Mr S was capable of doing such work or similar work before age 65.
 - As Mr S failed the first part of the test there was no requirement to consider the second and third parts.
16. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S, supported by Mr K (a Chartered Public Finance Accountant, who worked at the Audit Commission from 1986 until 2009, was Mr S' line Manager in 2001/2, and a long term friend), have provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S, and on Mr S' behalf by Mr K, for completeness.

Mr S' further comments

17. Mr S says:-

- The role of Audit Manager was the work normally undertaken by him, which required an essential competency as a qualified accountant. He was fit to practise at the Audit Commission, but became incapable of doing so at Grant Thornton.
- Dr Cheeseman's diagnosis, supported by Dr Cordell's opinion, are decisive, whatever the type of external public sector Audit Manager role he was to perform.
- The PCA undertaken by Dr Cheeseman was an assessment of his cognitive incapacity at 15 October 2014. The report was commissioned by Grant Thornton, and Dr Cheeseman was not asked to consider the work he had undertaken at the Audit Commission or to provide a timeline over which his cognitive function had deteriorated. His report was to provide an opinion on the possible cognitive causes of the performance issues he had developed in the workplace in 2014, and a prognosis of whether the impairment was likely to be permanent.
- The key question is whether there has been a deterioration in his cognitive functioning and capacity over time. The evidence is overwhelming that it has.
- While employed at the Audit Commission he was subject to bi-annual appraisals and consistently assessed as performing to the required standard. If the cognitive

incapacity diagnosed later at Grant Thornton had been present at the Audit Commission it would have revealed itself.

- He never aspired to being a higher level client facing Senior Audit Manager. His preference was to “stay under the radar”, work quietly within his audit team, directing and supervising audit team members at the detailed level to deliver audit work on time, to the required quality and auditing standards.
- In June 2009 he switched to an Audit Manager, undertaking an Area Team Programmer role in which he excelled. If deterioration had started during his time at the Audit Commission it did not impact on his work.
- The catalyst for the obvious deterioration in his cognitive function was:-
 - His distress at not being made redundant by the Audit Commission.
 - The stress of being defaulted into a high profile, public facing front line client portfolio management role when TUPE transferred to Grant Thornton, despite having no previous exposure or experience.
 - Caring for his mother up to her death in December 2012.
 - A legal dispute with his siblings over the winding-up of their parents’ estate.
- Apart from one phone call from Dr Cordell, the Trustees failed to discuss his case with him and to his knowledge did not carry out any follow up discussion with Dr Cheeseman.
- The process conducted by the Trustees appears to have been a desk based exercise and was not fit for purpose.
- He was not made aware by the Trustees of Dr Cordell’s June 2015 opinion.
- He should not have submitted Dr Hull’s January 2016 report as it is not relevant to his case. The report was commissioned by his Union, Prospect, as part of an ongoing legal action against Grant Thornton and its scope was limited to requesting Dr Hull to make a finding as to whether his cognitive incapacity was a disability under the Equality Act 2010. Dr Hull was not asked to consider whether his condition had existed when his support Audit Manager role ended at the Audit Commission, or speculate on his capability to carry out a hypothetical role if it was created today (or a reasonable alternative).
- Had the Trustees or their representative asked Dr Hull he would concede that he had no working insight into the demands of an Audit Manager at the Audit Commission.
- The Trustees should not have placed reliance on Dr Hull’s suggestion that if he was reemployed at Grant Thornton a strategy to help him cope would be to create a role similar to that he undertook at the Audit Commission. Grant Thornton

considered that no adjustments would effectively overcome his cognitive incapacity.

- Dr Hull's report should therefore be disregarded.

