PO-11695

Ombudsman's Determination

Applicant	Mr N
Scheme	John Lewis Partnership Pension Scheme (the **Scheme**)
Respondents	John Lewis Partnership Trust for Pensions (the **Trustee**)

Outcome

1. Mr N's complaint is upheld and to put matters right the Trustee should reconsider its decision to cease Mr N's pension. It should also pay Mr N £500 for non-financial injustice.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained that the Trustee did not take the decision to cease his ill health retirement pension in a proper manner. In particular, he considers it placed too great a reliance on the advice from its own occupational health physician and did not give reasons for preferring her advice.

Background information, including submissions from the parties

4. Mr N was awarded an incapacity pension in 2009. In the letter notifying Mr N about his pension, the Trustee said the pension might be varied or stopped altogether if there was any change in his health or employment prospects. Mr N was asked to notify the Trustee of any changes in his circumstances. He was also told that his pension would be reviewed by the Trustee's Pension Management Committee (the **Committee**) in two years' time; when it would arrange for an up-to-date medical report.

5. Mr N's pension was reviewed in 2012. The Trustee obtained a report from Mr N's GP. He was asked, amongst other things, what medical conditions Mr N was suffering from, what effect they had on his ability to work, whether further treatment was planned and whether there had been any changes in Mr N's health in the past year. The GP was also asked if Mr N had undertaken any work and what he thought the likelihood was of there being a change in Mr N's condition in the future. In August 2012, the Trustee informed Mr N that the Committee had agreed that he should

continue to receive his pension for a further three years. Mr N was told that a medical assessment would be arranged in three years' time and he was asked to inform the Trustee if there was a significant change in his health or he was able to return to work in the meantime.

6. The Trustee wrote to Mr N, on 1 June 2015, asking him to complete a consent form for the Committee to obtain a report from his GP. He was also asked to see his GP for a medical assessment because the Committee required an up-to-date report. The Trustee said it would assess whether the report from Mr N's GP was sufficient or whether it needed to arrange a full medical assessment. Following receipt of information from Mr N's GP, the Trustee decided Mr N should undergo a functional capacity assessment. The assessment was carried out by Dr Challen, Medical Director at AC Occupational Health (Cambridge) Ltd. He provided a report for the Trustee's occupational health physician, Dr Eraneva. Summaries of the medical reports obtained in connection with Mr N's case are provided in an appendix to this document.

7. Mr N's case was reviewed by Dr Eraneva. She provided a report on 27 November 2015.

8. The Trustee wrote to Mr N, on 24 December 2015, informing him that the Committee had determined that the definition of incapacity set out in the Scheme rules was no longer met and his pension should cease. It said Mr N's pension would cease from 31 March 2016. In its letter, the Trustee quoted the definition of incapacity (see appendix) and also referred to the requirements of the Finance Act 2004. It said the medical evidence confirmed that Mr N was unable to follow his normal employment and that his medical condition seriously impaired his earning capacity. The Trustee said the evidence did not indicate that Mr N's incapacity was likely, on the balance of probabilities, to be permanent; that is lasting until his normal pension age. It said this was because there were intervention options available on the NHS which remained to be considered. The Trustee said these were non-invasive, low risk and had a good prognosis. It referred to tailored medication and talking treatments under specialist oversight.

9. Mr N appealed the decision to cease his pension under the Scheme's internal dispute resolution (**IDR**) procedure. The Trustee issued a decision on 11 February 2016. In addition to references to the Scheme rules and the Finance Act 2004, the Trustee said the decision to pay an incapacity pension was discretionary. It said there were certain requirements it should comply with when exercising the discretion. It went on to list these: all relevant information must be taken into account; the Committee must not take any irrelevant information into account; and it should not reach a perverse decision, one which it would be unreasonable for it to reach on the basis of the information provided.

