PO-39957

Ombudsman's Determination

Applicant	Mrs L
Scheme	HBOS Final Salary Pension Scheme (**the Scheme**)
Respondents	HBOS plc (**HBOS)** Lloyds Banking Group Pensions Trustees Limited (**the Trustee**)

Outcome

1. Mrs L's complaint is partly upheld and, to put matters right, for the part that is upheld, HBOS shall pay £500 to Mrs L, in recognition of the significant distress and inconvenience caused by its maladministration.

2. No further action is required by the Trustee.

Complaint summary

3. Mrs L's complaint is about HBOS' refusal to grant her an ill health early retirement pension (**IHRP**) under the Scheme.

Background information, including submissions from the parties

4. Mrs L started working for the Bank of Scotland in August 1995, before it merged with the Halifax Building Society to form HBOS. HBOS was then taken over by Lloyds TSB in 2010 and became a division of Lloyds Banking Group (**the Bank**). Mrs L remained an employee of HBOS (**the Employer**) where she worked as a specialist recruitment manager.

5. Mrs L was a member of the Scheme (formerly named the Bank of Scotland 1976 Scheme). The Group Pensions department in the Bank (**Group Pensions**) administered the Scheme on behalf of HBOS.

6. In late 2009, Mrs L suffered an accident whilst travelling on business for HBOS. She fell down the steps of an aeroplane that had not been properly engaged by the crew. She suffered a disk herniation in her back that led to chronic sciatica.

7. From January 2010, Mrs L's condition deteriorated and, in July 2010, her GP, Dr Campbell, referred her to Ms Myles, a neurosurgeon. She was sent for an MRI scan.

Two reports from Ms Myles, dated 26 March 2011 and 11 April 2011, concluded that Mrs L would not benefit from decompressive surgery and recommended that she considered pain relief. Details from these reports are set out in Appendix 1.

8. Mrs L continued to suffer from her medical condition and took pain killers to reduce the pain. In September 2014, HBOS allowed her to work mainly from home, with compressed hours and additional workplace adjustments.

9. In early 2016, Mrs L fell again and suffered a frozen shoulder. She was absent from work for several weeks and was prescribed further pain killers. She still had problems with her back, but the adjustments at her home helped her to continue working.

10. In November 2016, HBOS announced a corporate restructuring. Mrs L and other employees were required to apply for new posts in the new structure, through a selection process. Anyone not successful was at risk of redundancy.

11. In January 2017, Mrs L was told that she had not been successful in the selection process and that she would be made redundant if she could not be redeployed. She appealed against this decision on the grounds of disability discrimination. She claimed that HBOS had not made adjustments in the selection process to accommodate her ongoing medical condition. Her complaint was rejected. She was offered a few months' additional work but was informed that she would be made redundant on 31 July 2017.

12. Mrs L's condition became worse due to chronic back pain and sciatica and, from 28 March 2017, she went on sickness absence. She made a further grievance complaint, claiming that HBOS had not provided her with adequate assistance in seeking redeployment.

13. In June 2017, Mrs L's GP, Dr Campbell, referred her back to Ms Myles who sent her for another MRI scan. Ms Myles reported back to the GP in letters dated 8 and 20 June 2017. She suggested that exploratory surgery to remove scar tissue and flatten the disc bulge was a possibility, but that there would be no guarantee of improvement. Ms Myles noted that surgery might not prevent future recurrences of sciatica. She stated that she had discussed the risks involved in surgery with Mrs L and added that prolonged sitting could also aggravate the disc protrusion.

14. On 21 June 2017, Mrs L advised her line manager that she wished to apply for an IHRP under rule 4.4 of the rules (**Rule 4.4**) of the Scheme dated 2 December 2011 (**the Scheme Rules**). Group Pensions acted as decision maker on behalf of HBOS.

15. HBOS agreed that Mrs L's application for an IHRP could progress as if she were still an employee as the process would not be completed before her termination date. It stated that this was on the condition that, if an IHRP was granted, she would be required to repay her redundancy payment and instead retire on 31 July 2017. Mrs L stated that she did not agree to repay her redundancy payment.

16. On 12 July 2017, Group Pensions referred Mrs L to an occupational health practitioner, Health Management Limited (**HML**), for a consultation. On 1 August 2017, she was examined about her health and its impact on her employment. She had then been on prolonged sickness absence from 28 March 2017, with chronic pain in her back and right sided sciatica.

17. Whilst on sickness absence, Mrs L left HBOS through compulsory redundancy on 31 July 2017.

18. On 7 August 2017, HML issued a report stating that Mrs L was experiencing significant symptoms, with limited functional movement and could not carry out her previous contractual duties. It added that BCERTA Ltd (**BCERTA**) had been appointed by the Trustee to independently assess Mrs L's condition and was solely responsible for deciding if her condition was "permanent" for IHRP purposes, not itself. Details of HML's Report are set out in Appendix 1.

19. In October 2017, Mrs L attended a grievance hearing at HBOS where she claimed that her illness had not been taken into account in the redundancy selection process. Her complaint was rejected because there was no medical evidence that her ongoing back pain had affected her concentration in the selection process. Following this, Mrs L submitted a claim for unfair dismissal to an employment tribunal.

20. On 22 November 2017, Mrs L's GP wrote to BCERTA and confirmed that:-

    - Mrs L's condition had improved initially in 2009 with exercise, but she still experienced bouts of pain, five or six times a year, that lasted about four weeks at a time.

    - Her condition had further deteriorated more recently, and he supported her claim for an IHRP. He could not see her returning to work as prolonged sitting exacerbated her pain.

    - Mrs L had been offered surgery by Ms Myles, her neurosurgeon, but that there was no guarantee of success.

    - Mrs L was taking pain relief medication but nothing else would help. He provided copies of letters from Ms Myles. Extracts from these are set out in Appendix 1.

21. On 3 October 2017, Mrs L asked the Issue Resolution Team how long the process would take. On 11 October 2017, the team manager replied that BCERTA was reviewing the medical reports and would request further information, as needed.

22. Dr Gonzalez of BCERTA assessed the medical evidence provided by HML and Mrs L's doctors, in accordance with the requirements of Rule 4.4. BCERTA provided its recommendation, in a report dated 18 December 2017 (**the Report**).

23. The Report concluded that BCERTA could not support Mrs L's application for an IHRP. It said that her condition "could not be considered as permanent because there remained the possibility of surgery which, on the balance of probabilities, had the

potential to resolve or improve her symptoms." Extracts from the Report are set out in Appendix 1.

24. On 5 January 2018, the Issue Resolution Team informed Mrs L, by email, that BCERTA had not recommended her for an IHRP. It confirmed that it was now reviewing her application and would let her know when a decision had been made.

