

Ombudsman's Determination

Applicant	Mrs L
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Norfolk County Council (the Council)

Outcome

1. Mrs L's complaint is upheld and to put matters right the Council shall consider whether Mrs L satisfied the criteria for Tier 2 benefits as at June 2014 and that this whole matter has caused Mrs L significant distress and inconvenience, which warrants a payment to Mrs L by the Council of £800.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs L's complaint is that she was not awarded Tier 1 or Tier 2 ill health retirement benefits from the date her employment with the Council ended.

Background information, including submissions from the parties

4. Mrs L was an Occupational Therapist for the Council and is a member of the Norfolk Pension Fund (**the Fund**), which is part of the Scheme. The Council is the administering authority for the Fund.
5. Mrs L commenced sickness absence in July 2011 attributed to a musculoskeletal condition.
6. An MRI scan in September 2012 showed an abnormality of the left shoulder. Mrs L also developed symptoms in her left wrist. Earlier, in November 2011, she had surgery for cancer of the womb.
7. The Council asked their medical adviser, at that time Atos Healthcare (**Atos**), to assess Mrs L's fitness to return to work. After seeing Mrs L, Dr Stipp, an Atos occupational physician, gave his opinion that the Council should consider arranging a private orthopaedic consultation in view of possible consideration for ill health retirement, as there was no foreseeable date when Mrs L would be able to return to a physical role. Dr Stipp did not recommend considering Mrs L for alternative work.

8. On 29 October 2012 the Council decided to dismiss Mrs L on grounds of capability due to ill health. The next day the decision was confirmed in a letter to Mrs L. The letter notified Mrs L that her employment would end on 21 January 2013 and that ill health retirement would be explored during the interim period.
9. Mrs L appealed against her dismissal but consented to be considered for ill health retirement. The Council failed to acknowledge Mrs L's appeal, but asked Atos for their opinion as to whether Mrs L satisfied the criteria for ill health retirement.
10. The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 applied. As relevant extracts from regulation 20 and 31 are provided in Appendix 1.
11. Whilst awaiting Atos' opinion a misunderstanding occurred between the Council's HR administration and payroll team and the Fund which resulted in the Fund writing to Mrs L on 24 December 2012 informing her that retirement benefits would be paid from 22 January 2013.
12. Mrs L duly requested an estimate of her benefits if she retired on grounds of ill health. The Fund sent the quotation to Mrs L on 2 January 2013 and Mrs L returned completed retirement forms.
13. On 8 January 2013 Dr Simpson, an Atos occupational physician, certified that Mrs L was not permanently incapable of efficiently discharging the duties of her employment with the Council. A copy of the report was sent to Mrs L.
14. Before Dr Simpson's report was released to the Council, the Fund wrote to Mrs L on 18 January 2013 to confirm the options that she had chosen and explain what would next happen.
15. Subsequently Mrs L notified the Fund of Dr Simpson's opinion. The Fund contacted the Council's HR department and were informed that Mrs L was not being ill health retired but dismissed on grounds of capability due to ill health. The Fund informed Mrs L by phone. Mrs L says she did not receive a decision letter from the Council refusing her ill health retirement.
16. Mrs L's employment ended on 21 January 2013. She was then age 59.
17. Mrs L sought to appeal the ill health decision and in July 2013 Mrs L's Solicitors wrote to the Council that at the very least their client should have been awarded Tier 3 benefits from the date her employment ended.
18. The Council contacted Mrs L and advised her that it would be best if she applied for the early release of her deferred pension, rather than pursue her appeal. Mrs L duly applied.
19. The Council referred the application to Atos. On 26 September 2013, Dr McLaren, an Atos occupational physician, certified that while Mrs L was permanently incapable of discharging efficiently her former duties with the Council her ill health was not likely to

prevent her from undertaking gainful employment within three years of the date of the application. Atos sent a copy of Dr McLaren's report to Mrs L.