10. The Trustee acknowledged that the information provided for Mr N in 2009 may not have accurately explained the review process; in particular, the reference to his pension being varied or stopped if there was a change in his condition or employment

prospects. It said the review had to be carried out in accordance with the Scheme rules. The Trustee noted Mr N's reference to Dr Challen's comment that he was unlikely to resume paid employment. It said,

> "The Scheme's medical adviser agrees with this statement in so far that it is based on statistical likelihood. It is recognised that after a year of absence from work the likelihood of an individual resuming gainful employment becomes low. However, this poor outlook is usually associated with non-medical factors and does not of itself represent incapacity to work."

11. The Trustee went on to say that the Committee accepted that it was difficult to be certain how Mr N's condition might change in the future. It said the Committee had noted there was uncertainty about Mr N's diagnosis and that there were intervention options remaining to be considered which offered a realistic prospect of a return to employment.

12. Mr N submitted a further appeal. In support of his appeal, he submitted a further letter from his GP and a report from a consultant psychiatrist, Dr Beary (see appendix). The Trustee asked Dr Eraneva to comment on this report. The Trustee issued a stage two IDR decision on 25 April 2016. It upheld the decision to cease Mr N's pension. With regard to the additional evidence provided by Mr N, the Trustee said Dr Eraneva disagreed with the view that Mr N would not be able to return to work before age 65. In particular, it noted her comments that,

> "It is my opinion that, on the balance of probabilities, recovery that is sufficient to allow [Mr N] to resume gainful employment with another employer is possible with his active engagement in these additional interventions.
>
> In view of this, I believe that the available medical evidence taken in its entirety does not suggest permanent incapacity to engage in gainful employment for the next 17 years until [Mr N] is aged 65."

The Trustee's position

13. The Trustee's position is summarised below:-

- Rule D3(b) governs the payment of an incapacity pension. It states the Trustee may decide to pay an incapacity pension to a member who is leaving service before age 65 and who is incapacitated. It also contains the discretionary power for the Trustee to vary, suspend or re-instate an incapacity pension as it considers appropriate at any time before the member reaches normal pension age.

- Rule D3(b) does not set out any particular test which the Trustee must apply when reviewing an incapacity pension. The Trustee must, therefore, look back to the same test it applied at the time the initial application was made. This is an appropriate and reasonable approach.

- The fact that the power to vary, suspend or reinstate the pension is contained within the same rule as the power to award the pension reinforces the view that the test to be applied on review is the same as that which is applied when the pension comes into payment.

- In order to construe rule D3(b) as providing an opportunity to consider whether payment of Mr N's pension was no longer justified by reason of some improvement in his condition necessitates implying further wording into the rule.

- The starting point in construction is that the wording of rule D3(b) should be given its natural and ordinary meaning. Rule D3(b) provides a clear discretion for the Trustee to vary, suspend or reinstate an incapacity pension as it sees fit. This power is contained within the same provision as the power to award the pension in the first instance.

- Any approach to construction should be purposive and practical. The purpose of rule D3(b) is to provide the Trustee with the ability to pay a pension to a member who is incapacitated within the meaning of the Scheme rules. It is only in circumstances where a member has been assessed as meeting this test that an incapacity pension should be paid at any time.

- Any construction of rule D3(b) should give effect to the aim of paying a pension to a member who is incapacitated. Any implied terms should aid interpretation; not rewrite the terms agreed by the parties to the deed when it was signed.

- Consideration should also be given to common practice in the pensions field. It is accepted that a number of schemes only vary or suspend an incapacity pension when the member has recovered, but this is by no means a universal approach. Many schemes apply the same test on review as on initial award. There can be no suggestion that the Scheme rules are illogical or out of step with prevailing industry practice such that the requirement for recovery should be implied in rule D3(b).

- In the *Turner*[1] case, the relevant regulation specifically stated that the authority should consider whether the degree of a pensioner's disablement had altered. It does not support a general stance that a pension can only be reviewed in circumstances where a member's condition has altered.

- It is possible that a member's condition could remain unaltered but that advances in treatment could lead to a different prognosis some years after the initial award. To introduce an automatic pre-requisite of an improvement in condition could produce a result whereby a pension could not be stopped until

[1] *R on the Application of Turner v The Police Medical Appeal Board* [2009] EWHC 1867 (Admin) had been referred to in the Adjudicator's opinion issued prior to this determination.

such time as the member had engaged with the treatment and his condition had, in fact, improved.