25. On 30 March 2018, her HBOS line manager wrote to Mrs L rejecting her application for an IHRP (**March 2018 Letter**). It set out the requirements in the Scheme Rules and legislation. These are summarised at Appendix 2.

26. In brief, it said that, under Rule 4.4 (Incapacity retirement), HBOS may allow a "Member" who leaves service before Normal Retirement Date (**NRD**) because of "Total or Partial Incapacity" to choose an immediate pension:-

> "Partial Incapacity" means physical or mental impairment which, in the opinion of HBOS, appears to be of a permanent nature such that it is unlikely that a Member can follow his or her normal occupation with the Employer and his or her future earnings capacity is seriously impaired.
>
> "Total Incapacity" means physical or mental impairment which, in the opinion of HBOS, permanently prevents a "Member" from following any gainful employment with the Employer or any other employer.

27. Before HBOS decides whether a member is suffering from Partial or Total Incapacity, the Trustee must obtain evidence from a registered medical practitioner that the "Member" is (and will continue to be) incapable of carrying on his or her occupation (Paragraph 1 of schedule 28 to the Finance Act 2004 (**FA test**))**.**

28. Mrs L will reach her NRD in 2023, at age 60.

29. In the March 2018 Letter, HBOS set out the reports that it had considered and explained to Mrs L that:-

- Her medical condition and prospects for recovery had been assessed at 31 July 2017, as though she were an active member of the Scheme, and she did not meet the criteria for an IHRP on Partial or Total Incapacity.
- As of 31 July 2017, there remained the possibility of surgical treatment that, on the balance of probabilities, had the potential to resolve or alleviate her symptoms. So, they were not of a permanent nature, as required by Rule 4.4.
- Mrs L could appeal the decision to the Head of Group Pensions.

30. On 20 April 2018, Mrs L sent an email to Group Pensions. She said that the March 2018 Letter had been sent to the wrong address and she had only just received it. She said that she had informed HBOS of her correct address several times. She also asked for a copy of all the medical reports and details of the appeals process.

31. Mrs L did not receive a reply. So, on 15 May 2018, she sent an email to Group Pensions appealing against the decision to refuse her an IHRP. In her submissions, she said that:-

    - Apart from HML's report dated 7 August 2017, she had still not received copies of the medical reports she had requested.

    - BCERTA had not contacted Ms Myles and had only reviewed her condition through her medical reports.

    - She had been struggling with her health condition for many years. Her role with HBOS was having an adverse effect on her condition as it was very difficult for her to sit or stand for prolonged periods of time. Her back and leg were so painful that she had to work at home and she often had to lie down to take conference calls. She had received very little support from HBOS in recent times.

    - She had discussed microdiscectomy surgery with Ms Myles but was told that it may not relieve her symptoms. The fact that she had pain all the time and not just whilst sitting pointed to this. There was also no guarantee that her disk would not prolapse again.

    - Due to the risks involved in this type of surgery, she had decided not to have surgery.

    - She was currently being treated by Ms Myles as she was experiencing further problems with her back. Her GP has also prescribed anti-depressants for the stress caused by her redundancy.

    - The Report contained a reference to a report from Mr Fitzpatrick that was incorrectly dated 28 June 2017, before she was referred for an IHRP.

    - There had been delays in providing a decision and the March 2018 Letter had also been sent to the wrong address.

32. On 9 August 2018, Mrs L received a letter from Group Pensions informing her that her appeal had been rejected. It explained that:-

    - An IHRP was granted solely at HBOS' discretion and it had considered whether she satisfied the criteria in the Scheme Rules for her condition to be "permanent". The FA test was more stringent than Rule 4.4, so it had not been specifically considered.

    - BCERTA had been appointed by the Trustee as the Scheme's medical adviser, as required by Rule 4.4. It had been instructed to review her medical history and advise if she satisfied the requirements for an IHRP.

- BCERTA had advised that she did not satisfy the criteria because of the possibility of surgery that, "on the balance of probabilities, had the potential to resolve or improve her symptoms."

- Group Pensions, on behalf of HBOS, had taken BCERTA's recommendation into account in reaching its decision.

- It noted her comments that she had been struggling with her health condition for many years and, while she had considered an operation, she had chosen not to have surgery, due to the risks involved. There was also no guarantee that surgery would relieve her symptoms.

- Mrs L could apply for an IHRP, from deferred status, if she could provide medical evidence that, on the balance of probabilities, there was limited expectation of her condition improving, even with other treatments.

- Group Pensions apologised for any inconvenience caused by the delay in considering her application or how the decision was communicated to her.

33. On 21 August 2018, in response to complaints from Mrs L, BCERTA confirmed to Group Pensions that Dr Gonzalez had acknowledged that there were minor errors in the Report. He had issued an amended Report that corrected her date of birth, the date of Dr Fitzpatrick's report and omitted the reference to previous back surgery. Dr Gonzalez confirmed that the errors did not affect the recommendation in his Report.

34. On 24 August 2018, Mrs L made some further comments by email to Group Pensions regarding Dr Gonzalez' Report (**August 2018 email**). She noted that:-

- Dr Gonzalez had said that she had occasional bouts of sciatica but, in fact, she had chronic pain from sciatica every day.

- Ms Myles had advised in her letter that "there is no guarantee that surgery would improve her leg pain or prevent future recurrences". Ms Myles had told her that the length of time she had had this issue, and the fact she was in chronic pain constantly and not just while sitting, lessened the chance of this surgery having any impact on her current condition.

- Ms Myles had also told her that prolonged sitting could aggravate the disc protrusion.

35. On 27 August 2018, BCERTA confirmed that Dr Gonzalez had considered Mrs L's August 2018 email and had commented that:-

- He had based his Report on the evidence provided by Dr Campbell and Ms Myles when Mrs L was examined. They had referred to five or six episodes of pain a year, of four weeks duration, but that the last episode had lasted longer. They had said that Mrs L had been offered neurosurgery but indicated that there was no guarantee of success. They added that Mrs L was currently considering this option.

- If Mrs L's medical advisers confirmed that her condition had become intractable with no prospect of improvement, she could reapply for an IHRP.

- Dr Campbell and Ms Myles had not provided any indication whether surgery was seriously being considered.

36. Mrs L subsequently complained to the Trustee about HBOS' decision. On 21 November 2018, the Trustee confirmed that Mrs L's case was not eligible for consideration under the Scheme's internal dispute resolution procedure (**IDRP**) because her complaint related to a decision made by her Employer, not the Trustee.

37. In March 2019, an employment tribunal (**the Tribunal**) rejected Mrs L's claim against HBOS that she had been unfairly dismissed on the grounds of redundancy on 31 July 2017. The Tribunal concluded that there was no evidence that HBOS had disregarded her ill health in the redundancy process and had not made reasonable adjustments for her.

38. The Tribunal noted that Mrs L had made an application for an IHRP: if this was successful, she would have to repay her redundancy payment. The Tribunal made no comments on the validity of that application.

