

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr Raymond Pinkstone
Scheme	Local Government Pension Scheme (LGPS)
Respondent(s)	University of Bradford (the University) City of Bradford Metropolitan District Council (Bradford MDC)

Subject

Mr Pinkstone has brought complaints to the Pensions Ombudsman Service on two previous occasions. Mr Pinkstone says that the Ombudsman's directions have not been complied with because his application for ill health retirement was not reconsidered in the correct manner. He also says that LGPS's internal dispute resolution procedure (**IDRP**) was not carried out correctly.

Mr Pinkstone's complaint is against his former employer, the University, and Bradford MDC, who are the administering authority for West Yorkshire Pension Fund (part of LGPS).

The Deputy Pensions Ombudsman's determination and short reasons

The complaint is partially upheld against the University because they delayed providing a response at stage 1 of IDRP and this was maladministration which caused inconvenience. The complaint is not upheld to its fullest extent because Mr Pinkstone's ill health application was properly re-considered.

The complaint is not be upheld against Bradford MDC. The stage two IDRP decision was delayed for reasons beyond Bradford MDC's control. They could not issue a response until the stage 1 letter had first been issued by the University and on being provided with the relevant documentation, Bradford MDC conducted a proper review of the University's decision.

DETAILED DETERMINATION

Scheme Regulations

1. Relevant to this complaint are the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007, introduced with effect from 1 April 2008 (the 2008 Regulations).
2. The relevant provision under the 2008 Regulations is contained in regulation 20, set out in full at Appendix I to this Determination. There are three tiers of pension:
 - Tier 1 - Permanently incapable and no prospect of obtaining gainful employment before age 65 (can never work again). The pension is based on accrued membership plus enhancement of 100% of service to age 65.
 - Tier 2 - Permanently incapable and no prospect of obtaining gainful employment within three years of leaving but likely to before age 65. The pension is based on accrued membership plus enhancement of 25% of service to age 65.
 - Tier 3 - Permanently incapable of current job but able to obtain gainful employment within three years of leaving. The pension is based on accrued membership only with no enhancement. The pension would be suspended on re-employment and is subject to review after 18 months. The Regulations provide that Tier 3 benefits can be uplifted to Tier 2 benefits within three years of leaving employment.
3. A Tier 3 pension is paid for a maximum of three years from the date employment ceased. Payment of the pension will be suspended on re-employment. If the pension is still in payment after 18 months from the date employment ceased the case will be reviewed. The Regulations provide that the authority is required to make enquiries as to the individual's current employment and if he is not in gainful employment, must obtain a further certificate from an independent registered medical practitioner as to whether he is able to obtain gainful employment.

Introduction

4. After a number of periods of sickness absence from work, Mr Pinkstone was awarded an ill health pension from 1 February 2009. However, Mr Pinkstone disagrees with the way the University has handled his ill health pension. He was initially awarded a tier 3 ill health pension (since uplifted to tier 2 in 2010), but he believes the severity of his condition should have warranted a higher classification.

5. On 2 September 2011, the Deputy Ombudsman determined Mr Pinkstone's first complaint. The facts relevant to the current complaint are:
- Mr Pinkstone went on long term sickness absence in July 2006 suffering from a musculoskeletal problem. He was assessed on a regular basis by the University's occupational health unit (OHU) during his absence. Following one such review the Deputy Director of Estates and Facilities wrote to the OHU and said "In short Ray's role is now mainly a sedentary one...I am concerned about this because if he cannot do his mainly clerical/sedentary role I am not sure we can re-deploy him into an even less active position..."
 - A report, dated 23 January 2008, from the OHU which said "in my view he is unfit for work and should be certificated as such".
 - A report, dated 17 April 2008, from the OHU in connection with Mr Pinkstone's fitness for work which said that Mr Pinkstone's current post would appear to be inappropriate at that time but that he could return to a predominantly sedentary role.
 - A report dated 4 August 2008 in which the OHU physician said that Mr Pinkstone was unfit for any kind of work due to his ongoing symptoms, that he was keen to pursue ill health retirement as an option and that a further report had been requested from his Consultant Neurologist.
 - A report dated 22 September 2008 from Mr Pinkstone's Consultant Neurologist who advised that he would support an application for ill health retirement as "There is no effective treatment I can offer and it is likely he will continue to have symptoms and continue to be unfit for work for the foreseeable future".
 - A report dated 4 November 2008 from an independent registered medical practitioner who said in his report that he accepted that Mr Pinkstone was permanently unfit for his normal job but that with appropriate risk assessments it would be medically feasible for Mr Pinkstone to perform alternative work such as sedentary office based work.
 - Certification, dated 19 December 2008, from the independent registered medical practitioner which indicated that Mr Pinkstone was suffering from a condition that rendered him permanently incapable of discharging efficiently

the duties of his employment but that he would be able to obtain gainful employment within three years of leaving his current employment.