- Applying the same test on review as on initial application ensures that all members are treated equally and a pension is only paid, and continues to be paid, in circumstances where the member is incapacitated as defined in the Scheme rules.

- As the Trustee is taking the decision to vary, suspend or reinstate an incapacity pension in the same way as for an initial application, the question of whether the member would meet the statutory ill-health condition is a relevant consideration.

- The Trustee has properly applied the Scheme rules. All relevant (and no irrelevant) matters have been taken into account. The decision to stop payment of Mr N's pension is justifiable on all of the facts. As such, there are no grounds to find that the Trustee's decision is perverse. There has been no maladministration on the part of the Trustee.

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-

    - It is not the role of the Ombudsman to review the medical evidence and come to a decision of his own as to whether or not Mr N's pension should have ceased in March 2016. His concern is with the Trustee's decision making process. The medical (and other) evidence is reviewed in order to determine whether it is appropriate and supportive of the Trustee's decision. The weight which is attached to any of the evidence is for the Trustee to determine, including giving it little or no weight. It is open to the Trustee to prefer the advice it receives from its own medical adviser unless there is a cogent reason why it should not, or should not without seeking clarification. The kind of issues referred to above include errors or omissions of fact or a misunderstanding of the relevant rules. Where a decision requires the Trustee to exercise discretion, as it does here, there are well established principles it must follow. Briefly, it must:-

        - ask the right questions,

        - adopt the correct construction of the law and the scheme rules,

        - take all relevant matters into account and exclude any irrelevant matters, and

        - not come to a perverse decision.

In the this context, a perverse decision is taken to be one which no other decision maker, properly directing itself, would have reached in the same circumstances. If the decision making process is found to be flawed, the decision can be remitted for the Trustee to reconsider.

- Mr N was awarded an incapacity pension in 2009. The Trustee must, therefore, have determined that he met the definition of "incapacitated" at that time. In view of the fact that the Trustee agreed that Mr N should continue to receive his pension, it must have been of the same view in 2012.

- Rule D3.(b) provides for the Trustee to vary, suspend or reinstate an incapacity pension "as it considers appropriate" at any time before the member's normal pension date. The rule does not specify on what grounds the pension could or should be varied, suspended or reinstated. The Trustee is of the view that Mr N should be assessed to see if he continues to meet the incapacity definition and that it must have regard to the ill health condition set out in the Finance Act 2004.

- Section 165 of the Finance Act 2004 prohibits the payment of a pension by a registered pension scheme "before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme". The ill health condition must be met immediately before the pension is put into payment but there is no requirement for the Trustee to monitor whether a member continues to meet the ill health condition once the pension has been put into payment.

- The Finance Act makes an exception to the general rule that a pension once in payment should be payable until a member's death if the member became entitled to it by reason of the ill-health condition being met. The Trustee is not, therefore, precluded from reducing Mr N's pension by the Finance Act 2004.

- The fact that the Finance Act 2004 makes a specific exception to allow the reduction of ill health pensions reflects the general expectation that a pension, once in payment, will be paid for the life of the recipient. The Courts too have indicated that, once a decision is made to pay a pension, that decision should, if at all possible, be final. The member is entitled to expect a degree of certainty in respect of the pension. It is recognised, however, that where someone begins to receive a pension on the basis of incapacity, he/she should not continue to draw the pension if it is no longer justified by reason of some improvement in his/her condition.

- The decision to vary, suspend or reinstate an incapacity pension under rule D3.(b) is discretionary. However, it is not the same discretion as was exercised by the Trustee in 2009. It does not provide the Trustee with the opportunity to revisit the decision it made in 2009. It would be contrary to the general principle that a decision to pay a pension, once made, should be final. If the

Trustee were to cease a pension simply because it had changed its mind, it might be argued it was failing in its duty not to act capriciously, i.e. unpredictably or whimsically.