Mr K's comments on behalf of Mr S

18. Mr K says:-

- By moving straight to IDR stage 2 the Trustees denied Mr S the opportunity to exercise a key part of his appeal rights in the process. This includes the opportunity to seek further advice, submit further evidence and the opportunity to draw attention to misunderstandings by the Trustees.
- The Trustees failed in their duty of care to provide Mr S with appropriate support and advice with his application, including not sharing the occupational health advice they received from Dr Cordell.
- Mr S condition of mental incapacity, together with related issues such as depression, anxiety and stress, have led him to understate and/or misrepresent the requirements of his respective roles at the Audit Commission and Grant Thornton.
- Mr S is a qualified accountant being a member of the Chartered Institute of Public Finance and Accountancy (**CIPFA**). He was employed to work as an Audit Manager at both the Audit Commission and Grant Thornton delivering external audits to clients and subject to the same professional audit standards.
- The type of work undertaken by Mr S at the Audit Commission, as a support Audit Manager, and at Grant Thornton, as a 'portfolio' Audit Manager, was at its core very similar, being external financial auditing. But at Grant Thornton he was expected to undertake a more strategic role, managing the relationship with clients and have competences such as "grow the business" and "builds business relationships". Nevertheless "technical expertise" was the predominant competency. Ultimately, whatever additional pressures arose at Grant Thornton they are not relevant to the core issue affecting Mr S going forward.
- The CIPFA Standards of Professional Practice (**SoPP**), requires that "Auditors should ensure they act with due care, competence and professional skill". Similarly, the International Standards on Auditing contains provisions related to the exercise of due care, diligence and competence, which apply to all external audit assignments undertaken by Grant Thornton and in the past by the Audit Commission.
- Mr S' deficits in concentration, attention, short-term memory and non-verbal reasoning, mean that Mr S cannot be assured of meeting the SoPP and

consistently and reliably the requirements to conduct external audit work when representing any appointed auditor.

- If Mr S was to proceed with self-employment in this profession he would be required to obtain a professional indemnity insurance that meets the requirements of CIPFA. But it is unlikely that he would be able to obtain it as an application would require that he disclose his medical history.
- An employer would also need consider this and was likely conclude during the recruitment process that Mr S could not satisfy professional indemnity insurance requirements. Consequently, Mr S may be unemployable in his profession in the UK.
- Grant Thornton considered the workplace adjustments recommended by Dr Cheeseman and viewed them as too generic to address Mr S' cognitive / mental incapacity issues.
- Dr Cordell's June 2015 finding supported that Mr S was incapable of the type of work normally undertaken by him or a reasonable alternative by virtue of permanent mental and cognitive incapacity.
- Dr Hull's January 2016 report was commissioned by the Prospect Union for submission to an employment tribunal pertaining to Mr S' disability discrimination case against Grant Thornton. While Mr S made the report available to the Trustees it was commissioned for the adversarial case and the questions asked and recommendations given were intended for that purpose only.
- Nevertheless Dr Hull's psychological test findings were consistent with those of Dr Cheesman's earlier PCA. This supports the likelihood of Mr S' mental incapacity being permanent.
- Dr Hull agreed with the adjustments proposed by Dr Cheeseman and further recommended, in the event of Mr S being reemployed at Grant Thornton, that he be given a role that replicated the role he undertook at the Audit Commission and eliminated what Mr S perceived as increased responsibility and expectations placed on him since the TUPE transfer. Dr Hull's recommendation was only intended to support the disability discrimination case. It did not arise from a direct evaluation of Mr S' mental capacity to satisfy the SoPP requirements for due care, diligence and competence. But the Trustees unreasonably used it to reach its opinion that Mr S could still perform the work he normally undertook at the Audit Commission or a reasonable alternative.
- Dr Hull's findings, interpreted in the correct context of being a CIPFA member subject to the Institute's rules, is strong evidence that Mr S should refrain from practising as an accountant and auditor.

- Dr Cordell had sight of Dr Hull's report. But as with Dr Hull's findings Dr Cordell's subsequent conclusions, in her March 2016 report, were reached without direct contemplation that Mr S must meet the aforementioned SoPP requirements.
- Mr S' competence issues at Grant Thornton did not exist when he worked under his supervision at the Audit Commission in 2001/2. All the available evidence from Mr S' time at the Audit Commission is that Mr S work met the required audit standards and he was fit to practise as an accountant and auditor. No psychological assessments were undertaken then, but performance was subject to formal appraisal.
- The focus in considering deterioration in mental capacity should be whether Mr S remains fit to continue to practise as a CIPFA qualified accountant in carrying out audit work.
- Dr Cheeseman's 2014 PCA, while Mr S was at Grant Thornton, identified deficits in Mr S' concentration, attention, short term memory and non-verbal reasoning. These were assessed as likely to be permanent.
- Grant Thornton evaluated Dr Cheeseman's report and decided to dismiss him without implementing adjustments to work or offering reasonable alternative work.
- Whether suffering from undiagnosed mental incapacity at the Audit Commission, or not, Mr S was fit to practise as an accountant and auditor when he worked at the Audit Commission.
- Taking together the psychological assessments, alongside the observed deterioration in Mr S' performance in auditing work at Grant Thornton there is strong evidence that Mr S should refrain from practising as an accountant and auditor. Therefore, on the balance of probabilities Mr S has suffered deterioration that meets the requirements of the Incapacity rule.