- Mr Pinkstone's ill health award was reviewed in September 2010. The independent registered medical practitioner said in his report, dated 10 September 2010, that there was no realistic possibility of matters improving in the future and Mr Pinkstone had no reasonable prospect of gaining employment before normal retirement age. Following the review the University uplifted Mr Pinkstone's benefits to a Tier 2 award effective from the date of the review.
 - The Deputy Ombudsman concluded that the University had reached a decision even though there was no evidence to suggest that the independent registered medical practitioner had given any consideration to the two most recent pieces of medical evidence which both appeared to conflict with previous opinions. In addition I concluded that the decision that Mr Pinkstone would find gainful employment within three years of leaving employment did not appear to be supported by any opinion given by the medical experts involved in his case. I found that in order to properly determine which level of benefits Mr Pinkstone was entitled to under Regulation 20 the University should have made further enquiries about the apparent conflict between the opinions provided and the likelihood of Mr Pinkstone obtaining gainful employment within three years.
6. The Deputy Ombudsman directed that the University should reconsider which level of benefits Mr Pinkstone was entitled to under Regulation 20 at 1 February 2009 and issue a further decision.
 7. Following the Deputy Ombudsman's determination of 2 September 2011 the University reconsidered Mr Pinkstone's application and decided not to change the level of benefits that Mr Pinkstone was awarded. This led Mr Pinkstone to make a second complaint to the Pensions Ombudsman Service, which was determined by the Deputy Ombudsman on 27 March 2013.
 8. The facts relevant to the current complaint are :
 - The University obtained a further opinion from an independent registered medical practitioner who had not previously considered Mr Pinkstone's case. She was provided with all the medical evidence previously considered and a

copy of Mr Pinkstone's job description and instructed to consider the inconsistencies between the various medical reports. .

- In her report the independent registered medical practitioner referred to medical reports dated 17 September 2007, 21 February 2008 and 22 September 2008. She commented about the symptoms and cause of Mr Pinkstone's condition as described in the reports dated 17 September 2007 and 22 September 2008 but did not refer to the opinions given in those reports in connection with permanency or gainful employment. There was no reference to the report dated 4 August 2008. She quoted from the report dated 21 February 2008 as follows "There is little evidence of any underlying medical condition severe enough to make a recommendation of permanent incapacity, though of course his symptoms would preclude a return to work" and concludes that "there is no medical evidence that he was permanently incapacitated from any gainful employment when his employment was terminated on 31 January 2009."
9. The Deputy Ombudsman concluded that there was little evidence that the inconsistencies between the various medical reports had been properly addressed, or for that matter, that any consideration had been given to the likelihood of Mr Pinkstone obtaining gainful employment within three years of leaving employment. She said the independent registered medical practitioner referred to gainful employment but appeared confused as to Mr Pinkstone's job description and that she did not comment on the report dated 4 August 2008 and made no reference to the comments in the report dated 22 September 2008.
 10. The Deputy Ombudsman directed that the University should again reconsider the level of benefits Mr Pinkstone was entitled to as at 1 February 2009. And that the application should be reconsidered with particular regard to the apparent conflict between the opinions provided, and the likelihood of Mr Pinkstone obtaining gainful employment within three years of the termination of his employment.

Material Facts

11. On 5 April 2013 the University wrote to Mr Pinkstone to acknowledge that he had provided his consent to release medical records, they also advised that they were in the process of appointing a further independent registered medical practitioner.