20. Mrs L replied to Atos on 24 October 2013. Amongst other things Mrs L said:

- She was unsure how Dr McLaren had arrived at his decision as he had not met or examined her.
- She disputed his findings. The Council had dismissed her on grounds of capability due to ill health as they were concerned there was no foreseeable date for her return to work. This was based on Dr Stipp's September 2012 report. Additionally, at no time did the Council offer any adjustments / adaptations to her workplace to enable her to return to work and she was not considered for alternative employment.
- Her Orthopaedic Consultant was of the opinion that it could take 2-3 years for her shoulder to settle and that she would have difficulty in any jobs that required moving her arm above shoulder level and external rotation.
- Similarly, her GP was of the opinion that her injury could take 2-3 years to resolve and that there was the possibility that it may not achieve full resolution.
- On 24 September 2013 she had been assessed by Atos for an industrial injuries disablement benefit and been deemed 17 per cent disabled for life.
- Her GP was still signing her off work for the foreseeable future.
- Her state pension was due to commence in November 2015. It was unlikely that she would be able to return to gainful employment before then.
- At the least she satisfied the Tier 3, if not the Tier 2 criteria, for ill health retirement.

21. Among other things Atos advised Mrs L that it was for the Council to consider Dr McLaren's recommendation and that the concerns she had raised should be addressed to the Council.

22. In early December 2013 the Council wrote to Mrs L informing her that they were unable to agree to the early release of her pension. The letter erroneously said that Dr McLaren was of the opinion that she currently did not meet the criteria for permanent incapacity. With the letter was enclosed a copy of the Scheme's IDR procedure.

23. On 23 January 2014 Mrs L wrote to the Specified Person to invoke IDR stage 1. Among other things she said:

- The Council had failed to properly consider her request for ill health retirement and take into account all of the relevant facts.

- It was apparent from the Council's decision letter of 2 December 2013 that they had only considered Atos' letter. In fact the Council had referred to Atos' letter as the decision. The Council had failed to recognise that they were the decision maker (not Atos) and that they were not bound by Atos' opinion.
- Dr McLaren's opinion appeared contradictory to the advice she had received from the orthopaedic consultant and her GP.
- Dr McLaren had referred to the use of adaptations, including voice activated software, to help her return to work. But the Council had considered this and her manager had emphasised the limitations of such software. As the Council were unable to offer her alternative employment with suitable adaptations, there was no reasonable prospect of her being able to undertake a job within three years.
- She had been disadvantaged by the Council twice confirming her entitlement to the early release of her pension and then withdrawing it. She would have more energetically challenged her dismissal and the Council's failure to offer her alternative employment.
- The Council had given no consideration to the decision. The Council had treated the matter as an administrative task after obtaining Atos' opinion.
- While she considered that she was entitled to Tier 1 benefits, no consideration appeared to have been given to at least a Tier 3 award.

24. In February 2014 the Council turned down Mrs L's appeal in advance of the Scheme's IDR procedure. Amongst other things the Council said:

- Tier awards were not relevant in deferred benefits cases.
- They agreed that it was for the Council to decide the benefits award, not the IRMP, and that whilst they must consider the recommendation of the IRMP they were able to make an award contrary to the IRMP's recommendation if considered appropriate.
- They were satisfied that Dr McLaren had available to him, and gave due regard to, the relevant and recent medical information before making his recommendation.
- The likelihood of Mrs L finding work was not a relevant factor. The decision had to be made on whether it was likely that she would be able to work 30 hours per week, for 12 months or more if work was available. This could, essentially, be any role.
- With this in mind Dr McLaren had considered the reports from Mrs L's GP and Consultant.
- Mr Al-Wattar's letter was not available to Dr McLaren as it was dated the same as the IRMP's certification. While he had said that Mrs L would have difficulty doing certain jobs he had not made a clear statement that she was unfit for all work.

Similarly Dr Bennett had said certain tasks should be avoided but she had not said that Mrs L was unfit for work.