Ombudsman's decision

19. Mr K says, that by the Trustees moving the consideration of Mr S' complaint straight to IDR stage 2, Mr S was denied an opportunity to appeal. However, it meant that Mr S was able to bring his complaint to The Pensions Ombudsman earlier.
20. Mr S says the Trustees failed to share Dr Cordell's reports with him. But Mr S has now had the opportunity to comment on these.
21. Mr S (supported by Mr K) says the deterioration in his mental capacity occurred from sometime following his TUPE transfer to Grant Thornton. I do not think that is disputed. Clearly, Mr S was or became unable to efficiently exercise the duties of his Audit Manager role at Grant Thornton.

22. Mr K says the core role of an Audit Manager at the Audit Commission and Grant Thornton was very similar and to do either job Mr S was required to comply with the CIPFA SoPP.
23. Nevertheless, there were differences between the two roles. At the Audit Commission, while Mr S' title was that of an Audit Manager, his role was supportive, and not client facing. At Grant Thornton, he had a client facing front line client portfolio management role. The expectations placed on him changed when he was transferred to Grant Thornton, causing him to struggle and to experience stress.
24. Mr K says Mr S' deficits in concentration, attention, short-term memory and non-verbal reasoning mean that Mr S cannot be assured of consistently and reliably meeting the requirements to conduct external audit work. But Mr S appears to have had no difficulty in performing his duties while at the Audit Commission. The problems appear to have arisen after he had transferred to Grant Thornton when his role changed.
25. In 2014 Dr Cheesman gave his opinion that Mr S was probably not suited to his current portfolio role at Grant Thornton and that if possible an alternative role might need to be considered to build on his strengths.
26. In 2016 Dr Cordell concluded, on balance, that Mr S would be capable of undertaking satisfactorily his previous role if suitable adjustments were made. Dr Cordell's opinion was based on Dr Hull's 2015 report.
27. Mr S says Dr Hull's opinion should be disregarded as his report was obtained for another purpose (in connection with his application for an employment tribunal, with respect to disability discrimination concerning the termination of his employment).
28. But one of the questions Dr Hull was asked was whether he could provide an opinion on any types of adjustments to Mr S' work that would be necessary to overcome a disadvantage to him in the workplace due to ill health?
29. Dr Hull considered Dr Cheesman's report and agreed with the list of adjustments that Dr Cheesman had suggested to manage Mr S' immediate strengths and weaknesses. Additionally, Dr Hull considered that that the most sensible strategy would be to make his job somewhat similar to the job he had carried out successfully at the Audit Commission. He also considered that a further course of cognitive therapy might be helpful.
30. Mr K says due to Mr S' mental incapacity he would not be able to comply with the requirements of SoPP and therefore could not perform the role of an Audit Manager with any employer or if he became self-employed. But it appears that Mr S' incapacity was due to the change in his role as an Audit Manager at Grant Thornton. It was not due to his inability to perform the role of an accountant or auditor.
31. But even if it were the case that Mr S is permanently incapable of performing his normal work duties that is only the first part of the test for Category 2 Incapacity. The

second part (of the three part test) is whether Mr S is permanently incapable of reasonable alternative work.