12. On 14 May 2013 the University sent Mr Pinkstone an email, they said that they had now appointed an independent registered medical practitioner to review his case, as of February 2009. However, they also said that the 56 day window was fast approaching and it was unlikely that they would be able to arrange an appointment for him in time for the deadline set by the Deputy Ombudsman. The University said they regretted the situation but they had experienced difficulty appointing a physician with no previous involvement in his case.
13. On 23 May 2013 Mr Pinkstone was interviewed by means of telephone consultation by an independent registered medical practitioner from Workplace Health & Well-being Centre.
14. On 17 June 2013 the independent registered medical practitioner wrote to the University to submit his findings. In her report the independent registered medical practitioner said that:
 - She had reviewed Mr Pinkstone's medical evidence, job specification, and interviewed Mr Pinkstone by means of a telephone consultation.
 - The consultation took place by telephone because Mr Pinkstone felt unable to attend the Workplace Health and Well-being Centre. And therefore an objective assessment of Mr Pinkstone's reported symptoms was not possible due to the limitations of a telephone consultation.
 - Mr Pinkstone suffers two or three falls a week due to a sudden loss of power in the right side of his body. However, no underlying neurosurgical or neurological cause was detected for these symptoms – they were medically unexplained.
 - Mr Pinkstone was unfit to perform the role of surveyor because of the mobility requirements of the job, and because of safety concerns stemming from his unpredictable falls.
 - Mr Pinkstone could return to work in a sedentary role and that the necessary adjustments to the workplace "...are adjustments that enable people with similar reported disabilities, e.g. epilepsy, remain successfully at work on suitably modified duties." She also said that "In Mr Pinkstone's case it appears that the loss of confidence and safety concerns in light of the unpredictability of the falls was an important factor in determining his fitness for modified

work” (Mr Pinkstone reportedly indicated that he could perform a predominantly sedentary role in the home environment).

- In relation to the difference between the reports of 8 April 2008 and 22 September 2008 it was her understanding that “...the report of 8 April 2008 was written by an occupational health practitioner and was intended as an interim report pending further specialist advice and referral to an occupational health physician. Furthermore the rationale behind the conclusion that he is unfit for work is not clearly explained. The neurology report of 22 September 2008 stated that “there is no effective treatment I can offer and it is likely he will continue to have symptoms and continue to be unfit for work in the foreseeable future.” Please note this does not specify whether this refers to Mr Pinkstone’s substantive role or work at all. This is not unusual as treating professionals more often than not are unaware of the specific role requirements, feasibility of adjustments in the workplace and the criteria of the various pension schemes. I do not think that these two reports warrant further investigation due to the limitations described above.”
 - As there was an absence of medical diagnosis to explain the reported disability, there was insufficient information to provide an opinion on permanency.
 - In her view, at the time, Mr Pinkstone fulfilled the medical criteria for the award of tier 3 benefits under the LGPS.
15. On 28 June 2013 the University wrote to Mr Pinkstone to inform him that they were still of the opinion that he was entitled to tier 3 benefits with effect from 1 February 2009. The letter enclosed a copy of the independent registered medical practitioner’s report.
16. On 5 July 2013 Mr Pinkstone wrote to Bradford MDC to make a complaint against the University, under stage one of IDRP. However, on 16 July Bradford MDC wrote back and said that the matter should be dealt with by the University, and so they had forwarded Mr Pinkstone’s correspondence to the appropriate person at the University.

17. On 23 October 2013 Mr Pinkstone again wrote to Bradford MDC because he had not had a response from the University and he did not consider that they were taking the matter seriously. He asked for his complaint to be escalated to stage two of IDRP.
18. On 8 November 2013 the Chief Executive of Bradford MDC wrote to Mr Pinkstone, in his capacity as a representative of West Yorkshire Pension Fund/ LGPS. He acknowledged Mr Pinkstone's stage 2 IDRP complaint and asked Mr Pinkstone to sign a consent form. He said the purpose of the second stage appeal was to review the decision which was made at stage one and that he hoped to let Mr Pinkstone have his decision by 28 December 2013. The letter also said that if the decision was delayed, he would write to Mr Pinkstone giving the reason for the delay and a revised date by which a decision could be made.
19. On 12 November 2013 Mr Pinkstone wrote to Bradford MDC enclosing his signed consent form, he also reminded them that he had yet to receive a stage one IDRP response from the University.
20. Mr Pinkstone wrote to Bradford MDC again on 30 December 2013, as he had still not received a stage one IDRP response. The Chief Executive responded on 9 January 2014 and said that he had contacted the University to ask them to supply relevant details. Mr Pinkstone was also asked to supply copies of all correspondence in relation to his stage one IDRP application.
21. On 14 January 2014 the University wrote to Mr Pinkstone. They said that they had received Mr Pinkstone's stage one IDRP appeal in July 2013 but due to staffing issues they had failed to respond to his appeal in a satisfactory timescale. The letter apologised and said that a response would be issued within one month.
22. On 23 January 2014 Bradford MDC wrote to Mr Pinkstone chasing a response to their 9 January 2014 letter (Mr Pinkstone says he did not received the 9 January 2014 letter).
23. On 3 February 2014 Bradford MDC responded to an enquiry from the Pensions Ombudsman Service. They said the stage 2 IDRP appeal was on-going, however, they had been in contact with Mr Pinkstone's former employer who had confirmed that that would conclude the stage one IDRP appeal within one month of 14 January 2014. As such, Bradford MDC hoped to make a stage 2 IDRP decision by 28 February 2014.