- The discretion to review an incapacity pension in payment should be viewed as an opportunity to consider whether payment of Mr N's Pension was no longer justified by reason of some improvement in his condition. This might be because his underlying health had improved or there was some new treatment available to him, such that he was now able to undertake some remunerated employment. The fact that the discretion allows the Trustee to vary Mr N's pension as an alternative to suspending it indicates this employment need not be his normal employment or similar.

- The evidence does not indicate that this is the approach taken by the Trustee in 2015/16. This is in contrast to the approach outlined in 2009 and to the approach taken in 2012. In 2009, Mr N was told the pension might be varied or stopped altogether if there was any change in his health or employment prospects. The Trustee now says that this was incorrect. However, this is the approach envisaged by the Scheme rules and the Courts. In 2012, Mr N's GP was specifically asked whether there had been any changes in Mr N's health in the past year and if Mr N had undertaken any work. This appears to be in keeping with the approach envisaged by the Scheme rules and the Courts.

- In 2015/16, the Trustee, in effect, revisited its decision to pay Mr N an incapacity pension. Instead of asking whether there had been any change in Mr N's condition, it asked whether he met the definition of incapacitated.

- Having reviewed the medical evidence provided, the Adjudicator was not able to identify any reference to an improvement in Mr N's condition or any new treatment options which had become available to him since 2009. In fact, all the medical advisers, including Dr Eraneva, agreed that he was not fit for any work at that time. The treatment options discussed would appear to be options which would have been available to Mr N in 2009.

- The Trustee failed to ask itself the right questions and did not adopt a correct construction of the relevant rule. This amounts to maladministration on its part. Mr N has suffered injustice inasmuch as his pension has been ceased when it had yet to be established that this was justified.

15. The Trustee did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Trustee provided its 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 the Trustee for completeness.

Ombudsman's decision

16. It is accepted that rule D3(b) gives the Trustee the discretion to vary, suspend or reinstate Mr N's incapacity pension. It would not be appropriate for the Trustee to continue to pay an incapacity pension if this was no longer justified. However, in coming to a decision to cease a pension which has been in payment for some time, the Trustee should, to my mind, be able to point to a change in the member's circumstances. The discretion provided in rule D3(b) should not be seen simply as an opportunity for the Trustee to change its mind or interfere in decisions made by its predecessors. Once the decision has been made that the member meets the eligibility criteria for an incapacity pension, that decision should stand unless and until there is a change in the member's circumstances. Any such change needs to be explained to the member.

17. I acknowledge that the regulation referred to in the *Turner* case specifically referred to a change in the pensioner's degree of disablement. However, the underlying principle that a pension, once in payment, is payable for the life of the pensioner has wider application. It can be seen running throughout pensions legislation over very many years.

18. A natural reading of the rule providing discretion to vary, suspend or reinstate the pension is one that looks for a rational basis for change. The purpose of the power is plainly to recognise that circumstances can change after a pension has been put into payment. Each decision maker applying the eligibility criteria has to consider whether the member's earning capacity is seriously impaired and whether that condition is likely to subsist for a substantial period.But to apply the discretion to vary, suspend or reinstate rationally trustees must have regard to an existing payment situation and should in my view be able to point to evidence of a change of circumstance which supports the case for variation of an existing grant of benefit. It is possible that over time advances in treatment could change a member's prognosis. It is possible that changes in technology might assist a member to work where they had not been able to before. This reading of rule D3(b) does not require any additional terms to be implied; it follows naturally from the inclusion of such a provision after the power to award a pension in the first instance.

19. However, the Trustee has not identified any such change in Mr N's circumstances. This is essentially because it did not ask itself or its advisers this question. It did not apply its mind to the specific question of whether it should vary or suspend the pension, that is whether it should remove the existing entitlement. Instead it took an approach akin to requiring Mr N to make a fresh application for an incapacity pension. I do not find this to be appropriate or supported by rule D3(b).