39. On 8 March 2019, Mrs L complained to The Pensions Ombudsman's Office (**TPO**). She said that the IHRP process was confusing, with long delays, and she had to "chase" for a response at several stages. She also said that there were errors in the Report and the criteria for the decision was not clear. Mrs L added that her GP had supported her claim for an IHRP.

40. In response, HBOS stated that it provided a copy of the internal process for applying for "Ill Health Early Retirement, Guidance on Reapplication" (**the Application Process**). This is set out in Appendix 4 and provides information on both the original application and any reapplication. HBOS acknowledged that Mrs L was wrongly advised to send the reasons for her appeal to the Group Pensions team. HBOS stated that as she had left HBOS, the normal appeals process did not apply. However, this did not affect HBOS' handling of her appeal.

41. In August 2020, Mrs L provided TPO with an updated medical report dated 29 April 2020, from NHS Neurosciences (**the 2020 Report**). Following a scan, it advised that, as she had had pain for more than ten years, her condition was chronic, and surgery would have no benefit. The recent nerve root injection had made the pain worse.

42. Although the 2020 Report referred to Mrs L's condition in April 2020, Mrs L asserted that surgery would have made no difference if she had had an operation on 31 July 2017.

43. **Summary of Mrs L's position**

- She did not believe HBOS and BCERTA gave proper consideration to her request for an IHRP as they did not weigh up any conflicting evidence.

- HBOS blindly followed advice from BCERTA. It did not, at any time, ask her medical consultants for their opinion and merely copied information from her medical notes provided by her GP.

- HBOS did not engage her in the process. She was never asked to submit evidence to BCERTA to support her application.

- There was no formal appeals process as her complaint was not covered by the Scheme's IDRP.

- She believed that certain people within HBOS had made a decision to refuse an IHRP, based on more personal matters. The process was not transparent.

- The whole process was completely "shambolic" and caused her a great deal of stress. She has been unable to work since leaving HBOS.

- The March 2018 Letter included confidential medical information. It was sent to a previous address, even though she had informed HBOS of the correct address.

44. **Summary of HBOS' position**

- The Trustee appointed BCERTA, a registered medical practitioner in occupational health, to review Mrs L's medical condition and advise if she qualified for an IHRP under the Scheme Rules.

- BCERTA's role was to interpret the medical reports provided by Mrs L's medical advisers and HML and to give a view on whether she met the definitions under the Scheme Rules for an IHRP. If it considered that it needed to ask further questions, because the information provided was unclear or insufficient, it was able to do so.

- If Group Pensions equally felt that further clarity or information was needed, it would have asked further questions of BCERTA. In Mrs L's case, the decision maker did not deem it necessary to be provided with further information.

- Group Pensions specifically set out the relevant questions that BCERTA needed to address for an IHRP application. BCERTA showed in the Report that it had reviewed the medical reports on Mrs L's condition and the requirements of her role.

- BCERTA had discretion to determine whether it was necessary to examine Mrs L in person or request further reports. It had considered HML's report dated 7 August 2017, and Dr Campbell's letter stating that, on 31 July 2017, treatment by further conservative measures and surgical intervention was a reasonable and relevant option being explored by Mrs L.

- All medical evidence, including the Report by BCERTA, was provided to Group Pensions who had authority to agree an IHRP on behalf of HBOS. Group

Pensions reviewed Mrs L's application for an IHRP and concluded that she did not meet the conditions set out in the Scheme Rules.

- Mrs L's GP did not have the requisite knowledge of the Scheme Rules to support her application for an IHRP nor was he a qualified specialist in occupational health.

- BCERTA's recommendation was based on a plethora of medical reports which the decision makers also reviewed. The decision makers clearly felt there was sufficient clarity in the reports they reviewed to come to a decision. The decision makers did not just rely on BCERTA's recommendation.

- There was no reason to question the recommendation provided by BCERTA and ask Mrs L's GP or Ms Myles whether they agreed with the recommendation. They provided independent information regarding her medical condition. BCERTA assessed the medical condition against the IHRP criteria.

- BCERTA's recommendation was taken into consideration as well as the other reports that formed part of the assessment. The errors that Mrs L had noted were corrected in BCERTA's Report and were not taken into account in HBOS' decision.

- Mrs L's appeal was dismissed because of the potential for further medical improvement that would allow her to return to employment and maintain her earnings capacity.

- Medical professionals are reluctant to give an opinion in percentage terms as there are numerous factors for them to consider. It is more common for medical professionals to refer to the balance of probabilities.

- Mrs L's decision not to explore surgical options was not a relevant factor when HBOS considered her appeal. Her application for an IHRP had to be considered on 31 July 2017, when those treatment options were being considered as viable options. Ms Myles' report stated that an operation could be successful but could not guarantee this. The report did not mention the downsides that Mrs L noted in her August 2018 email.

- Mrs L could apply for an IHRP from the Scheme if her condition had worsened since 31 July 2017, but as a deferred member of the Scheme. Alternatively, she could take early retirement from age 55 under Rule 4.3, subject to an actuarial reduction being applied to her pension.

- HBOS acknowledged that there had been a delay in dealing with her application and that Mrs L should have been kept better informed during this period. HBOS apologised for any inconvenience this may have caused. Some delay may have been caused by the fact that Mrs L had left HBOS when her application was reviewed.

45. **The Trustee's position**

- An application for an IHRP and the associated process was solely a matter for HBOS under the Scheme Rules.
- Mrs L's complaint lay with HBOS, as the decision maker, not the Trustee. Contrary to Mrs L's assertion, the Trustee had no record of telling her otherwise.

Adjudicator's Opinion

46. Mrs L's complaint was considered by one of our Adjudicators who concluded that there was maladministration by HBOS that led to non-financial injustice.

47. The Adjudicator's findings are summarised below:-

- Under Rule 4.4, HBOS may allow a member who is suffering from Total or Partial Incapacity to take an early retirement pension. In reaching its decision, HBOS had to comply with the Scheme Rules, the FA test, and its Application Process.
- In the Adjudicator's view, HBOS had complied with the procedure in the Scheme Rules and the Application Process, in making its initial decision.
- The key point was whether there was factual evidence to support HBOS' decision that Mrs L was not eligible for an IHRP. Mrs L's medical condition had to be assessed as at 31 July 2017.
- In the Adjudicator's view, it was reasonable for HBOS to decide, on the facts, that Mrs L could still carry on her occupation and did not satisfy the eligibility criteria for an IHRP, under Rule 4.4. HBOS was entitled to rely on the opinion it received from BCERTA. It did not differ significantly from the views of Mrs L's own doctors and there were no other cogent reasons to question its recommendation.
- In the Adjudicator's view, BCERTA could not reasonably discount the possibility of surgery when considering the assessment criteria.
- Mrs L's appeal was dismissed because the medical evidence showed that there was, on the balance of probability, the potential for further medical improvement. In the Adjudicator's view, Mrs L's appeal was properly considered by an independent person at HBOS, with the medical reports on her condition, as of 31 July 2017. It could not take into account information concerning Mrs L's condition after 31 July 2017.
- Mrs L considered that her appeal was unfair because she was not provided with details of the Application Process. In the Adjudicator's view, this did not affect the outcome of her appeal as she had previously been advised about the criteria for awarding an IHRP.