- Dr McLaren was of a similar opinion. While he considered that Mrs L was permanently unfit for her previous role, there were tasks and duties she could perform particularly with support and adaptations.
- While the Council may not have been in a position back in late 2012 to offer such a post to Mrs L that did not mean that her health prevented her from undertaking gainful work.
- Mrs L's reference to maladministration dating back to January 2013 did not impact directly on the issue being considered, which was essentially her ability or otherwise to undertake gainful employment.

25. On 17 May 2014 Mrs L again appealed to the Specified Person. Mrs L enclosed a copy of her 23 January 2014 letter saying it remained the principal grounds for her appeal. Commenting on the Council's informal appeal decision Mrs L said:

- There had been no recognition of the appeal registered by her Solicitors in July 2013 for ill health retirement from active status. The Council had advised her that it would be better for the appeal to be considered from "deferred benefits", but this advice appeared to be against her best interests.
- The restrictions on her physical abilities meant that there was no reasonable prospect of her gaining employment because jobs which could accommodate her limitations did not exist.
- Whilst not available when the Council made their latest decision, the latest letter from her doctor made it clear that she was unable to work in any capacity.
- The maladministration in her dismissal was not irrelevant.
- The Council appeared to be hiding behind the process and not taking a holistic view as any good employer would do.

26. The Specified Person wrote to Mrs L on 31 July 2014. She said the Council's advice to Mrs L to pursue a deferred benefits application, rather than an ill health retirement appeal, had failed to make clear to Mrs L how this changed the assessment eligibility or the potential benefits she might receive. The Specified Person said it would have been appropriate if Mrs L had been advised firstly to appeal against the January 2013 ill health retirement decision and only to pursue a deferred benefits application if that proved unsuccessful.

27. In light of that finding the Specified Person reviewed the situation in early 2013 to reach a judgement on whether it was likely that an ill health retirement appeal would have been successful at that time. The Specified Person said:

“In reviewing the January 2013 ill-health retirement application and outcome, I have had to make a number of assumptions because of the passing of time. The occupational health report (on entitlement to deferred benefits) from September 2013 contained more detail on your medical position than the January 2013 report. This may have been the result of the second report looking more carefully at your health situation and fitness for work or it may have been that more medical information was available in September 2013. What I am not able to say is whether an occupational health review (as part of an appeal) in January 2013 would have changed the recommendation made in the January 2013 report. What I do know is that by September 2013, permanent incapacity for your former role had been established and the predicated timescale for recovery such that gainful employment could potentially be undertaken was lengthy. If the recommendation in the September 2013 report (i.e. permanent incapacity for the former role but not permanent incapacity for other gainful employment) had been applied to the ill-health retirement (rather than the deferred benefits) application you would have been granted Tier 3 ill-health retirement benefits.”

28. The Specified Person awarded Mrs L Tier 3 benefits backdated to 22 January 2013, which the Council duly put into payment.
29. In October 2014 Mrs L invoked IDR stage 2. Mrs L said while she accepted the Tier 3 award the grounds for her appeal related to the unfairness she had suffered arising from the Council’s handling of her dismissal.
30. The stage 2 decision maker notified Mrs L that as she appeared to have accepted the Tier 3 award there was no decision for him to make. He said the issue of her dismissal was a separate matter which she might want to take up further with the Council’s relevant HR officers and offered to instigate this for her.
31. In February 2015 Mrs L resubmitted her stage 2 appeal following consultation with this office. She said her appeal was twofold. Firstly, she was of the opinion that she should be awarded Tier 1 benefits from the date her employment ended “recognising the misinformation and mishandling of my case to both compensate for the maladministration and to put me in the position I believed that I would be at the time of my dismissal”. Secondly, Tier 3 was not appropriate given her age and current state of health. If Tier 3 had been awarded in January 2013 it would have been reviewed just before it was actually released (July 2014) and uplifted to Tier 2 as it was clear that she would not be able to return to gainful employment before state pension age (6 March 2016).
32. In March 2015 the stage 2 decision maker recommended that the Council review Mrs L’s case to consider whether her pension should be uplifted to Tier 2.
33. On 21 May 2015 the Council asked Mrs L to complete a ‘Consent for referral to Occupational Health Ill Health Retirement’ form. Mrs L initially refused on the grounds that the 18 months review should have occurred 14 months previously, but subsequently returned the completed form on 24 August 2015.