20. I am unable to determine precisely what impact, if any, it had upon the trustee's decision making process, but I also have reservations about the standard of proof applied by Dr Eraneva in the formulation 'it is my opinion that, on the balance of probabilities, recovery that is sufficient to allow [Mr N] to resume gainful employment with another employer *is possible (my emphasis)* with his active engagement in these

additional interventions'. Evidence that an improved outcome is 'possible' is insufficient alone to support a finding that it is likely; that is, one made on the balance of probabilities. In making a decision on balance of probabilities trustees need to satisfy themselves whether a particular outcome is more likely than not after receipt of any suitable available treatment.

21. Therefore, I uphold Mr N's complaint.

Directions

22. Within 21 days of the date of this determination, the Trustee shall reconsider its decision to cease Mr N's pension. Having reconsidered its decision, the Trustee shall provide Mr N with its new decision and its reasons for reaching that decision. If the decision is that Mr N's pension should not have been ceased, he should be paid arrears from March 2016, together with simple interest at the rates quoted for the time being by the reference banks from the due date of each payment to the date of actual payment.

23. The Trustee shall also pay Mr N £500 within the same 21 days.

Karen Johnston

Deputy Pensions Ombudsman
17 May 2017

Appendix

Scheme rules

24. “Incapacitated” is defined in the Scheme rules as,

> “suffering from such physical or mental deterioration which in the opinion of the Trustee prevents the Member from following his normal employment and which seriously impairs his earning capacity and in the opinion of the Trustee is likely to do so for a substantial period. In forming its opinion the Trustee must obtain and consider the advice of a registered medical practitioner.”

25. Rule D3.(b) provides that the Trustee “may decide to pay an incapacity pension”. It also provides,

> “The Trustee may vary, suspend or re-instate the incapacity pension as it considers appropriate at any time before the Member reaches Normal Pension Date.”

The Finance Act 2004

26. Section 165 contains the Pension rules which state,

> “(1) These are the rules relating to the payment of pensions by a registered pension scheme to a member of the pension scheme ("the pension rules").
>
> Pension rule 1
>
> No payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the pension scheme.”

27. Part 1 of Schedule 28 contains the “ill-health condition”. This states,

> “For the purposes of this Part the ill-health condition is met if -
>
> (a) the scheme administrator has received 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.”

28. Schedule 28 also states,

> (2) A pension payable to the member is a scheme pension for the purposes of this Part if -
>
> (a) …

(b) it satisfies the condition in sub-paragraph (3).

(3) The condition is that (subject to sub-paragraph (4)) -

(a) the pension is payable (at least annually) until the member's death …, and

(b) the rate of pension payable at any time during any relevant 12 month period is not less than the rate payable at the relevant time .

…

(4) None of the following prevent the pension satisfying the condition in sub-paragraph (3) -

(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met …"

Medical evidence

Dr Abeywickrema (GP), 9 July and 24 August 2015

29. In a letter to the Trustee's occupational health doctor, Dr Abeywickrema said Mr N had a recurrent depressive disorder with anxiety dating back many years, together with on-going back pain/sciatica. He provided copies of [Mr N's] most recent PHQ9 scores and his current medication. Dr Abeywickrema said Mr N had last seen the local mental health team in 2013, when they had reported a good response to Cognitive Behavioural Therapy (**CBT**). He pointed out that Mr N's condition was a recurrent disorder and he continued to receive medication. He said Mr N had informed him that he was not working. Dr Abeywickrema concluded,

> "I am unable to comment on the long-term prognosis. Based on his current PHQ9 score, which confirms severe depression, it is unlikely that [Mr N] will be able to work."

30. In response to a request for further information, Dr Abeywickrema provided copies of Mr N's medical records from 2010 to date. He confirmed that Mr N had been referred to a psychiatrist in March 2011 and June 2012. He said Mr N had been referred for counselling and was awaiting assessment. Dr Abeywickrema said Mr N had been stable on his current medication but had been anxious and depressed since being informed his pension was to be reviewed.