- In the Adjudicator's view, the Trustee was correct not to consider her complaint under the IDRP as HBOS made the decision under the Scheme Rules, not the Trustee.

- In the Adjudicator's view, there was maladministration that caused distress to Mrs L. There were mistakes in BCERTA's Report, delays in reviewing her application and in providing copies of medical reports, sending the March 2018 Letter to the wrong address and delaying notifying Mrs L concerning the result of her appeal.

- In the Adjudicator's view, Mrs L suffered significant distress and inconvenience and an award of £500 was appropriate.

48. Mrs L did not accept the Adjudicator's Opinion and made further submissions:-

- Mrs L stated that the incorrect rules had been applied and that the rules of the Bank of Scotland 1976 Pension Scheme should have been taken into account.

- Mrs L noted HBOS' comment that the Application Process covering appeals was not sent to her because she did not have a Line Manager. She asserted that it was her Line Manager who had sent her the decision on 30 March 2018, and added, "I do not believe it was an oversight not to include an appeals document with the decision letter."

- Mrs L referred to HBOS' comment that it did not minute its decisions as the process provided transparency. She stressed that there was no formal application process, no written guidelines and no information on the decision makers or how they made their decision. She added "…it now transpires there may have been no meetings held as there are certainly no records."

- Mrs L suggested that a formal appeal process should have been notified to her. If she had been given a copy of the Application Process that stated she could provide additional medical evidence, she would have asked Ms Myles, specialist neurosurgeon, to submit a medical report.

- It is not clear from the appeal letter what medical evidence was investigated. The Application Process on appeals referred to a specialist opinion but HBOS did not seek a specialist opinion, in the first instance. Ms Myles did not provide a specialist medical report, only letters to her GP, Dr Campbell. A proper medical report from Ms Myles would have detailed the risks involved with surgery.

- On 12 June 2017, Ms Myles gave her a consent form detailing all of the risks of surgery. These included infection, dural tear, leakage of cerebrospinal fluid, nerve injury and paralysis and bowel/bladder incontinence. She had then gone away to think things through.

- She states that it was also said that about ten per cent of patients felt that their back pain was worse after surgery. The procedure was not designed to relieve her chronic back pain, aggravated by sitting or standing for long periods. HBOS chose

not to request a formal medical report from Ms Myles as it was aware she would concur with her GP's view.

49. In response to the further submissions made by Mrs L, HBOS made a number of additional points which included:-

- The FA test would have to be met before Mrs L could be considered for an IHRP regardless of which set of rules applied. The medical evidence did not support this test being met.

- There is a split in benefits to be considered between pre 2006 and post 2006 pensionable service. Post 2006 benefits are subject to the ill-health provisions set out in the Scheme Rule 4.4. For pre 2006 benefits, the rules of the Bank of Scotland 1976 Pension Scheme needed to be considered. The provisions for total and partial incapacity, as set out in Rule 4.4, were referred to by BCERTA. If these were met, then this would mean that the pre 2006 definitions were also met. Similarly, if they were not met, then the pre 2006 provisions would not be met.

- It did not dispute the fact that Mrs L was an employee at the time that she made her application for an IHRP. She was on notice at the time and the IHRP process would not complete before her termination date. She would not be eligible to take both an IHRP and a redundancy payment.

- In relation to the appeal, Mrs L could have provided additional evidence at the time. While the Appeals Guidance was not provided, in its response to Mrs L of 9 August 2018, it did state:

  "Should a Specialist opinion be provided that indicates that no further improvement in your health can be expected and that you have, on the balance of probabilities, limited expectation of symptomatic improvement even with other treatment options, then a reapplication can be made."

- The letter of 30 March 2018 serves as a record of the reasons why Mrs L's application to take IHRP was declined. There was no need for these reasons to be minuted and there is no requirement for there being more than one decision maker.

- The letter of 9 August 2018 provides responses to the concerns raised by Mrs L in her appeal request. It also sets out the reasons why the appeal resulting in the request for an IHRP being declined.

50. Mrs L provided further feedback on HBOS' response to her earlier comments. This feedback included the following points:-

- The Scheme Rules do not represent the ill-health provisions applicable to her. It is the Rules of the Bank of Scotland 1976 Pension Scheme (the **Previous Rules**) that apply. These are: "Ill-health means in relation to a member physical or mental deterioration of health to a degree which in the sole opinion of the Principal

Company prevents the Member from following his or her normal employment or severely impairs his or her earning capacity."

- Her Solicitor requested a copy of any document which shows that any element of an enhanced redundancy package must be repaid in the event of an application for ill health retirement being granted. This was not provided. In addition, Mrs L said that she has seen no evidence of her agreeing to this.
- There was ample opportunity for the Appeals Guidance to be sent to her.
- An email that she had received from Group Pensions stated that these decisions are made jointly with trustee representatives, so a meeting should have taken place which should have been minuted. In addition, when her line manager advised her that her application had been declined, he mentioned that her application had been jointly considered by the Trustee and the Employer.
- HBOS stated that Mrs L had not come forward with any new evidence. However, a letter from her Consultant dated 29 April 2020 had been provided.
- The results of her initial application for an IHRP and the subsequent appeal influenced the outcome of her employment tribunal.
- The appeal guidance document provided to Mrs L was from 2018. A copy of any guidance available before then had not been provided.
- Mrs L had not been permitted to raise a complaint under the Trustee's IDRP due to the IHRP decision being solely an employer decision. However, the Trustee is responsible for managing the Scheme and has overall responsibility.
- Mrs L requested an oral hearing. The reasons that she cited for this included misleading responses from HBOS and differing accounts in relation to the Rules, the appeal guidelines and the repayment of the redundancy sum. She also said that she found it difficult to make sense of the Opinion, stating that no proper investigation had been carried out.

51. Mrs L's complaint was passed to me to consider. Her comments do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised.

Ombudsman's decision

52. Mrs L has requested that an oral hearing be held in relation to her complaint and I note the reasons that she has given for this. Oral hearings have a specific purpose and will not be held simply to discuss the complaint or to enable the applicant to address me in person. In general, I will hold an oral hearing if I consider that there is a significant conflict of evidence which cannot be decided on the basis of written submissions. In Mrs L's case I consider that I am able to reach my decision on the basis of the written submissions that have been provided and I do not consider an oral hearing to be necessary.