34. The Council referred the review to Dr Krishnan who on 2 November 2015 certified that it was unlikely that Mrs L would be capable of undertaking gainful employment by age 65.
35. Later that month the Council notified Mrs L that they had decided to change the tier of her ill health retirement award from Tier 3 to Tier 2.
36. The Council said the change merited no uplift in Mrs L's pension. Mrs L complained that this was not in accordance with LGPS guidance.
37. Subsequently, the Fund wrote to Mrs L informing her that her Tier 3 pension had been uplifted to a Tier 2 pension from 2 November 2015.
38. Mrs L was in receipt of state Disability Living Allowance until 24 February 2015. The award was replaced by a Personal Independence Payment from 25 February 2015 to 7 January 2018.
39. Dr Stipp's, Dr Simpson's, Dr McLaren's and Dr Krishnan's reports are summarised in Appendix 2

Adjudicator's Opinion

40. Mrs L's complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised briefly below:
 - In his report Dr Simpson noted the role of the IRMP and listed questions to be considered. The first two questions and the difference between the Tiers was relevant. However, Dr Simpson then referred to regulation 20 (12)(b) and the HMRC severe ill health condition, which were not. The former concerns the period to be added to a part-time members service for the calculation of Tier 1 or Tier 2 benefits and the latter is a more stringent test to state pension age than required under regulation 20(1)(b) which is to normal retirement age.
 - Dr Simpson noted that Mrs L's left shoulder injury had begun to settle and that further treatment options had been suggested by the treating Physiotherapist to the GP. Dr Simpson concluded that there was evidence of slow progress with Mrs L's upper limb condition and that there remained therapeutic options to be explored. But he did not name these or comment on whether they were likely to improve Mrs L's condition to a sufficient extent to mean that she was not permanently incapable of her former duties and or had a reduced likelihood of undertaking gainful employment before NRA. That may have been implied by Dr Simpson's certification but it was not clear from his report.
 - Dr Simpson said there had been effective cancer treatment though some sequelae remained troublesome and further specialist assessment was planned. He concluded that it was premature to accept permanent incapacity

and certified that Mrs L was not permanently incapable. Dr Simpson said Mrs L did not satisfy the criteria for HMRC severe ill health. But that test was not relevant and is more stringent.

- Dr Simpson did not mention Mrs L's problem left wrist. Dr Stipp said in his 28 September 2012 report that Mrs L's grip was weak in this hand and she would not be able to sustain an administrative role due to the symptoms experienced. Mrs L said this was the biggest deterrent to her returning to work in January 2013.
- The Council failed to make a proper decision after obtaining Dr Simpson's opinion. The Council appeared to have blindly accepted Dr Simpson's report and not issued a decision letter to Mrs L.
- The Specified Person at IDR stage 1 concluded that the Council had erroneously persuaded Mrs L to apply for the early release of her deferred pension, rather than pursue her appeal for ill health retirement from the date her employment ended. The Specified Person decided on balance after reviewing the medical evidence that Mrs L was entitled to Tier 3 benefits from January 2013.
- Erroneously the Specified Person said Dr McLaren's recommendation was "permanent incapacity for the former role but not permanent incapacity for other gainful employment". In fact Dr McLaren's opinion was that with ongoing treatment and workplace adaptations it was likely that Mrs L would be capable of undertaking gainful employment within three years of her application for the early release of her deferred pension on grounds of ill health. Nevertheless Mrs L was awarded Tier 3 benefits from the date her employment was terminated. The Specified Person's decision corrected the Council's failure to properly consider Mrs L for ill health retirement at the date her employment ended.
- An 18 months review of the Tier 3 award resulted in the uplift of Mrs L's pension to Tier 2 from 2 November 2015. This did not invalidate the Specified Person's decision which had been based on the medical evidence available at that time. But under the Scheme's regulations the Council were required to commence a review of the award after it had been in payment for 18 months, by June 2014. Clearly that was not possible as the retrospective award was made on 31 July 2014.
- The actual review took approximately 10 weeks to complete, that is from the date Mrs L returned the Consent form to the Council to the date her pension was uplifted to Tier 2 – this excluded the period from 21 May 2015, when the Council wrote to Mrs L requesting that she complete the form, to 24 August 2015 when Mrs L signed the form, as a) it is not clear why the Council required Mrs L to complete it and b) on balance it is likely that Mrs L would not have delayed its return if the review had commenced in June 2014.