24. On 5 and 6 February 2014 the University wrote to Mr Pinkstone under stage one of IDRP. Mr Pinkstone's appeal was not upheld.
25. On 26 March 2014 the Chief Executive issued his stage 2 IDRP decision. He said that:

“Having studied the available evidence and the regulatory requirements, I have formed the view that, on the balance of probability, at the time your employment was terminated the decision made by the University of Bradford to award ill health retirement benefits under Benefit Regulation 20(1) was correct. I am also satisfied that they have demonstrated that adequate steps were taken to ensure the level of benefit awarded was correct in that they obtained medical opinion on this aspect from a suitably qualified and approved practitioner who has taken into account all the available evidence including the conflicting medical reports.”

Summary of Mr Pinkstone's position

26. It has been six years since his retirement and he is still making the same complaint.
27. The University have delayed at every opportunity and disregarded the time limits set down for them.
28. The 2013 determination by the Deputy Pensions Ombudsman said that his case should be reassessed within 56 days, yet the University did not even start their decision making until the 56 days were over.
29. He was supposed to have the stage one IDRP decision by October 2013 but he did not receive it February 2014. The University seem to be blaming the fact that he had put in a Subject Access Request but that was a separate request made to a different department.
30. He doubts that a thorough investigation was carried out at stage one of IDRP because the investigation was completed within a few days after the Pensions Officer began working on it.
31. Bradford MDC had to keep postponing the issue of the IDRP stage 2 response before he finally received it in March 2014.
32. He requested a home visit with the independent registered medical practitioner; this was not an unreasonable request. Yet when it became apparent that she did not undertake home visits, he was not offered an alternative physician.

33. After his assessment by the independent registered medical practitioner he asked for a copy of the report so that he could challenge any inaccuracies. But he was not given a copy of the report until much later, after the decision had been made. When he received the report he tried to get the inaccuracies changed but neither the independent registered medical practitioner nor the University answered his emails.
34. The independent registered medical practitioner said that “At the time, given the absence of medical diagnosis to explain his reported disability, there was insufficient information to provide an opinion on permanency.” Of this statement Mr Pinkstone says that:
 - the independent registered medical practitioner was of the opinion that the University did not gain enough evidence to make a decision on either tier one or two; and
 - it shows the University did not look into whether he was permanently unfit for any work.
35. The University should have consulted a specialist in his condition about his fitness for work, rather than independent registered medical practitioner. In particular the University should have asked his Consultant Neurologist what he meant by “foreseeable future”.
36. The University have not demonstrated that they have made the correct decision, and they have ignored any parts of the medical reports which support the award of tier one or two benefits.
37. The University have not carried out the Ombudsman’s directions. They have not gathered enough information to ascertain whether he would be able to find gainful employment within three years and the independent registered medical practitioner has not cleared up the question of inconsistencies in the reports.
38. Bradford MDC should have made the IDRP stage 2 decision by finding out the facts of his case. In particular the Chief Executive should have asked the University:
 - to investigate the likelihood of him finding gainful employment before normal retirement age; and
 - explain how they had come to the decision they did.

39. The Chief Executive says in his letter dated the 26 March 2014 that the decision was made on the balance of probability. The balance of probability is not good enough. It should be beyond all reasonable doubt that the decision was right, at the time his employment was terminated.