53. HBOS claimed that Mrs L's condition did not meet the requirements for Total or Partial Incapacity under Rule 4.4 of the Scheme Rules. Consequently, she was not eligible for an IHRP.

    In the Scheme Rules, Rule 1 defines 'Total Incapacity' as being:

    > "physical or mental impairment which, in the opinion of HBOS, permanently prevents a Member from following any gainful employment with the Employer or any other employer. Before HBOS decides whether a Member is suffering from Total Incapacity, the Trustees must obtain evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on his or her occupation …"

    'Partial Incapacity' is defined as being:

    > "physical or mental impairment which, in the opinion of HBOS, appears to be of a permanent nature such that it is unlikely that a Member can follow his or her normal occupation with the Employer and his or her future earnings capacity is seriously impaired. Before HBOS decides whether a Member is suffering from Partial Incapacity, the Trustees must obtain evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on his or her occupation …".

54. Rule 4.4 of the Scheme Rules required HBOS to make two decisions: firstly, whether Mrs L met the Partial or Total Incapacity definitions (a finding of fact); and secondly, whether it should allow her to opt for a pension (a discretion).

55. Mrs L claimed that the Rules of The Bank of Scotland 1976 Pension Scheme applied to her. I find that this has some truth in relation to the calculation of her pre 2006 benefits, which are classed as Former Scheme Benefits under the Scheme Rules. However, in the Scheme Rules, Rule 13.1.3 states:

    > "If a Member had a right to take (or request) any benefits at a date earlier than his or her Normal Retirement Date under the Scheme, the Member will have a right to take (or request) his or her Former Scheme Benefits at that earlier date … the Member must choose to take any other benefits under the Scheme at the same time, and these other benefits under the Scheme will be adjusted for early payment as described in these Rules."

56. Mrs L did not have a right to take benefits under Rule 5.4 of the Previous Rules; receipt of benefits was contingent upon her satisfying the definition of "Incapacity" and the Trustees and Principal Company permitting her to retire with immediate benefits. At most, she had a right to request ill health retirement which may be preserved under Rule 13.1.3.

57. That being said, I do not find that reference to the Previous Rules helps Mrs L's case. The definition of Incapacity in the Previous Rules is not dissimilar to the combined

definitions of Total and Partial Incapacity. If anything, the separation into Total and Partial Incapacity provides more flexibility.

58. However, for the avoidance of doubt, I find that, in order to receive ill health benefits, it is the rules of the scheme that Mrs L was an active member of at the time of her application that apply. It is the criteria for Total and Partial Incapacity in Rule 4.4 of the Scheme Rules that is relevant to Mrs L's application for an IHRP. If either of these criteria are met, then her Former Scheme Benefits will also be eligible for early payment. In addition, Mrs L must also satisfy the FA test.

59. Mrs L claimed that her application for IHRP was accepted by HBOS in June 2017, so it was not backdated to 31 July 2017 as a concession. In my view, the result of HBOS' factual decision on whether she suffered from Partial or Total incapacity would have been the same in June 2017 as it would have at 31 July 2017.

60. An important element of Mrs L's complaint is that HBOS did not consider enough evidence from her medical advisers when it refused to grant her an IHRP.

61. The Trustee appointed BCERTA as a registered medical practitioner to interpret Mrs L's medical reports and to advise HBOS whether she met the criteria for an IHRP on 31 July 2017. BCERTA's Report recommended that Mrs L did not satisfy the criteria for Total or Partial Incapacity on 31 July 2017 as "there remained the possibility of surgical treatment that, on the balance of probabilities, had the potential to resolve or alleviate her symptoms." Group Pensions considered the Report and other medical reports and decided to follow BCERTA's recommendation. So, it did not need to consider whether to exercise its discretion to grant her an IHRP.

62. Mrs L disagreed because, at that time, she had not yet decided whether to have surgery. On 12 June 2017, Ms Myles gave Mrs L a consent form with all of the risks of surgery, including infection, dural tear, leakage of cerebrospinal fluid, bowel/bladder incontinence, nerve injury and paralysis. So, she went away to think things through.

63. Mrs L has explained that she was told that about ten per cent of patients felt their back pain was worse after surgery. Mrs L is of the view that the procedure would not change her chronic back pain, as it is aggravated by sitting or standing. She claimed that HBOS chose not to seek a formal medical report from Ms Myles because it would concur with her GP's view, recommending ill health retirement.

64. I consider that HBOS could not reasonably discount the possibility of surgery when considering the assessment criteria. The fact that Mrs L had not yet decided whether to have the surgery was a factor to be taken into account. Nevertheless, this option was still available to her.

65. Mrs L stated that the outcome of her employment tribunal was influenced by the results of her initial application for an IHRP and the subsequent appeal. She also stated that her Solicitor requested evidence that her redundancy package would have to be repaid if her application for ill health retirement had been successful. While I

have noted these points, they are not something that I am able to comment on as they relate to Mrs L's employment rather than her benefits from the Scheme.

66. Mrs L said that the Trustee has overall responsibility for managing the Scheme. She stated that she should have been permitted to raise a complaint under its IDRP. I am in agreement with the Adjudicator in this respect, in that the Trustee was correct not to consider Mrs L's complaint as, under the Scheme Rules, the decision was solely the responsibility of HBOS.

67. Mrs L also complained that BCERTA had merely copied information from her GP's medical reports and HBOS had blindly followed BCERTA's recommendation, without requesting further medical evidence. She said that Ms Myles did not provide any specialist medical reports, only letters to her GP. Mrs L stated that, had a proper medical report been obtained from her neurosurgeon, this would have detailed the risks involved with such surgery.

68. Having considered this, I note that Dr Gonzalez' view was not contradicted by Ms Myles' reports. It seemed unlikely that Ms Myles would have suggested surgery if there was no possibility of success at all. There are, of course, risks involved with spinal surgery. It is unlikely that Dr Gonzalez would be unaware of this. The Report took into account the aggravating effect of Mrs L's condition on her work. BCERTA had also noted that a specialist would not be able to comment on the success of any surgery for at least six to twelve months afterwards. This was within the time remaining to Mrs L's normal retirement date.

69. In reaching its decision, I consider that HBOS complied with the Scheme Rules, the FA test, and its Application Process, set out in Appendix 4. I do not consider that HBOS should have requested a report from Ms Myles or any other specialist as to the percentage success rate. HBOS was entitled to rely on the recommendation it received from BCERTA. It had sought advice from an appropriate source, namely Dr Gonzalez. His Report did not differ significantly from the views of Mrs L's own doctors and there were no other cogent reasons to question its recommendation.