- On that basis the Council should consider whether Mrs L's Tier 2 award should be backdated to 1 September 2014. That is 10 weeks from 21 June 2014.
- Inevitably this whole matter has caused Mrs L significant distress and inconvenience. In addition to the aforementioned events the Council:
 - Misinformed Mrs L that her retirement benefits would be put into payment from 22 January 2013.
 - Delayed the consideration of Mrs L's ill health appeal.
 - Incorrectly advised Mrs L to submit a claim for the early release of her deferred benefits.
 - Incorrectly notified Mrs L that the Tier 2 award did not entitle her to an uplift in her pension.

In the circumstances a payment by the Council to Mrs L of £800 was merited.

41. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs L provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs L for completeness.

Ombudsman's decision

42. Mrs L says the Specified Person failed to request further medical evidence and only considered awarding her Tier 3 benefits. I do not think that is right. The Specified Person reviewed the medical evidence and decided that it was sufficient to decide whether Mrs L was entitled to ill health retirement from the date her employment ended. His decision was that Tier 3 benefits were merited.
43. Mrs L points out that Dr McLaren was only asked for his opinion on whether she met the criteria for deferred benefits. In my view however, this does not mean that his evidence was not a suitable basis to make the decision whether she met the test for tiers 1 or 2 of under Regulation 20.
44. Dr McLaren's opinion was that Mrs L was permanently incapable of discharging efficiently the duties of her employment with the Council, but capable of gainful employment within the next three years. Dr McLaren gave his opinion on 26 September 2013, eight months after Mrs L's employment with the Council ended. It is therefore unlikely that if Dr McLaren had been asked to consider whether Mrs L satisfied the criteria for ill health retirement at the date her employment ended he would have recommended more than a Tier 3 benefits award.
45. I am therefore satisfied that the Specified Person made a properly informed decision to award Mrs L Tier 3 benefits from 22 January 2013.

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46. Mrs L says the Adjudicator's suggested resolution leaves her vulnerable and at the mercies of the Council. She says she does not trust the Council to approach a reconsideration of the 18 months review fairly.
47. I consider the questions the Council asked Dr Krishnan at the 18 months review were pertinent. The error was limited to not requiring a retrospective assessment. I have no reason to suppose that the Council will not now give proper consideration to whether Mrs L's Tier 2 benefits award should be further backdated to June 2014 which is the date at which, had the original errors not occurred, the review should have taken place.
48. Clearly, this whole matter has caused Mrs L significant distress and inconvenience. I agree with the Adjudicator's Opinion that £800 is sufficient for that.
49. Therefore, I uphold Mrs L's complaint.

Directions

50. To put matters right the Council shall:

- Within 14 days of the finalised Opinion pay Mrs L £800 and request a medical report and certification from another IRMP (not previously involved) as to whether Mrs L satisfied the criteria for Tier 2 pension benefits as at 1 June 2014.
- Within 21 days of receiving the IRMP's opinion the Council should decide and inform Mrs L of their decision, together with their reasons.
- If the Council decide to award Tier 2 benefits from 1 June 2014 and it transpires that Mrs L is unable to reclaim all or some of the tax paid on the payment of the arrears then the Council should pay Mrs L an equivalent amount as compensation if the amount of tax paid would have been less or not payable if the Tier 2 award had originally been paid from 1 June 2014.