Summary of the University's position

40. The University accepts that there was a delay in issuing a response to Mr Pinkstone's stage I IDRP appeal. The timescales were not adhered to in accordance with Regulation 59 of the LGPS (Administration) Regulations 2008.
41. The University received Mr Pinkstone's IDRP Stage I appeal in July 2013. Initially, no action was taken because of Mr Pinkstone's on-going data access request. However, an interim response should have been issued.
42. The Payroll & Pensions Manager was initially dealing with Mr Pinkstone's case but this member of staff left the University's employ in October 2013. Unfortunately, the Pensions Officer did not become aware of the issue until he was contacted by Bradford MDC on 27 November 2013.
43. The Pensions Officer was then absent from work, due to an operation, and did not return until January 2014.
44. An interim response was issued on 14 January 2014 promising a full response by 14 February 2014 (which was in fact issued on 6 February 2014).
45. As instructed by the Pensions Ombudsman, the University undertook a full review of the decision to award Tier 3 benefits and the Workplace Health Physician was appointed to assist with this review.
46. The University did not refuse Mr Pinkstone's request for a home visit by the independent registered medical practitioner. The independent registered medical practitioner does not offer home visits. Mr Pinkstone could have instead visited the independent registered medical practitioner's surgery, which they note is fully wheelchair accessible.
47. Mr Pinkstone later agreed to a telephone consultation on 23 May 2013.
48. The independent registered medical practitioner completed the review and included reference and opinion regarding the two conflicting reports. On completing the review the independent registered medical practitioner was provided with the previous medical reports and the Pension Ombudsman's directions.

49. Pursuant to Regulation 58 of the LGPS (Administration) Regulations, the University considered the evidence provided by the physicians involved in Mr Pinkstone's case and concluded that a tier 3 benefit was the correct tier to award in February 2009.
50. After consideration of a medical review undertaken in September 2010, the University uplifted Mr Pinkstone's benefits to Tier 2. However, this had no bearing on the decision to award Tier 3 benefits 18 months previously.
51. The University considers that all instructions from the Ombudsman have been adhered to.

Summary of Bradford MDC's position

52. They oppose the allegation against them because under Regulation 55 of LGPS (Administration) Regulations 2008 it is the employer's decision whether benefits can be paid due to permanent ill health. Furthermore, Regulation 20 of the LGPS (Benefit, Membership and Contributions) Regulations 2007 requires the employer to determine the level of ill health benefits payable.
53. After sending a copy of Mr Pinkstone's consent form to the University on 22 November 2013, they sent reminders to the University on 13 and 19 December 2013, in request of a full stage 1 IDRPs response. And on 23 December 2013 they informed Mr Pinkstone that there would be a delay in issuing the stage 2 IDRPs decision because they were still waiting for information from the University.
54. Following a further reminder to the University an email was received from them on 13 January 2014, which confirmed that nothing had been actioned with the appeal. They said the reason for this was because of an on-going data protection act request from Mr Pinkstone.
55. On 23 January 2014 Mr Pinkstone was informed that there would be a further delay in making a decision on his stage two appeal but they hoped to make this by 28 February 2014.
56. On 28 February 2014 a letter was sent to Mr Pinkstone confirming that they had received a copy of the stage one decision (which included the independent registered medical practitioner report). However, further information was required from the University before a decision could be made on his stage two appeal and that they hoped to make a decision by 28 March 2014.
57. Bradford MDC notes that the independent registered medical practitioner's report upon which the stage 1 IDRPs decision was based contained :

- a list of all of the documents the physician had reviewed;
- confirmation that the physician had read points 33-44 of the Deputy Ombudsman's determination;
- the physician's comments on the difference between the two opinions and the two reports of 8 April 2008 and 22 September 2008; and
- the conclusion that at the time Mr Pinkstone left employment he fulfilled the criteria for the award of their 3 benefits.

58. The University supplied the information on 6 March 2014 and the Appointed Person wrote to Mr Pinkstone with his decision on 26 March 2014. The Appointed Person acknowledged the mistakes by the University but he could not make a decision on these, as his powers are limited to considering whether the rules governing LGPS have been correctly applied.
59. Bradford MDC believes that they dealt with Mr Pinkstone's appeal in the appropriate manner.

Conclusions

60. I am aware that on 20 and 25 February 2015 Mr Pinkstone submitted letters expressing his views on my Provisional Decision. However, the letters largely repeat points already raised, and I have not changed my view on matters as a result of reading them. Therefore, I have not separately addressed those letters within this determination.