70. Mrs L raised concerns about how her appeal against this decision was dismissed. She asserted that she was not provided with details of the Application Process and a formal appeal process should have been in place. HBOS claimed that this was not sent to her because she did not have a Line Manager. Mrs L disagreed with this and added "I do not believe it was an oversight not to include an appeals document with the decision letter." I find that the failure to provide Mrs L with details of the appeal process did not prevent her from submitting an appeal. Nor did it affect the outcome of that appeal as she had previously been advised about the criteria for awarding an IHRP.

71. Mrs L also submitted that the letter dismissing her appeal did not set out the medical evidence that was taken into account, even though the Application Process, that HBOS has now provided, referred to a specialist opinion. She asserted that HBOS did not request a specialist opinion from Ms Myles but relied on her letters to Dr

Campbell. If she had been given the opportunity to provide additional medical evidence, she would have asked Ms Myles to submit a medical report that detailed the risks of surgery. As evidence of that, she provided the 2020 Report to show that her condition had deteriorated, and that surgery had proved not to be an option.

72. Any evidence provided or considered in connection with Mrs L's application for ill health retirement from active service would have to relate to her condition in 2017. Mrs L has argued that the 2020 Report supports her view that surgery in 2017 would have made little difference to her condition. This is applying the benefit of hindsight. The reports considered by Dr Gonzalez and HBOS included two letters from Ms Myles dated June 2017. These were sufficiently contemporaneous with the cessation of Mrs L's employment to be considered relevant and appropriate evidence of her condition at the time.

73. I find that Mrs L's appeal was properly considered by an independent person at HBOS, with reference to the medical reports on her condition, as of 31 July 2017. HBOS correctly interpreted the Scheme Rules and reached a decision, after considering medical evidence and its own internal guidance. It was reasonable to conclude that Mrs L could reapply for an IHRP if she considered that she met the criteria after that date.

74. Nevertheless, throughout the process, HBOS made errors. Mrs L claimed that it did not provide a formal application process or information on how the decision makers made their decision. There were delays in reviewing her application, delays in providing copies of the relevant medical reports and mistakes in BCERTA's Report that had to be corrected. HBOS also sent the March 2018 Letter to the wrong address. HBOS did not provide a valid reason for not sending the Application Process covering appeals to her and there was a delay in notifying Mrs L about the outcome of her appeal. HBOS explained that it did not minute its decisions as the process was transparent, but Mrs L has asserted: "…it now transpires there may have been no meetings held as there are certainly no records." HBOS has said that its letter of 30 March 2018 provided sufficient reasoning for its decision to decline Mrs L's application and there was no need for the decision to be minuted. There is no specific requirement for decisions to be minuted, but it is good practice.

75. I find that these were failings by HBOS that amounted to maladministration. They caused Mrs L significant distress and inconvenience and an award of £500 is appropriate to recognise this.

76. As Mrs L's application for an IHRP was decided by HBOS under the Scheme Rules, I do not find that the Trustee was responsible.

77. I find that this complaint should be partly upheld.

Directions

78. Within 14 days of the date of this Determination, HBOS shall pay £500 to Mrs L, in recognition of the significant distress and inconvenience it has caused.

Anthony Arter

Pensions Ombudsman
23 April 2021

Appendix 1

Reports considered by HBOS, as set out in Group Pensions' letter dated 30 March 2018:-

• Occupational Health Report	Dr Griffin	7 August 2017
• Occupational Health Report	Dr Briton	20 May 2016
• GP Report	Dr Campbell	22 November 2017
• Neurosurgeon Reports	Ms Myles	8 June 2017
		20 June 2017
		11 April 2011
		28 March 2011
• Consultant Neurosurgeon Report	Mr Fitzpatrick	28 June 2017
		[corrected to 28 June 2010 and not provided].
• BCERTA Report	Dr Gonzalez	18 December 2017

Medical evidence

Extracts from Report dated 18 December 2017 from BCERTA, Dr Gonzalez, Occupational Health Physician, to HBOS and the Trustee.

Mrs L's condition: Lumbosacral disk protrusion and sciatica

Reports considered: [as above]

Referral

Question 1

Mrs L meets the definition of Incapacity and he would support a case for early retirement on the grands of partial or total Incapacity?

Definitions of Partial or Total Incapacity provided.

Answer 1

No

Summary from comments to support conclusion

Mrs L had a history of chronic pain with back ache and right-side sciatica and had been absent from work as a recruitment manager since March 2017.

He referenced a recent report from Mrs L's GP, Dr Campbell, stating that she had lower spinal issues following an accident in 2009, with recurrent episodes of leg pain every year.

She was seen by neurosurgeon Ms Myles several times, most recently on 12 June 2017.

He referred to Ms Myles' report. It stated that Mrs L's leg was "slowly settling", and that sitting "seemed to provoke it", attributable probably to scar tissue round a lumbar disc protrusion. She proposed that exploratory surgery could be performed to remove the scar tissue and flatten the disc bulge but that there would be no guarantee of improvement of the pain in her right leg or preventing future recurrence. Prolonged sitting could potentially aggravate the disc protrusion, but surgery was being considered as it could possibly relieve some pain by removing scar tissue that may cause tethering.

He noted that Ms Myles concluded that there was no guarantee of symptomatic improvement and that Mrs L was considering whether to explore this surgical option.

He also noted reports from Mrs L's GP, Dr Campbell, stating that Mrs L was taking medication to reduce nerve pain, but other forms of conservative treatment were unlikely to help.

He stated that, at this time, she had had ongoing symptoms for a number of years. [despite surgical intervention in the past- words subsequently deleted] and there "remains the possibility of surgical treatment which on the balance of probabilities has the potential to resolve or improve her symptoms".

He concluded "It is not appropriate at this time to consider that her incapacity will be permanent. So, I cannot support her application under the Rules."

Referral

Question 2

Mrs L meets the Finance Act test?

Answer 2

No

Summary of comments

The Finance Act 2004 test was that the member is (and will continue to be) incapable of carrying on the member's occupation because of mental or physical impairment.

He stated:

> "There is a potential surgical solution to her problem. Clearly, the neurosurgeon is not able to give any guarantee of success, but the benefits of surgery must presumably outweigh the risks for it to be a consideration. The

> prognosis is difficult to establish at this time even for the specialist but whilst the possibility of surgery remains it is not appropriate to consider that her current incapacity is of a permanent nature.
>
> On the balance of probabilities, it is considered that surgical intervention may improve her symptoms and allow a return to work. A period of post-surgical assessment and rehabilitation would be necessary to establish whether or not surgery has been successful.
>
> It should be noted that her specialist would not be in a position to comment definitively on the success of any surgery for at least six to twelve months post operatively.“

NOTE

On 21 August 2018, Dr Gonzalez acknowledged errors to the Bank in the report and made the following amendments:

Her date of birth was corrected.

Mr Fitzpatrick- date of report corrected.