32. While the Trustees decided that Mr S did not satisfy the first part of the test they have considered whether he would pass the second part. Their conclusion is that he does not on the grounds that he has skills and abilities that are valued in the job market and was clearly capable of a similar role to that he held at the Audit Commission.
33. That decision is part based on Dr Hull's report. Dr Hull considered Mr S' weaknesses placed him slightly below the population mean, whilst his strengths fell within the superior range and within the top 10% of the population. Although, Dr Hull's report was obtained for another purpose, his comments on Mr S' weaknesses and strengths are relevant and it was reasonable for the Trustees to note them.
34. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
15 November 2017

Appendix 1

Medical evidence

Dr Cheesman, Psychological Capacity Assessment Report dated 24 October 2014

35. The Report advised that Mr S' overall ability was in the average range but with significant differences in index scores. He had superior range for problem solving, verbal communication and processing speed, but there were significant weaknesses for non-verbal reasoning and working memory and low average range for use of non-verbal concepts to problem solve. There was no specific underlying cause for the significant deficits with cognitive functioning. It was noted that he was mildly depressed.
36. On prognosis the report said this was unclear. The difficulties identified may be longstanding. Mr S may always have had difficulties with attention and concentration and were likely to be permanent. The report went on to say that Mr S was probably not suited for his current portfolio role, that it was unsurprising that he was struggling with aspects of the job, and if possible an alternative role might need to be considered that built on his strengths.

Dr Cordell, 29 June 2015 report

37. On Mr S' fitness for work Dr Cordell said:

"The opinion of the psychologist's report is that the problems identified with cognitive function are likely to be permanent and not attributable to clinical symptoms. As a result Grant Thornton felt that as a result of his cognitive weaknesses he was permanently unfit for his role within the organisation. Adjustments were considered but felt to be not reasonable due to the risk to the business being too high. [Mr S] continues to have problems with cognitive function...which results in lack of focus and concentration, poor short term memory and struggles to retain task instruction and therefore remains unable to undertake employment similar to that of his former role at Grant Thornton..."

38. Dr Cordell concluded:

"...considering the report [Dr Cordell's] and previous findings of Grant Thornton the individual is incapable of the type of work normally undertaken by him or a reasonable alternative by virtue of permanent mental and cognitive incapacity..."

Dr Hull, report dated 6 January 2016

39. Commenting on Mr S' cognitive status Dr Hull said:

"The effects of his cognitive status are likely to be as described in the existing documentation: he has difficulty in concentrating, in multitasking and in dealing with complex situations. [Mr S] said that the audit commission [sic] played to his strengths and took his abilities into account and Grant Thornton did not do this to the same extent. I have no reason to doubt his opinion on this matter, [Mr S] was able to discharge the role he had

at the audit commission [sic]. However, it appears, on the basis of the information available to me, that his role changed when the job was transferred to Grant Thornton and he was no longer able to discharge this role due to the pattern of cognitive abilities that he shows.

...It is likely that [Mr S] has shown the same pattern of cognitive ability throughout his adult life...it is likely that his levels of stress have changed as his work situation has developed”

Dr Hull agreed with the list adjustments suggested by Dr Cheesman to manage Mr S' immediate strengths and weaknesses and said he believed that, if he were to be reemployed at Grant Thornton, then the most sensible strategy would be to make his job somewhat similar to the job he had carried out successfully at the Audit Commission. Dr Hill said Mr S was aware that he was working at the limit of his capabilities at the Audit Commission and he was unlikely to cope with any significantly increased level of responsibility. He said that it might be helpful if Mr S was offered a further course of cognitive behavioural therapy. If his anxiety and depression were addressed it might increase his cognitive ability.

Dr Cordell, letter dated 4 March 2016 to Punter Southall

40. Based on Dr Hull's report Dr Cordell said:

“[Mr S] has a particular weakness with the ability to concentrate and also has a range of psychological problems – depression and anxiety which have been assessed as moderately severe. This results in problems with multi-tasking and dealing with complex situations.

[Mr S], from the information in the psychologist's report was able to cope with the role at the Audit Commission due to the adaptation of his role. The psychologist has commented that there was no evidence raised about his capability or cognition before his transfer to Grant Thornton and therefore the assumption is that his level and pattern of cognitive ability was taken account of in the roles that were created for him. Based on this information, on the balance of probabilities, [Mr S] would be capable of undertaking satisfactorily his previous role if suitable adjustments were made.”