Reconsideration of Mr Pinkstone's ill health application

61. The University failed to reconsider Mr Pinkstone's ill health application within 56 days of the Deputy Ombudsman's determination of March 2013. However, I accept that this was because they experienced difficulty appointing an independent registered medical practitioner who had no previous involvement in Mr Pinkstone's case. The small delay which ensued should not have been too much of an inconvenience to Mr Pinkstone and prior to the deadline, the University were in contact with Mr Pinkstone, so he was aware of the situation.
62. Mr Pinkstone is aggrieved that the independent registered medical practitioner interviewed him via the telephone rather than in person. However, since the decision she was asked to make concerned the state of Mr Pinkstone's health back in February

2009, it would not have been of vital importance that the independent registered medical practitioner saw Mr Pinkstone in person.

63. But in any event whether the medical adviser who is asked to provide an opinion physically examines and speaks face to face with the patient or carries out a telephone consultation is a matter for the judgment of that doctor. There is in principle nothing wrong with the doctor making his report on the basis of reviewing the patient's medical history and discussing the matter on the telephone.
64. Mr Pinkstone wished to comment on aspects of the independent registered medical practitioner's report before the matter was finalised. Mr Pinkstone's role in the assessment was to provide an outline of his symptoms and answer any questions. The independent registered medical practitioner needed to reach her own opinion given the information provided.
65. The independent registered medical practitioner's report addressed the apparent conflict between the medical opinions of 8 April 2008 and 22 September 2008. She said that the 8 April 2008 report was only intended to be an interim report and that the occupational health physician who compiled it did not explain how he/she reached conclusion that Mr Pinkstone was unfit for work. Of the 22 September 2008 report she said it was not clear if the physician in question was referring to Mr Pinkstone's substantive role or work at all. I accept that the independent registered medical practitioner did give proper consideration to the conflicting opinions in the reports.
66. Mr Pinkstone contends that he should have been assessed by a specialist. Unless the specialist had been asked to provide an opinion as to Mr Pinkstone's condition in 2009, I do not think an assessment would have been of assistance. However, the independent registered medical practitioner had access to all of the medical evidence available at the time of the initial decision in 2009, including that of a specialist (the Consultant Neurologist). Mr Pinkstone says that the independent registered medical practitioner was of the opinion that the University did not gain enough evidence to make a decision in relation to tier one or tier two benefits. I do not agree with this statement. The independent registered medical practitioner said that "At the time, given the absence of medical diagnosis to explain his reported disability, there was insufficient information to provide an opinion on permanency." I take this to mean that as the cause of Mr Pinkstone's illness was unknown, it was also unknown whether it was permanent.

67. Under the regulations, in order to qualify for a tier 1 pension, Mr Pinkstone would have to be incapable of ever working again. As it was unknown at the time whether Mr Pinkstone's condition was permanent, he could only qualify for either a Tier 2 or a Tier 3 pension.
68. Mr Pinkstone believes that more should have been done to establish the permanency of his condition. However, it is perfectly acceptable to say that it is unknown whether a condition is permanent, if permanency cannot be established with certainty. Such statements do not automatically lead me to believe that there were shortcomings in the findings of the occupational health report.
69. To summarise the University have reconsidered the level of benefits Mr Pinkstone was entitled to as at 1 February 2009, proper consideration has been given to the apparent conflict between the opinions provided and also to the likelihood of Mr Pinkstone obtaining gainful employment within three years of the termination of his employment. The complaint against the University is not upheld.
70. It was Bradford MDC's role to consider the process undertaken by the University and ensure that all relevant matters and evidence have been taken into account. Medical evidence should be considered on the balance of probability i.e. to the civil standard rather than (as Mr Pinkstone has said) on the basis of beyond reasonable doubt. I find no fault with Bradford MDC's review process; hence, the complaint against Bradford MDC is also not upheld.

IDRP

71. I do not consider that Mr Pinkstone's subject access request was sufficient reason to delay the consideration of Mr Pinkstone's complaint under IDRP in the first instance, as this request was dealt with by another department. It is clear that the delays were caused by a number of events that occurred with personnel at the University. First the Payroll & Pensions Manager left the University's employment without passing the matter on to anyone and when the matter was picked up again the Pensions Officer was absent from work as a result of illness. Whilst these events may have been unavoidable the University ought properly to have measures in place to cover these events.
72. However, I note that once the Pensions' Officer became aware of the matter it was dealt with in the correct way. Mr Pinkstone has expressed doubts that the stage one decision was thoroughly investigated because the Pensions Officer issued a response

shortly after he began working on it in January 2014. However, since the stage one decision was based on a review of existing evidence (it was not necessary to obtain further information), I have no reason to believe that insufficient time was spent on the stage one response.