Reference to “historical surgical treatment” changed to “physiotherapy/neurosurgical option”.

He confirmed that these errors did not materially change the decision that “treatment options remain”.

Extracts from Occupational Health Report dated 7 August 2017.

Health Management Ltd (HML) to Group Pensions

Reference - whether Mrs L met the criteria for ill health retirement**.**

Occupation (Mrs L) - Recruitment Manager.

Summary of report

HML stated that Mrs L was referred to it on 12 July 2017. She was examined on 1 August 2017, with regard to her health circumstances and impact on employment, due to her prolonged sickness absence since 28 March 2017. This was due to chronic pain with back ache and right sided sciatica.

HML noted that its report was based on currently available medical information and Mrs L’s previous occupational health reports. However, it could not advise whether Mrs L satisfied the ill-health rules without further instructions and consents. The Trustee had appointed BCERTA to advise on this.

Mrs L explained to HML that she started work in [1985], and had been a recruitment manager since 2010, in a specialist recruitment team. She worked full time and mostly home based, though with an office desk. She currently experienced significant symptoms

with limited functional movement, due to ongoing low back pain and right sided sciatica. She said she was in ongoing discussions about the optimum possible remedial treatments with her GP and her neurological specialist, including surgery. Her recent experiences, including health and employment situation, was having an adverse impact on her overall mental health and well-being.

Conclusion of referral

A report was produced on 7 August 2017 by Health Management with the following recommendation/opinion:

> "Presently I believe that Mrs L's current health situation is such that she is not at a level of medical fitness that would allow her to conduct her recent, and now previous, full contracted duties. As to whether such circumstances might presently be considered as being permanent, as likely required for any potential medical support of ill health early retirement, such considerations are the sole responsibility of the authorised Scheme Medical Advisers, BCERTA."

Dr Campbell, Mrs L's GP, letter dated 22 November 2017.

Summary of letter to Dr Gonzalez of BCERTA regarding Mrs L

Mrs L's main problem was with her lower spine, following an accident in 2009.

An MRI scan shortly afterwards showed a partial central disc extrusion with nerve root compression on the right. This initially improved with exercise and physiotherapy but, since then, she had suffered five or six exacerbations of leg pain each year, lasting about four weeks at a time.

Her current problem was due to one of these exacerbations lasting longer than usual. A recent MRI scan continued to show problems with thickening of the nerve root and possible scar tissue. She has been offered neurosurgery, but it has been indicated that there was no guarantee of success. She was currently considering this option.

Mrs L was aware that prolonged sitting of any type exacerbated her pain, and this would be in keeping with the pathology.

Dr Campbell stated that he had known her to be a determined lady who certainly had been keen to get back to work, if possible, but the physical issues had precluded this. She was taking medication at night, but he thought it unlikely that other forms of conservative therapy would make much difference.

His own view was that it was difficult to see her returning to work and being able to provide a productive service. He supported her request for early retirement on the grounds of ill health.

Summary of report from Ms Myles, consultant neurosurgeon, to Dr Campbell

26 March 2011

Ms Myles set out the background to Mrs L's medical problems.

In January 2009, Mrs L fell downstairs on a plane. For 12 months, she had pain on her right side, lower back and buttocks.

In January 2010, the pain became very severe when she was walking on an icy pavement. This developed into severe pain when she was getting into bed with right sided leg pain radiating into the back of her calf and foot, causing numbness.

In April 2010, Mrs L had an MRI scan followed by physiotherapy.

In November /December 2010, Mrs L managed a phased return to work.

January 2011 to March 2011, Mrs L's leg pain increases. She finds it difficult to sit for any length of time as it causes pain and numbness, but she can stand and walk without pain. Her sciatica has improved since July 2010 but is still causing loss of function She takes medication for the pain.

Ms Myles concluded that she had sent Mrs L for a repeat MRI scan. If this showed the disk resting on the nerve, she would be happy to offer microdiscectomy surgery. She had given Mrs L information about this, setting out the pros and cons and risks of surgery.

If the new scan showed there is no longer compression on the nerve root, then her pain must be due to chronic nerve damage. In that case, a steroid nerve root canal injection might be of some benefit.

Ms Myles, consultant neurosurgeon, to Dr Campbell

Letter dated 11 April 2011

Summary

The results of the MRI scan showed a small residual disk protrusion on the right side. It was not compressing the nerve root. The nerve root looked slightly enlarged due to either inflammation or scar tissue. It was difficult to say. She did not think Mrs L should have decompressive surgery.

She referred Mrs L to a pain management consultant to try steroids and ended the letter saying:

> "I am sorry I could not do any more for her"

Letter dated 8 June 2017.

Ms Myles, consultant neurosurgeon, to Dr Campbell

Summary

She noted Mrs L's condition when last seen in 2001 and that she had been treated conservatively.

From then to the beginning of 2017, Mrs L had experienced five to six exacerbations of leg pain each year, lasting approximately four weeks.

Mrs L had been off work for six weeks from March 2017 because of a flare up of her right leg pain but it was now settling a bit. The pain radiated into the back of her right calf and to her foot, like an electric shock. Her back was stiff but not particularly painful. She was taking medication for the pain.

Ms Myles suggested that the pain may be chronic nerve pain related to the disk prolapse in 2011 or a further disk prolapse, as the latest episode was getting more prolonged.

She arranged for an MRI scan for Mrs L to see if there was any nerve root compression.

Letter dated 12 June 2017

Ms Myles, consultant neurosurgeon, to Dr Campbell

Summary

Ms Myles stated that the MRI scan showed a very similar appearance to the scan in 2011.

There was a right sided disc bulge that looked chronic but was probably slightly smaller than in 2011. It was slightly abutting the right nerve root which looked slightly thickened but was not compressing it.

Ms Myles wondered if the nerve was tethered to the underlying chronic disc protrusion by the scar tissue that was laid down in 2011.

Ms Myles noted that Mrs L's leg pain was slowly settling down, but Mrs L was very apprehensive of it flaring up as soon as she returned to work as sitting seemed to provoke it.

Ms Myles said she had explained to Mrs L that she "could explore this region and remove the scar tissue and flatten the disk bulge" but "there would be no guarantee of improving her right leg pain or preventing future recurrence of sciatica. The disk could bulge again particularly if she sits for a long time".

However, Ms Myles added that if there was tethering scar tissue some people did get benefit from untethering the nerve root. Although there was always a risk that the scar tissue would form again.

Ms Myles ended by saying that Mrs L went away to think things through**.**

Appendix 2

Extracts from the Rules of The HBOS Final Salary Pension Scheme, consolidated as of 2 December 2011.