Dr Challen (occupational health physician), 12 November 2015

31. In his report, Dr Challen listed the medical evidence which had been provided for him. This consisted of various medical reports dating back to 2009. He gave a brief history of Mr N's case and listed his diagnoses and medication. Dr Challen went on to say,

> "There is a suggestion, from the history given to me, that there is a possibility of Post-Traumatic Stress Disorder, there is no evidence available to me that this has been adequately addressed.
>
> It is accepted that [Mr N] has a diagnosis of Recurrent Depression, in which case it is preferable if the sufferer has quick and easy [access] to the Local Mental Health Team for any recurrence as well as regular review by a Psychiatrist. This does not appear to be available in his area.
>
> The full gamut of treatment for depression has been suggested to be the trial of adequate doses of 2 or 3 different Anti-Depressants, each working by different pharmacological effect and each being prescribed for a suitable length of time, as well as CBT. [Mr N] appears to have received the CBT but whether the dosage or type of the Anti-Depressants received has been adequate is not known, nor whether it has been administered for sufficient time.
>
> Companion Dog 'Tim' has only just been acquired, pets are said to have beneficial effects on both Mood and BP, Tim might yet be seen to be highly beneficial.
>
> Quite obviously, all treatment options will be limited by the facilities of his Local Mental Health Care Trust."

32. Dr Challen expressed the view that Mr N was not fit for any work at that time. He said Mr N was not fit to undertake his former role or any gainful employment. He concluded,

> "[Mr N] is only 48 years old and it is very difficult to prognosticate for the next 20 years. Much will be dependent upon what treatments are available in his local NHS area, and whether his medical attendants are able to provide a service that will respond to the remissions in this recurrence disorder.
>
> If the pensions Trustees wish for a more precise answer to these questions it would be imperative to commission an assessment with an expert in the field of Mental Health.
>
> On the evidence available to me today I consider it unlikely that [Mr N] will ever resume paid employment."

Dr Eraneva (consultant occupational physician), 27 November 2015

33. In her report for the Trustee, Dr Eraneva listed the evidence she had considered. This consisted of a 2009 "fitness to work" report, reports from Mr N's GP dating from 2011 to 2015, specialists' reports dating from 2009 to 2013, a face-to-face assessment undertaken in November 2015, and a manager's report from 2009. She then described the Scheme's incapacity criteria as follows,

> "such physical or mental deterioration which in the opinion of the committee

1. prevents the partner from following his/her normal employment
2. seriously impairs his/her earning capacity, and
3. is likely to do so for a substantial period. This has been defined further to mean 3 years.
4. Where a partner is under the age of 55 the question arises as to whether on the balance of probabilities, the partner is permanently unable to follow his/her current employment with the Partnership and similar work with another employer until age 65."

34. Dr Eraneva then gave a brief background to Mr N's case. Amongst other things, she said she agreed with the diagnosis of recurrent depressive disorder with anxiety and that he was unable to follow his normal employment at that time. She said the evidence indicated that Mr N was able to "manage the household for his wife and two children and the care of a new dog". She noted Mr N enjoyed periods of stability in his health but experienced increased symptoms in connection with the reviews of his pension. Dr Eraneva said the evidence suggested Mr N's symptoms were active and seriously impaired his earning capacity at that time. She expressed the view that Mr N's relationship with his former employer played an important part in his incapacity.

35. Dr Eraneva listed the treatment Mr N had received. She noted Dr Challen's reference to PTSD and agreed that some of Mr N's symptoms supported this diagnosis. She expressed the view that such a diagnosis should be made by a consultant psychiatrist and then discussed possible treatment options.

Dr Abeywickrema, 29 February 2016

36. Dr Abeywickrema provided an open letter in support of Mr N's appeal. He said Mr N had first been diagnosed with a recurrent depressive disorder in 1997. He said Mr N had suffered a relapse in 2008 and had completed a course of CBT at this time. Dr Abeywickrema said Mr N's medication had also been changed in 2008. He explained that Mr N had been seen by a consultant psychiatrist in 2008. Dr Abeywickrema said Mr N had had relapses in 2011, 2012, 2013, 2015 and 2016 and had been referred to the local mental health team again. He concluded,