73. Under the LGPS (Administration) 2008 Regulations (see regulation 59 at the appendix), when a member makes an application under IDRP, relevant authority must supply a written response within two months of the date which they received the application, or an interim reply should be sent to the member, explaining the reason for the delay and the revised expected decision date.
74. The University did not adhere to the time limits and an interim response was not sent out. It took approximately seven months for the University to supply a response to Mr Pinkstone. This was maladministration, as it is an inordinate amount of time for such a routine request.
75. Under Regulation 55 of the LGPS (Administration) Regulations 2008, it is an employer's decision whether benefits can be paid due to permanent ill health, and that under Regulation 20 of the LGPS (Benefit, membership and Contributions) Regulations 2007 requires the employer to determine the level of ill health benefits payable. And so Bradford MDC could not issue a stage 2 response until the University had first issued a response at stage one of IDRP.
76. Bradford MDC remained in contact with Mr Pinkstone throughout the process and assisted in bringing the matter its conclusion; it was only after Bradford MDC's intervention that the University eventually issued the IDRP stage 1 response.
77. Under regulation 61 of the LGPS (Administration) Regulations 2008 Bradford MDC has a duty to inform Mr Pinkstone of their stage 2 decision within two months, or if that was not possible, give reasons for the delay and an expected date for giving the decision. Bradford MDC complied with regulation 61 because they wrote to Mr Pinkstone on 23 December 2013, 23 January 2014 and 28 February 2014 to inform him that the stage 2 decision would be delayed.
78. The complaint against Bradford MDC is not upheld because they were not responsible for the delays that occurred during IDRP, and they provided Mr Pinkstone with updates at each stage of the process.

79. However, the way in which the University mishandled the stage 1 IDR application caused Mr Pinkstone avoidable stress and anxiety for which should receive compensation, as provided for in my directions.

Directions

80. Within 28 days of the date of this determination the University shall pay Mr Pinkstone £200 for the distress and inconvenience caused by their delay in responding to Mr Pinkstone's IDR application (if they have not already done so).

Jane Irvine
Deputy Pensions Ombudsman

31st March 2015

Appendix

The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007

20. (1) If an employing authority determine, in the case of a member who satisfies one of the qualifying conditions in regulation 5-
- (a) to terminate his employment on the grounds that his ill-health or infirmity of mind or body renders him permanently incapable of discharging efficiently the duties of his current employment; and
 - (b) that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age,
- they shall agree to his retirement pension coming into payment before his normal retirement age in accordance with this regulation in the circumstances set out in paragraph (2), (3) or (4), as the case may be.
- (2) If the authority determine that there is no reasonable prospect of his obtaining any gainful employment before his normal retirement age, his benefits are increased-
- (a) as if the date on which he leaves his employment were his normal retirement age; and
 - (b) by adding to his total membership at that date the whole of the period between that date and the date on which he would have retired at normal retirement age.
- (3) If the authority determine that, although he cannot obtain gainful employment within three years of leaving his employment, it is likely that he will be able to obtain any gainful employment before his normal retirement age, his benefits are increased-
- (a) as if the date on which he leaves his employment were his normal retirement age; and
 - (b) by adding to his total membership at that date 25% of the period between that date and the date on which he would have retired at normal retirement age.
- (4) If the authority determine that it is likely that he will be able to obtain any gainful employment within three years of leaving his employment, his benefits-
- (a) are those that he would have received if the date on which he left his employment were the date on which he would have retired at normal retirement age; and
 - (b) unless discontinued under paragraph (8), are payable for so long as he is not in gainful employment.

- (5) Before making a determination under this regulation, an authority must obtain a certificate from an independent registered medical practitioner qualified in occupational health medicine as to whether in his opinion the member is suffering from a condition that renders him permanently incapable of discharging efficiently the duties of the relevant employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition he has a reduced likelihood of obtaining any gainful employment before reaching his normal retirement age...
- (7) (a) Subject to sub-paragraph (c), once benefits under paragraph (4) have been in payment to a person for 18 months, the authority shall make inquiries as to his current employment.
- (b) If he is not in gainful employment, the authority shall obtain a further certificate from an independent registered medical practitioner as to the matters set out in paragraph (5).
- (c) Sub-paragraph (a) does not apply where a person reaches normal retirement age...
- (11) (a) An authority which has made a determination under paragraph (4) in respect of a member may make a subsequent determination under paragraph (3) in respect of him.
- (aa) A subsequent determination under paragraph (3) must be made within three years of the date that payment of benefits is discontinued under paragraph (8), or before the member reaches the age of 65 if earlier.
- (b) Any increase in benefits payable as a result of any such subsequent determination is payable from the date of that determination.
- ...
- (14) In this regulation-
- "gainful employment" means paid employment for not less than 30 hours in each week for a period of not less than 12 months;
- "permanently incapable" means that the member will, more likely than not, be incapable until, at the earliest, his 65th birthday; and...
- (15) Where, apart from this paragraph, the benefits payable to a member in respect of whom his employing authority makes a determination under paragraph (1) before 1st October 2008 would place him in a worse position than he would otherwise be had the 1997 Regulations continued to apply, then those Regulations shall have effect in relation to him as if they were still in force instead of the preceding paragraphs of this regulation."