1 Meaning of words used

"Former Scheme" means each of:

(i) The Bank of Scotland 1976 Pension Scheme …

4.3 Early retirement

HBOS may allow a Member who leaves Service after reaching age 50 (age 55 if the Member leaves on or after 6 April 2010) and before Normal Retirement Date to choose an immediate pension on leaving. The pension will be calculated as described in Rule 4.1 but will then be reduced for early payment on a basis agreed between HBOS and the Trustees after considering advice from the Actuary.

The Trustees must be reasonably satisfied that the benefits for a Member who retires early under this Rule are at least equal in value to the benefits to which the Member would otherwise have become entitled on leaving.

4.4 Incapacity retirement

HBOS may allow a Member who leaves Service before Normal Retirement Date because of Total or Partial Incapacity to choose an immediate pension on leaving. However, this will not normally be allowed by HBOS if:

4.4.1 the Member has not accepted an offer of alternative employment from an Employer which HBOS considers reasonable; or

4.4.2 the Total or Partial Incapacity is due to causes within the Member's own control.

If the Member is leaving because of Total Incapacity the pension will be calculated as described in Rule 4.1 but as if Pensionable Service included the period between the Member's leaving and Normal Retirement Date.

If the Member is leaving because of Partial Incapacity the pension will be calculated as described in Rule 4.1 but as if Pensionable Service included one-half of the period between the Member's leaving and Normal Retirement Date.

"Partial Incapacity" means physical or mental impairment which, in the opinion of HBOS, appears to be of a permanent nature such that it is unlikely that a Member can follow his or her normal occupation with the Employer and his or her future earnings capacity is seriously impaired. Before HBOS decides whether a Member is suffering from Partial Incapacity, the Trustees must obtain evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on his or her occupation.

HBOS' decision as to whether a Member is suffering from Partial Incapacity will then be final.

"Total Incapacity" means physical or mental impairment which, in the opinion of HBOS, permanently prevents a Member from following any gainful employment with the Employer or any other Employer. Before HBOS decides whether a Member is suffering from Total Incapacity, the Trustees must obtain evidence from a registered medical practitioner that the Member is (and will continue to be) incapable of carrying on his or her occupation. HBOS' decision as to whether a Member is suffering from Total Incapacity will then be final.

9 Choices for early leavers

9.2 Early pension

If the Trustees agree, a Member entitled to a preserved pension may choose to start receiving it before Normal Retirement Date (but not before reaching age 50 (age 55, if the pension starts on or after 6 April 2010), unless the Member is suffering from Total or Partial Incapacity). If the pension starts before Normal Retirement Date, however, it will be reduced on a basis agreed between HBOS and the Trustees after considering advice from the Actuary.

The Trustees must be reasonably satisfied that the benefits for a Member who retires early are at least equal in value to the benefits that would otherwise have been provided for the Member under the Scheme.

Note: The ill-health benefits which can be awarded include Partial Incapacity from active status and Total Incapacity from active status and deferred status. From active status there will be no actuarial reduction to take account of the time before NRD. From deferred status, there will be actuarial reduction.

13 Special provisions for certain Members

13.1 Members who transferred from a Former Scheme

… Former Scheme Benefits will be the same (in amount, terms and options) as would otherwise have been provided for and in respect of the person under the Former Scheme in respect of service up to and including the relevant merger date …

13.1.3 If a Member had a right to take (or request) any benefits at a date earlier than his or her Normal Retirement Date under the Scheme, the Member will have a right to take (or request) his or her Former Scheme Benefits at that earlier date, subject to the same conditions (and so long as payment of the benefits at the earlier date is "authorised" for a registered pension scheme by Part 4 of the Finance Act 2004). However, the Member must choose to take any other benefits under the Scheme at the same time, and these other benefits under the Scheme will be adjusted for early payment as described in these Rules.

Paragraph 1 of schedule 28 to the Finance Act 2004,

The Trustees must receive evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on the member's occupation because of physical or mental impairment, and (b) the member has in fact ceased to carry on the member's occupation.

Note: The Finance Act 2004 requirements are part of the Scheme's Rules as set out above and must be met as a minimum for an IHRP to be an authorised payment.

Appendix 3

Extracts from the Rules of The Bank of Scotland 1976 Pension Scheme.

Part I – Common rules

1 Definitions

"Principal Company" means HBOS plc, incorporated under the Companies Acts and having the company number SC218814;

Part II – BOS section specific rules

1 Definitions

"Ill-health" means in relation to a Member physical or mental deterioration of health to a degree which in the sole opinion of the Principal Company prevents the Member from following his normal employment or severely impairs his earning capacity;

5 Ill-health Retirement

(A) An Active Member who is permitted by the Principal Company to retire from Service before Normal Retirement Age on the grounds of Ill-health and who has completed five years' Pensionable Service shall be entitled to an immediate pension …

Appendix 4

Ill Health Early Retirement Guidance on Reapplication Applicable to the HBOS Final Salary Pension Scheme.

When an application is made for an ill-health early retirement pension (**IHRP**), the initial decision is made jointly by appointed individuals acting on behalf of HBOS and the Trustee, respectively. In doing so, they will consider medical reports from your GP, any specialist medical reports and specific reports from a specialist Occupational Health Practitioner, acting on behalf of HBOS and the Trustee.

The decision to grant an IHRP will only be made if the criteria set out in the rules of the Scheme and the applicable tax laws are satisfied.

It is important to note that the criteria for granting an IHRP may be different from the criteria on which you may leave HBOS on health grounds. Exiting HBOS, for this reason, does not automatically mean that you will be eligible for an IHRP. If your case has been referred by Occupational Health ("HML") for consideration for an IHRP, this is a referral for a decision only. HML will not assess whether you will, or will not be, be eligible for IHER, they will simply refer you for a decision.

Any reapplication against the initial decision should be addressed to your line manager. A reapplication will be acknowledged on receipt, will be considered by Senior Managers not involved in the original decision on behalf of HBOS and Trustee, and the outcome will usually be communicated within one month. If it is not possible to make the decision within this timescale, you will be informed and of the reason for the delay. For example, it may take longer to consider a reapplication if further medical or legal advice is required.

Grounds for Reapplication

The initial decision to grant an IHRP is based on all the medical evidence provided along with an assessment by a specialist Occupational Health Practitioner.

When making a reapplication, it is not sufficient that you simply state you are unhappy with the decision or that you disagree with the decision. You should explain, as fully as you can, the grounds for a re-application and why you consider the original decision was not correct.

For example: You believe some of the relevant evidence provided as part of the application was not considered. Irrelevant information was taken into account in the decision. The process or criteria used in the initial decision were incorrect, for example, because you believe you are subject to different Scheme rules.

If your reapplication is successful, an IHRP may be backdated to the date your employment with HBOS terminated.

If you wish, you can provide additional medical evidence or other new information that relates to your health and your eligibility for an IHRP. However, if the managers considering your reapplication believe that the new evidence does not relate to your state

of health as at the date your employment ended they may determine not to consider that evidence.