Karen Johnston

Deputy Pensions Ombudsman
31 January 2017

Appendix 1

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

51. As relevant regulation 20 says:

“(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) [Tier 1], (3) [Tier 2] or (4)[Tier 3], as the case may be.

(2) If the authority determine that there is no reasonable prospect of his being capable of undertaking 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 ; 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 is not capable of undertaking gainful employment within three years of leaving his employment, it is likely that he will be capable of undertaking 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 capable of undertaking gainful employment within three years of leaving his employment, or before reaching normal retirement age if earlier, 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.

(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 ("IRMP") 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 being capable of undertaking any gainful employment before reaching his normal retirement age.

...

(7)

(a) ..., once [Tier 3] 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).

...

(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) [Tier 2] in respect of him.

...

(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

"qualified in occupational health medicine" means-

(a) holding a diploma in occupational medicine (D Occ Med) or an equivalent qualification issued by a competent authority in an EEA State; and for the purposes of this definition, "competent authority" has the meaning given by section 55(1) of the Medical Act 1983; or

(b) being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State."

52. As relevant regulation 31 says:

"(1)This regulation applies to-

(a)a member who has left his or her employment before he or she is entitled to the immediate payment of retirement benefits...

(2)Subject to paragraphs (3) and (4), if a member to whom paragraph (1)(a) applies becomes permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body, the member may ask to receive payment of their retirement benefits whatever the member's age.

...

(4) Before determining whether to agree to a request under paragraph (2), the member's former employing authority or appropriate administering authority as the case may be, must obtain a certificate from an IRMP as to whether in the IRMP's opinion the member is suffering from a condition that renders the member permanently incapable of discharging efficiently the duties of that employment because of ill-health or infirmity of mind or body and, if so, whether as a result of that condition the member has a reduced likelihood of being capable of undertaking any gainful employment before reaching normal retirement age, or for at least three years, whichever is the sooner.

(8)In this regulation, "gainful employment", "IRMP" and "permanently incapable" have the same meaning as given to those expressions by regulation 20(14)."

Appendix 2

Medical Reports

Dr Stipp (Atos – Consultant Occupational Physician), 28 September 2012

53. Among other things Dr Stipp said:

“The long-term prognosis of the musculoskeletal problems will depend on the precise diagnosis and response to specialist management. This is uncertain at the present time. I advise management to consider arranging a private orthopaedic consultation via the bespoke route to bridge the NHS waiting time in view of possible consideration for ill health retirement as there is no foreseeable date that she will be able to return to a physical role. I do not recommend consideration for alternative work due to active inflammation she has in the left wrist.”

Dr Simpson, 8 January 2013

54. In his report Dr Simpson noted Mrs L’s age (59) and occupation with the Council and the medical evidence he had considered – Occupational Health records / reports, 4 January 2013 report from Dr Bennett (Mrs L’s GP), 2 November 2012 report from Ms Smith (the Musculoskeletal Specialist) and January-July 2012 correspondence from Dr Nieto (Consultant Gynaecologist).

55. Dr Simpson said the questions to be asked were:

- a) Is the member permanently incapable of discharging efficiently the duties of the relevant local government because of ill health or infirmity of mind or body, and if so:-
- b) Whether this had resulted in a reduced likelihood of the member being capable of undertaking any gainful employment and if so:-

Dr Simpson then noted the difference between Tiers 1, 2 and 3.

- c) In the case of a member who satisfies any of the Tiers, and who is wholly or partly in part-time service, was this as a result of the condition that had caused him to be prematurely incapable of discharging efficiently his current employment?
 - d) In the case of a member who satisfies any of the Tiers, whether the member is unlikely to be capable if undertaking any other paid work in any capacity, other than to an insignificant extent before State pension age (HMRC severe ill health condition)?
56. Among other things Dr Simpson said Mrs L’s absence from work was due to a number of conditions. A persistent shoulder condition which had developed into a frozen shoulder and surgery for cancer of the womb (a hysterectomy and bilateral salpingo-oophorectomy).