The Local Government Pension Scheme (Administration) Regulations 2008

- 44.—(1) An administering authority may require an administering or employing authority from which payment of any amount due under regulations 39 to 42

(employers' contributions or payments) or regulation 86 (changes of fund) is overdue to pay interest on that amount.

- (2) The date on which any amount due under regulations 39 to 41 is overdue is the date one month from the date specified by the administering authority for payment.
 - (3) The date on which any amount due under regulation 42 (other than any extra charge payable under regulation 40 or 41 and referred to in regulation 42(1)(c)) is overdue is the day after the date when that payment is due.
 - (4) Interest due under paragraph (1) or payable to a person under regulation 45(5) (deduction and recovery of member's contributions), 46(2) (rights to return of contributions) or 51 (interest on late payment of certain benefits) must be calculated at one per cent above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.
- (55) First instance decisions - general
- (1) Any question concerning the rights or liabilities under the Scheme of any person other than an employing authority must be decided in the first instance by the person specified in this regulation.
 - ...
 - (4) Where a person is or may become entitled to a benefit payable out of a pension fund, the administering authority maintaining that fund must decide its amount.
 - (5) That decision must be made as soon as is reasonably practicable after the event by virtue of which the entitlement arises or may arise.
 - (6) Any question whether a person is entitled to a benefit under the Scheme must be decided by the employing authority which last employed him...
- (56) First instance determinations: ill-health
- (1) Subject to paragraph (1A), an independent registered medical practitioner ("IRMP") from whom a certificate is obtained under regulation 20(5) of the Benefits Regulations in respect of a determination under paragraph (2), (3) or (4) of that regulation (early leavers: ill-health) must be in a position to declare that-
 - (a) he has not previously advised, or given an opinion on, or otherwise been involved in the particular case for which the certificate has been requested; and
 - (b) he is not acting, and has not at any time acted, as the representative of the member, the employing authority or any other party in relation to the same case,
 and he must include a statement to that effect in his certificate.

(1A) Paragraph (1)(a) does not apply where a further certificate is requested for the purposes of regulation 20(7) of the Benefits Regulations...

- (3) The employing authority and the IRMP must have regard to guidance given by the Secretary of State when carrying out their functions under this regulation, and-
 - (a) in the case of the employing authority, when making a determination under regulation 20 of the Benefits Regulations; or
 - (b) in the case of the IRMP, when expressing an opinion as to the matters set out in regulation 20(5) and regulation 31(2) (early payment of pension: ill health) of those Regulations.”

59. Notice of decisions on disagreements

(1) A decision on a disagreement to which an application under regulation 58 relates must be given by notice in writing to—

- (a) the applicant;
 - (b) the employing authority; and
 - (c) if the employing authority is not the appropriate administering authority, to that authority, by notice in writing before the expiry of the period of two months beginning with the date the application was received.
- (2) But, if no such notice is given before the expiry of that period, an interim reply must immediately be sent to the persons mentioned in paragraph (1)(a) to (c) setting out —
- (a) the reasons for the delay; and
 - (b) an expected date for giving the decision (“the expected decision date”)...

(61.) Notice of decisions on reconsideration of disagreement

(1) The appropriate administering authority must give its decision on an application under regulation 60 by notice in writing—

- (a) to the applicant; and
 - (b) if that authority is not the employing authority, to the employing authority, before the expiry of the period of two months beginning with the date the application was received.
- (2) But, if no such notice is given before the expiry of that period, an interim reply must immediately be sent to those parties setting out —
- (a) the reasons for the delay; and
 - (b) an expected date for giving the decision.