> "Based on [Mr N's] diagnosis of recurrent depressive disorder with frequent relapses in spite of regular treatment it is extremely unlikely that he will be able to continue any employment. He is currently awaiting further evaluation and assessment under the mental health team while continuing his long-term treatment …"

Dr Beary (consultant psychiatrist), 16 March 2016

37. Mr N obtained a report from Dr Beary in connection with his appeal. He examined Mr N in March 2016. He concluded,

> "[Mr N] comes from a family where a paternal great uncle committed suicide and his father retired early on health grounds and who has suffered from depression and been treated for this for many years. It seems probable that [Mr N] has inherited vulnerability to anxiety and depression.
>
> I agree with the diagnosis of recurrent depression (ICD10.F33.1) which his consultant psychiatrist has made and he has been treated with appropriate antidepressant medication … to a dose which does not adversely affect his blood pressure. He has also had the benefit of courses of cognitive behaviour therapy which is an effective treatment [for] depression and anxiety through the local NHS team.
>
> At the time that I assessed him … he was moderately to severely depressed in mood with sleep disturbance and some 9kg loss of weight. He is tremulous, shaky, sweating and his pulse rate was very rapid which are all symptoms of severe anxiety and depression.
>
> He is currently not fit to work because of his psychiatric state.
>
> [Mr N] would benefit from a combination of psychiatric medications and I would recommend that he continues on … but in addition he is prescribed the major tranquiliser …
>
> In my view he is also likely to benefit from a course of eye movement desensitisation (EMDR) which is available through the NHS but is also available through the private sector.
>
> It is probable that these treatments will improve [Mr N's] mental state and improve the quality of his life.
>
> However, on the balance of probability, [Mr N] will not regain his mental health sufficiently to be able to return to the work force in the long term and at least until the age of 65."

Dr Eraneva, 7 April 2016

38. The Trustee asked Dr Eraneva to comment on Dr Abeywickrema's letter and Dr Beary's report. Dr Eraneva noted extracts from Dr Beary's report and gave a summary of Dr Abeywickrema's letter. She said the diagnosis of depression and anxiety had been re-confirmed and accepted that an individual with a history of recurrent depression was more likely to experience further episodes. She noted Dr Beary had not mentioned a diagnosis of PTSD but had recommended a recognised intervention for PTSD. She said the full range of intervention for PTSD would include trauma-focused psychotherapy. Dr Eraneva noted Dr Beary had not commented on the workplace issues which had featured in Mr N's history of ill health and were documented in his GP records. She noted Dr Beary referred to Mr N's alcohol intake and she commented that individuals with mental health issues were advised to refrain from alcohol. She noted the GP records indicated Mr N's health was stable between

pension reviews, with a significant increase in symptoms at times of correspondence with his former employer.

39. Dr Eraneva commented,

> "… I believe that it is important to consider carefully the impact of the relationship with the Partnership as a perpetuating factor in [Mr N's] ill health. Dr Challen states that a counsellor told [Mr N] … that she could not help him as "the matter was about his firm". Therefore the focus of intervention is to help manage the current and incapacitating symptoms, and then to help [Mr N] overcome his experiences at the Partnership with EMDR and also long-tern talking treatments, although Dr Beary has not mentioned the latter."

40. Dr Eraneva accepted that Mr N was unable to work in any capacity at that time. She also accepted that he was unlikely ever to be able to return to his previous or another role at his former employer. She noted Dr Beary's comment to the effect that the recommended treatment would probably improve Mr N's mental state and the quality of his life. She noted Mr N had been described as stable between reviews and said he was able to "manage a busy household" without the further interventions. Dr Eraneva concluded,

> "Therefore it is my opinion that, on the balance of probabilities, recovery that is sufficient to allow [Mr N] to resume gainful employment with another employer is possible with his active engagement in these additional interventions
>
> In view of this, I believe that the available medical evidence taken in its entirety does not suggest permanent incapacity to engage in alternative gainful employment for the next 17 years until [Mr N] is aged 65.
>
> In further consideration of this review, it may be helpful to commission a report from an independent psychiatrist with a particular interest in occupational aspects of mental health, and I would be pleased to assist with this."