57. Referring to Dr Bennett's report Dr Simpson noted that Mrs L had continuing functional impairment affecting her left upper limb and remained under the care of the Orthopaedic Triage Service and the Physiotherapist; and had been experiencing some sequelae following the major gynaecological surgery and may undergo surgical investigation. Dr Simpson noted that Dr Bennett felt unable to give a prognosis on Mrs L's shoulder condition. Dr Simpson said:

"MRI scan of the left shoulder has shown signs of impingement. The Physiotherapist expresses the view that there is an adhesive capsulitis, bursitis, and impingement and has noted that symptoms have begun to settle. Further treatment options have been suggested in the report to the GP.

The evidence therefore is that there is some slow progress with the upper limb condition and that there remain therapeutic options to be explored. There has been effective cancer treatment though some sequelae of this remain troublesome and further specialist assessment is planned. At this stage therefore, it is advised as premature to accept permanent incapacity over the period under consideration the next five years."

58. Dr Simpson said Mrs L did not satisfy the criteria for the HMRC severe ill health condition as it was likely that she would be capable of undertaking any other paid work in any capacity, more than to an insignificant extent, before State pension age.

Dr McLaren, 26 September 2013

59. In his report Dr McLaren noted the medical evidence: Occupational Health records, all of the information gathered in relation to the application for ill health retirement, Dr Bennett's report of 11 September 2013 and copies of hospital / specialist correspondence, the most recent dated 9 July 2013.
60. Dr McLaren gave his opinion that Mrs L was permanently incapable of discharging efficiently the duties of her former employment with the Council, but her ill health was not likely to prevent her from undertaking gainful employment within three years of the date the application. Dr McLaren said:

"Dr Bennett states that she has ongoing symptoms from the left shoulder and the de Quervain's tenosynovitis. She remains under hospital follow up the endometrial carcinoma her diabetes is managed by the Diabetes Nurse at the GP surgery.

She has continuing pain and reduced movement in her left shoulder. She is unable to elevate her left arm above the horizontal plane and is restricted in her ability to reach behind her back with her left arm. Strenuous activities (such as lifting, pushing and pulling) are also painful and limited.

She remains under Orthopaedic & Physiotherapy review. There is felt to be no value in injection or surgery to the shoulder and instead of physiotherapy is aiming to gradually 'defrost' her shoulder by means of a graduated exercise programme.

Dr Bennett indicates that her shoulder condition is likely to resolve slowly over the next 2-3 years. She may be left with some residual functional impairment. Furthermore, she is likely to remain at risk of further episodes of shoulder pain, particularly in relation to heavier lifting tasks. It is noted that the former local government employment has a requirement to complete / demonstrate moving and handling techniques in home environments where there may be limits on how far risk can be minimized.

The applicant has continuing pain in her left wrist. She has previously received physiotherapy for this. She has now been referred to the Head Therapists to review her management, including the provision of splints as appropriate.

Dr Bennett indicates that once her wrist symptoms have resolved, there will be risk of further symptoms if there is over use, and repetitive or prolonged actions, such as typing or using a computer mouse, would be likely to contribute,

Ergonomic adjustments / adaptations (including the provision of voice activated software to minimise the need for typing) are likely to enable her to undertake office-based gainful employment, with a suitable mix of administrative / clerical duties, while the same time enabling her to avoid physically strenuous work tasks.”

61. In conclusion Dr McLaren gave his opinion that the criteria for ill health retirement from deferred status had not been met.

Dr Krishnan, 2 November 2015

62. Dr Krishnan noted Mrs L's current health issues as a frozen left shoulder and tendonitis of both hands and wrists. He noted that Mrs L's right hand had been injected in June 2015 and that she was under the care of a shoulder and hand specialist as well as a Rheumatologist. He said that Mrs L had confirmed difficulties with day to day activities and noted that she was receiving a Personal Independence Payment.
63. Commenting on Mrs L fitness for work Dr Krishnan said Mrs L was unfit to return to work for the foreseeable future (before her retirement age).
64. Dr Krishnan certified that Mrs L was not likely to be capable of undertaking other gainful